

Copyright Q & As Tutorial Series Transcript

[Thresholds for copyright: "Original"](#)

Hi, I'm Copyright Cate. Welcome to the Copyright Q&As tutorial series.

Under the Canadian Copyright Act, there are thresholds that must be met for copyright protection. In this tutorial we look at one threshold that says a work must be original in order to be protected. A companion tutorial looks at another threshold that extends copyright protection only to substantial parts of a work.

On completion of this tutorial you will be able to:

- identify the two main factors that determine whether a work is original and
- recognize kinds of works that are likely to be original.

One threshold for copyright protection is that a work must be "original." If a person is the author of a work, plainly that person must be its creator or originator. But what does it take for a work to be considered "original"? Once again we look to case law for guidance since the term "original" is not defined in the Copyright Act.

In a 2004 landmark case, *CCH vs the Law Society of Upper Canada*, the Supreme Court of Canada ruled that to be "original," a work must be more than a mere copy of another work, but there's no need for it to be creative in the sense of being novel or unique. Instead, to be original, a work must be the product of an exercise of skill and judgment.

The Court said skill is using your knowledge, developed attitude or practiced ability to produce a work, and judgment is using your capacity to form an opinion or evaluation by comparing different possible options to produce a work. According to the Court, the skill and judgment required to produce the work must involve intellectual effort that is not so trivial as to be purely mechanical.

By deciding that originality requires an exercise of skill and judgment, the Supreme Court chose a middle ground between two alternative approaches: the sweat of the brow, and creativity. The sweat of the brow approach says merely demonstrating that labour was exerted to produce an item is sufficient to qualify it as an original work. At the opposite extreme, the creativity approach says an item must be creative in order to be an original work.

Perhaps it's helpful to consider some examples that do not meet the threshold of originality. In the landmark CCH case, the Supreme Court ruled commercial publishers of judicial decisions do not own copyright in their published versions if changes they make to the printed judgments consist only of corrections to minor grammatical errors and spelling mistakes, or if only the font is changed. The Court regarded these kinds of changes as merely trivial or mechanical actions that are insufficient to make a work original.

Other items that Canadian courts have ruled not to be original works include the outline for a talent contest, payroll books, and an ordinary floor plan for a mass-produced house.

Thanks for viewing this tutorial in our Copyright Q&A series. You can check out the Sources used in this tutorial as well as Further Information if you'd like to find out more about copyright.