

Copyright Q & As Tutorial Series Transcript

[Thresholds for copyright: "Substantial part"](#)

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

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

On completion of this tutorial you will be able to:

- identify the main factor that determines whether part of a work represents a "substantial part" and
- recognize selections that are likely to be a "substantial part" of a work.

The Copyright Act defines copyright as the sole right to do certain acts in relation to particular forms of intellectual expression or a substantial part of those expressions.

The implication is if something is copyrighted and you use a portion that isn't "a substantial part," that portion is not protected by copyright. In other words, a copyright owner's rights do not extend to every iota of his or her creation, but only to parts that are substantial. Since non-substantial parts are not protected by copyright, you can use those parts without needing to seek permission or pay fees.

How can we tell if part of a copyrighted item we wish to copy meets the threshold of being a substantial part? As you might have guessed, the Copyright Act does not define what is meant by "substantial part," so we turn to case law for guidance.

Citing an 1878 UK copyright case, one legal scholar has suggested that a "part" means portion, not "particle," and that "a copyright owner . . . cannot control every particle of her work, any little piece the taking of which cannot affect the value of her work as a whole."

In a more recent case, an Ontario court ruled in 2002 that 60 lines copied from a 14,000-line computer program did not constitute taking a substantial part. Therefore, using the copied lines in a new program did not infringe the copyright in the source program.

As well, in a 2010 Australian case, the court determined that when a small part of a work by itself is not a substantial part, aggregating ten such particles from ten different works in a new work does not elevate the ten particles to become substantial parts just because they are used in combination.

So how do courts determine whether copying a portion is or is not a substantial part of a work? In a 2013 case called *Cinar vs Robinson*, the Supreme Court of Canada explained “substantial part” is a flexible notion. It’s a matter of fact and degree, chiefly determined by the quality rather than quantity of the part.

According to the Court, a substantial part of a work in general represents a substantial portion of the author’s skill and judgment expressed in the work. The Court also pointed out “a substantial part of a work is not limited to the words on the page or the brushstrokes on the canvas. The Act protects authors against both literal and non-literal copying, so long as the copied material forms a substantial part of the infringed work.”

Now that we know “substantial part” is mainly determined by the quality of the part taken, what kinds of factors can influence whether a part we wish to copy is a substantial part? In a 2012 case called *Warman vs Fournier*, the Federal Court of Canada shed some light on this question by suggesting five factors that can be relevant:

- the quality and quantity of the copied part,
- the degree to which what is copied adversely affects the copyright owner’s activities and the value of the source work,
- whether what is copied is protected by copyright,
- whether the copying was done with the intention of saving time and effort, and
- whether what is copied is used in a similar manner to that of the copyright owner.

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.