The Role of Copyright Law in the Music Industry

Prince Sarao

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**Introduction & Overview**

 The rise of digital streaming platforms in recent decades has resulted in several disputes over musicians' entitlement to royalties under contracts signed prior to the age of music streaming. This, as expected, is due to the agreements not including detailed clauses outlining the rights of the involved parties. This short piece will cover the basis of what role copyright law plays in the Canadian music industry and how it acts to protect the musical works of individuals as well as the creators themselves.

Canada’s Copyright Act provides that *“any work of music or musical composition, with or without words, and includes any compilation thereof”* is copyrightable.[[1]](#footnote-1) However, this broad coverage of ‘musical works’ can be dissected to uncover two distinct rights which have the possibility of being possessed by separate entities.

First, the copyright in the musical composition, i.e., combination of harmonies, chords, and notes, would belong to the producer of the recording, and secondly, the specific sound recording of the whole composition, which can be owned by a record label or other music publisher. Albeit most rights lay with the musician who is able to regulate the recreation, distribution or reproduction of their work, unless the rights are assigned to a third party like a recording company via a written contract.[[2]](#footnote-2)

**Artist’s Rights**

The artist’s rights granted under copyright protection in Canada cover a broad range of actions in relation to the musical work they have created. The **reproduction rights** associated with the work of music allows the creator to allow permit its use in movies, or publish it.[[3]](#footnote-3) This right is exercised when the work is made available for the purpose of distribution or other use like embodying it on a CD or other media platform. However, the *Copyright Act* allows for the reproduction of a song if you had legally bought the original copy and if you are reproducing it for private purposes only (i.e., not for monetary reasons).[[4]](#footnote-4) Furthermore, the artist possesses the ability to license the reproduction of their work. [[5]](#footnote-5) This is analysed further within the licensing section of this article.

As expected, an exclusive **right of distribution** is granted to the copyright holder which allows the creator to publish their work as they see fit, whether that is electronically on iTunes or in physical copies at a local entertainment shop.[[6]](#footnote-6) An exclusive **performance right** is also granted which enables the creator to regulate both live, and playback recordings of their work, in public settings like supermarkets and bars.[[7]](#footnote-7) Whatever broadcaster wishes to use a copyrighted work, they must pay royalties to the publishers and songwriters via the ‘’Society of Composers, Authors, and Music Publishers of Canada (SOCAN).[[8]](#footnote-8) This society protects creators by way of demanding a play list, royalty and licensing fees from others who play your work.[[9]](#footnote-9) Pursuant to Canadian law, any individual caught reproducing or performing an original piece of musical work without the consent of the copyright holder can be subject to prosecution under copyright infringement.[[10]](#footnote-10)

Since the publication of the Canada-United States-Mexico Agreement, on July 1, 2020, the copyright terms covering sound recordings and performances have been amended to include a general term of copyright protection of life plus 70 years.[[11]](#footnote-11) This is an addition of 25 years in comparison to the prior term of protection lasting 50 years following the end of the calendar year of the author’s death.[[12]](#footnote-12) There is no requirement of registration to acquire copyright protection, however, a certificate of registration from the Canadian Intellectual Property Office will only work in favour of the rightful holder as it can serve as *prima facie* evidence in court in relation to a dispute over copyright ownership.

**Moral Rights**

In brief, moral rights are awarded to the author of an original work in a bid to protect their reputation and integrity in the event their work is defamed or altered without their permission.[[13]](#footnote-13) In tandem to the integrity rights, authors are awarded credit rights which allow them to be associated with the musical work by name or pseudonym, regardless of having the economic rights to the work.[[14]](#footnote-14) The remedies awarded for the infringement of these rights are equal to those of copyright infringement such as damages, injunction and accounts, thus showing the significance of the author’s moral rights.[[15]](#footnote-15) In regard to record deals signed with third parties, moral rights are not transferred, they may only be waived in part, or whole.[[16]](#footnote-16)

**Licensing Agreements**

Due to the rights afforded to the creator of musical works, it allows one to benefit from their production via the use of licensing agreements. This enables other individuals to use their work in return for monetary value in the way of royalties.[[17]](#footnote-17) It is important for non-creators who wish to use the work of others to acquire the correct licenses in a bid to preclude any copyright infringement proceedings being filed against them, or the work they produce. However, should one wish to use a musical work written more than 75 years ago, they do not require a license, therefore no royalties need to be paid either. Upon the expiration of the 75-year period, following the death of the last surviving author, the musical work is said to be in the ‘public domain’, meaning no one is the copyright holder and no one owns it.[[18]](#footnote-18) Nevertheless, new artists must be careful in the recent era of music production as there are many old songs which have been labelled as being in the ‘public domain’ but have then been used in recent musical works which have become subsequently copyrighted. Consequently, the work would then have to be licensed when reproduced.

1. *Copyright Act*, (R.S.C., 1985, c. C-42)s 2, “musical work”. [↑](#footnote-ref-1)
2. Ibid, s3(1) & s18(1). [↑](#footnote-ref-2)
3. Ibid, s3(1). [↑](#footnote-ref-3)
4. Ibid, s29.22(1)(b). [↑](#footnote-ref-4)
5. Ibid, s53(2.2). [↑](#footnote-ref-5)
6. Ibid, s3(1). [↑](#footnote-ref-6)
7. Ibid, s3(1)(d). [↑](#footnote-ref-7)
8. Ibid, s19(2)(a). [↑](#footnote-ref-8)
9. https://www.socan.com/about/. [↑](#footnote-ref-9)
10. Ibid, s27(1). [↑](#footnote-ref-10)
11. https://www.ic.gc.ca/eic/site/693.nsf/eng/00189.html [↑](#footnote-ref-11)
12. Ibid, s6. [↑](#footnote-ref-12)
13. Ibid, s14.1(1) & 17.1. [↑](#footnote-ref-13)
14. Ibid. [↑](#footnote-ref-14)
15. Ibid, s34(2). [↑](#footnote-ref-15)
16. Ibid, s14.1(2). [↑](#footnote-ref-16)
17. Ibid, s19(1 & 2). [↑](#footnote-ref-17)
18. Ibid, s23(1.1). [↑](#footnote-ref-18)