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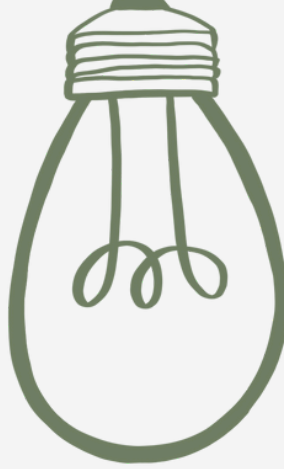
BY SABRINA OUYANG

A GUIDE  
FOR

# CANADIAN MEDICAL ILLUSTRATORS

WHAT ARE MY  
INTELLECTUAL PROPERTY  
RIGHTS?

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## WHAT IS INTELLECTUAL PROPERTY? HOW DOES IT AFFECT ME?

Intellectual property (IP) refers to creations of the mind. Any form of illustration, animation, or other expression of biomedical communications that you create is considered your IP and you are entitled to the rights in the work. In Canada, IP is protected under statute. The different types of IP include copyright, trademark, and patent, each relying on a distinct core legal

mechanism and protecting different categories of works. Specifically, copyright covers works of medical illustration. As a medical illustrator, it is important to understand your IP rights in order to protect your ownership of your works and seek redress if your copyright is infringed upon. This guide provides some basic information and case scenarios to help you better understand your IP rights.

# COPYRIGHT

There is copyright in works that are original and fixed in a tangible form. Copyright applies to all literary, dramatic, musical, and artistic works, performances, sound recordings, and communication signals (this includes drawings, illustrations, and animations). However, ideas and facts are not protected by copyright. When you create an original work, you automatically get the copyright for that work. Even though copyright in Canada does not require registration, registration with the Canadian Intellectual Property Office (CIPO) may be helpful as evidence of your copyright in your work, especially in court.

In Canada, the rights of copyright owners are governed by the *Copyright Act*. Under the Act, the copyright owner has the exclusive legal right to produce, reproduce, publish, or perform their copyrighted work. This includes the right to license your work, meaning copyright owners can give others permission to disseminate their work. Copyright in a work exists for the author's lifetime, plus 70 years after that. After that, the work is no longer protected by copyright and falls into the public domain.



**Practice tip:** you can find the copyright owner of a work on the Canadian Copyright Database



# MORAL RIGHTS

In addition to copyright, authors have moral rights. Moral rights preserve the integrity and intent behind an author's creation.

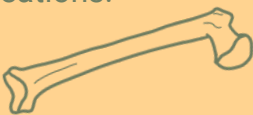
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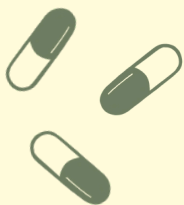
and 14.2 of the *Copyright Act*, moral rights include the right to the integrity of the work and the right to be associated with the work as an author where reasonable in the circumstances. It also includes the author's right to remain anonymous. Moral rights subsist for the same term as the copyright in the work. Furthermore, even if copyright is transferred, moral rights remain with the original author.

The integrity of your work is infringed when it is altered without your permission or used in association with a purpose to the prejudice of your reputation. Actions done in good faith to restore the work or change the location of the work do not constitute an infringement of the integrity of your work. If your moral rights are infringed, you may be entitled to remedies.

Moral rights can be waived, but not transferred. Some may choose to waive their moral rights in order to demand a higher fee for their work. However, others may wish to retain their moral rights in order to be credited for their work and preserve some say over the treatment of their creations.

**Practice tip:** check for a moral rights waiver provision in the contracts that you sign





# USING COPYRIGHTED WORKS

Working within the biomedical field means that you may come across copyrighted works that you may wish to draw from for inspiration or use as a reference. How do you do so without infringing on another's copyright?

When you use a copyrighted work or a substantial part of that work without authorization from the copyright owner, that is an infringement of copyright. However, the person who used the copyrighted work can rely on the fair dealing defence, a broad defence available to copyright users. It is defined under section 29 of the *Copyright Act*. If you can establish that you used the copyrighted work for one of the defined purposes (research; private study; education; parody; satire; criticism; review; news reporting) and that the use of the copyrighted work was fair, then you may be able to use this defence.

## **What if you don't know the copyright owner of the material?**

Where the copyright owner of a copyrighted work is unknown or unable to be located, that work is considered to be an orphan work. Under section 77 of the *Copyright Act*, you may be able to obtain a license to use orphan works.



**You are a freelancer or independent contractor and have taken on assignments producing illustrations for various clients, including journals, museums, and lawyers. What are your IP rights?**

Freelancers and independent contractors in Canada, unlike employees bound by the employment relationship, often retain ownership of the IP rights associated with their works. For every client, you sign a separate contract detailing the parameters of your assignment. While you can assign full ownership of the copyright to the client in the contract, you can also opt to retain the copyright and instead license your work to the client.

What you ultimately decide to do may depend on the circumstances of the work. Is it an illustration specific to the client that you may have no other reason to use again? In that case, it may make sense to assign full copyright ownership to the client.

## CASE SCENARIO #2



**Practice tip:** as a freelancer, make sure to sign a written agreement with your client, detailing your discussions around the copyright of the produced work.

# FAQ

## Q. Do I have the same IP rights in a country other than Canada?

Every country has its distinct IP legislation and jurisprudence. As such, you should seek to understand the IP laws of the country of interest. It should be noted that Canada is a party to the *Berne Convention*, an international treaty. Through its provisions, your work automatically has copyright in all signatory countries.

## Q. If I use generative AI to create my work, is it copyrightable?

The copyrightability of AI-generated work has not yet been determined in Canada. There will likely be updates on this in the coming year - stay tuned!

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