

GENERAL INFORMATION
ON
OBTAINING NORTH AMERICAN
COPYRIGHT PROTECTION

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COPYRIGHT DISCLOSURE FORM

1.0 PREFACE

It is often said that we are living in an “information age”. In fact, we are. However, it is not the nature of the information to which we are currently exposed, *per se*, that is of special significance to our age. Rather, it is the speed by which it may be readily disseminated. While the vitality of community and industry has always depended upon synergetic assemblies of people, information and capital, now, messages transmitted through copper, coaxial or glass fibre wires, or beamed through the sky, have replaced the bricks and mortar which have heretofore allowed for such assemblies. This has fundamentally altered the way we live our personal lives and conduct business, and shattered the established paradigms in all sectors of the economy. The Internet, in particular, has expanded the ability of entrepreneurs to market their goods, at relatively low cost, and in the process, turned thousands of hobbyists into viable industrialists.

Nowhere has this change been more evident than in those industries wherein the product is information itself. The vast expansion of markets available to potential entrepreneurs which has occurred is of particular value to purveyors of information. Even in the information age, vendors of capital goods face limitations on the speed in which they may expand their business, or alter same to counter changing economic climates; there are, *inter alia*, limits on the speed by which factories can be built, or re-tooled. In contrast, the technological advances of the information age mean that vendors of information have no such limits; their work-product, namely, information, may be replicated and transmitted, for all intents and purposes, as needed, to meet demand. The results are self-evident. In North America alone, revenues relating to the book publishing, motion picture, computer software and recorded music industries, which number among the most important of the “information industries”, are estimated to exceed US\$ 130 Billion, and have grown in recent years at a pace well in advance of the overall domestic growth rate.

However, this great advance comes with a corresponding downside. The ease by which information may be replicated and distributed results in the potential for widespread piracy. Books may be scanned and printed at blinding speed. Computer software, pre-recorded motion picture videotapes, MP3 files, and music CDs may be easily duplicated and distributed. The control of these types of piratical activities is the purview of the law of copyright. As such, the importance of copyright law to modern commerce cannot be understated.

In light of the foregoing, the following brochure has been written, to assist the reader in ascertaining the benefits which can be obtained through the proper exercise of copyright law. However, it should be noted that the laws relating to copyright are very complex. The information provided in this brochure represents only an overview of certain selected elements of copyright law of general interest. The information contained herein pertains to works created in Canada, by Canadian residents, only. In no circumstances should the information enclosed in this brochure be considered an adequate substitute for considered legal advice, and the authors hereby expressly disclaim any and all liability relating to the provision of this information.

2.0 WHAT IS A COPYRIGHT?

Copyright is a bundle of monopolistic rights created by statute in relation to a “work” of an author, such as a novel, painting, photograph, screenplay, movie, musical score or computer program, that allows the owner of the copyright to prohibit others, *inter alia*, from producing or reproducing the work, performing the work in public, or publishing the work, in the country, or countries, in which the copyright subsists. Accordingly, anyone who produces, reproduces, publishes or performs the work without permission of the owner of the copyright is in violation of Canadian law, and is liable to civil, and potentially criminal, sanctions.

Copyright automatically comes into existence upon the creation of an original work, without the need for registration. For most works, copyright subsists throughout the life of the author, and for fifty years following the author’s death; however, it should be noted that the duration of copyright depends on a number of factors, including, *inter alia*, whether or not the work has been published. Normally, the author is the first owner of the copyright in a work, except in circumstances where the work is created by the author in the course of employment for another; in this event, first ownership of the copyright normally resides with the employer, absent an agreement to the contrary. In circumstances where a work is commissioned, such as a photograph or portrait, first ownership of the copyright normally resides in the person by whom the photograph or portrait was commissioned, provided the author has been duly paid. Some exceptions to these general rules do exist. For example, although copyright in the articles of a newspaper columnist may be owned by the newspaper, the columnist may have reserved rights to restrain other types of publication, such as publication of the collected articles in book form. As such, it is necessary to examine each fact situation in detail, in order for a proper assessment of copyright ownership to be made.

Ownership of a copyright may be transferred, in writing, from one person, such as the author, to another, or bequeathed by will. However, where the author is the first owner of the copyright, no assignment of rights or bequest may vest any rights in the work beyond the expiration of twenty-five years from the death of the author, at which time, ownership of the copyright reverts to the heirs of the author, notwithstanding any agreement to the contrary. This provision was originally introduced to provide a limited form of protection to the widows and heirs of authors who made improvident financial deals during their lifetime.

3.0 PERFORMANCE RIGHTS

The Canadian *Copyright Act* also creates a special class of rights, called “performance rights”, in performances, such as, for example, vocal, musical or theatrical performances (as distinguished from the copyrights to the lyrics, score or screenplay of the underlying work being performed). Briefly stated, the performance rights provide to performers, *inter alia*, the sole right to “fix” their performances (i.e. film, tape or otherwise record same); the sole right to communicate their unfixed performances to the public by telecommunication; and the sole right to rent out a sound recording of the performance.

It will be evident that the performance rights encompass only a small sub-set of the entire bundle of rights which normally arise under copyright. As such, certain rights are available to authors which are, ostensibly, not available to performers, including, *inter alia*, the sole right of reproduction; the sole right to present in public; and the sole right to communicate to the public by telecommunication. However, it should not necessarily be taken from the foregoing that the law intends to extend to authors a greater ambit of protection than performers. Since performances, by their very nature, are transitory, portions of the bundle of rights granted under copyright are inapplicable in the context of performances and performers. For this reason, performers require a different type of protection than do authors. For example, it is obvious that a performer's "performance", *per se*, cannot be reproduced or presented to the public, except with permission of the performer. While only fixations of the performance might be reproduced and/or publicly presented, the sole right to fix a performance resides with the performer. Accordingly, that performer, indirectly, has the complete ability to control reproduction and public presentation of any fixation in which he is a performer. Thus, no express rights in this regard need be granted to the performer, but arise, pursuant to the *Copyright Act*. As such, notwithstanding that the bundles of rights respectively granted to authors and performers under the *Act* are not identical, the legislation meets, arguably, the reasonable needs of each.

4.0 MORAL RIGHTS

Copyright, as we now know it, is of relatively modern origin. Even into the middle ages, the concept of ownership in a work was largely foreign, since reproduction of literary works and artistic works was still done by hand, and to have one's works so reproduced amounted to flattery of a high order. However, such reproduction was only tolerated if due credit was given the author; plagiarism, for example, was not treated lightly. Given this long tradition, it is unsurprising that current Canadian copyright law maintains a right of paternity, so as to provide to an author the right to be named as author of his or her works (or to remain anonymous, or to claim authorship under a pseudonym).

In combination with the right of paternity, there has also been statutorily created in Canada a right of integrity, which provides to the author of a work the right to prevent its distortion, mutilation, or use in association with products, services, causes or institutions, if such use would result in prejudice to the honour or reputation of the author. However, establishing that an activity would be "to the prejudice of the honour or reputation" of an author might be difficult in a court of law. For this reason, the *Copyright Act* includes a deeming provision, whereby, in the case of a painting, sculpture or engraving, prejudice is deemed to occur in respect of any distortion, mutilation or other modification to the work. One of the earliest reported moral rights cases involved the sculpture of Michael Snow entitled "Flight Stop", which comprises 60 individual geese, positioned high within the atrium of the Toronto Eaton Centre, and is illustrative of the type of activities which may be found to constitute a "distortion, mutilation or other modification". One year, as part of Eaton's Christmas decoration effort, red ribbons were tied about the necks of the geese, and the artist, who claimed that affixing ribbons in this manner was prejudicial to his honour and reputation, was successful in obtaining a judicial order requiring that the ribbons be removed, even though no permanent harm or change to the sculpture was intended by Eaton's.

The right of integrity and right of paternity are collectively referred to as “moral rights”, and only apply to “works” within the meaning of the *Copyright Act*; as such, current wisdom believes them to be inapplicable in the case of performer’s performances, mechanical rights in sound recordings and in communication signals. Moral rights cannot be assigned, but they may be waived, in whole or in part. Accordingly, it is important, in circumstances wherein ownership of a copyright is being transferred, that a suitable written waiver of moral rights, reflecting the reasonable expectations of the purchaser, also be obtained, so as to enable the purchaser to subsequently use the copyright in accordance with his or her intended purpose.

In the United States, a right to be named as author of a work is available to an author, as is a right to prevent any intentional distortion, mutilation or other modification of the work which would be prejudicial to his or her honour or reputation. However, moral rights, in the broad Canadian sense, do not exist under United States law, and the rights available in the United States differ in numerous ways from Canadian moral rights. For example, in the United States, the rights of paternity and integrity do not apply in respect of commissioned works, nor is there a prohibition against use “prejudicial to the honour or integrity of the author” in association with products, services causes or institutions. As well, waivers of the U.S. paternity and integrity rights must be in writing, and signed by the author. However, it should be noted that the foregoing is not an exhaustive list of differences, and should further information in this regard be required, the reader is urged to seek professional advice.

5.0 ARE ALL WORKS COPYRIGHTABLE?

The short answer is "No." To be copyrightable in Canada (and most other countries) the “work” must be original and must fall within one of the following statutory categories:

- 1) artistic work, which includes paintings, drawings, maps, charts, plans, photographs, engravings, sculptures, works of artistic craftsmanship, architectural works and compilations of artistic works;
- 2) dramatic work, which includes any piece for recitation, choreographic work or mime, the scenic arrangement or acting form of which is fixed in writing or otherwise, cinematographic work and compilations of dramatic works;
- 3) musical work, which includes any work of music or musical composition, with or without words, and compilations of musical works; or
- 4) literary work, which includes tables, computer programs and compilations of literary works.

With reference to the requirement of originality, foremost, it is clear that the work must have originated from the author, and may not have been copied from the work of another.

There is also a threshold level of creativity required in a work to attract the protection of copyright. Assessment of creativity is, obviously, greatly subjective. As such, the courts generally have not imposed a significant burden in this regard. In fact, even an arrangement of data taken from other sources, provided that the arrangement is the product of the plaintiff's thought, selection and work, may result in the creation of a copyright. However, where the work in question is obviously lacking in creativity, for example, being merely an arrangement of factual data, the courts have proved willing to reject claims to copyright protection. So, for example, the arrangement of data in a telephone directory has been found in Canada to not be protectable as a copyrighted work.

It should also be noted that copyright may be lost in useful articles if more than 50 are produced. This provision allows artisans, such as potters or wood carvers, to produce "limited run" three-dimensional articles of a particularly artistic design. However, the *Copyright Act* provides that if a quantity of the articles in excess of 50 is produced by, or under the authority of the artisan, then it shall no longer be an infringement of the copyright for others to reproduce the three-dimensional design, with reference only to the article incorporating the design. In circumstances wherein a useful article is to be produced in quantities in excess of 50, protection under the *Industrial Design Act* may be available, and professional consultation in this regard is advisable.

6.0 NOTICE OF COPYRIGHT

Many Canadians are familiar with the copyright symbol ©. This is due largely to our exposure to copyrighted materials originating in, or destined for, the United States, where it had, until recently, been a requirement that published works, as a condition for maintaining copyright protection, bear a notice of copyright. There has never been such a mandatory notice requirement in Canada. Moreover, the mandatory notice requirements have been removed from US law for works published in the United States after March 1, 1989, at which date the United States conformed its laws to the international standard of no marking requirement, thereby allowing the United States to become a member of the Berne Convention for the protection of copyrighted works. This treaty extends minimum levels of reciprocal copyright protection to nationals of the member states, and is discussed in more detail in section 7.0 of this paper.

However, notwithstanding that there is no legal requirement to do so, it is advisable to place some form of copyright notice on works in which copyright is claimed. Firstly, under Canadian law, if the name of the owner of the copyright in the work in question is printed, or otherwise indicated, on the work, that person shall, unless the contrary is proven, be presumed to be the owner of the subject copyright.

Additionally, the placing of an appropriate notice of copyright serves to give the copyright owner an advantage over infringers. Pursuant to Canadian law, if a person was not aware, and had no reasonable grounds to suspect, that a work was subject to copyright, no damages are payable to the owner of the copyright relating to infringement by that person. That is, only injunctive relief may be available against the infringer, to stop ongoing infringement. By giving potential infringers notice of copyright on the work (i.e. by placing a suitable indication of copyright on the work), copyright owners can make it difficult, if not impossible, for an infringing party to allege that he or she "had no

reasonable grounds” to suspect that the work was copyrighted, thereby enabling the owner to collect full damages for any infringement, in addition to an injunctive remedy.

In the United States, placing notice on the work has a similar effect; if a proper notice of copyright appears on published copies to which a defendant in any infringement suit had access, then the courts are directed not to give any weight to a claim of innocent infringement in mitigation of actual or statutory damages, which are discussed in the next section.

If notice of copyright is given, it should be at least be marked on the title page of the work, or the reverse thereof, in the following form:

© [year of publication of work] [the name of the copyright owner]
All Rights Reserved

e.g. © **2012 HOFBAUER PROFESSIONAL CORPORATION**
All Rights Reserved

7.0 REGISTRATION OF COPYRIGHT

Copyright is created automatically at law upon the creation of an original work. There are, however, certain important advantages in taking the additional step of obtaining a copyright registration.

Foremost amongst these advantages is a presumption of validity. A certificate of registration is evidence that copyright subsists in the work and that the person registered is the owner of the copyright, and, in the absence of evidence to the contrary, is *prima facie* proof thereof. Although the presumption created as to ownership of copyright may be rebutted, the person challenging the existence of copyright, or ownership thereof, must lead convincing rebuttal evidence. Accordingly, the copyright owner who has registered his copyright will enjoy significant procedural advantages before the courts, if forced to take legal action against an infringer. These advantages will undoubtedly shorten the length of any ensuing copyright infringement trial, and will, in a close case, almost certainly tip the scale in favour of the registered copyright holder.

Under Canadian law, another benefit which arises from registration is the presumption of intentional infringement. Pursuant to the Canadian *Copyright Act*, if a copyright is unintentionally infringed, no damages are payable to the author, and the only remedy which is available to the author is an injunction, forcing the infringer to stop its infringing activities. The registration of a copyright provides to the author an irrebuttable presumption of knowledge on the part of the infringing party, such that all damages which accrued at law to the author as a result of the infringement are recoverable. This may be important, for example, in a situation where a copyright notice marked on a work is inadequate, or has been obliterated or removed prior to unauthorized reproduction.

Where a work which is the subject of Canadian copyright is intended to be marketed in the United States, registration is also advisable, as the benefits of registration in this jurisdiction are of even greater importance than in the Canadian context.

In the United States, a certificate of registration made before, or within five years, after first publication of a work constitutes *prima facie* evidence of the validity of the copyright, and of the facts stated in the certificate. As well, at United States law, owners of copyright are entitled, as an alternative measure of damages, to elect to obtain statutory damages, as opposed to proven economic damages. In circumstances of willful infringement, statutory damages as high as US\$150,000 may be awarded. This feature of United States law represents a significant benefit to American litigants, particularly in situations where actual economic damages will be difficult, or costly, to establish, as is often the case. However, statutory damages are not recoverable for any infringement which occurs before registration of copyright, unless copyright is registered within 3 months from the first publication. Additionally, no award of attorneys fees are recoverable prior to registration of copyright, which can also be a significant disadvantage, particularly when the high costs of American litigation is taken into consideration.

Also of note is that works of American origin must be registered in order to bring an infringement suit in the United States, while works protected in the USA by means of the Berne Convention, and whose origin is not the United States, need not be registered prior to commencing a suit. This is one of the rare instances where US law treats foreigners more favourably than its own nationals.

It should be noted that, as of October 1, 1999, statutory damages also became available under Canadian copyright law; however, the applicable legislation differs significantly from the U.S., as awards in the Canadian context may not exceed \$ 20,000, nor is registration a prerequisite to their availability.

8.0 PROTECTION IN FOREIGN COUNTRIES

Canada is a signatory to the Berne Convention, along with most of the countries of the British Commonwealth, and the United States. A full discussion of the impact of this and other relevant international treaties is well beyond the scope of this paper. However, succinctly, as a result of Canada's participation in the Berne Convention, Canadian citizens enjoy copyright protection in other participating nations as if they were nationals thereof, without the need for registration in each nation. It should not be taken, however, that such copyright protection in other contracting states is equal to that protection available in Canada; only that in such contracting states, Canadians are treated on an equal footing with nationals of those states. If further information on this topic is desired, the reader is advised to consult legal counsel familiar with these matters.

Other countries which adhere to the Berne Convention include:

Albania
Lebanon
Argentina
Lesotho
Australia

Egypt
Russian Federation
El Salvador
Rwanda
Estonia

Liberia
Austria
Libya
Bahamas
Liechtenstein
Barbados
Lithuania
Belgium
Luxembourg
Benin
Madagascar
Bolivia
Mali
Bosnia
Malta
Brazil
Mauritania
Bulgaria
Mauritius
Burkina
Mexico
Faso
Moldova
Cameroon
Monaco
Canada
Morocco
Central African Rep.
Namibia
Chad
Netherlands
Chile
New Zealand
China
Niger
Columbia
Nigeria
Congo
Norway
Costa Rica
Pakistan
Croatia
Peru
Cyprus
Phillippines

St. Kitts
Fiji
St. Lucia
Finland
St. Vincent and Grenada
France
Senegal
Gabon
Slovakia
Gambia
Slovenia
Georgia
South Africa
Germany
Spain
Ghana
Sri Lanka
Greece
Surinam
Guinea
Sweden
Guinea-Bissau
Switzerland
Guyana
Tanzania
Holy See
Thailand
Honduras
Macedonia
Hungary
Togo
Iceland
Trinidad and Tobago
India
Tunisia
Ireland
Turkey
Israel
United Kingdom
Italy
United States
Ivory Coast
Uruguay
Jamaica
Venezuela

Czech Republic
Poland
Denmark
Portugal
Ecuador
Romania

Japan
Yugoslavia
Kenya
Zaire
Latvia
Zimbabwe

9.0 EXPLOITATION OF COPYRIGHT

You have your copyright. What next? Most authors will seek to publish their copyrighted material. Publication has traditionally been carried out by large third party companies, such as print publishing companies and record companies. However, self-publication, wherein the author, through his/her own means, has copies of the work reproduced and sold, is becoming increasingly commonplace. Each of these processes will be now briefly discussed.

When a third party company accepts a work for publication, the copyright in the work is normally **licensed** from the author to the publisher, in exchange for royalties. It is known, occasionally, for licenses to be granted on a lump sum basis. However, royalty payments based upon sales (i.e. on a per unit, or percentage, of revenue basis) are more common; such arrangements are usually more attractive to the publishers, since the success of the product in the marketplace is, of course, uncertain prior to publication. If you are interested in a licensing agreement, this area of the law is highly specialized, and we would strongly recommend that you seek the advice of an intellectual property practitioner to ensure that your rights are properly protected. It is necessary to precisely define the nature of the rights being licensed, and the nature of the rights being reserved by the author, as it is possible to license all, or just a part, of the bundle of rights which constitute copyright, and we have been consulted by many clients after they have already negotiated and entered into a license agreement, at which point, it is extremely difficult, if not impossible, to renegotiate the terms of the license agreement.

It is now common for professional quality typesetting and graphics to be generated easily by computer. Similarly, professional quality sound and video recordings may now be made, and produced in large quantities on CDs, or in virtually limitless quantities as MP3 or other electronic files at very low cost. Moreover, electronic files can be quickly and readily distributed over the Internet. As such, self-publication is becoming increasingly popular. Authors often utilize the services of other artists for the purpose of the production of the finished work. For example, a work of a famous photographer might be chosen as cover art for a novel or a CD, or original art might be commissioned for illustrations within a novel. In these circumstances, licenses, or outright assignments, of these works must be obtained in order that the author of the initial work to be published does not infringe upon the copyright of the authors of the included works when publishing his or her own work!

It will be appreciated that the foregoing comments relate primarily to works of the entertainment arts, which are desirable primarily for listening, viewing or reading pleasure. However, it is also possible to publish useful works, such as computer software, or other types of data. This type of publication has its own unique set of concerns, since the author may wish to restrict the manner in which the work may be used by the persons to whom it is distributed. This is commonly done by way

of individual licenses (often termed “shrink-wrap licenses”), entered into between the publisher and each end-user. If you have “purchased” any computer software, you will likely have seen examples of such licenses, which typically state that the purchaser does not own the software, or indeed, the floppy discs, but only have a license to use the software upon the terms set out in the license. Typically, you indicate acceptance of these terms by opening the packaging containing the software discs or by loading the software onto a computer, typically after clicking the “I Accept” tab on the computer’s screen.

10.0 YOUR NEXT STEP

If, after having read this brochure, you are interested in pursuing legal protection for your work, please contact our office to set up an initial office conference with one of our copyright professionals to review your situation. Such an appointment will, in most cases, be set one or two weeks after the date you call. In the interim, we will suggest that you complete our ***Copyright Disclosure Form***. This Form asks you to complete a series of questions, setting out the details of the work which you have created and the circumstances surrounding its creation in an organized fashion. This will not only form a permanent record of your work for your own records, but will also allow the professional conducting your initial interview to have before him or her the pertinent details of your work, in order that the focus of the initial office conference may be directed to the issues with which you are primarily concerned, without overlooking any of the details in this very detailed area of the law. Thus, it is important that the Copyright Disclosure Form be fully completed to the best of your ability prior to your attendance at an initial office interview, if you wish to derive maximum benefit from the time allotted for your interview, which is typically about one hour.

As to confidentiality, all disclosures made to our firm are treated with the strictest confidentiality. As Barristers & Solicitors and Patent & Trade-Mark Agents, we are subject to the disciplinary proceedings by both the Law Society of Upper Canada (which licences lawyers to practice in Ontario) and the Patent & Trade-Mark Offices (which licences patent and trade-mark agents to practise in Canada). Moreover, we are also members of the ***Intellectual Property Institute*** of Canada, which professional organization sets and administers a Code of Ethics for all members practising in Canada. If requested, we will date and sign a form of confidentiality agreement at the initial interview so as to provide you with a written record of your disclosure to us.

11.0 COST ESTIMATES FOR COPYRIGHT SERVICES

The following estimates for copyright services are estimates, only, and are based upon routine cases of average complexity which entail an average expenditure of time on the part of the professional(s) involved. They do not include other standard disbursements (eg., searches, telephone, facsimile, photocopies, postage, couriers etc.), except as otherwise explicitly stated. H.S.T. must also be added to the estimated amounts shown below. These estimates are based upon performing the services as routine cases and not on an expedited basis. Premiums may be applied if expedited service is requested. Thus, the charges which follow should only be seen as a guide to the charges which you will ultimately incur. As to the time frames normally required to complete the services, these vary from time to time depending upon current workloads, and should be discussed with the copyright professional handling your affairs at the time of your initial interview.

		<u>OUR FEE</u>	<u>GOV'T. FEE</u>
1.	Reduced rate initial office conference (including provision to you of Disclosure Form)	\$ 225 to \$275/hr.	
2.	Preparation and filing of a copyright application for a single work		
	Canada	\$1000.	\$ 65.
	U.S.A.	\$1000.	\$ 65. (US)

NOTE: The estimates given above are approximate only. HST is not included in these estimates. It is the policy of our firm to request of new clients retainers of not less than 50% of the estimated fees and disbursements prior to the preparation of a copyright application. The balance of actual fees and disbursements incurred on your behalf will be billed upon completion of the requested service. Interest is charged on unpaid accounts after 30 days, pursuant to The Solicitors' Act.

E. & O. E.

01/07/2012
(O33)

Appendix
COPYRIGHT DISCLOSURE FORM

GENERAL INSTRUCTIONS:

The spaces provided on this form are intended to provide a guide as to the amount of information which experience has shown is needed for the purposes of an initial consultation. However, if you feel additional space is required, please feel free to attach as many sheets of paper as you may require for your purpose. Please print or write as clearly and legibly as possible, so as to avoid any undue delay in the assessment of your creation.

I. CLIENT INFORMATION:

A. Name of client (for billing purposes):

B. Name of contact person (if A. is other than a personal name):

C. Client Address:

D. Telephone:

(Home): () _____ (Business): ()

E. Facsimile:

()

II. AUTHOR INFORMATION:

It is essential that the authors of a Work be correctly and fully identified in any copyright application filed for the Work. Any failure to so identify all persons who contributed in a significant manner to the content of the Work at the outset will, at the very least, complicate, and therefore increase the cost of obtaining registered copyright. In addition, such a failure may result in any resulting copyright registration being held to be invalid, and therefore unenforceable. Please ensure, therefor, that a careful review is made concerning all individual and collective contributions that went into each element of the work.

A. CONTRIBUTOR NUMBER 1.

1. Name:
2. Address:
3. Phone: ()
4. Citizen of:
5. Describe below this person's contribution to the Work:
(Attach separate sheet, if necessary.)

Examples: "Author of Entire Text"; "Co-author of Chapter 7";
"Vocals and Guitar on Track 6"; "Text Editing"; "Coding of
Computer Program"; "Ink Sketches"; "Plot and outline suggestions"

B. CONTRIBUTOR NUMBER 2. (if applicable)

1. Name: _____
2. Address:
3. Phone: ()
4. Citizen of:
5. Describe below this person's contribution to the Work:
(Attach separate sheet, if necessary.)

C. ADDITIONAL CONTRIBUTORS (if applicable)

On separate sheets, provide for any additional contributors the same type of information given above for Contributors 1. and 2.

III. OWNERSHIP INFORMATION:

Ownership of a Work is a thing quite apart from authorship and can be affected by many circumstances. It is important to clarify the extent and diversity of all possible ownership interests in a Work prior to your making any substantial commitments to any legal, developmental, or marketing expenses.

Each of the questions listed below will bear on the final determination of ownership. Remember in answering these questions, that any failure to determine the proper owner at this initial stage could, in the long run, lead to either an unenforceable registration, or, to a court awarding an equitable assignment of the copyright to the proper owner, without necessarily providing you with any recompense for your expenses in obtaining those rights.

- A. Were any of the persons named above employees at the time they contributed to the work? (Answer "Yes" or "No" beside the name of each contributor)
- B. If you answered "No" for all of the persons under Section A, go to Section C, below. If your answer was "Yes" for any of the contributors, answer the following additional questions:
1. By whom are/were such persons employed? (Give the name of each contributor who is an employee, followed by the name of his/her employer.)
 2. Is there a written employment contract? (Indicate "Yes" or "No" beside the name of each employee contributor.)
 3. Do any of the employers named in Question 1. have a written policy concerning Works authored by employees? (Answer "Yes" or "No" below beside the name of each employer.)
 4. If the answer to Question 3. is "No" for each and every employer, skip to Question 5, below. If the answer is "Yes" for one or more employers, list below the general terms of such policy for each employer that has such a policy. (Attach separate sheets if necessary.)

5. What type of work are each of the employee contributors employed to do? (Attach separate sheets if necessary.)
6. Does the Work relate to the general type of work referred to in Question 5.? (Give a "Yes" or "No" answer beside the name of each employee contributor)
7. Were any of the resources of the employers named in Question 1, (e.g. premises, word-processing equipment, research sources, drafting tools or employee time, e.g. secretarial effort) used in creating the Work? (Answer "Yes" or "No". If "Yes", give the name of the employer and the resources used, attaching separate sheets, if necessary.)
8. Does the Work relate to the business, or any natural expansion of the business, of the employers named in Question 1.? (Answer "Yes" or "No". If "Yes", give the name of the employer(s) and a brief explanation of their business.)

- C. Were any of the contributors working under a commission or as independent contractors at the time the Work was created?** (Answer "Yes" or "No" beside the name of each contributor.)

If yes, describe the terms of the commission or contract.

- D. Were any third party funds used in any work which lead to the work?** (Answer "Yes" or "No". If your answer is "Yes", give the name of the party providing such funding.)

- E. If your answer to Section D was "No", skip to Section F. If your answer was "Yes", answer the following question.**

1. Were there any contractual provisions which might effect ownership or use of the Work as a consequence of such third party funding? (Answer "Yes" or "No". If your answer is "Yes", provide a brief description of such provisions, attaching separate sheets, if necessary.)

F. Have any agreements, either oral or written, been entered into by any of the contributors which could affect the right to file an application for copyright to the work in their own names? (Answer "Yes" or "No" for each contributor and briefly indicate the nature of any such agreements.)

IV. DISCLOSURE OF THE WORK:

A. BRIEF DESCRIPTION

Please provide a brief description of the Work

V. STATUS OF WORK:

A. Has the Work been published?
(Answer "Yes" or "No". If AYes@, give the date, place and type of first publication)

Thank you for filling out this form!

ABOUT THE AUTHOR

Patrick Hofbauer is a lawyer with over 30 years of experience in patent and trade-mark matters. He is also a patent and trade-mark agent registered to practise before both the Canadian and U.S. Patent and Trade-Marks Offices and is a member of numerous legal and professional organizations, including The Hamilton Law Association, The Halton Law Association, the Intellectual Property Institute of Canada, AIPLA, the Licensing Executives Society, FICPI, and the Association Internationale pour la Protection de la Propriété Industrielle. Mr. Hofbauer is a Toronto native who lives and practices in Burlington, Ontario.