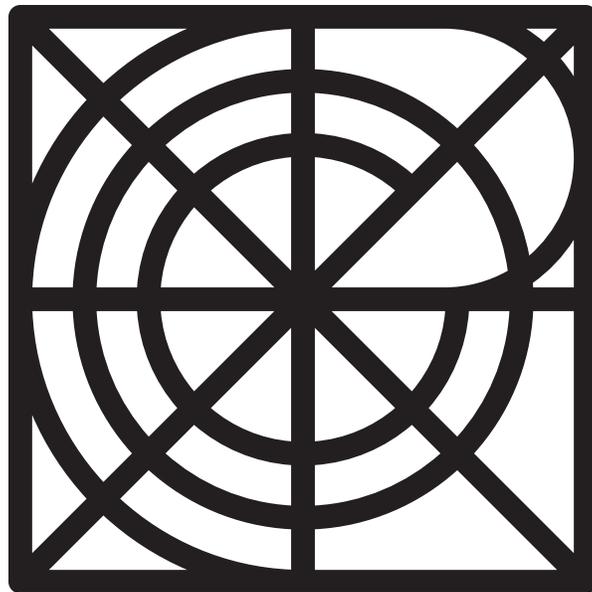


# art export

LAUNCHPAD  
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UNDERSTANDING  
COPYRIGHT  
presented by Daniel Rosen

# What We'll Learn

04 / The Big Idea

06 / Copyright Basics

08 / What is Covered by Copyright

10 / How You Make Money From Copyright

12 / Copyrighting Checklist

14 / Q+A with Daniel Rosen

Resident Expert

# Daniel Rosen



Daniel Rosen is an artist and lawyer who has cultivated a wealth of music industry knowledge first hand as a producer and songwriter. In his professional practice as an entertainment lawyer at Goldenberg Nahmias LLP, Daniel uses his unique perspective to represent his clients, which range from emerging and well-established artists to music companies and film/television producers.



Copyright isn't complicated, but it does take some **TIME** and **EFFORT** to fully understand it.

Protecting your work, tapping into your earning potential, and having a successful career in your industry requires an understanding of all of the rights involved in what you are creating.

The good thing is that copyright has been established around the world for years, including how copyright owners can make money from it.



**You don't  
have to be  
a lawyer to  
understand  
copyright.**



# Copyright Basics

## WHAT IS COPYRIGHT?

Copyright is a bundle of rights that a person has in connection with a work (musical, artistic, dramatic and literary) or some form of other subject matter (sound recordings, performer's performances, and broadcast signals).



With respect to “works”, the general rule is that the author of the work is the first owner of the copyright in the work. However, individuals and organizations who are not the

author of a work may contract for certain rights (including ownership) in the work, which means that sometimes the author and the owner of the work can be two different people or entities.

Copyright does not just subsist in works, but also subsists in what is termed “other subject matter” under the *Copyright Act*.

Sound recordings fall under this category, along with performer's performances and broadcast signals. Ownership rules are different with respect to “other subject matter”.

For example, the first owner of a sound recording under the *Copyright Act* is the “maker”, defined as the person who makes the necessary arrangements for the first fixation of the sounds on that record. You can think of the

“maker” of a sound recording as equivalent to an “author” of a work.

Just as is often in the case of works, contractual arrangements can be made in respect of the ownership of a sound recording.

It is important to note that an author of a work and a performer of a performer's performance have moral rights under the *Copyright Act*.

There are three types of moral rights: paternity, attribution, and integrity. Moral rights cannot be assigned but may be waived by the author or performer.

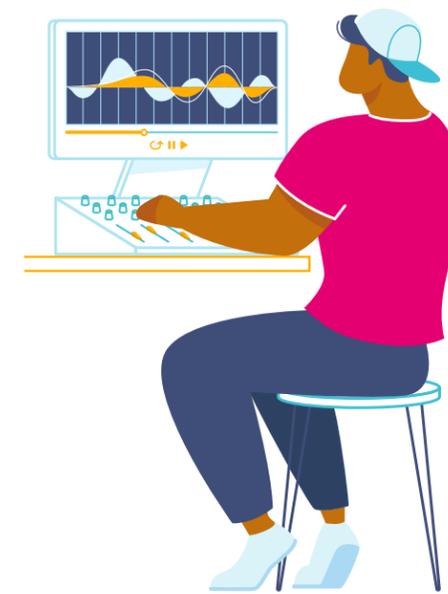
Moral rights ensure an author or performer can have their name (or a pseudonym) attributed in connection with the work or performance (i.e. in the credits), prevent distortion or mutilation of

their work or performance, and to prevent the work or performance from being used in certain context the author or performer does not want (i.e. in association with a certain product or service).

## DO I NEED TO REGISTER MY WORK WITH THE CANADIAN INTELLECTUAL PROPERTY OFFICE TO HAVE THE COPYRIGHT?

No. A work is automatically protected by copyright the moment you fix it in any material form. This is often referred to as a “tangible medium of expression”.

This expression must be sufficiently permanent or stable to permit the work to be perceived, reproduced, or otherwise communicated.



The next time you write that song, write down the lyrics or get out your phone and record it. Registration of copyright is generally not necessary in most cases unless a specific situation requires it (i.e. film distributors will require you to register the copyright to your film).

## WHAT IS THE BENEFIT OF REGISTERING A WORK?

In my view, there really is none unless there is a commercial arrangement that requires you to do so.

While the *Copyright Act* states that a certificate of registration of copyright is evidence that copyright exists and that the person registered is the owner of the copyright, such evidence can be created without registration (see the note above regarding fixation of your work in a tangible medium of expression).



# What is Covered by Copyright?

There are four categories of works covered by copyright.

ARTISTIC WORKS	LITERARY WORKS	DRAMATIC WORKS	MUSICAL WORKS
Includes paintings, drawings, maps, charts, plans, photographs, engravings, sculptures, works of artistic craftsmanship, architectural works, and compilations of artistic works.	Includes books, pamphlets, essays, dictionaries, lectures, speeches, tables, computer programs, and compilations of literary works.	Includes movies, plays, screenplays, scripts, characters, scenes, dialogue (a script or screenplay can be literary works too).  Any piece for recitation, choreographic work or mime, the scenic arrangement or acting form of which is fixed in writing or otherwise.  Any cinematographic work and any compilation of dramatic works.	Sound recordings are often fixations of musical works.

There are three types of other subject matter.

PERFORMANCES	SOUND RECORDINGS	COMM SIGNALS
Covers the rights to transmit to the public, perform, fix, reproduce (the original work or a reproduction) or rent out that work.	“Sound recording” means a recording fixed in any material form, consisting of sounds, whether or not of a performance of a work, but excludes any soundtrack of a cinematographic work where it accompanies the cinematographic work.	Means radio waves transmitted through space without any artificial guide, for reception by the public.



Exporting Art from Canada: A Legal Perspective



# How Copyright Relates to Making Money in Music

## Musical Work Royalties ("music publishing royalties" or "songwriting royalties")

### **PUBLIC PERFORMANCE**

Collected by SOCAN.  
Derived from the broadcast or public performance of a musical work (i.e. at a live event or on a radio station).

### **SYNCHRONIZATION**

Collected from the producer of movie/TV show (or other audiovisual work, i.e. an online video).  
Compensation is negotiated directly with the producer and there are no "set" rates (although there are industry conventions).

### **MECHANICAL REPRODUCTION**

Collected by CMRRA and SOCAN (which has recently acquired SODRAC).  
When a master recording containing a song is sold (i.e. when a record/digital download is sold).  
CMRRA/SOCAN also have direct licenses with music streaming services, which allow royalties that are similar to mechanical royalties to be paid to songwriters/publishers for the songs embodied in the sound recordings being streamed.

## Sound Recording Royalties ("record royalties" or "master royalties")

### **STREAMING/SALES**

Collected by record label (or you, if you release it without a label).  
Derived from when a sound recording is sold (in digital or physical form) or is streamed on a streaming service (i.e. Spotify or Apple Music).

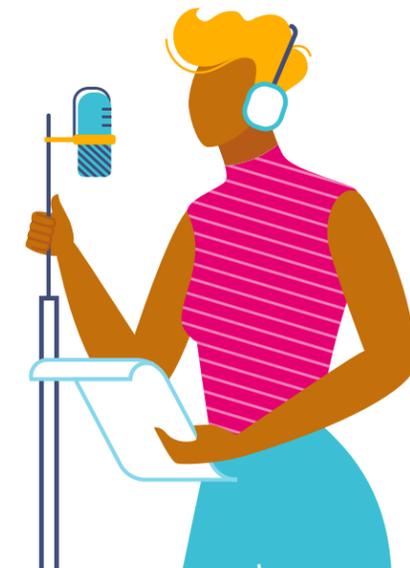
### **PUBLIC PERFORMANCE**

Collected and distributed by Re:Sound (or its affiliates: Connect Music Licensing, SOPROQ). For record labels, I would recommend Connect Music Licensing.  
Derived from the broadcast or public performance of a sound recording (i.e. at a live event or on a radio station.)

## Performer's Performance Royalties

### **PUBLIC PERFORMANCE**

Collected and distributed by Re:Sound (or its affiliates: ACTRA RACS, Artisti, or MROC). For Performers, I would recommend ACTRA RACS, Artisti, and MROC.  
Derived from the broadcast or public performance of a musical work (i.e. at a live event or on a radio station).



# Copyrighting Checklist

Some useful questions to ask yourself when creating.

**1** What type of “work” and/or “other subject-matter” am I creating?

**2** When did the copyright arise in my work or other subject-matter? Have I fixed it in a “tangible medium of expression”?

**3** Am I the first owner of the work or other subject-matter?

**4** Is there a contract that assigns ownership or certain rights in the work or other subject-matter to someone else?

**5** Are there multiple people involved in the creation of the work or other subject-matter? Are there contractual arrangements or agreements regarding ownership?

**6** If I want to exploit my work free of claims from anyone else, do I have the necessary contracts and agreements in place to do that?

**7** Are there certain licensing bodies that oversee the payment of certain royalties in respect of the work or other subject-matter I am creating?

**8** Are there certain people or entities that can help me exploit my work or other subject-matter?



# Q+A

with Daniel Rosen

## What is the one part of the Copyright Act everyone should know?

Section 3(1) of the *Copyright Act*. It lists what you can do as the owner of the copyright in a work. This includes the right to reproduce any substantial part of the work in any material form, to perform the work or any substantial part of it in public, or, if the work is unpublished, to publish the work or any substantial part of it.

It also includes a list of rights unique to specific types of works such as the right to convert a literary work (i.e. a book) into a dramatic work (i.e. a movie).

## What is a common mistake that artists make?

Trying to find a shortcut to success. In my view, there just isn't one - it's just something that takes time, consistent effort, and creating a high volume of work.

The creative industries are tough... but my view is that all creatives need to put in the work, get good at their craft, and let the quality of art find you a deal that will further your career.

Artists like Ellie Goulding, Lady Gaga, and Katy Perry were creating music for years before they broke through to stardom. Their rise to fame was a slow and gradual process, along with a bit of

luck and some good advice. Often artists are presented with exclusive deals that have another party promising all sorts of things, including instant success and connections.

Sometimes these promises can be true, but the deal has to be fair. In my practice, I've had clients who haven't listened to my advice and have signed unfair deals. To have somebody go ahead, not listen to you, and sign a bad deal after advising them not to is frustrating.

The creative industries are tough, and I understand why someone would want to do such a thing, but my view is that all creatives need to put in the work, get good at their craft, and let the quality of art find you a deal that will further your career.

Don't take the first piece of paper that's thrown at you. It's an industry that takes a lot of work and sometimes you have to just be at the right place at the right time.

I'm a creator...as someone who understands the trials and tribulations of being an artist, I bring that perspective to my representation of clients.

## Why are you so engaged with young artists and creative entrepreneurs?

Because I'm a creator myself – I've been a producer and songwriter for over 10 years. As someone who

understands the trials and tribulations of being an artist, I bring that perspective to my representation of clients.

I try to give young artists and creative entrepreneurs the tools to allow them to navigate an industry that can be complex to navigate. Helping young creators and emerging artists become equipped with the tools to help them succeed is something I enjoy doing, because at the end of the day, as a lawyer you really should like helping people.

My participation in the programs at Artscape is just my way of giving back.

It's great to be providing artists with a little bit more confidence to conduct their affairs as artists and to show them that the law may not be as confusing as they think.

Don't take the first piece of paper that's thrown at you. It's an industry that takes a lot of work and sometimes you have to just be at the right place at the right time.



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Nous remercions le Conseil des arts du Canada de son soutien.

For a guide to copyright in Canada:

[http://www.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/h\\_wr02281.html](http://www.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/h_wr02281.html)

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