



# Creative Manitoba

## Artist's Rights Online Info Booklet

Prepared for Creative Manitoba  
By Pro Bono Students Canada (2021)



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## General Rights

### Copyright

#### What is copyright and what does it protect?

A copyright is the exclusive legal right to produce, reproduce, publish or perform an original literary, artistic, dramatic or musical work. Examples of things that can be protected by copyright are:

- Literary works (books, pamphlets, computer programs)
- Dramatic works (motion picture films, plays, screenplays and scripts)
- Musical works (compositions with or without words, sound recordings)
- Artistic works (paintings, digital drawings, maps, photographs, sculptures)
- Performers' performances

If you own a copyright, it essentially means that only you can use your creation unless you give someone else permission. For example, no one else can:

- Copy your artwork
- Modify it
- Sell it
- Perform it
- Publish it
- Convert it

#### How do I obtain a copyright?

Generally, a copyright is automatically applied to any original work at the time it is created. However, you can apply to register your copyright, which allows for a more robust protection, especially if you are required to prove ownership of the work in a court of law.

#### How long does it last?

In most cases, copyright lasts for the life of the author and for 50 years following their death starting at the end of that calendar year. Therefore, protection will expire on December 31 of the 50th year after the author dies.

#### Can I lose my Copyright?

Posting your work online does not mean it is in the public domain or free for anyone to use. However, most websites will have provisions in their terms and agreements that allow them to use your work in some capacity. Therefore, it is critical to read user agreements and terms and conditions before posting any work online.

[See Copyright & Fair Dealing Info Booklet for more information.](#)

## Trademarks

Trademarks in Canada are administered by the Canadian Intellectual Property Office (CIPO). CIPO provides an online instruction service to help potential trademark holders file properly. As a trademark holder, one can use CIPO's service to renew or amend an

existing trademark. Holders may also oppose others applying for a trademark if the holder believes that it would infringe upon their own.

All fees mentioned are in CAD and for the year 2021. The application fee for a trademark registration is \$336 for the first class of goods or services to which the application relates. For any additional class of goods or services, an additional \$102 fee applies. If using means other than CIPO's website, the respective application fees are \$438.60 and \$102. To file a statement of opposition, a fee of \$765 must be paid. To renew a trademark, the fee is \$408, with an additional fee \$127.50 for each additional class of goods or services. Through means other than CIPO's website, the fee is \$510.

## Fan Art

As a general rule, if there is a copyright, the distribution and display of any rendition of that work is subject to copyright infringement. Therefore, fan art, which is defined as work created by someone other than the original artist or copyright holder, falls under this umbrella. However, while there are legitimate exceptions to copyright infringement, the internet and the rise of the digital space has fueled misconceptions on what is legally permissible to share online.

### Misconceptions

#### It's not copyright infringement if there is no profit.

The absence of profit does not automatically exclude fan art from copyright infringement. However, it is a significant factor that will strengthen your argument that the fan art you are posting falls under an exception to copyright infringement. The most common being the fair dealing exemption or fair use as it referred in the US. (For more information on fair dealing, see page 8 of the [Copyright & Fair Dealing Info Booklet](#))

Another exception that is relevant for sharing fan art online is non-commercial user-generated content. Essentially, this provision allows an individual to use existing copyrighted work in the creating of a new work, provided a strict adherence to the following conditions: non-commercial purpose, cite original source if reasonable, existing work must not be a counterfeit, and the new work does not have an adverse effect on the existing work. While fan art may not have been the intended target of this legislation, there is a legitimate argument to be made that sharing and posting non-commercial fan art online is protected by this provision.

It is important to note that while this exception is offered in Canada, there is no equivalent U.S. provision and therefore may not apply to websites that are in the exclusive jurisdiction of U.S. jurisprudence. And unfortunately, that applies to many commonly frequented websites like Deviant Art, Redbubble, Twitch and YouTube.

#### It's not copyright infringement because everyone else is doing it/no consequences.

Despite the fact that fan art is extremely common online, posting or sharing fan art online can still be a violation of copyright. However, it seems that many media copyright holders simply "look the other way" when it comes to non-commercial fan art. In fact, some welcome fan art as they feel it can have a positive effect on their underlying

intellectual property, as it creates goodwill to the fans and doubles as free promotion to reach a wider audience.

Nevertheless, the right holder is still in control of their legal rights in all circumstances. Just because they allow some forms of non-commercial fan art, does not open the door for everything else. For example, some copyright holders only object to fan art that is racist or overly obscene. Furthermore, selling fan art without permission can easily lead to a cease and desist letter from the copyright holder, as some larger companies have been known to go after even small online shops. Even if you have been engaging in commercial fan art for years on various online platforms, if you do not have permission from the copyright holder, selling fan art is undoubtedly copyright infringement and they could pursue legal action at any time.

### **Short answer to fan art online:**

Non-commercial fan art is likely fine but any form of commercial exploitation, especially large-scale, may attract legal consequences.

### **Not all hope is lost for selling fan art**

There is always the option of asking for permission from the copyright holder to sell fan art and fan art merchandise. However, it is possible that the rights holder will refuse to grant permission.

Another viable option is to utilize partner programs on websites like Redbubble, which allow a user to create and sell officially licensed fan art designs for select brands. The application process is relatively simple: follow the guidelines listed for the specific brand partnership and upload a design for review. If approved, you can then begin selling that design (only on the specified website), as it is now officially licensed by the rights holder. Unfortunately, this review process can be slow, with some brands stating waiting periods of 5+ weeks for a response.

Note: By submitting Fan Artwork to their partnership program, you are entering into a legally binding contract with Redbubble Inc. and thus agree to their terms and conditions.

## **How does the internet change your rights?**

The main benefit that the internet brings to copyright law is that it is far easier to detect plagiarism, as long as you actively search for it. However, there are a number of difficulties that arise as well.

The major concern is that it's easier for others to steal your copyright material without you finding out. Even if you do detect stolen material, it can be much more difficult to enforce copyright laws, as the offender may be anonymous, or they may reside somewhere where Canada's laws don't apply.

Copyright laws vary widely from country to country, and although 179 countries are part of an international agreement that imposes minimum copyright standards on each of its members, there are a few problems with relying on this. Firstly, this leaves 16 countries that aren't a part of the agreement. Secondly, the agreement has not been updated in

50 years and is thus very outdated, particularly regarding modern inventions like the internet. Finally, the minimum standards that the agreement imposes on its members are in many ways very different from Canadian standards and laws: something that violates Canadian copyright laws will not necessarily violate another country's copyright laws, despite the existence of those minimum standards.

In conclusion, you cannot reliably assume that just because you find someone stealing your copyright material, you will be able to force them to take it down.

## How to Protect Yourself

Besides the below discussion of reacting to people who use your work without your authorization through issuing a takedown request through the respective website, there are several proactive measures creators can do to protect themselves from having their work stolen. Some of these include:

**Put a watermark on your content:** a simple fix that is relatively well known in the internet community is to put a watermark on your content. A simple guide in putting a watermark on your content can be found [here](#). You can also add text somewhere on the photo if you find a watermark too intrusive of your art. But note that adding text on the bottom or top of the photo may lead to someone just cropping the text out.

**Only put certain things on the internet:** rather than posting your content to the masses you can put samples of some of your work online and have people that are interested in your work reach out to you directly. This will allow you to control who gets to see your work and limit it to those that are interested in your work rather than have it sent to the masses.

**Control who sees your stuff:** several of the websites mentioned above have options where you can set your account to private or can send direct links to people. As an example on Instagram you can set your account to private and approve or deny follow requests. Another example is on YouTube you can set your video to private and only allow people who have the link to the video to see it. These methods would make it so you can decide who is or is not allowed to view your content.

**Be notified when someone uses your work:** If you have a Google Account you can set up a Google Alert to notify you when certain phrases or keywords appear on Google. As an example you can set up an alert for "John's Art Studio" that would notify you when that phrase appears in a Google search. To manage or add Google Alerts click [here](#).

Like Google Alerts, you can also reverse search written material or photos to see if they appear on websites. On [Copyspace](#) you can input your webpage to see if there are any duplicates of the written work on any other websites on the internet. On [TinEye](#) you can reverse image search by dropping an image on the website and it will give you all the websites where that image exists.

## Overview of Terms & Conditions of Various Social Media Websites

General Rule - Using a website/service = accepting the user agreement/terms of service

## REDBUBBLE

### Who owns your work? What can the site do with it?

You keep the copyright in any content that is submitted or uploaded to the Redbubble website. However, you grant Redbubble a non-exclusive royalty free licence to use and archive the content in accordance with or as reasonably contemplated by the User Agreement. Essentially, this means you still own your work and maintain your rights, but you are granting Redbubble permission to use your work without paying any fees.

Note: The licenses are terminated within a commercially reasonable time after you remove or delete your listings from the Redbubble site.

Redbubble has the right to review and remove any content from the website if the content in question breaches the user agreement or an applicable laws (for example, copyright infringement).

### What others do with it

Each user of the Redbubble site is granted a non-exclusive license to access your content through the site, and use, reproduce, distribute, and display such content as permitted through the functionality of the site and under the User Agreement. For clarity, this license does not grant any rights or permissions for a user to make use of your content outside of Redbubble.

### Dispute resolution

Any disputes with Redbubble or the User Agreement must adhere to California law, and with be exclusively resolved under confidential binding arbitration, which is to be held in San Francisco, California. Additionally, any dispute resolution proceedings must commence within one year after the cause of action arose (the facts/event that lead to the arbitration), and must be done on an individual basis (cannot gather a group of plaintiffs and launch a class action).

### Takedown mechanism

Redbubble has a takedown process that is molded after the process set forth in the U.S. Digital Millennium Copyright Act (DMCA). This process allows rights holders the ability to issue a takedown notice if you believe someone is using your work without your permission. In order to submit your report, you must fill out Redbubble's Notice and Takedown Report Form.

If Redbubble has received a Notice and Takedown Report which lists one or more of your works as infringement, that work will be removed without the ability to review or update them. However, if you believe, in good faith, that this was an error or mistake, you can file a Counter Notice by filling out the Counter Notice Form. At this time, the complainant may pursue legal court action against you in the United States. If no action is taken within 14 days, you may contact Redbubble to request that your work be reinstated.

Note: Redbubble has a repeat infringer policy - where a user's account may be disabled or terminated if there are multiple found cases of infringement.

## DEVIANTART

### Who owns your work?

DeviantArt does not claim ownership rights in any of the content that you submit.

### What can the site/others do with it

For the sole purpose of making the content you upload available on the DeviantArt website, you are granting DeviantArt a non-exclusive, royalty free license to reproduce, distribute, re-format, store, prepare derivative works based on, and publicly display and perform any content that is submitted.

Third parties will be able to copy, distribute, and display any content that is uploaded using available tools on their computers for this purpose. However, other than linking (through a sharing link, which members can enable or disable), any use by a third party may be subject to copyright laws and contravene the terms and conditions of DeviantArt, unless the third party received permission from you by license.

### Takedown mechanism

If you believe someone is using your work without your permission on DeviantArt, you can file a copyright infringement notification with DeviantArt (known as the DMCA takedown notice). In order to submit your report, you must either fill out DeviantArt's Notice and Takedown Report Form (which requires a DeviantArt account) or send written communication to DeviantArt's agent for notice of claims of copyright infringement, who can be reached through [violations@deviantart.com](mailto:violations@deviantart.com).

If DeviantArt has received a Notice and Takedown Report which lists one or more of your works as infringement, that work will be removed without the ability to review or update them. However, if you believe, in good faith, that this was an error or mistake, you can file a Counter Notice.

Note: DeviantArt has a 3 strikes infringer policy - where a user's account may be banned or deactivated after 3 instances of infringement.

## FLICKR

### Who owns your work?

The default position is that the uploader retains all rights for everything they upload. You can change the rights that you have to a variety of Creative Commons licenses, including putting your images in the public domain if you so choose.

### What others can do with it

Regularly-uploaded photos will appear in public areas, which means that others may view download, or use them. To avoid this, you can mark your photos NIPSA (Not In Public Site Areas), and they will not be shown to the public.

### Dispute resolution

If you believe that your intellectual property rights have been violated, you may fill out one of Flickr's premade dispute resolution forms: either the Copyright Infringement Form or the Trademark Infringement Report Form.

If you believe that you are the wrongful subject of a DMCA notification, you can fill out Flickr's Counter-Notification Form.

## TUMBLR

### Who owns your work?

You retain all rights to your work for everything you upload.

### What others can do with it

Everything you upload is public by default and anyone can view, download or use it. Even anything that you share privately with another user may be downloaded or shared publicly by them. There are options for private password-protected blogs, but as soon as you share anything from them, they become public; Tumblr considers itself to be a public platform, and there are few options for privacy.

### Dispute resolution

Instances of copyright infringement can be reported to Tumblr by submitting a notice under the DMCA using the copyright notice form that Tumblr provides. If the DMCA notice is valid, Tumblr will remove or disable access to the material, and it will notify the user who made the copyright infringement.

If you are the wrongful subject of a DMCA notification, you can file a counter-notification with Tumblr.

## SHOPIFY

### Your Shopify account and Terms of Use

Shopify provides a summary of each term of service in plain language. However, the website notes at the beginning of the page that these plain-language summaries are not legally binding, whereas the more complex terms of service are. Under "Account Terms", the website states that a person accessing the service must provide the required information, be the age of majority in their jurisdiction, confirm that they are using the service for the purposes of conducting a business only, acknowledge that their email is the primary method of communications between the service and the user, maintain responsibility of the user's password security, acknowledge that the maintenance of the user's Shopify store is the user's responsibility, maintain responsibility of the user's content, and honour contracts directly with their buyers. A breach of these terms may result in the termination of the user's Shopify account.

### Who owns your content?

The "Confidentiality" heading details what is defined as "confidential" relating to the service, and that parties must take the necessary steps to protect information which is defined as so. Under "Intellectual Property and Customer Content", Shopify tells the

user that the content which a user may upload belongs to the user, but Shopify holds the right to use your content in promoting the service.

### Takedown Mechanism

If a user believes another user is posting their content without permission, they may send a DMCA notice to Shopify. Shopify will then provide the offending user with a notice of takedown, to which they may reply. The user who filed the report then has 14 days to seek a court order restraining the other user from posting the content. After 14 days, the content will be restored if there is no court order.

## ETSY

### Terms of Use

Etsy's Terms of Use are a legally binding contract between the user and Etsy. They state that by using the service, you must agree to these terms. Buyers, sellers, and third parties have their own "House Rules". Included in the Terms of Use is House Rules for everyone, which includes agreement with the site's Privacy Policy and Anti-Discrimination Policy. The Terms of Use prohibit any content that is abusive or fraudulent, in accordance with Etsy's Prohibited Items Policy and Community Policy.

### Who owns your content?

Under the "Your Content" subheading, Etsy outlines the rights and responsibilities surrounding user-created content using the service. A user is responsible for their own content, and must ensure that it does not infringe or violate any third party's rights. When using the service, the user grants Etsy a license to their content. This means that Etsy has the rights to alter or reproduce your content, in addition to promoting it through the website or other third-party.

### Takedown Mechanism

A user may also report content of theirs posted without permission through Etsy's Intellectual Property Policy, which gives instructions to users on what to do in such a situation.

### Your Account

The user may terminate their Etsy account at any time. The user's content will still be available through the service even after their account is terminated. If Etsy believes that the user is in violation of any Terms of Use or policy, they may terminate the user's account. The user does not have any contractual or legal right to continue using the service after termination. Generally, the user will be notified by Etsy when their account is terminated. Etsy may terminate or discontinue the service at any time, without fear of legal action from the user.

## YOUTUBE

### Who owns your work? What can the site do with it?

On YouTube the creator or 'poster' retains the ownership of their content. YouTube is granted a license by you posting the video on their website that they in turn host and

allow the video to be shown around the world. The creator is free to remove their content from the website at any time. Generally, the video will remain on YouTube until the creator removes the video themselves. YouTube also reserves the right to remove any content that is posted on their website that they feel is in violation of their [community guidelines](#). Reasons for violating the community guidelines include posting content that is considered: sensitive; violent or dangerous; regulated or spam; and deceptive. Having content that violates YouTube's terms of service can lead to the channel receiving a 'strike', suspension, or being removed from the website entirely.

### What others can do with it

Although it is a breach of YouTube's [terms of service](#) to have people download content from YouTube, it still happens often. It is also worth noting that YouTube has generally refrained from doing anything in response to people downloading videos from their website. This can lead to content from their website being posted on other websites without the original poster consenting. It can also be a disadvantage to some creators to post their content on YouTube since it is so pervasive, and the video may be used for reasons that the content creator does not want it to be used for. To avoid this, the creator can change the video settings to private and make the video only viewable to people who have the direct link to the video.

### Dispute Resolution

YouTube recommends that creators should only upload videos that they have made or are authorized to use. However, with the amount of content that is posted to YouTube daily, it is difficult for YouTube to remove all content that is in violation of copyright. In the terms of dispute resolution / takedown mechanism YouTube has a copyright claim system that users can submit a claim to when they think that content found on their website falls under any of the following categories: is inappropriate; I appear without permission; is abuse / harassment; violates privacy; trademark infringement; copyright infringement; or other legal issues. The interface of the [claim system](#) is easy to navigate and user friendly, so if you do think that any of the content on their website has any of the issues mentioned above, it is a good idea to file a claim. The claims process changes depending on what issue you are raising and can take a lot of time.

A final note on YouTube is regarding Fair Use. Fair Use is a U.S. law that allows certain copyright protected material to be used without getting permission from the copyright owner. This is determined on a case-by-case basis. Work that is considered Fair Use includes the following: commentary, criticism, research, teaching, or news reporting.

## **TWITCH**

### Who owns your work? What can the site do with it?

Twitch and YouTube have a similar composition as far as copyright is concerned. On Twitch the person who streams or is the 'content creator' is the owner of the content. Twitch acts as licensee that distributes the content throughout the world. In other words, Twitch does not 'own' the content they merely distribute it. The content creator has the right to remove their content from the website at any time. Twitch also has the right to remove any content that they deem inappropriate or harmful. This can lead to the

removal of the content, a strike on the account, and a suspension of the account. Some examples of content that Twitch considers harmful is content that: breaks the law; is self-destructive; is violent or threatening; is harassment; is impersonation; is unauthorized sharing of private info; is spam; contains nudity; or violates intellectual property rights.

#### What others can do with it

It is also possible that other users can download content that is seen and distribute it on other sites. This often happens when a Twitch users' content is uploaded to another video sharing website like YouTube. In this event the user would have to contact YouTube to get the video removed.

#### Dispute Resolution

Twitch has a takedown mechanism for users who are infringing on copyright. If you think that a Twitch user used your content without permission or infringed on your copyright, you can contact a Twitch Copyright Agent at [dmca@twitch.tv](mailto:dmca@twitch.tv) and provide them with the following information:

- 1) Identification of your work that is being infringed on
- 2) Identification of the Twitch user's work that infringes on your work with link and timestamp.
- 3) Statement that shows that you, in good faith, believe someone infringed on your copyright and that the information provided is accurate.

An important thing to note about Twitch is because the content on the website is consumed by its users in real-time, this takedown mechanism may not be effective. In other words, most viewers would have already seen the video that may have taken your work before any action is taken by Twitch.