PROTECTING GOVERNMENT WORKS: *THE COPYRIGHT ISSUE*

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The federal government, through its employees and contractors, produces commercially valuable inventions and information every day, often without any protection of the intellectual property involved. Intellectual property protection may provide sufficient incentive to investors to commercialize by granting a measure of exclusivity for a period of time. Federal program managers and directors,[1] as well as private sector investors, should become familiar with all available intellectual property protection, such as: copyright law, including its impact on "government works," those created by federal and contract employees; the alternatives that would permit the Government to own the copyright in "government works"; the ability to allow private sector companies to assign co-authored works; and the importance to a federal technology manager of such protection.

Under the United States Code (U.S.C.), there is no copyright protection available in the United States for work by government employees if the work was developed as part of the creator's official duties. Exceptions contained within the 1976 Copyright Act[2] and other alternatives could allow government-employee-authored-works to become eligible for copyright protection outside the United States.

Copyright Protection Defined and Examined

The protections provided by patent and copyright statutes differ significantly. But by using the protections afforded through the appropriate intellectual property law, a federal technology manager can protect inventors and inventions, and in some instances, authors and their works.

What Is a Copyright?

Copyright is a form of property right protection provided by the laws of the

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United States (Title 17, U.S.C.) to the authors of "original works of authorship," including literary, dramatic, musical, artistic, and certain other intellectual works. Copyright affords the right to protect against unauthorized copying of a protected work. This protection is available to both published and unpublished works. Some copying is permitted by statute.[3]

How Is a Copyright Different from a Patent?

A patent protects certain statutorily defined classes of new, useful, and nonobvious inventions for approximately 20 years. A patent protects not only one form of an invention, but all of the other forms obvious to one skilled in the subject matter of the invention. In order to obtain patent protection, an inventor or his legal representative must file a patent application describing the invention with the Patent and Trademark Office (PTO). Patent examiners at the PTO review the application. If after examination and dialogue with the inventor (or his legal representative) it appears that the applicant is entitled to a patent under the law, the PTO shall grant a patent to the applicant.

"The protection available by a copyright is narrow in scope, but is granted for a long period of time."

The protection available by a copyright is narrow in scope, but is granted for a long period of time.[4] Copyright protects only against the copying of a work by providing a safeguard to a single expression of an idea and *only* that expression of the idea.[5] Copyright protection does not preclude another author from creating independently authored, yet identical, works. A work is automatically protected from the moment of its creation and fixation[6] and is ordinarily given a term enduring for the author's life plus an additional 70 years after the author's death.[7] For works of corporate authorship, the term is 95 years after the date of first publication or 120 years after creation, whichever comes first. Note that unlike patents, examination of the material is not needed to attach copyright protection.

When a work is published, it may bear a notice of copyright to identify the year of publication and name of the copyright owner and to inform the public that the work is protected by copyright.[8] This differs from a patent where protection is indicated by a notation of its assigned patent number. To show the contrast between patents and copyrights, for example, a patent may be obtained on the process by which the barrel of a gun is constructed and allows for redress against those who attempt to manufacture a gun barrel using a process that incorporates the protected steps, whether or not the one infringing had knowledge of the existence of the patent on this process. A copyright may be obtained on the manual of how to use the same gun and allows the owner to preclude someone from copying the manual, but it will not protect the owner from someone who writes his or her own manual that is independently generated, albeit identical.

What Are Copyrightable Works?

Copyright protects "original works of authorship" that are fixed in a tangible form of expression. The fixation need not be directly discernible so long as it may

be communicated with the aid of a machine or device. Copyrightable works include the following categories:[9]

1. Literary works (training manual, description of technology one-pager, procedure manuals, or process descriptions).

2. Musical works (sound wave transmissions, acoustic signatures, and recordings), including any accompanying words.

3. Dramatic works (possibly certain training materials).

4. Pantomimes and choreographic works.

5. Pictorial (images of a tank in various spectra), graphic (sketches and computer printouts of a tank), and sculptural works (model of a tank).

6. Motion pictures (training videos or pictures of testing) and other audiovisual works.

7. Sound recordings.

8. Architectural works (blue prints of buildings).

These categories and corresponding examples should be viewed broadly as the definitions may encompass different works. For example, computer programs and most "compilations" may be registered as "literary works." It should be noted that computer software can be protected by both copyright and patent.

What Works Cannot Be Copyrighted?

Several categories of material are generally not eligible for United States copyright protection, including: raw facts, ideas, and methods of operation, processes, and systems. Note however, an original expression, selection or arrangement of these materials can create a copyrightable work.[10]

Under 17 U.S.C. § 105, copyright protection is not available for any work of the United States Government. But, the United States Government is not precluded from receiving and holding copyrights transferred to it by assignment, bequest, or otherwise.[11] For the Defense Department, it is clear that copyright protection would be available for much military oriented material — but under Copyright Law, this protection is not available to the work of a government employee inside the borders of the United States.

"A federal employee is prohibited from receiving a copyright within the United States for work created in the course of and within the scope of employment."

The Prohibition Against the Copyrighting of Federal Employee Works

A federal employee is prohibited from receiving a copyright within the United States for work created in the course of and within the scope of employment. More specifically, where there has been a Government contribution in connection with the preparation of the work, e.g., use of

Government time, facilities, equipment, materials, funds, or the services of other Government employees on official duties, and the subject matter of the work directly relates to or was a type involved in the employee's field of governmental employment, then the work generally is presumed to be a "Government Work" and not available for copyright. The Copyright Act was not meant to inhibit placing government information into the public domain. Rather, the Act was intended to generally prevent people from profiting from public information created by tax dollars. For information on copyright protection abroad, see "Copyright Protection Abroad for Government Works."

It is important to note that "[t]he bill deliberately avoids making any sort of outright, unqualified prohibition against copyright in works prepared under Government contract or grant,"[12] as there may be cases where it would be in the public interest to allow copyright in the writings generated by Government research contracts and other similar cases where the denial of copyright protection would be unfair or would hamper the production and publication of important works.[13] This legislative history of Section 105[14] permits the Department of Defense (DoD) to allow contractors to claim copyright in any work of authorship (including computer software) first prepared, produced, originated, developed or generated under a contract; however, if the work is a "special work," the copyright must be assigned to the federal government.[15] This includes works jointly created with one or more federal employees. This result is contractually achieved by the insertion of the appropriate standard clauses.

" The Copyright Act was not meant to inhibit placing government information into the public domain."

Some Thoughts about Special Circumstances and Copyright Protection

Copyright Created under the FAR[16] and DFARS Contracts with the Federal Government

There are times when the federal manager may not want the private sector company to retain the copyright protection as is permitted in the usual case. In these instances the "special works" clause of the Defense Federal Acquisition Regulation Supplement (DFARS) may be utilized, requiring the assignment of copyrighted work to the government. This clause is generally used when the government is acquiring copyrightable material such as motion pictures and scripts, television recordings, soundtracks, translations, training works, and certain technical reports and studies. For example, a DoD unit might use this clause when the control of multiple versions of software distributed among different allies is required to insure that interoperability is maintained.[17] Under the "special works" provision, the contractor, unless directed to the contrary by the Contracting Officer, places the following copyright notice on such works:

> © (Year) United States Government, as represented by the Secretary of (*department*). All rights reserved.

The contractor must also grant to the government (as required by the regulation) a royalty-free, worldwide, nonexclusive, irrevocable license to reproduce, prepare derivative works from, distribute, perform or display, and to have or authorize others to do so, any of the contractor's copyrighted works that were not first produced, created, or generated under the contract, but were placed within "special works" material. The contractor is not allowed to incorporate, without the written approval of the Contracting Officer, any copyrighted works in the deliverables unless the contractor is the copyright owner or has provided to the government appropriate license rights.

When it is important for the government to control the copyrighted material, consider use of the "special works" provision of the DFARS.

Copyright Protection under the Federal Technology Transfer Act of 1986

The Federal Technology Transfer Act (FTTA), passed in 1986, allows government activities to transfer technology, including intellectual property, to other organizations for nongovernmental applications through the use of a Cooperative Research and Development Agreement (CRADA).[18] This statute allows transfer of technology, including expertise, intellectual property, and works of authorship to nonfederal entities.[19]

Because a CRADA, by its very nature, fosters joint activity between federal and nonfederal parties, joint works of authorship are likely to be created. In this event, the private sector CRADA partner may register the work, and transfer copyright title to the government, should the CRADA so provide.

Further, a version of a work prepared under a CRADA may be protected by copyright even though a government employee may have created portions of the work prior to the Agreement. To the extent that the changes and improvements are made during the CRADA effort, the work could be copyrighted as a derivative work and assigned back to the government if the CRADA so provides. It should be noted that minor alterations might not be enough to permit copyright protection. Section 105[20] does not restrict copyright for compilations and arrangements of edited versions of government works and new materials contributed by a nongovernmental party. This applies even where such works are based on pre-published government documents.[21] Thus, work done prior to a CRADA may be transferred to a private sector party who may prepare a derivative work, copyright that work, and assign title back to the government, if the CRADA so provides. The resulting copyright may provide sufficient protection to encourage commercialization.

"When it is important for the government to control the copyrighted material, consider use of the 'special works' provision of the DFARS."

The availability of copyright should be of particular interest to product and program managers, especially where valuable software, jointly developed by contractor and government employees, otherwise patentable but now subject to a statutory bar (i.e., enabling disclosure), might still be protected by copyright. For example,

in a standard procurement contract subject to the FAR and DFARS, where the circumstance is such that software development was jointly accomplished without that circumstance being addressed in the contract, the government is now interested in commercializing the software, and further improvements to the code are desired, the foregoing approach should be considered, obviously with the consent or participation of the original contractor.

Consistent with the foregoing, in the general case where government employees have created a work of commercial potential that requires modification or refinement for market acceptability, the approach outlined above may prove useful. Considering the large upfront investments involved in government software projects, intellectual property protection for the subsequent commercialization is an appealing prospect.

"There is no such thing as an 'international copyright' that will automatically protect an author's writings throughout the world."

It is suggested that the government developer or acquirer of software-intensive systems should fully understand the ownership and intellectual property rights of all software code contained within their products before they engage in external business activities such as Foreign Military Sales (FMS), Direct Sales, or Technology Exchange Agreements. This applies to government-developed code; contractor-developed code; government off-the-shelf (GOTS) code; and commercial off-the-shelf (COTS) code; as well as libraries of images, data, etc.

Copyright Protection Abroad for Government Works

There is no such thing as an "international copyright" that will automatically protect an author's writings throughout the world.[22] International copyright protection can be secured in two ways: (1) by obtaining separate and independent copyright protection in each of the countries where such protection is sought, in compliance with the laws of each country (in other words, registration in each country) or (2) through international conventions or treaties that provide for the mutual recognition and protection of the literary and intellectual property of the citizens of the nations that are parties to such treaties or conventions.[23] Citizens of the United States who seek copyright protection in foreign countries may sometimes utilize the first method; sometimes the second, and sometimes neither are available (depending upon the law requirements of the country).

If a U.S. citizen wishes to utilize the second method of obtaining foreign protection, there are several issues of which he or she should be aware. Because most countries are signatories to international copyright treaties and conventions, most works authored by U.S. citizens are protected abroad. As of March 1, 1989, the United States became a party to the Berne Convention for the Protection of Literary and Artistic Works.[24] The countries to which the Berne Convention applies constitute a group of countries that recognize international copyright protection. At the present time, over 100 countries belong to the Berne Union. The Berne Convention works on the principle of "national

treatment," under which a country extends the same protection to foreigners that it accords to its own authors.[25] In other words, protection against unauthorized use in a particular country depends on the national laws of that country where enforcement is sought.

In the United States, the Court in *Bridgeman Art Library, Ltd. v. Corel Corp.*, 36 F.Supp.2d 191 (SDNY 1999), examined issues of whether a signatory nation in which enforcement is sought must enforce a foreign copyright, even if that copyright would not be valid under its own law. The Court found that the fundamental issue was "whether the United States courts may give effect to any provision of the Conventions which might require or suggest that the existence of copyright be determined under the law of another nation."[26] The Court ruled that the Berne Convention is not self-executing and that under 17 U.S.C. § 104(c), "no right or interest in a work eligible for protection under this title may be claimed by virtue of, or in reliance upon, the provisions of the Berne Convention or the adherence of the United States thereto."[27] Thus, while the Copyright Act extends certain protection to the holders of copyright in Berne Convention works as there defined, the Copyright Act is the exclusive source of that protection.[28] Therefore, where a foreign work was found not to be original under section 102(a) of the Copyright Act, protection under the Act was not awarded.

In other words, the Berne Convention on copyrights did not require United States courts to enforce copyrights of other countries where those copyrights did not satisfy the originality requirement for copyrights set forth in the United States Constitution. The Berne Convention provided that signatories were to provide foreign copyrights with same protection available to domestic copyrights, and in ratifying the Convention, Congress provided for its enforcement through the Copyright Act.[29]

This case illustrates that the United States' courts recognize (1) the equal treatment accorded to foreign copyrights under the Berne Convention and (2) that in order to enforce the rights under a foreign copyright, a foreign owner must comply with the United States Copyright Act. For example: a U.S. publisher discovers that bootleg copies of his book are being sold in England. Because the United Kingdom is a member of the Berne Convention and the Universal Copyright Convention (UCC), the U.S. publisher's work is automatically protected by copyright in England. When the U.S. publisher files a copyright infringement action in England against the bootlegger, that publisher receives the same rights as an English copyright owner has. The rights relating to enforcement are based on the law of the country of enforcement.[30]

"While the Copyright Act extends certain protection to the holders of copyright in Berne Convention works as there defined, the Copyright Act is the exclusive source of that protection."

It is the authors' position that U.S. authors automatically receive copyright protection in all countries that are parties to the Berne Convention, to the extent that the foreign country, considers the material to be protected and eligible for copyright. But the work to be protected must be eligible for copyright in the country where enforcement is sought.

Section 105 of Title 17 of the Copyright Act makes copyright protection unavailable, inside the borders of the United States (see "The Prohibition Against the Copyrighting of Federal Employee Works"), for "works of the United States Government" as defined in the Act. If another signatory to the Berne Convention, however, allows copyright protection of its government works (i.e., Crown Copyright of the United Kingdom[31] or Canadian Copyright Act[32]), it is clear that that country's courts must afford protection to similar works of the U.S. Government, despite the fact that the work could not be protected in the United States. Congressional legislative history supports this position. The Notes on 17 U.S.C. § 105 states:

"Works of the governments of most other countries are copyrighted."

"The prohibition on copyright protection for United States Government works is not intended to have any effect on protection of these works abroad. Works of the governments of most other countries are copyrighted. There are no valid policy reasons for denying such protection to United States Government works in foreign countries, or for precluding the Government from making licenses for the use of its works abroad."[33]

Every country has different copyright laws. For work to be eligible for copyright protection in the United States, it must qualify under the laws and requirements of the United States (i.e., under the Copyright Act). For a work to be eligible in a foreign country for copyright protection, it must qualify under the particular laws and requirements specific to that country (i.e., in the United Kingdom copyright requirements are provided in the *Copyright, Designs and Patents Act 1988*). Other countries and their laws may differ from the requirements for copyright protection as set forth in the United States Copyright Act. For example, in the United States, Section 105 of the Copyright Act, the phrase "government works" is use to indicate a specific group of works under the law. Other countries may not use this phrase, or may use a different phrase to specify the group of works (i.e., "Crown Copyright" in the United Kingdom), or not offer protection to this group of works. While every country may not recognize or utilize the phrases "government works," "works created under the direction of the government," or "government employee works," it is imperative that if the reader wishes to utilize the method of obtaining a copyright in a foreign country, he or she should first obtain counsel and research the copyright laws of the country where they believe infringement or registration has occurred.

United States Government Work Registration Under Canadian Copyright Law and Practice

United States government work may receive copyright protection abroad. Canada maintains a federal agency responsible for registering copyrights called the Canadian Intellectual Property Office (CIPO). Registration is official acknowledgment of a copyright claim. It means that the Copyright Office has recorded details about an author's or owner's work. Owners receive a certificate to this effect, which prohibits others from copyrighting their work without permission. Registration in

the CIPO may be accomplished electronically via the Internet by completing a simple registration form and submitting it with the prescribed fee.[34] It is not necessary — nor is one allowed — to submit a copy of the work to be registered, as the CIPO does not review or assess the work in any way. Upon receipt of the form and fee, the CIPO will issue a certificate of copyright. The required registration information includes the title and category of the work; the date and place of first publication if published; author, applicant, or owner information; agent information if applicable; and payment method. The convenience, simplicity, and the economic feasibility of registration provide U.S. Government Works with the foreign protection contemplated under Section 105.

The Perilous Problem: "Moral Rights"

The Berne Convention provides authors with "the moral right," under $6^{bis}(1)$, although 17 U.S.C. § 106A does not use this term.[35] "Moral rights" are the rights of the author to be attributed as the author of the work and to object to a particular use of the work. This means that no one, including the person who owns the copyright, is allowed to distort, mutilate, or otherwise modify the work in a way prejudicial to the author's honor and reputation. Generally, moral rights reflect a belief that the author's creations are an extension of the author, and therefore, the author can control how the public views the author through his or her creations.

If a copyright owner sells the copyright to someone else, moral rights in the work are still retained by the author. These moral rights cannot be assigned by the author, but may be waived in whole or in part.[36] Finally, the rights exist for the same length of time as copyright, normally the lifetime of the author plus 70 years.

Although it is unlikely that a government employee would prevail in asserting damage to his reputation and honor as the result of the use or modification of a government work, a simple waiver can be obtained from the authors at the same time that an assignment is executed. This would serve to alleviate concerns over any future use of the material or transfer of title. Whenever copyright protection of government works is sought, the issue of "moral rights" should be of concern.

"Whenever copyright protection of government works is sought, the issue of 'moral rights' should be of concern."

Important Issues

Considering the potential for broad commercialization if intellectual property rights attach to federal technology, the federal technology manager should be aware of the opportunities the Copyright Law allows:

1. Copyright of federal employee work for everywhere outside the United States. Thus, a transfer of otherwise copyrightable U.S. government works including "data," software, etc., in jurisdictions outside the United States will not fail for lack of consideration

because of copyright registration in a Berne Convention country. This may have an interesting effect on Foreign Military Sales or Direct Sales situations.

2. A contracting agency may negotiate for copyright ownership in "special works" giving the government more control of software.

3. A private party may copyright material created under a CRADA and then assign the rights to the federal party. This allows the private party to assign to the federal party both U.S. and foreign copyright protection in the eligible work. This assignment is important to provide both protections to the government work, as well as a commercial product that can be marketed by the private entity.

Conclusions and Recommendations

Federal employees and federal contractor employees are creating information of significant commercial value every day. Valuable information might include images in various spectra, software that has been made unpatentable by a disclosure, training or process manuals, or look-up tables containing many kinds of data.

While copyright in works of government employees is generally not available, there are several ways in which such a copyright might be received by the federal government including:

- Joint authorship created during a "contract" where the private party assigns back to the government a copyright in such a work.

- Joint authorship during a CRADA.

- Copyright registration filing by the government outside of the United States in a Berne Convention country.

Copyright is a form of intellectual property protection that grows more important in today's technology and information driven market where private venture capital businesses need to feel that their investment is secure from competition. Without protection, good opportunities and marketable technologies are often passed over. Considering the duties under the Technology Transfer Act and the opportunities for potential broad commercialization if intellectual property rights have attached to a government work, the federal technology manager should be aware of the contract construction and process concerning the general intellectual property protection available to government employee authored works. Intellectual property protection provides incentive to the effort of attracting private resources for continued research and development between the government and private sectors. It is through the combination of entrepreneurship and intellectual property protection that successful technology transfer commercialization and cooperation is achieved.

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Endnotes

1. The phrase "Federal program managers and directors" is used here to represent the leaders of all organizations and programs that may participate in the Federal Technology Transfer Program or otherwise benefit from copyright protection.

2. 17 U.S.C.A. §§ 101-810; 1000-1010.

3. See Sections 107 through 121 of the 1976 Copyright Act.

4. Section 106 of the 1976 Copyright Act gives the owner of copyright exclusive right to do and authorize others to do the following: *make* copies of the copyrighted work; *distribute* copies of the work, *create* "derivative works" based on the copyrighted work; or *publicly perform* or *publicly display* the work.

5. For example, copyright protects a particular picture of a thing but does not protect all pictures of that thing or the method of making that picture.

6. Publication is no longer the key to obtaining federal copyright under the 1976 Copyright Act. Publication allows for additional legal protection, but does not preclude unpublished works from enforcement. *Fixation* is the attachment of a copyrightable material to any fixed tangible medium (17 U.S.C. § 101).

7. For works made for hire and for anonymous and pseudonymous works (unless the author's identity is revealed in Copyright Office records), the duration of copyright will be 95 years from publication or 120 years from creation, whichever comes first.

8. A copyright notice is no longer required under U.S. law. Use of a notice informs the public that the work is protected by copyright, identifies the copyright owner, and shows the year of first publication. The use of the copyright notice is the responsibility of the copyright owner and does not require advance permission from, or registration with, the Copyright Office. If notice is used on visually perceptible copies it should contain *all* the following three (3) elements:

   1. *The Symbol* © (the letter C in a circle), or the word "Copyright," or the abbreviation "Copr";

   2. *The year of first publication* of the work; and

   3. *The name of the owner of copyright* in the work, or an abbreviation by which the name can be recognized, or generally known alternative designation of the owner.

   Example: © 2000 Jane Doe

9. 17 U.S.C. § 105.

10. Even modestly creative selections or arrangement of data can result in a copyrightable compilation. *Example:* a book containing definitions can be held to be a copyrightable work.

11. This prohibition against copyright applies to "any work of the United States Government," and is defined in 17 U.S.C. § 101 as "a work prepared by an officer or employee of the United States Government as part of that person's official duties."

12. House Report No. 94-1476.

13. Government implementing regulations strike a balance between the rights of the contractor and the rights of the taxpayer to the information created with taxpayer funds.

14. House Report No. 94-1476.

15. See, DFARS 227.402-77, "Special Works."

16. Federal Acquisition Regulation.

17. DFARS 252.227-7020, "Rights in Special Works, Instructions and Guidance for Use."

18. 15 U.S.C. 3710a, "Cooperative Research and Development Agreements."

19. "[T]he term 'cooperative research and development agreement' means any agreement between one or more Federal laboratories and one or more non-Federal parties under which the Government, through its laboratories, provides personnel, services, facilities, equipment, intellectual property, or other resources with or without reimbursement (but not funds to non-Federal parties) and the non-Federal parties provide funds, personnel, services, facilities, equipment, intellectual property, or other resources toward the conduct of specified research or development efforts which are consistent with the missions of the laboratory." 15 U.S.C. 3710a(d)(1).

20. Although the individual pieces that make up the compilation may be in the public domain, the copyright would protect the compilation but not the individual pieces. Therefore, anyone who reproduces the uncopyrighted pieces has not infringed the copyright in the compilation.

21. Legal textbooks, comprised to a large extent of judicial decisions, are a prime example of copyrighted compilations of government works.

22. U.S. Copyright Office. 1996 Form Letter. http://www.loc.gov/copyright/fls/fl100.pdf.

23. Excerpt *West's Encyclopedia of American Law*. http://www.wld.com/conbus/weal/wcopyint.htm.

24. Commonly known as the Berne Union or the Berne Convention. See, Berne Convention Implementation Act of 1988. Pub.L.No. 100-568, 102 Stat. 2853 (Oct. 31, 1988) effective March 1, 1989.

25. Article 5, Section 1, of the Berne Convention.

26. The Bridgeman Art Library, Ltd. v. Corel Corp. F. Supp. 2d 191 (S.D.N.Y. 1999).

27. The Bridgeman Art Library, Ltd. v. Corel Corp. F. Supp. 2d 191 (S.D.N.Y. 1999).

28. The Bridgeman Art Library, Ltd. v. Corel Corp. F. Supp. 2d 191 (S.D.N.Y. 1999).

29. U.S.C.A. Const. Art. 1, § 8, cl. 8; 17 U.S.C.A. § 104(c).

30. Paul D. Supnik. *Copyright Clearance, Protection and Enforcement Outside of the United States*. http://www.supnik.com/coprfor.htm.

31. See Copyright, Designs and Patents Act 1988 (of Nov. 15, 1988), Chapter X, Section 163, Crown and Parliamentary Copyright.

32. See Canadian Copyright Act — Chapter C–42.

33. House Report No. 94-1476.

34. The Canadian Intellectual Property Office home page is http://strategis.ic.gc.ca/. The present registration fee is $65.00 (CAN$) or $130 for "accelerated action," and payment is accepted with MasterCard, Visa, or deposit account.

35. Under 17 U.S.C. § 106A, *Rights of Certain Authors to Attribution and Integrity*, an author is entitled to: (a)(1)(A) to claim authorship of that work, and (a)(1)(B) to prevent the use of his or her name as the author of any work of visual art which he or she did not create. Further, under subsection (a)(2), an author shall "have the right to prevent the use of his or her name as the author of the work of visual art in the event of a distortion, mutilation, or other modification of the work which would be prejudicial to his or her honor or reputation.

36. See Canadian Copyright Act 14.1(2).