

## How Do I Protect My Songs?

The views and opinions expressed in this article are not meant to substitute for legal advice which should be sought in each particular instance.

### Introduction

I have had the opportunity to moderate panels across the country where I speak to aspiring songwriters. One of the most common questions I am asked is: "How Do I Protect My Songs?" This article is a brief attempt to answer that question and some of the common issues related to this question.

### Be So Lucky

During a series of panels last year with veteran, accomplished songwriters, one panellist repeatedly stated, "You should be so lucky that someone would want to steal one of your songs. Concentrate on writing great songs – protection should be a secondary concern." I tend to agree with this response. Notwithstanding that, you shouldn't totally ignore this concern. There are a number of things you can do to protect your copyrights.

### Registration

According to Paul Sanderson in *Musicians and the Law in Canada* (3<sup>rd</sup> Ed.):

"A copyright owner need not register copyright to acquire copyright protection. However there are reasons to register copyright: (1) registration is an aid to establishing copyright ownership; (2) it constitutes notice to an infringer; and (3) when a work is registered, the certificate of registration can be used as evidence in court."

For more information about the registration process contact the Commissioner of Patents office at (819) 997-1936 or online at [http://strategis.ic.gc.ca/sc\\_mrksv/cipo/welcome/welcom-e.html](http://strategis.ic.gc.ca/sc_mrksv/cipo/welcome/welcom-e.html). It is also advisable to consider registration in the US through the US Copyright Office, Library of Congress at (202) 707-5000 or online at <http://lcweb.loc.gov/>.

This can be a costly process. In Canada, only titles are registered not the actual song itself. In the US the actual works in CD format may be deposited.

### Songwriters Association of Canada

The Songwriters Association of Canada (SAC) provides a registration service to its members. Find more information online at [www.songwriters.ca/services/songdepository.htm](http://www.songwriters.ca/services/songdepository.htm). They will store works in a temperature-controlled environment for a fee. SAC does not necessarily recommend this manner of protection. However, where it provides a songwriter piece of mind – they are happy to assist.

### "Poor Man's Copyright"

Other writers protect their works by sending copies of their work to themselves by registered mail which is immediately stored, unopened for future use if need be. The date stamp on the envelope can be good evidence of the date of creation of the song which could be used as evidence in court.

### Songwriting Credit – Copyright Infringement

In the co-writing scenario many of the tests are outlined in the case of *Darryl Neudorf vs. Sarah McLachlan*. (For a complete text of this decision see: [www.courts.gov.bc.ca/jdb-txt/sc/99/19/s99-1906.txt](http://www.courts.gov.bc.ca/jdb-txt/sc/99/19/s99-1906.txt).) Some of the test outlined in this case provide a guideline for songwriters and producers working together on recording and, possibly, co-writing together. These tests are outlined in paragraph 96 of that judgment as follows:

- Did the author contribute significant original expression to the songs? If yes,
- Did each of the plaintiff (producer) and defendant (songwriter/artist) intend that their contributions be merged into a unitary whole? If yes,
- Did each of the plaintiff (producer) and defendant (songwriter/artist) intend the other to be a joint author of the songs?

A number of tests have been developed by the courts to determine whether or not copyright infringement has occurred. We don't have the room here to discuss these in detail but a number of factors are relevant as follows:

- Did the infringer have access to the original work?
- Was the original work created before the infringing work?
- Does the infringing work appropriate a "substantial" part of the original work?

Infringement issues arise frequently with respect to the sampling issues. Consider how this might be relevant for you as a songwriter of an original work. (For an article on sampling issues see [www.sandersontaylor.com](http://www.sandersontaylor.com) for a copy of an article which originally appeared in *Canadian Musician* Nov./Dec. 2001).

### How Are Splits Determined?

Many songwriters have questions about how song writing is split or how percentages are determined. Unfortunately, there is no scientific definition on how to apportion various contributions to a song. The following methods are effectively used by various songwriters.

- Split the songs evenly depending on how people are in the room when it is written (commonly used in the Nashville/Country Music context).
- Allow an identical split regardless of the input (Lennon/McCartney).

c) Discuss each song once it is completed and determine splits according to input and contribution.

Some writers will divide music/lyrics 50/50; others count the actual number of words; others count the bars of the songs to more scientifically dissect the contributions.

Regardless of how the song is split, most advisors and music publishers would recommend that the actual splits on songs be determined once everyone agrees that the song has been completed. This can be an uncomfortable conversation for some songwriters but IT HAS TO HAPPEN. My most successful songwriter/clients develop unique methods that work for them and I am rarely approached by them about discrepancies after the fact.

You can confirm these splits by simple fill in the blanks form that can be provided to you by a music attorney.

### SOCAN

One way of confirming splits would be filing the work and the applicable splits with your performing rights society. This method is not determinative but can be a factor in determining songwriting splits. In Canada the performing rights society is called the Society of Composers, Authors and Music Publishers of Canada. They can be found at [www.socan.ca](http://www.socan.ca).

You can register your works with them subject to the requirements that can be found on their Web site.

### Conclusion

Novice songwriters often spend an inordinate time obsessing over songwriting splits and the protection of their copyrights. If you are the obsessive type I would recommend you dig deeper into the reference tools above like the Sanderson text to investigate these issues further – but don't forget to write a good song somewhere along the way.

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