Moral Rights Infringement (& Letter of Demand Explanation)

An information sheet to guide you through what moral rights infringement looks like and some steps you can take if you feel you have been infringed.

What is moral rights infringement?

It's important to start by understanding what moral rights are, and what they protect. Arts Law has an information sheet about Moral Rights which sets out some of the essential things to know. Generally, moral rights infringement occurs when, without your written consent, you have not been properly named or credited when your work is used, or if someone has treated your work in a way that hurts your reputation, for example changing or destroying your work. Even the way someone exhibits your work, or the relocation of your artwork, could infringe your moral rights.

It's important to seek legal advice if you think your moral rights have been infringed. Arts Law can advise you on whether a letter of demand is a good idea in your particular situation. Because there may be time limits for starting legal proceedings to sue someone for moral rights infringement, depending on where the proceedings are commenced, you should get legal advice as soon as possible after discovering the infringement. Also, it is very important to note that a delay can be used in support of an argument to deny relief and/or limit the amount of damages payable to you.

For further information on moral rights and what constitutes infringement see the Australian Copyright Council's information sheet on Moral Rights available from its website copyright.org.au.

When isn't it an infringement?

Not every instance of not naming you or mistreating your work will infringe your moral rights. If you consent in writing to such treatment, or if it was reasonable for a person to ignore your rights in the particular circumstance, it may not be infringement. What is reasonable depends on the circumstances including, for example any relevant industry practice. For example, not crediting an artist whose artwork appears on a postage stamp might be reasonable. (Remember the issue of moral rights and credit is different to the issue of copyright – this example assumes the copyright owner has given a licence to use the artwork on the stamp).

Also, broadly speaking, it won't always be moral rights infringement for a person to destroy an art work or to relocate certain art works, provided that they follow certain notification processes set out in the Copyright Act. So, for example, if someone intends to destroy your painting they must first give you a reasonable opportunity to collect your painting. Or if a person intends to destroy or relocate an artwork affixed to a building (such as a mural), the process they must follow includes giving you notice about the intended treatment and a chance to make a record of your work.

If you are advised that an infringement has occurred, you may be advised to write a letter of demand to the other party (the person or entity infringing your moral rights).

What is a letter of demand for breach of moral rights?

The purpose of sending a letter of demand to someone who infringes your moral rights is to:

- make the recipient aware that you are the creator of the work in question;
- outline your legal moral rights as the creator of the work;
- explain how the recipient has infringed your moral rights;
- outline how you would like to remedy the situation and specify a reasonable deadline within which that must happen;

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- state that if an adequate response is not received by the specified deadline, you have the right to commence legal proceedings; and
- serve as a document which can be used as evidence in any court proceedings to prove that you informed the recipient of your rights and gave them an opportunity to rectify the breach.

Things to know when sending a letter of demand

You don't have to draft a letter of demand from scratch. Arts Law has a low cost (free for subscribers) template letter of demand for moral rights infringement which you could use if you wish. Alternatively, Arts Law can give you a referral to a lawyer who can draft the letter for you though this usually will be at a cost to you based on the lawyer's fees. If you draft your own letter of demand or use our template, we can advise you on it before you send it to the other party if you are a subscriber.

The first step is to understand your moral rights and make a careful assessment as to whether they are being infringed. You should consider what outcome you would like – if, for example, the infringing material is on a website, do you simply want it removed as quickly as possible, or do you also want an apology or compensation for the harm suffered? Or are you happy for it to stay online if you are clearly identified as the artist?

When sending a letter of demand you should:

- be careful not to make threats about infringement which cannot be substantiated;
- be prepared to take the matter further (to court or some form of alternative dispute resolution process) if the letter of demand does not lead to a satisfactory outcome. This means you need to be able to prove that you are the creator of the work and that the recipient has infringed your moral rights; and
- not to send a letter which is designed to look like a court document because this is illegal.

It is advisable to send a letter of demand by registered post or fax so that you can prove it was received. Don't forget to retain a copy for your records.

A copy of our template letter of demand is available as a free download for Arts Law subscribers or for $15 for non-subscribers. As mentioned, above, **it is very important that you seek legal advice before sending a letter of demand**. To get advice from Arts Law, lodge a query please submit a legal query form through our website.

Disclaimer

The information in this information sheet is general. It does not constitute, and should be not relied on as, legal advice. The Arts Law Centre of Australia (Arts Law) recommends seeking advice from a qualified lawyer on the legal issues affecting you before acting on any legal matter.

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