Statutes of Limitations

If you have a dispute with another person or entity, you've done your best to resolve it, you've sought legal advice (e.g. from Arts Law), *and*, if the issue is *still* not resolved, you might want to go to court. Going to court can be stressful and expensive. Unfortunately, sometimes it's necessary. It's important to understand that there are time limits. If you don't comply with the time limits, you might not be able to bring your claim in court. These time limits are called limitation periods.

The Statute of Limitations is the law that sets the period of time within which you can start legal proceedings. Limitation periods can change, depending on the issues in dispute and the areas of law that are involved. The areas of law that frequently come up for artists include copyright, moral rights, and defamation. We'll look at these areas and the statutes of limitations for each in this information sheet. General information about the areas of law can be found in information sheets on our website. The statute of limitations sets out the maximum amount of time between the dispute (i.e. the event that has caused the conflict between you and another person or entity), and when you file an application in court to initiate legal proceedings. After the limitation period has passed, it will be much harder to commence legal proceedings and sometimes impossible. In other words, once the relevant statute of limitations period is up, you can't sue someone, even if you believe you have a convincing case.

The idea underlying this law is that limitation periods prevent delays which can make legal proceedings unfair and difficult. The person who wants to take legal action against another (the plaintiff) should make a claim as soon as possible.

Let's have a look at some of the limitation periods that might affect you in practice.

Copyright

Copyright is the most common way that artists can use the law to protect their creative works. The statute of limitations for copyright infringement is **six years** from the time of the alleged infringement.

In formal terms, the statute of limitations for copyright means that legal action cannot be brought for an infringement of copyright, or in respect of the conversion or detention of an infringing copy, or of a device used or intended to be used for making infringing copies, after six years from the date that the infringement took place or on the date that the infringed copy or infringing device was made.

In practical terms this means that if somebody has used your copyright without your permission (or you have used somebody else's copyright without their permission) you have six years from the date it was used to bring a claim in court. For more information on copyright infringement see our information sheet.

If the infringement happens online, the limitation (time) period can effectively start again every time someone accesses the work.

Moral rights

Moral rights protect the personal relationship between the artist and their work even if the artist no longer owns the physical work, or the copyright in it.

Legislation does not state a limitation period for moral rights. However, *Skildum-Reid v University of Queensland* [2024] FCA 733 is a recent case that suggests that a **six-year** limitation period applies to moral rights. This period would start from the date of the infringement of that moral right.

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This means that if somebody has used your work without crediting you, or attributed somebody else for your work, or made changes to the work that would affect your reputation, you have six years to bring a claim in court.

Defamation

Defamation refers to the action of damaging the reputation of a person by way of communication or publication.

The statute of limitations for defamation proceedings is **one year** from the date of the publication. Publication is defined as the moment the matter is read, heard, or seen.

This means that if somebody says something or publishes something about you that damages your reputation you only have one year to bring an action in court. There are some elements you would need to satisfy to bring a claim for defamation and some steps that you must take before filing in court – for more information see our information sheet on defamation.

Things to Consider

As an artist or arts organisation when you become aware of a legal dispute it is important to consider the statute/s of limitations. If you think you have a legal action you should be careful not to make groundless or unjustified threats. If you commence legal proceedings that are groundless or unjustified, you may end up being the subject of a legal claim.

A lawyer can help you better understand your position of bargaining and legal options before engaging with other parties in a potential conflict. If you need legal advice, you can lodge a query on 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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