
MORAL RIGHTS

Introduction

Moral rights were introduced into the Copyright Act in 2000 to confer certain protections on creators and authors irrespective of any economic interest in their creation. This information sheet provides basic information on moral rights and their significance for creators and authors. See the Arts Law information sheet, [Copyright](#) for the relevant background information.

Moral rights cannot be bought or assigned (i.e. sold). They belong to an author regardless of whether they are the copyright owner. Moral rights apply to artistic, literary, dramatic and musical works and films. Performers also have limited moral rights in their live or recorded performances. See the Arts Law information sheet, [Performers' rights](#) for more information.

In Australia, there is no need to "assert" your moral rights. However, this is required in some other countries, including the United Kingdom and New Zealand. If your work is likely to be sold or distributed in these countries, you should include a clause in contracts that states that you assert your moral rights.

Arts Law recommends to artists do not agree to any term whereby they give up ("waive") their moral rights. The Copyright Act does not specifically allow for the "waiver" of moral rights. However, it does contemplate that artists can consent in writing to the future infringement of their moral rights. Arts Law considers that general consents or purported waivers of all moral rights in relation to all copyright works could potentially breach the Australian Consumer Law. A moral rights consent that is unfair may also be open to attack under various State legislation regulating contracts and industrial relations.

What are moral rights?

Moral rights are personal rights that connect authors to their work. Though they exist only in relation to copyright material (and some performances), and are distinct from the economic rights included in copyright.

Moral rights arise automatically and have a legal meaning. There are three types of moral rights:

- **Right of attribution:** this is the right of an author to be identified and named as the author of his/her work;
- **Right against false attribution:** this is the right of an author to stop someone else being credited as the author of their work; and

- **Right of integrity:** this is the right of an author to ensure that his/her work is not subjected to derogatory treatment which is any act in relation to the work that is in any manner harmful to the author's honour or reputation.

"Derogatory treatment" in relation to an artistic work is defined in the Copyright Act as:

- "(a) *the doing, in relation to the work, of anything that results in a material distortion of, the destruction or mutilation of, or a material alteration to, the work that is prejudicial to the author's honour or reputation; or*
- (b) *an exhibition in public of the work that is prejudicial to the author's honour or reputation because of the manner or place in which the exhibition occurs; or*
- (c) *the doing of anything else in relation to the work that is prejudicial to the author's honour or reputation."*

Who owns moral rights?

The author of a work has moral rights in relation to that work, even if the author is not the owner of the copyright in the work.

As moral rights recognise the ongoing connection between authors and their work, they are individual. This ongoing connection requires that moral rights cannot be given away, sold or otherwise disposed of. As a result, an author might not own copyright in the material he/she created, for example because it was created in the course and within the scope of his/her employment but still have moral rights in relation to that material, subject to the consent regime or exceptions.

Consent regime

An author can consent in writing to other people's specific actions or omissions which would, in the absence of consent, amount to an infringement of moral rights. This is common in the area of literary works created within the course and scope of employment, where the employee consents not to be attributed as the author of a text (e.g. a volunteer in your organisation consents not to be attributed as the author of an information sheet or text on your website).

In some circumstances it may be necessary or appropriate for an artist to consent to certain acts or omissions in respect to his/her moral rights. You should always carefully consider any consent and seek advice if you are uncertain of the terms of the consent.

In relation to film and television production, there is the 'Industry Accord on provisions which by consent may be incorporated in contracts' (**Industry Accord on Moral Rights**). The Industry Accord on Moral Rights is a voluntary Australian film industry standard that is available for download from the [Screen Australia website](#) and which acknowledges an author's moral rights, but provides for a process to obtain the author's consent to certain acts which would, in the absence of consent, infringe those moral rights.

Duration of moral rights

The duration of moral rights depends on the nature of the moral right and whether it is held by an author or a performer.

An author's moral right of integrity in respect of a work other than a cinematograph film, and the author's right of attribution and right against a false attribution all continue in force until copyright in the authored

work or subject matter expires – 70 years following the author's death. However, the moral right of integrity of the director, producer and screenwriter of a cinematograph film only continues in force until their death.

The duration of performers' moral rights is quite different. While the moral rights of attribution and false attribution in a recorded performance continue until copyright in the recorded performance expires - 70 years from the end of the calendar year in which the recording (sound only or audiovisual) was first published, the moral right of integrity in a recorded performance continues only until the performer dies.

Moral rights infringement

In principle, any act which is contrary to an author's moral rights, for instance a failure to attribute the author or a derogatory treatment of the author's work, is considered a moral rights infringement.

There is, however, no moral rights infringement if:

- the author has consented to the action or omission that would otherwise infringe moral rights; or
- the defence of reasonableness or an exception applies.

Defence of reasonableness

There is no infringement of the moral right of attribution and of integrity (but not against false attribution) if it was reasonable in the circumstances not to identify the author or to subject the work to the derogatory treatment. A number of factors are used to determine whether a failure to attribute or an act amounting to derogatory treatment is reasonable in the circumstances, such as the nature of the work, its purpose, the manner and context in which it is used, any relevant industry practice, or any practice contained in a voluntary code of practice, as well as the context in which it is created. For example, it is common not to attribute the author of a text written by an employee, for example internal guidelines, sample contracts, information sheets. In such circumstances, the copyright material is attributed to the employer entity rather than to the individual or individuals who actually did the drafting.

The application of some of these factors is uncertain, or there could be argument over what is the relevant industry practice, therefore in relation to commissioned work and other circumstances in which the author will enter into a contract with the person acquiring the work, the best practice is to address in the contract how the work should be attribution and also provide for an appropriate process to manage any changes to the work that may possible be derogatory treatment of the work.

Exceptions

In order to balance the interests of authors and of owners of copyright material, the Copyright Act allows certain acts which would otherwise constitute an infringement of the right of integrity if the owner complies with certain notification requirements. For example, the Copyright Act states that in relation to the destruction of moveable artistic work it is not an infringement of the moral right of integrity in the artistic work if the person who destroyed the work gave the author, or a person representing the author, a reasonable opportunity to remove the work from the place where it was situated.

Sculpture and installations

In relation to artistic works that are affixed to or form part of a building, the Copyright Act provides for a process that should be followed by the owner of the building in relation to any change in, or the relocation, demolition or destruction of, such sculptures or installations.. The building owner is required

to make reasonable inquiries to discover the identity and location of the author and if after those reasonable inquiries they locate the author then the obligation is to give the author 3 weeks in which the author can make a record of the work and consult in good faith with the owner of the building about the removal or relocation of the work. If the author could not be located after carrying out reasonable inquiries, then the owner of the building can justify the removal, relocation or destruction of the work.

Remedies

If you think someone has infringed your moral rights, you should contact them, possibly by sending a letter of demand. For more information, see the Arts Law information sheet, [Moral rights infringement and letter of demand](#).

If a court agrees that an author's moral rights have been infringed, the author can get an order from a court for:

- a public apology;
- a declaration of infringement;
- payment of money for the harm suffered (damages);
- the person to stop the infringement (an injunction); or
- an order that any false attribution or derogatory treatment is removed or reversed.

Since 2000 there have been successful claims of infringement of moral rights. In *Perez v Fernandez* (2012) the court determined that Mr Fernandez has infringed Mr Perez's moral rights by altering the sound recording of the song to falsely represent that he (Mr Fernandez) was a subject of the song. The court awarded Mr Perez damages of A\$10,000 for infringement of his moral right of integrity. In *Corby v Allen & Unwin* (2013) the publisher of a book was held to have infringed Ms Corby's right of attribution by failing to credit her as the author of photographs published in the book. The successful action for infringement of moral rights was in addition to the action for infringement of copyright in the photographs, which had been published without the permission of Ms. Corby, so that damages were awarded for both infringement of moral rights and infringement of copyright.

Further information

You can find additional information about moral rights on the website of [Australian Copyright Council - Moral Rights](#)

Relevant Arts Law information sheets include:

- [Copyright](#)
- [Copyright infringement and letter of demand](#)
- [Moral rights infringement and letter of demand](#)
- [Performers' rights](#)

Arts Law publishes '*Visual Artists and the Law*' by Shane Simpson. 3rd Edition by Annabel Clemens (2013) in [EPUB format](#), [MOBI format](#) & [eBook - PDF format](#); which provides a commentary on: the basics of copyright (Ch 1); trading copyright (Ch, 2); protecting your copyright (Ch 3); moral rights (Ch 4).

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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