

Moral Rights

1 INTRODUCTION

The *Copyright Amendment (Moral Rights) 2000 Act* came into operation on 21 December 2000 and amended the *Copyright Act 1968* to introduce a moral rights scheme in Australia. Moral Rights applies to all literary, dramatic, musical and artistic works which were in existence on 21 December 2000 (and created after that date) and are still protected by copyright. Films created after 21 December 2000 are subject to moral rights.

1.1 Types Of Moral Rights:

1.1.1 Right of Attribution

This is the right of the author of the copyright work to be identified as the author of the work.

1.1.2 Right not to have authorship falsely attributed

This is the right of a person to prevent the insertion or affixing of the person's name on a work which implies falsely that the person is the author of the work.

1.1.3 Right of Integrity

This is the right of the author of the work to object to any distortion, mutilation or derogatory treatment to the work that would be prejudicial to the author's honour or reputation.

1.2 Who has moral rights

1.2.1 Authors of literary works (includes computer programs, novels, poems, journal articles, instruction and training manuals and reports);

1.2.2 Authors of dramatic works (includes plays and screenplays);

1.2.3 Authors of musical works;

1.2.4 Authors of artistic works (includes paintings, graphs, plans, photographs, illustrations, graphic art and sculptures); and

1.2.5 Authors of films (whose authors for the purposes of moral rights are the principal director; principal producer and principal screen writer).

1.2.6 Corporations do not have any moral rights.

1.3 **Duration Of Moral Rights**

1.3.1 Moral rights continues until the copyright expires in relation to literary, dramatic, artistic and musical works.

1.3.2 In relation to a film, moral rights expires on the death of the producer, director or screenwriter.

2 **RIGHT OF ATTRIBUTION**

2.1 **Meaning**

2.1.1 This is the right of authors to be identified as the authors of their works whenever an “attributable act” is done in respect of the work or a substantial part of the work. (For definition of “attributable act” please refer to paragraph 2.2 below).

2.1.2 Identification of the authors must be in a reasonable form.

2.1.3 Identification must be reasonably clear and prominent.

2.2 **Infringement of right of attribution**

2.2.1 There will be an infringement of an author’s right of attribution of authorship of the work if a person does or authorises the doing of an ‘attributable act’ in relation to the work.

2.2.2 In the case of literary, dramatic and musical works “*attributable act*’ means the reproduction, publication, public performance, communication (transmission electronically or making available online) or adaptation of the work.

2.2.3 In the case of artistic works “*attributable act*’ means the reproduction, publication, exhibition in public or communication of the works.

2.2.4 In the case of films “*attributable act*’ refers to the making of a copy, its exhibition in public or its communication.

2.2.5 It is also an infringement to commercially deal with an “an infringing article”.

2.3 Defences

2.3.1 The following defences apply to an infringement of the right of attribution.

(a) Defence of Reasonableness (see paragraph 5.1 below); and

(b) Defence of Consent (see paragraph 5.2 below).

3 RIGHT NOT TO HAVE AUTHORSHIP FALSELY ATTRIBUTED

3.1 Meaning

3.1.1 This is a person's right not to have authorship falsely attributed which means that the person may prevent the insertion or affixing of his/her name on a work which implies falsely that he/she is the author of the work;

3.1.2 This is also the right of an author not to be attributed authorship where the work has been altered without the permission of the author.

3.2 Infringement of right not to have authorship falsely attributed

3.2.1 It is an infringement to do or authorise an act of false attribution in respect of a work or a substantial part of the work.

3.2.2 It is an infringement to perform in public or communicate an infringing work or to commercially deal with such a work.

3.2.3 It is NOT an infringement where the alteration is insubstantial or necessary to comply with a law.

3.3 Defences

3.3.1 The defence of Consent (Refer to paragraph 5.2 below) applies to the infringement of the right not to have authorship falsely attributed.

4 RIGHT OF INTEGRITY

4.1 Meaning

4.1.1 This is the right of an author not to have his/her work subject to "derogatory treatment".

4.1.2 "Derogatory treatment" means the doing of anything in relation to the work (literary, dramatic, musical and artistic works or film) that is prejudicial to the author's honour or reputation. It

includes the doing of something to the work which results in:

- (a) a material distortion of the work;
- (b) a mutilation of the work; or
- (c) material alteration to the work

that is prejudicial to the authors honour or reputation.

4.2 **Infringement of the right of integrity**

4.2.1 It is an infringement of the right of integrity if a person subjects or authorises a work or a substantial part of the work to “derogatory treatment”.

4.2.2 **It is also an infringement to deal commercially with an infringing work.**

4.3 **Defences**

4.3.1 The following defences apply to an infringement of the right of attribution.

- (a) Defence of Reasonableness (see paragraph 5.1 below); and
- (b) Defence of Consent (see paragraph 5.2 below).

5 **DEFENCES TO INFRINGEMENT OF RIGHTS OF INTEGRITY AND ATTRIBUTION**

5.1 **Defence of Reasonableness**

5.1.1 If the relevant act or omission by a person was “reasonable” in the circumstances, the person will not infringe the author’s right of attribution or integrity.

5.1.2 The *Copyright Act 1968* lists a number of factors to take into account when assessing whether the act or omission was reasonable. They include:

- (a) the nature of the work;
- (b) the purpose for which the work is used;
- (c) any practice in the industry in which the work is used that is relevant to the work or the use of the works;
- (d) whether the work was made in the course of the author’s employment under the contract of service;
- (e) in the case of films, whether the primary purpose for which the film was made was for exhibitions, cinemas or

broadcasted by division or for some other purpose.

5.1.3 Paragraph 65 of the Copyright Amendment (Moral Rights) Bill 1999 Revised Explanatory Memorandum provides the following illustration: “For example, it may be reasonable not to attribute authorship of one of the makers of an in-house training film but unreasonable in the case of a film that was made for exhibition at cinemas”.

5.1.4 The Discussion Paper, The Proposed Moral Rights Legislation for Copyright Creators, Commonwealth of Australia, June 1994, (Paragraphs 3.51-3.65), provides some examples where treatment of literary, dramatic, musical and artistic works and films may or may not be derogatory. Some of the examples are cited below:

5.1.5 ***Examples where it is not a derogatory treatment include:***

- (a) an employer edits or reworks a draft document;
- (b) translation of a work;
- (c) demolition of a building where the artistic work cannot be removed (see para 6.2 below);
- (d) minor part of a photograph is not reproduced due to space problems; and
- (e) film is subject to criticism or review or used for parody or burlesque.

5.1.6 ***Examples of derogatory treatment include:***

- (a) substantial part of a work is altered or deleted which alters the context of the article and is reproduced without the consent of the author;
- (b) the editing of a poem with the intention to make a mockery of the poet or alter its intended meaning;
- (c) altering the script of a film so that it becomes offensive;
- (d) destruction of an artistic work without notifying the artist and giving the artist the opportunity to remove it; and
- (e) use of an artistic or musical work with an advertising, product or service offending against the known views of the artist.

5.2 **Defence of Consent**

5.2.1 **Films and literary, dramatic, musical and artistic works included in films**

- (a) General or comprehensive consent may be relied upon only in relation to films and literary, dramatic, musical and artistic works included in films.

- (b) Written consent may be given by the author in relation to “all or any acts or omissions” occurring before or after the consent is given provided the consent relates to:
- specific existing works; or
 - works of a particular description, the making of which has not begun, or that are in the course of being made.
- (c) Consent may be given for the benefit of the owner or future owner of copyright in the work.

5.2.2 Works (except for films and works included in films)

- (a) With respect to literary, dramatic, musical and artistic works you CANNOT rely on a general or comprehensive consent.
- (b) Written consent may be given by the author in relation to specified acts or omissions or specified classes or types of acts or omissions whether occurring before or after the consent is given. The consent cannot apply to “all or any acts or omissions”.
- (c) The consent must also relate to a specific work in existence at the time the consent is given or a work of a particular description the making of which has not begun or which are in the course of being made.

5.3 Consent of Joint Authors

- 5.3.1 Each joint author has moral rights in a work of joint authorship.
- 5.3.2 Consent of one joint author does not affect the rights of another joint author. Consent of all authors are required

6 SPECIFIC DEFENCES

6.1 Defence for infringement of moral rights of integrity relating to destruction of moveable artistic works (Eg Sculptures)

- 6.1.1 It is not an infringement of the right of integrity of an author of an artistic work if the person who destroys it gave the author or the person representing the author a reasonable opportunity to remove the work from the place where it was situated.
- 6.1.2 The defence does not apply to a work which is a fixture to the ground or a mural (see para 6.2 below).

6.2 Defence to infringement of moral rights of integrity relating to
(a) artistic works that is affixed to or forms part of buildings;
(b) moveable artistic works in public places;
(c) buildings, plans (both artistic works) or instructions (literary works) used in the construction of a building or part of a building

6.2.1 It is not an infringement of the right of integrity of an author of the copyright works specified in paragraph 6.2 above to change, relocate, demolish or destroy the building provided the owner of the building does the following:

- (a) The owner makes reasonable enquiries to identify and locate the author or a person representing the author;
- (b) If successful in identifying the author, the owner gives notice of what is proposed to the author in accordance with the Copyright Regulations;
- (c) The notice gives the relevant person 3 weeks to seek access to the work for the purposes of making a record or consulting with the owner in good faith with respect to the owner's proposal; and
- (d) A reasonable opportunity is given to the author to have access to the work for a further 3 weeks.

6.2.2 In the above circumstances, the author has the right to request that his or her identity be removed from the work in the case where a change/alteration or relocation of the building is to take place. An example of this may be with respect to giving an architect the opportunity to have his/her name removed from a building which is to be altered and where he/she disagrees with the changes. This may include the painting of a building a different colour.

6.3 Defence to infringement of moral rights of integrity relating to restoration and preservation of works

6.3.1 It will not be an infringement if the act of restoring and preservation is done in good faith.

6.3.2 This applies to all works and films.

6.3.3 There needs to be some consultation to comply with "good faith". The work must require restoring and preserving.

If you have any queries relating to moral right, please contact Gilbert Ducasse, Deputy Director, Legal Services for advice on 9479 1795.

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