

Article for *Copyright World*

Moral rights legislation in force

Virginia Morrison, Australian Copyright Council, 8 January 2001

Australia now has legislation giving creators of copyright works the moral rights of attribution and integrity. These long-awaited rights were introduced by the Copyright Amendment (Moral Rights) Act 2000 which came into effect on 21 December 2000.

In the previous issue of *Copyright World*, we reported that the Moral Rights Bill had passed the Federal Parliament's lower house (the House of Representatives). During debate in the Senate (the upper house), the Government moved several amendments in co-operation with the opposition Labor Party. Many of these amendments were aimed at addressing the concern of creators outside the film and television industries that provisions drafted on the basis of a consensus between creators and users in these industries applied unfairly to them.

Senator Aden Ridgeway, of the Democrat party, moved amendments which were intended to recognise collective moral rights in Aboriginal and Torres Strait Islander cultural works. These amendments were not passed. However, the Government indicated it would give serious consideration to the principles underlying the proposals in the context of developing legislative amendments and other measures to address the issue of protection for indigenous intellectual property.

The Moral Rights Act amends the Copyright Act 1968 (Cth) by granting authors of literary, dramatic, musical and artistic works and films the rights of attribution of authorship and integrity of authorship. There are also new provisions relating to false attribution of authorship which are largely similar to the provisions existing prior to the commencement of the Act.

Right of attribution

The right of attribution is the right of the author of a work to be identified as such whenever the work is used in one of the ways corresponding to the exercise of economic rights, including reproduction. The identification of the author must be in accordance with the author's wishes or, if these wishes are not known, in a form that is "reasonable". The identification must also be clear and reasonably prominent.

The right to be attributed as author of a work lasts for the period of copyright protection in that work. The right applies to all works (except films and works as included in films) in which copyright subsists, whether created before or after the date the legislation commenced. Only authors of films which were created after the commencement date get the benefit of the right.

Right of integrity

The right of integrity of authorship is the right of an author not to have his or her work subjected to "derogatory treatment". Derogatory treatment would involve doing anything in relation to a work that was "prejudicial to the author's honour or reputation", including mutilating or materially distorting or altering a work.

A person could infringe this right either by subjecting a work to derogatory treatment, or by dealing with a work that had been subject to derogatory treatment in ways that broadly correspond to the exercise of economic rights in a work, such as by reproduction.

In the case of films, the right of integrity expires on the death of the author. The authors of all other works have the benefit of the right for the duration of copyright protection in the works. As with the right of attribution, the right of integrity only applies to films, and works included in films, which are created after the date the legislation commenced.

Defences to infringement

There are two defences to infringement which apply to both the rights of attribution and integrity – the reasonableness defence and the consent defence. Under the reasonableness defence, it is not an infringement to fail to attribute an author, to subject a work to derogatory treatment or deal with a derogatorily treated work if the relevant act or omission was “reasonable in all the circumstances”. The Act contains a list of factors to be taken into account in assessing whether such an act or omission was reasonable. These factors include:

- the nature of the work;
- the purpose for which the work is used;
- any practice in the industry in which the work is used that is relevant to the work or the use of the works;
- whether the work was made in the course of the author’s employment or under a contract of service; and
- in the case of films, whether the primary purpose for which the film was made was for exhibition at cinemas, for broadcasting by television or for some other purpose.

Under the consent defence a defendant may rely upon a written consent given by the author in relation to acts or omissions that would otherwise infringe moral rights. A consent is valid if it relates to:

- specified existing works; and
- works of a particular description, the making of which has not begun or that are in the course of being made.

In the case of films (and works to the extent they are included in films), a consent may relate to *all* or *any* acts or omissions. In the case of other works, a consent must relate to *specified* acts or omissions, or *specified* classes or types of acts or omissions.

In the case of employed (as opposed to freelance) creators of all works including films, the consent provisions are wider. Employed creators may give their employers consent to *all* or *any* acts or omissions in relation to *all* works made or *to be made* in the course of employment.

In addition to these defences, there are specific exceptions to infringement of the right of integrity in relation to moveable artistic works, site specific artworks and buildings, and in relation to the restoration and preservation of works.

There is more information about the legislation in the information sheet, *Moral rights*, published by the Australian Copyright Council on its web site (www.copyright.org.au).