

MORAL RIGHTS IN COPYRIGHT WORKS

An individual (a **creator**) who authors a work protected by copyright can sue to protect his or her moral rights in that work. That can impact on the use or later sale of the copyright work.

The *Copyright Act* grants to an owner of a work protected by copyright certain economic rights (such as to copy or publish) in relation to that work. And the Act also grants moral rights to the individual who authored the work, even if that author is not and never was the owner of the work. Copyright can exist in software, diagrams, books, articles, drawings, plans, screenplays, photographs, music scores and many other things that are reduced to written form.

Moral rights

A creator has these moral rights until copyright in the work expires:

- a right to attribution of authorship, so people acquiring or viewing the work have notice of the creator's identity
- a right not to have authorship falsely attributed to another person
- a right of integrity of authorship, meaning their work should not be subjected to derogatory treatment, such as a material distortion, mutilation or a material alteration of the work that is prejudicial to the creator's honour or reputation (subject to special rules about building designs and artistic works affixed to buildings).

Only a human being can have moral rights. A creator cannot transfer or assign their moral rights.

A creator may however give written consent (in advance or arrears) to another party to infringe some or all of their moral rights. An employee may give their employer a consent with respect to all moral rights in all works (present and future) they create in the course of their employment.

A consent given to an owner (or prospective owner) of copyright in the work is presumed (unless a contrary intention exists) to extend to the owner's licensees and successors in title.

Infringement

If moral rights are infringed, the creator can sue the infringer for damages, injunctions or a declaration that an infringement has occurred. A court may also order a public apology.

In defence, a person does not infringe moral rights of attribution or integrity if their non-compliance was reasonable in the circumstances having regard to:

- the nature of the work
- the purpose and manner in which the work is used
- the practice in the industry in which the work is used
- for the right of attribution – the difficulty and expense in identifying the creator
- whether the work was made in the course of the creator's employment, or under a service contract between the creator and a third party.

Moral rights in practice

An original owner's commercial relationship to the creator should often be enough for the owner to have the reasonableness defence. But this is not certain. There is no substitute for a written consent from the creator.

Some examples of moral rights in practice:

#1 - You modify your business logo (eg stylise it or change its colours) and then use it on your annual report, premises, marketing materials and website. The logo's creator did not consent to the modification and you breach their right of integrity.

#2 - You contract a company to write an instruction booklet, for you to own. The company subcontracts the job to an individual. The creator (the individual) later claims moral rights over your copyright work.

#3 - An individual helps you write software. You may own the copyright in the software, but the helper later demands a right of attribution.

#4 - You buy from a company the rights in some equipment designs. In the sale agreement the company warrants that it owns the designs, including copyright in drawings and plans. The warranty doesn't cover you for moral rights claims by the people who created the work.

#5 - You want to sell the copyright in a work, but buyers use the potential for creator's moral rights claims to offer a lower price.

What to do

If you a creator, know your moral rights.

If you own or will come to own a copyright work:

- ask your employees for written consent waiving their moral rights, or make that a condition of employment for new employees, like -

“The employer owns the copyright in all works the employee creates or contributes to in the course of the employment. The employee waives in respect of those works any right to be attributed as the creator of the work and any right against the work being changed or adapted.”
- ask your contractors who are individuals to give written consent waiving their moral rights, or make that a condition of engagement for new contractors or new tasks (you can adapt the precedent above)
- ask your contractors who are companies to obtain from their own employees or sub-contractors written consents waiving their moral rights, like -

“The customer owns the copyright in all works the company creates for the task. The company must ensure that individuals who create or contribute to such works waive in writing in respect of those works any right to be attributed as the creator of the work and any right against the work being changed or adapted.”
- when buying, ask for a vendor warranty that moral rights have been waived.

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