

1.16 Moral Rights

a. What are Moral Rights?

Moral Rights are personal rights granted to authors of:

- o literary, dramatic, musical and artistic works and
- o films

Moral rights are:

- o **the right of attribution of authorship.** The author has the right to be identified as the author of the work or film when it is presented to the public. The attribution must be reasonably clear and prominent
- o **the rights against false attribution of authorship.** The author has the right not to have their work attributed falsely to someone else and not to have an altered work being attributed as unaltered
- o **the right of integrity of authorship.** The author has the right to have the integrity of their work respected and not subjected to derogatory treatment. A treatment is derogatory if it in some way prejudicially affects the honour or reputation of the author

b. Who has moral rights?

Moral rights are granted to authors of:

- o literary, dramatic, musical and artistic works
- o films

An author of works and films for moral rights purposes is different from the author of works and film for copyright purposes. An author of a film for moral rights purposes includes the screenwriter, director and the individual producer.

Moral rights are granted to individuals only and cannot be held by corporate entities, trusts or associations.

c. Can moral rights be waived or sold?

Moral rights are separate from copyright and unlike copyright, cannot be waived, sold, assigned or licensed or transferred. They remain with the author even where the copyright has been sold or passed to a third party.

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d. Defences

The Copyright Act sets out the following defences for infringement of moral rights:

i. Defence of Reasonableness

It will not be an infringement of the author's:

- right of attribution of authorship or
- right of integrity of authorship

if a person can establish that the act or omission was 'reasonable' in the circumstances.

The Copyright Act sets out a number of factors that the court takes into consideration when determining whether an act or omission was reasonable, including:

- the nature of the work purpose for which the work is used
- the manner in which the work is used
- any industry practice relevant to the work or the use of the work

- any practice in any voluntary code of practice in the industry in which the work is used
- whether the work was made in the course of the author's employment or under a contract for services (independent contractor or freelancer)

ii. **Consent**

It will not be an infringement of the right of attribution or the right of integrity if the author consented in writing to the act or omission. Consent may be obtained for past and future acts or omissions.

e. **Dealing with Moral Rights**

In order to avoid moral rights infringements, education institutions should:

- attribute the author of the work or film where reasonable. For example, crediting the name of the author and title of the work on material that is reproduced or communicated to the public
- attribute authors of musical and dramatic works where the works are performed at concerts and other performances either in the program or by announcement
- not alter, add to, crop, edit, change, distort or mutilate the work or film of the author unless it is reasonable in the circumstances
- obtain a written consent to such acts or omissions that would otherwise infringe the author's moral rights. Consents should be addressed in all contracts that deal with copyright material such as commission or freelance agreements, employment agreements and licence agreements

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