



INFORMATION SHEET Artists & copyright

July 2009

G033v13

This information sheet is for visual artists.

Before reading this information sheet, see Copyright Basics at www.copyright.org.au/basics.

Check our website to make sure this is the most recent version, and for related information and Q&As on this topic. See our webpage "Artists, designers & photographers" at www.copyright.org.au/art.

The purpose of this information sheet is to give general introductory information about copyright. If you need to know about how the law applies in a particular situation, please get advice from a lawyer.

Most artistic works are automatically protected by copyright

Copyright automatically protects most artistic works that:

- have resulted from some skill and effort;
- are not simply copied from something else; and
- are "fixed" in some way (for example, as a painting or photograph, or saved as a digital file).

Artistic works covered by copyright include:

- drawings
- paintings
- sculptures
- photographs, and
- craftworks (such as mosaics, tapestries, jewellery and woven art).

There is no registration procedure for copyright protection in Australia. You do not have to register your work or go through any other procedure.

Artistic works based on, or incorporating other people's work, can be protected by copyright

A work that is based on, or incorporates, other people's work can be protected by copyright if something new has been added. The artist may, however, need to get permission from the owners of copyright whose works have been included.

Freelance artists usually own copyright in work they produce

If you are a freelance artist, you will usually own copyright in work you produce. If the work is produced for a client, the client may own copyright if:

- you agreed, in writing, that the client would own copyright, or
- the client is a Commonwealth, State or Territory government department or agency.

If you are a salaried employee, copyrights in artworks produced as part of your job are likely to be owned by your employer.

Owning copyright means that others need your permission to do certain things with your work

If you own copyright, others who do the following with your work usually need your permission to:

- reproduce it (for example, in a book, poster or film),
- include it in a webpage,
- show it on television, and
- email it to the public.

People do not need your permission to exhibit the original version of your work (for example, in a gallery), but they usually need to credit you if they do so.

There are many special exceptions in the Copyright Act that allow people to use other people's work without permission. These include special exceptions relating to research and education.

People who use your work usually need to attribute you, and not treat your work in offensive ways

Even if you do not own copyright, people who use your work usually need to attribute you, and to avoid treating your work in offensive ways. This is because of obligations in the Copyright Act relating to "moral rights".

If your work is used as a design for the shape of a functional object, you might need to register the design

There are provisions in the Copyright Act that limit copyright protection for artistic works, such as drawings or sculptures, used as designs for the three-dimensional features of functional objects (such as the shape of a jug or chair). Because of this, you may need to consider registering the design under the Designs Act, administered by IP Australia.

Viscopy and Copyright Agency Limited collect royalties for artists

Viscopy is a non-profit organisation, known as a copyright collecting society, which licenses certain uses of artistic work on behalf of its members, who are artists. Copyright Agency Limited (CAL) administers special provisions in the Copyright Act that allow uses of copyright material, including artistic works, by educational institutions and by governments, subject to payment. CAL also licenses other types of organisations to make certain uses of its members' works, including local governments and non-profit organisations, and corporations. For more, see our webpage "Copyright collecting societies" at www.copyright.org.au/wp0080.

More information

- more information on this topic, including links to Q&As, at: www.copyright.org.au/art
- general information about copyright: www.copyright.org.au/information
- information from Arts Law Centre of Australia: www.artslaw.com.au

The Australian Copyright Council is a non-profit organisation, partly funded by the Australia Council for the Arts. The Council's services include information about copyright via its website, training and publications, research, and submissions on copyright policy.



Australian Government



The Australian Copyright Council has been assisted by the Commonwealth Government through the Australia Council, its arts funding and advisory body, through its Policy, Communication and Planning Division.



AUSTRALIAN
COPYRIGHT
COUNCIL



INFORMATION SHEET

G043

Moral rights

June 2006

In this information sheet we give an overview of the “moral rights” of individual creators under the Copyright Act. These rights were introduced in December 2000. Moral rights for performers are discussed in our information sheets *Performers’ Rights* and *Free Trade Agreement amendments*.

For detailed information, see our practical guide, also called *Moral Rights*. These rights are also discussed in our books *Film & Copyright*, *Architects: Copyright & Moral Rights* and *Photographers: Copyright & Moral Rights*.

For information about our other information sheets, other publications and training program, see our website <http://www.copyright.org.au>.

The purpose of this information sheet is to give general introductory information about copyright. If you need to know how the law applies in a particular situation, please get advice from a lawyer.

A Copyright Council lawyer may be able to give you free preliminary legal advice about an issue not addressed in an information sheet. This service is primarily for professional creators and arts organisations but is also available to staff of educational institutions, libraries and governments. For further information about the service, see <http://www.copyright.org.au/advice> or our information sheet *Australian Copyright Council: who we are, what we do*.

We update our information sheets from time to time. Check our website to make sure this is the most recent version.

Key points

- Moral rights are personal legal rights belonging to the creators of copyright works and cannot be transferred, assigned or sold.
- Only individual creators have moral rights.
- Someone using copyright work may need to get consent from the creator as well as permission from the copyright owner.
- There are a number of defences and exceptions to infringements of moral rights.
- Courts can award a range of damages for infringements of moral rights.

What are “moral rights”?

“Moral rights” are the rights individual **creators** have in relation to copyright works or films they have created. Moral rights are separate from the “economic rights” of the **copyright owner**, such as the right to reproduce the work or communicate it to the public. The creator of a work, who holds moral rights, is not necessarily the owner of copyright in the work.

Creators have the right:

- to be attributed (or credited) for their work;
- not to have their work falsely attributed; and

- not to have their work treated in a derogatory way.

What types of material do moral rights apply to?

Moral rights apply to:

- **literary material** such as novels, screenplays, poems, song lyrics and journal articles;
- **artistic works** such as paintings, drawings, architecture, sculpture, craft work, photographs, maps and plans;
- **musical works**;
- **dramatic works** such as ballets, plays, screenplays and mime;
- **computer programs**; and
- **cinematograph films** such as feature films, documentaries, music videos, television programs and television commercials.

In the moral rights provisions, these categories of material are referred to as “works”.

Films, and works included in films, are treated differently from other works under the moral rights provisions.

Who has moral rights?

Individual creators have moral rights in relation to their work. Examples of such creators are:

- the writer of a novel;
- the writer of a screenplay;
- the architect of a building;
- the composer of a song melody and the writer of the lyrics;
- the painter of a picture;
- the choreographer of a ballet.

In the case of films the following people have moral rights:

- the principal director;
- the principal producer (provided the producer is a natural person and not a company); and
- the principal screen writer.

Moral rights for **performers** whose performances are captured on sound recordings were introduced by the US Free Trade Agreement Implementation Act 2004, but will only be effective once the World Intellectual Property Organisation Performances and Phonograms Treaty comes into force in Australia. Moral rights belong to each person who contributed to the sounds of a performance, including the conductor of a musical work. For more information, see our information sheets *Performers’ Rights* and *Free Trade Agreement amendments*.

How do you get moral rights?

In Australia, there is no need to do anything to ensure you have moral rights: they arise automatically once you have created a copyright work or film. In Australia it is **not** necessary for an author to expressly assert his or her moral rights.

However, in some countries (such as the United Kingdom and New Zealand), there is a requirement to assert moral rights in order to benefit from them. Australian creators whose work may be published, distributed or broadcast overseas should consider getting advice on whether they should use a form of assertion to ensure that they get moral rights protection in those countries. This is generally done simply by including a statement in copies of the work (for example, on the imprint page of a printed book) stating that the creator asserts his or her right to be identified as the author of the work.

How long do moral rights last?

The rights of attribution and false attribution in relation to all works, and the right of integrity in relation to all works except films, last for the same period as copyright protection. (For films, each creator's right of integrity lasts only for that creator's lifetime).

Generally, copyright protection lasts for the creator's life plus 70 years. For more information, see our information sheet *Duration of copyright*.

Can moral rights be transferred?

Moral rights are different from copyright, which consists of "economic rights" (such as the right to reproduce the work), which can be assigned or licensed. Creators cannot assign, transfer or sell their moral rights. Creators can give consent for their work to be used in specific ways, but cannot assign the right to grant such consent.

Where moral rights continue after the creator's death, they would be administered by the creator's legal personal representative.

Right of attribution

Creators have a right to be attributed (or credited) when their work is used in certain ways.

Creators of copyright in **literary, dramatic, musical and artistic works** can take action for any failure to attribute them that take place on or after 21 December 2000 (regardless of when the works were originally created).

The right of attribution applies to **films** made on or after 21 December 2000 and to literary, dramatic, musical and artistic works "as included in" films made on or after this date. This means that creators of such works completed before 21 December 2000 cannot take action for failure to attribute them.

When does a creator need to be attributed?

Creators of copyright material have the right to be attributed when the work is:

- "reproduced" (such as by making photocopies, copying it by hand, reciting it onto an audio tape, scanning it onto a computer disk or printing out a copy of a digital file);
- "published" (made public for the first time);
- "exhibited in public" (in the case of artistic works and films);
- "communicated" to the public (such as by putting the written work onto a website, broadcasting or faxing it or emailing digital files containing the work); or
- "adapted" (translated, adapted from a literary to a dramatic work, or, for a musical work, arranged).

How should a creator be attributed?

If a creator has not stated the way in which he or she wishes to be identified, any "clear and reasonably prominent" form of identification may be used. This means that someone receiving, seeing or hearing the work or adaptation would be aware of the creator's name.

When is attribution NOT necessary?

You do not need to attribute the creator when you use a copyright work in one of the ways outlined above if:

- the creator has consented in writing not to be identified; or
- it is **reasonable** in all the circumstances not to identify the author.

There are a number of factors to be taken into account to assess whether a person has acted reasonably. These are outlined below, under the heading "Defences to infringement".

Right of false attribution

Authors of literary, dramatic, musical and artistic works and films have the right not to have the authorship of their works falsely attributed. This right was already in the Copyright Act before the changes in December 2000.

False attribution means:

- crediting the wrong person as the creator of the work; or
- crediting the creator of a work that has been altered without acknowledging the alterations.

It is also an infringement of this right to knowingly deal with or communicate a falsely attributed work.

When is it OK to falsely attribute the author?

False attribution does not infringe the creator's rights if the creator has given written consent. See below, under the heading "Defences to infringement".

Note that there is no defence of "reasonableness" for false attribution.

Right of integrity

The right of integrity is the creator's right not to have his or her work subjected to "derogatory treatment".

Creators of copyright in **literary, dramatic, musical and artistic works** can take action against another person who treats the work in a derogatory manner on or after 21 December 2000, regardless of when the works were created.

The right of integrity applies to **films** made on or after 21 December 2000 and to literary, dramatic, musical and artistic works "as included in" films made on or after this date. This means that creators of such works completed before 21 December 2000 cannot take action for derogatory treatment of them.

What is "derogatory" treatment?

"Derogatory treatment" means doing anything in relation to the work which prejudices the **creator's honour or reputation**. This could include:

- distorting, mutilating or materially altering the work in a way that prejudices the creator's honour or reputation; and
- in the case of artistic works, destroying the work or exhibiting it in public in a way that prejudices the creator's honour or reputation.

Someone who imports material for commercial purposes, or commercially deals with material, that infringes a creator's moral rights, may him or herself infringe moral rights.

Simply altering a work, or treating it in a way the creator is not happy with, will not necessarily infringe the creator's moral rights: there is also a requirement that the treatment of the work prejudices the creator's honour or reputation. To date, there have been no cases in Australia to clarify what this might mean. However, it is likely that Australian courts would require some evidence of objective damage to the creator's reputation, rather than simply of hurt feelings, before they would find that the creator's right of integrity had been infringed.

When is derogatory treatment not an infringement of moral rights?

You do not infringe the creator's moral rights if you treat a copyright work or film in a way that would otherwise be "derogatory" if:

- the creator has consented in writing to the treatment of the work; or
- it is reasonable in all the circumstances to treat the work in this way.

There are a number of factors to be taken into account to assess whether a person has acted reasonably. These are outlined below, under the heading "Defences to infringement".

Special exceptions to infringement of the right of integrity

There are special exceptions to infringement of the right of integrity in relation to artistic works (including buildings and architectural drawings). It is not an infringement of moral rights to:

- destroy a moveable artistic work, if the creator, or the creator's representative, is given a reasonable opportunity to remove the work; or
- change, relocate, demolish or destroy a building of which an artistic work forms part, or to which it is affixed, provided certain conditions (including the giving of notice and provision of access for the purpose of making a record and consultation) are met;
- change, relocate, demolish or destroy a building, provided certain conditions (including the giving of notice and provision of access for the purpose of making a record and consultation) are met; or
- remove or relocate site-specific artworks, provided certain conditions (including the giving of notice and provision of access for the purpose of making a record and consultation) are met.

It is not an infringement of moral rights to do anything in good faith to restore or preserve a work.

Consent

The Copyright Act sets out several different regimes for providing consent to infringements of moral rights. A creator who is an employee of the person wanting the consent can give a wide-ranging consent covering all material created in the course of employment. Similarly, a very broad consent to infringement of moral rights can be given by a creator whose work is a film, or will be included in a film. Other creators cannot give such wide-ranging consent.

Reasonableness

A failure to attribute the creator, or a derogatory treatment of copyright work, does not infringe the creator's rights if the action was "reasonable" in the circumstances.

The Act sets out a number of factors to be taken into account in working out whether the action was reasonable. These include:

- the nature of the work;
- the purpose, manner and context for which it is used;
- relevant industry practice;
- whether the work was created in the course of employment or under a contract of service; and
- if there are two or more authors, their views about the failure to attribute or derogatory treatment.

Note that there is no defence of reasonableness for false attribution.

In the case of films, the creators of "underlying" works reproduced or recorded in the film – such as the music – have moral rights, as well as the creators of the film itself (the director, producer and screenwriter). The creators of a film can enter into a written "co-authorship agreement" under which they each agree not to exercise their respective rights of integrity except jointly with the other creators.

What remedies can a court give for infringement of moral rights?

If a creator made a successful claim for infringement of moral rights, the remedies a court could grant include:

- financial compensation (damages);
- an order to prevent or stop a particular activity (an injunction);
- a declaration that a moral right of the creator has been infringed;
- an order that the defendant make a public apology for the infringement; or
- an order that any false attribution of authorship, or derogatory treatment of the work, be reversed or removed.

There are a number of factors which the court could take into account when deciding the appropriate remedy, such as anything done by the defendant to reduce the effects of infringement.

Before deciding whether or not to grant an injunction, a court must consider whether it should adjourn the hearing to give the parties an opportunity to negotiate a settlement.

Copyright Amendment (Indigenous Communal Moral Rights) Bill

The Government has announced in its legislative and policy initiatives for 2006 that it will introduce a Copyright Amendment (Indigenous Communal Moral Rights) Bill. This follows promises made by the Government in 2003 and 2004 to give Indigenous communities rights similar to those of individual creators when a community's cultural material is embodied in new copyright works.

Further information

For further information about copyright, see our website – <http://www.copyright.org.au> – or contact us.

Information from the Arts Law Centre of Australia may also be of interest to you: see <http://www.artslaw.com.au> or telephone (02) 9356 2566.

Reproducing this information sheet

You may download and print one copy of this information sheet from our website for your reference, or you may purchase a printed copy from our online shop – <http://shop.copyright.org.au> – or direct from us.

Australian Copyright Council

The Australian Copyright Council is a non-profit organisation whose objectives are to:

- assist creators and other copyright owners to exercise their rights effectively;
- raise awareness in the community about the importance of copyright;
- identify and research areas of copyright law which are inadequate or unfair;
- seek changes to law and practice to enhance the effectiveness and fairness of copyright;
- foster co-operation amongst bodies representing creators and owners of copyright.



Australian Government



The Australian Copyright Council has been assisted by the Commonwealth Government through the Australia Council, its arts funding and advisory body, through its Policy, Communication and Planning Division.

© Australian Copyright Council 2006