



Moral Rights

Moral rights were introduced into the United Kingdom by the Copyright, Designs and Patents Act 1988 and came into effect on 1 August 1989. They are personal rights generally given to creators of certain types of work namely literary, dramatic, musical or artistic works and also the director of a film has certain moral rights.

Moral Rights are:

The Paternity Right

This is the right of a creator of a work to be identified whenever the work is commercially published, exhibited to the public or included in a broadcast or film. This right must be “asserted” in order to have any validity. It can be asserted in an assignment of the copyright generally. It can be asserted by any other instrument in writing and will bind anyone who has notice of it. This can be done by including a written statement of assertion with any transparency print, original or any other form of the work.

In respect of artistic works, specifically in relation to the public exhibition of an artistic work, the right may be asserted if the author is identified on the original copy or on the frame or mount for example by means of a signature. Only authors who were living on 1 August 1989 benefit from this right, although generally it applies to their works, whether created before or after that date. In granting licences, DACCS usually insist that licensees give a credit stating the artist’s name together with a copyright by-line.

In the case of a work of architecture in the form of a building or a model for a building, a sculpture or a work of artistic craftsmanship the author has the specific right to be identified when copies of a graphic work representing it or a photograph of it are issued to the public. Also in the case of a work of architecture in the form of a building the author has the right to be identified on the building as constructed. Again, the right must be asserted.

The right lasts for as long as the works are in copyright - basically life of the author plus 70 years.

The Right of Integrity

This means that an author can object to a derogatory treatment of his or her works. A derogatory treatment is regarded as any addition to, deletion from, alteration to or adaptation of the work which amounts to a distortion or mutilation of the work or is otherwise prejudicial to the honour or reputation of the creator. There are some specific areas where the right of integrity would not apply which include where somebody may have to alter the work to avoid committing a criminal offence, for example for reasons of obscenity or defamation, and there is a specific exclusion for the BBC where they may choose to avoid including anything in a broadcast which offends against good taste or decency or which is likely to encourage or incite crime or to lead to disorder or be offensive to public feeling.

Again this right is only granted to creators living as at 1 August 1989 but applies to earlier and later works. The right lasts for as long as the relevant work is in copyright.

False Attribution

This right existed before the 1988 Act came into force and therefore is available to creators whether living or not at the time of 1 August 1989. It is the right not to be identified as the creator or author of a work which is in fact created by someone else. It is there essentially to protect the creators reputation and also to ensure that they do not have other works passed off as theirs. This right lasts for the life of the relevant author and for a further 20 years.

The Right of Privacy

This is not quite the same as all the other moral rights. It does not belong to the author of a work but, where a person who for private and domestic purposes commissions the taking of a photograph or the making of a film then, as long as copyright subsists in the resulting photograph or film, that person has the right not to have copies of the work issued to the public, exhibited or shown in public, broadcast or included in a cable programme service. This is subject to some fair dealing exceptions. Although this is aimed at preventing sensationalist journalism, it is very restricted in its application since the photographs (or films) have to be commissioned for private and domestic use and it is not a general right of privacy. This right lasts for as long as the resulting photograph or film remains in copyright so in the case of a photograph it would now generally be the life of the creator of the photograph plus 70 years and in the case of a film, 50 years from the date it was made or released if it was released within the first 50 years.

Personal Right

Moral rights are personal rights which cannot be assigned. Insofar as they last beyond an author's death they pass under their will or the rules of intestacy to their personal representatives. Moral rights can, however, be waived.

A waiver can be specific or general. Normally a waiver of moral rights must be in writing signed by the person who is giving up the right. However, it is possible that on occasion an artist can consent expressly or by conduct to a certain use of the work which may allow the person who goes ahead and uses the work on the basis of that consent to rely on that waiver of moral rights. Care has to be taken if contemplating any waiver so that the effects of the protection given by such rights are not completely lost. Specific advice should be taken.

Exceptions

There are several important exceptions to the applicability of moral rights. The first is in relation to existing works the copyright in which had previously been assigned, since although moral rights may technically apply, a creator may be prevented from exercising them due to consents given by the copyright owner. Generally also, where there are fair dealing or other exemptions to copyright infringement where people can use a work without consent, moral rights will not normally apply.

One important exception to the rights of paternity and integrity, is that they do not apply in relation to works created for reporting current events or the publication in newspapers, magazines or similar periodicals or encyclopaedias, dictionaries, year books or other collective works of reference. Even where a work is not made specifically for publication in newspapers, magazines or any other specifically mentioned publications, moral rights still do not apply for the purpose of such publication (not a general waiver) provided that the works were made available with the consent of the creator for the purposes of such publication.

Neither the Paternity Right nor the Right of Integrity apply to works that are computer generated works or computer programs.

Where artistic works are created by photographers or artists who are employed and create work in the course of that employment, copyright in the work in the first instance vests in the employer. In this instance the Paternity Right and Right of Integrity are somewhat limited since they cannot be exercised against anyone who is doing something by, or with the authority of, the employer or any subsequent copyright owner. However a creator may still object to derogatory treatment if he or she has been identified as the creator on copies of the work which have been previously published, or is identified at the time of the relevant act of derogatory treatment, unless there is a sufficient disclaimer.

Remedies For Infringement of Moral Rights

If moral rights are infringed this is a breach of statutory duty and the remedies available are similar to those for copyright infringement which would include injunctions to prevent further infringement, damages and delivery up of infringing items. (See Fact Sheet 1 for further details). The content of this fact sheet is of benefit interest only and is not an exhaustive explanation of Moral Rights. This fact sheet is not intended to apply to specific circumstances. The contents of this fact sheet should not therefore be regarded as constituting legal or other advice and should not be relied upon as such. In relation to any particular problem that you may have, you are advised to seek specific and specialist advice.

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