



Intellectual Property Information Sheet

Moral Rights

What are Moral Rights?

Moral rights are found in Section 77 to 89 of the Copyright, Designs & Patents Act 1988 ("the 1988 Act"). Moral Rights are intended to protect the author's artistic integrity as opposed to copyright rights, which are used to protect the commercial aspect of copyright. Moral rights (if asserted) enable the author certain privileges which are described below.

Section 77 of the 1988 Act - Right to be identified as author or director

This section confers a right on the creator of a work to be identified to the public as the creator of their work. The different types of work to which this right attaches are: literary works; dramatic works; musical works; artistic work; and films. The type of work which this right does not attach to include computer programs or computer generated work; the design of a typeface; and work in which the copyright belongs to an employer or a director's employer by virtue of S11(2) of the 1988 Act.

Unlike copyright, the right of attribution does not arise automatically. In order to be enforceable, the creator must assert this right in writing. It is very important for the creator to assert their right, as in the event of any action for infringement, delay in assertion will be taken into consideration. If the author has asserted their right to be attributed to the work, the obligation to do so does not arise until the work has been issued to the public.

If an author asserts their right and is then not identified as the creator of the work, this would be deemed an infringement. There are certain exceptions to this and these are set out in S.79 of the 1988 Act.

Section 80 1988 Act - Right to object to derogatory treatment of work

The author of a copyright literary, dramatic, musical or artistic work, and a director of a film, has the right not to have his or her work subjected to derogatory treatment. As with the other moral rights, there are exceptions and these are contained in Section 81 and 82 of the 1988 Act e.g. the right does not attach to any computer program or computer generated work

or work made for the purpose of reporting current events.

This right exists to prevent injury to the owner and protect the reputation of an artist. It arises when a derogatory treatment of the creator's work is made public or is possessed by a party in the course of business. The treatment of a work is derogatory if it amounts to distortion or mutilation of the work or is otherwise prejudicial to the honour or reputation of the author or director.

Section 84 1988 Act - False attribution of work

This section protects the creators of a literary, dramatic, film, musical or artistic work from being attributed with work which they have not had anything to do with, or with their own work which has been amended without their knowledge. An author may incur injury to his reputation when being attributed to a work, particularly a bad piece of work.

In short, this right is infringed by any person who exhibits, performs, shows or issues to the public a work containing a description stating that a particular person is the author or director, when in fact they are not ("false attribution").

A person may also infringe this right by possessing or dealing with any work knowingly, or having reason to believe that, they are possessing or dealing with falsely attributed work (copies or otherwise), in the course of a business.

Section 85 1988 Act - Right to privacy of certain photographs and films

It is the right of the author of photographs and films, who create such work for private and domestic purposes, and where copyright subsists in the resulting work, not to have the copies of the work issued, exhibited, broadcast or shown to the public. The person who does or authorises the doing of any of those acts infringes that right, unless the actions having been performed, would not infringe the copyright in the work. These include incidental inclusion of the work in an artistic work, film, broadcast or cable programme; parliamentary and judicial proceedings; royal commissions and statutory enquiries; acts done under statutory authority; acts permitted on assumptions as to expiry of copyright.

Duration

The duration of the right to be identified, the right to object to derogatory treatment and the right to keep certain photographs and films private subsists as long as the copyright subsists in the work, which is generally life of the author plus 70 years.

However, the right not to be falsely attributed to work lasts only for the life of the author plus 20 years.

Waiving Moral Rights

All of the above rights can be waived by the owner. This must be done in writing and be signed by the person giving up the right. The waiver can be based on conditions to suit the owner of the moral rights and if the person does not want to waive them completely, they do not need to.

In the event that the person owning the moral rights wishes to waive his/her rights, such a waiver may be general or specific, may relate to existing or future works, and may be on a conditional or unconditional basis. Their waiver may also be subject to revocation.

If such a waiver is made in favour of the owner or prospective owner of the copyright in the works or the works to which it relates, it shall be presumed to extend to his licensees and successors in title, unless a contrary intention is expressed.

It should be noted that under Section 94 of the 1988 Act, moral rights cannot be assigned. The owner of moral rights can however, on his death, transfer those rights to another person by way of a Testamentary Will.



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This Information Sheet is intended to provide general guidance on Moral Rights. For more specified guidance, legal advice should be sought. Thorntons is a trading name of Thorntons Law LLP.

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