

# Your guide to NZ Copyright



## Moral Rights

### Introduction

The Copyright Act 1994, provides creators with certain moral rights in relation to works or films they have created. Moral rights are often referred to as “personal rights” and are separate from copyright rights – which are often referred to as “economic rights”.

Moral rights remain with the creator, even when copyright is owned by someone else.

Moral rights give creators:

- the right to be identified as the author of the work, or director in the case of a film (right of attribution);
- the right to not have a work falsely attributed to them; and
- the right to object to derogatory treatment of the work (right of integrity).

In New Zealand, moral rights apply in specific situations and there are many exceptions and qualifications. It is a good idea for creators to obtain written agreements where appropriate to protect important personal rights. In some industries, it may be standard to require creators to sign a “waiver” of moral rights (where creators agree not to enforce their moral rights).

### Who has moral rights?

Moral rights belong to authors of:

- **literary works**, including novels, screen plays, poems and song lyrics;
- **dramatic works**, including dance, mime and film scenarios or scripts;
- **musical works**,
- **artistic works**, including paintings, drawings, diagrams, maps, engravings, etchings, photographs, sculptures and architectural works.

Moral rights are also enjoyed by directors of **films** made on or after 1 January 1995 (even though copyright is usually owned by film producers).

Creators of sound recordings and computer-related works have no moral rights under the Copyright Act.

## **Right to be identified (right of attribution)**

Creators have the right to be identified (credited) in a clear and reasonably prominent way, when their work is used in certain situations.

### *Right must be asserted*

The right to be identified is not infringed unless the creator has first “asserted” the right. This means they must specify that they wish to be named on copies of the work. Creators can specify if they want to be identified under a pseudonym or by other means.

The right to be identified should be asserted in writing, preferably in a commissioning agreement or an agreement transferring or licensing copyright to another person. However, the right may be asserted in any other written form, at any time.

An artist can assert his or her right to be identified by including their identification on the artistic work before giving the physical item to an exhibitor.

### *Nature of right*

The right to be identified differs slightly depending on the type of work.

Creators of **literary, dramatic, musical, and artistic works** have the right to be identified whenever the work is published commercially. Creators also have the right in relation to:

- **literary works** (except works intended to be sung or spoken with music) and **dramatic works**, when:
  - the work is publicly performed, broadcast or included in a cable programme;
  - copies of a film or sound recording including the work are issued to the public;
  - the work is adapted (for instance where a screen play has been adapted from a novel).
- **musical works** and **literary works** (consisting of words intended to be sung or spoken with music), when:
  - copies of a sound recording of the work are issued to the public;
  - a film whose sound-track includes the work is shown in public or copies of the film issued to the public;
  - the work is adapted (for instance, where lyrics have been translated or music arranged).
- **artistic works**, when:
  - exhibited in public, broadcast or included in a cable programme;
  - included in a film shown to the public or copies of the film issued to the public;
  - copies of a painting, drawing or other graphic work representing the work (in the case of a sculpture, a work of architecture or work of artistic craftsmanship), or of a photograph of such work, are issued to the public;
  - a work of architecture has been constructed (with the architect having the right to be identified on the building, or on the first constructed where there is more than one building).
- **films**, when:
  - shown in public, broadcast or included in a cable programme;
  - copies are issued to the public.

## **Right to object to false attribution of a work**

Creators have the right not to have authorship (or directorship in the case of a film) falsely attributed to them. This prevents, for example, a person putting an artist’s name to a painting, falsely implying that the artist painted the work.

A creator also has the right not to have a literary, dramatic or musical work falsely represented as an adaptation of their work, and not to have an artistic work falsely represented as their unaltered artistic work (if it has been altered without the artist's consent).

Generally, the right will not be infringed where the person making the attribution or representation does not know or have reason to believe that it is false.

### **Right to object to derogatory treatment of a work (right of integrity)**

Creators have a right to object to derogatory treatment of their work, often referred to as the "right of integrity".

The right of integrity is infringed where there is a distortion or mutilation of a work, or treatment of the work that prejudices the honour or reputation of the author or director. The right only applies where there is:

- an addition to, deletion from, or alteration to a work; or
- an adaptation of the work (but not a translation of a literary or dramatic work from one language to another, or a musical arrangement or transcription involving no more than a change of key or register).

The right of integrity does not apply simply because a work has been altered in some way or because the creator is not happy about how the work has been treated. The right does not cover situations where, for example, an artwork is exhibited alongside a work that the creator finds offensive, or a work has been allowed to deteriorate or is deliberately destroyed.

### **Exceptions from moral rights**

Moral rights are not infringed where creators have given their consent.

Rights of attribution and integrity will not apply, or are qualified, where a work:

- is made for reporting current events;
- is made for publication in a newspaper, magazine, periodical or other collective reference work, or made available for such publication with the author's consent;
- is made in the course of employment; or
- is subject to "Crown" copyright;

In some situations, the right of attribution does not apply, for example:

- in some "fair dealing" or "public administration" situations, including:
  - incidental inclusion of works in artistic works, sound recordings, films, broadcasts or cable programmes;
  - use for criticism, review or news reporting;
  - use in examinations, parliamentary and judicial proceedings, Royal commissions and statutory inquiries;
- to television and film advertisements;
- to the use of an insubstantial part of a film on television.

In some situations, the right of integrity is qualified, for example:

- where something is done to avoid the commission of an offence or to comply with a statutory duty;
- in the case of a broadcast or inclusion of a film in a cable programme, where something is done to comply with broadcasting laws and standards, or maintain law and order;
- where a film is altered to fit within television time slots or to use clips in advertisements for the film.

## **Right to privacy in certain photographs and films**

A person who commissions a photograph or film, but does not own the copyright in it, has a privacy right (often referred to as the fourth moral right), where the photograph or film is for private or domestic purposes (such as wedding photos or a family video).

The privacy right consists of the right not to have the photograph or film:

- published;
- exhibited or shown in public; or
- included in a broadcast or cable programme.

## **How long do moral rights last?**

The rights of attribution, integrity and of privacy in certain photos and films, lasts for the duration of the copyright protection for the work.

The right relating to false attribution lasts until 20 years after the death of the creator.

## **Can moral rights be transferred?**

Because moral rights are personal to the creator, they cannot be sold or transferred to another person.

The right relating to false attribution may be enforced by a creator's personal representative after the creator's death.

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