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Make way for... moral rights!

**In brief:** Are you renovating your office premises and knocking down part of the building? Or moving that sculpture sitting out the front of your office building? What about the training manual or video prepared for you by an external consultant that needs a bit of rewriting or editing to hit the spot for your employees? Are you changing or updating the graphics on your company's website?

These may all sound like innocent pastimes, but since 21 December 2000, with the implementation of the *Federal Government's Copyright Amendment (Moral Rights) Act 2000* (the Act), doing any of these things may mean you infringe the moral rights of authors, creators or designers of everyday materials used in your business. This includes manuals, logos, the building itself, promotional materials and even the artworks gracing your offices.

**Moral right is not copyright**

The new Act, which amends the *Copyright Act 1968*, gives to authors or creators the following three moral rights:

- the right to be attributed as the author of a work;
- the right not to have authorship falsely attributed;
- the right to prevent treatment of a work that is prejudicial to the author or creator's honour or reputation (known as the right of integrity of authorship).

Moral rights add to an author's existing copyrights in their work, such as the right not to have work copied or reproduced without permission.

Only individuals can have moral rights. These are personal in nature and are not assignable. This means that even if your business has purchased the copyright to use and reproduce a work (such as a promotional photograph), the author (in this
case, the photographer) will retain his or her moral rights in relation to that photograph. Under the Act, the photographer could apply to the court to prevent your business from using or dealing with the photograph in a way that infringes these rights.

**Materials and moral rights**
Moral rights apply to a wide range of materials that include:

- written works such as training manuals, articles for magazines, bulletins or websites, and computer programs;
- dramatic works such as plays and screen plays;
- artistic works such as sculptures, paintings, photographs, plans, architecture and drawings;
- musical works, including jingles, background music in commercials, promotional videos, or on your company website; and
- films, including promotional and training videos, television programs and commercials, and multimedia services with a video component, as might appear on your company website.

**When do they apply?**
Moral rights will apply to works (other than films) already in existence as at 21 December 2000 that are still protected by copyright, not just to works made after the Act commenced. Copyright generally lasts until the end of the fiftieth year following the death of the author or creator.

The rights will not apply to films made prior to 21 December 2000, but will apply to any films made after that date.

**How are moral rights infringed?**
The Act provides two basic levels of infringement of moral rights: direct and indirect.

**Direct Infringement** includes:

- not attributing an author or creator of a work;
- falsely attributing someone else as the author or creator of a work; and
- treating an author or creator's work in a way that harms their honour or reputation.

There will be no infringement of the right to be attributed as the author of a work or the right of integrity of authorship if the act or omission is deemed 'reasonable'. The Act sets out a number of considerations a court can take into account including what are 'reasonable' acts or omissions, such as industry practice and whether or not the work was made during the course of employment.

**Indirect Infringement** varies according to the type of work created, but generally relates to dealing with a work that infringes a moral right of an author. Indirect infringements may include situations in which an author's work is sold, distributed, imported for sale, let for hire, exhibited in a public place, published, performed in public, adapted or transmitted. The indirect infringement provisions are primarily designed to prevent further use or distribution of the infringing version of a work or film.

Authorization others to commit an infringement may itself be an infringement.

**What happens if they are infringed?**
An author whose moral rights have been infringed may apply for one or more of the following remedies:

- an injunction;
- damages;
- a declaration that his/her moral rights have been infringed;
- an order requiring a public apology for the infringement; and
- an order that any false attribution of authorship or derogatory treatment of the work be removed or reversed.

Obviously even an application for any of these remedies (regardless of outcome) may have adverse consequences for your business, in terms of cost, reputation and delays to specific projects.

**How do I avoid infringement?**
Because moral rights are personal in nature and not assignable, the best way to avoid infringement is to obtain appropriate consents from employees, contractors and third parties. The Act specifically provides that authors or creators can consent in writing to acts that would otherwise infringe their moral rights.

The form of consent necessary under the Act will differ according to:

- whether the material already exists or is yet to be made, written or created; and
• whether or not the author or creator of the material is an employee.

Consent will be void if obtained under duress or as the result of a misleading statement.

There are specific rules governing what you can do in relation to buildings and some artworks. For example, moving an artistic work situated in a public place, or changing, relocating, demolishing or destroying a building does not constitute an infringement of moral rights so long as you notify and consult with an identifiable author, artist or architect. The specific notification requirements are set out in regulations made under the Act. You may also need to allow up to six weeks prior to acting, for consultation with the author, artist or architect, and for access to the building or artwork.

Because this period may impact on project deadlines, it makes sense to become familiar with the obligations now.

What should I do now?
The time to insert appropriate moral rights consents into your standard employment contracts and agreements with third parties is NOW.

It would also be prudent to review existing contracts, licences and arrangements in relation to materials already created and being used in your business. You can then identify where consents or other measures are necessary in order to avoid infringement of moral rights in created work used or supplied by your business.

Contracts with third party suppliers should also include warranties from the supplier that your use of the materials will not infringe the moral rights of the creators of those materials.