

Moral Rights for Researchers

Moral rights are the rights individual creators have in copyright works that they have created, including works that result from research projects. Moral rights last for the same duration as copyright itself, which in Australia is the life of the author plus 70 years. However, moral rights are separate from the economic rights of copyright.

A creator (or author) has the following moral rights:

- To be attributed (or credited) for their work (right of attribution)
- Not to have their work falsely attributed (right of false attribution)
- Not to have their work treated in any derogatory way (right of integrity)

Moral rights arise automatically upon creation of the work, as with copyright itself. Unlike copyright, moral rights cannot be assigned, transferred or sold. Furthermore, moral rights are owned by the creator or author. This may occur, for example, where research notes or a research paper is written by an employee researcher in the course of his or her duties of employment.

Infringement of moral rights does not occur if:

- the creator has given consent for his or her work to be used in specific ways (including ways that would, but for the creator's consent, constitute an infringement of a moral right); or
- the alleged infringer's actions are reasonable in the circumstances.

1. Right of attribution

Creators have the right to be attributed (i.e., credited or identified) whenever their work is reproduced, published, performed, or adapted (for literary, dramatic, or musical works); reproduced, published, exhibited, or communicated (for artistic works); or copied, exhibited, or transmitted (for films). The right of attribution applies to all reproductions, unless it is not reasonable to attribute authorship, having regard to all of the circumstances.

In Australia, moral rights were introduced in 2001, which means that creators can take an action for any failure to attribute works that are reproduced after 21 December 2000 (regardless of when the works were originally created). Unless the creator has specified how attribution is to be made, the author must be identified in a clear and reasonable manner, so that anyone receiving, seeing, or hearing the work would be aware of the author's name.

When is it reasonable not to attribute an author?

A creator does not need to be attributed if the creator has consented in writing not to be identified or if it is reasonable in all the circumstances not to identify the author. Circumstances that may make it reasonable to not attribute an author include where:

- 1) the work is a collaborative effort of a significant number of people;
- 2) the work is very short;
- 3) the work is technical instruction, rather than research; and
- 4) the work is used only for internal purposes, and was written by an employee.

2. Right not to have authorship falsely attributed

The right not to have authorship falsely attributed means that in any reproduction of a work, there is a duty to the creator of the work not to insert another person's name in or on the work in such a way as to suggest falsely that

the other person is the author. It is difficult to conceive of a situation in which false attribution would be reasonable.

3. Right of integrity

The right of integrity is a right to prevent 'derogatory treatment' of a work, unless it is reasonable to do so. Derogatory treatment means doing anything in relation to the work that prejudices the author's honour or reputation, including:

- distorting, mutilating, or materially altering the work in a way that prejudices the creator's honour or reputation.
- 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.

Regardless of when the works were created, under Australian law creators of literary, artistic, dramatic, and musical works can take action for

any derogatory treatment that occurs after 21 December 2000.

When is the right of integrity not breached?

The right of integrity would not be violated when an employer edits or rewords a draft document; when a translation of the work is made; when a minor part of a photograph is not reproduced due to space constraints; or when the work is subjected to criticism or review.

4. Consent

In the case of employment contracts, general consent agreements may be signed to permit a work to be used in specific ways. These include ways that, but for the creator's consent, would constitute an infringement of a moral right. For example, a creator may consent to have their name omitted from the final version of a research proposal or report.

Fact Sheet 7: Moral Rights for Researchers September 2022

This fact sheet is only for information purposes, and to assist you in understanding your legal rights and obligations in a general sense. It is not tailored to any particular fact, situation or specific requirements, and must not be relied on as legal advice.