

Copyright Law Review Committee

PART I

To: The Hon. Lionel Bowen
Attorney-General of Australia

(1) TERMS OF REFERENCE

- * Whether legislative protection is needed for the 'moral rights' of authors and artists; and
- * If so, what form should such legislation take.

The Committee has treated its reference broadly as referring to all literary, dramatic, musical and artistic works¹, as well as to other subject matter, in particular films and sound recordings.

(2) RECOMMENDATIONS

1. The Copyright Law Review Committee is divided on the question whether more extensive moral rights legislation is necessary. The views of the majority (comprising Mr B. Cottle, Mr I. Govey, Professor D. Pearce, Mr C. Rodgers and Mr D. Walsh) are set out in Part II of the report. The minority (comprising the Chairman, Mr Justice I.F. Sheppard, Mr P. Banki, Mr F. Fielding and Mr M. Frankel) sets out its views in Part III of the report. The majority is persuaded that it is inappropriate to introduce legislation to protect moral rights at this time. The one very limited exception concerns the right of attribution in cases where works are subject to use under a compulsory licence (paragraph 53).

2. In summary, the minority considers that legislation should be introduced conferring on authors of works (literary, dramatic, musical and artistic) and directors of films, rights to the attribution of their works and to the integrity of them. Attribution should only be required where the circumstances make it reasonable for the author or director to be acknowledged. The right to integrity should not arise unless there is a distortion of the work or film which is likely to prejudice the honour or reputation of the author or director.

(3) COURSE OF THE INQUIRY

3. On 4 October 1984 the Committee's Chairman issued a press statement announcing the release of the Committee's discussion paper on moral rights. Copies of the discussion paper were circulated to organisations in Australia and overseas. Thirty three submissions were received in response to the Committee's paper (a list of submitters is at Appendix 1). In August 1985 the Committee wrote to Local and State Government Authorities, education authorities, publishers and postcard manufacturers. A further eleven submissions were received (a list is at Appendix 2).

(4) NATURE OF **MORAL** RIGHTS

4. Authors of works have for many years received recognition of the need to protect their interests in the commercial exploitation of their works. The Copyright Act 1968 ('the Copyright Act ') presently provides extensive protection for what are generally termed an author's economic rights. Thus the reproduction of a work, its publication, performance, broadcast, etc., is in most cases forbidden without the licence of the author. Similarly, the importation of a work into Australia for commercial purposes is prohibited without

approval. These economic rights are designed to protect the financial position and commercial interests of copyright owners and thereby provide like protection to authors whether or not they are still the owners of copyright in their works.

5. Some authors claim, however, that a work that they have created should not be able to be altered without their approval - that there should be protection for the work itself. They claim also that where their works are reproduced the authorship of the work should be attributed. These sorts of rights are generally designated 'moral rights' or rights of personality to distinguish them from the economic rights referred to above.

6. The legal foundation for the international protection of moral rights is the Berne Convention of which Australia is a member. The Convention deals primarily with economic rights but Article 6 bis states:

'(1) Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honour or reputation.

(2) The rights granted to the author in accordance with the preceding paragraph shall, after his death, be maintained, at least until the expiry of the economic rights, and shall be exercisable by the persons or 'institutions authorised by the legislation of the country where protection is claimed. However, those countries whose legislation, at the moment of their ratification of or accession to this Act, does not provide for the protection after the death of the author of all the rights set out in the preceding paragraph may provide that some of these rights may, after his death cease to be maintained.

(3) The means of redress for safeguarding the rights granted by this Article shall be governed by the legislation of the country where protection is claimed. '

7. The moral rights contemplated by the Convention can be conveniently referred to as the right to recognition (internationally known as the right to paternity) and the right to integrity in a work. Whilst not referred to in the Convention there are two other moral rights which are recognised in some countries. These are the right to determine when and how a work should be disclosed to the public and the right to the withdrawal of a work from publication.

8. The development of recognition of these rights in other countries is described in detail by the minority (see Part III). It is sufficient in the present context to note that moral rights have their origin in the concept that a created work is seen as an extension of the creator's personality. Accordingly, both the work and the creator's relationship to the work must be respected and recognised. Dealing with each of the moral rights in turn:

(i) The Right to Recognition

This right covets:

- (a) the right to be made known to the public as the creator of the work;
 - (b) the right to prevent others from claiming authorship of the work;
 - (c) the right to prevent others from wrongfully attributing to an author works that are not his or hers; and
 - (d) the right to prevent others from wrongfully attributing to an author works that are unauthorised altered versions of his or her work.
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(ii) The Right to Integrity

This right enables an author to prevent distortions and mutilations of his or her work. The Berne Convention recognises this only where this mutilation or distortion impinges on the author's reputation. Some countries which recognise the right to integrity do not require that reputation be adversely affected. Also in some cases countries which recognise the right to integrity extend it to prevent the destruction of a work.

While not recognised by the Berne Convention, two other rights are often referred to as constituting moral rights.

(iii) The Right to Divulge or Disclose

This right is intended to enable an author to be the person who can determine if and when a work is to be divulged to the public.

(iv) The Right, to Withdraw, Repent or Retract

This right is intended to enable an author to withdraw a work from the public if the author wishes to do so.
