Moral and performers’ rights

Moral rights and performers’ rights are associated with copyright works, and are often referred to as ‘personal rights’ to show that they are independent from the copyright that exists in the work itself.

These personal rights can be clarified or waived in written agreements, including employment contracts and artist releases. A waiver is essentially a promise not to enforce a right under specific conditions. For example, an agreement that allows the use of preapproved stage performance footage to promote the show.

Moral rights

Authors and directors have certain moral rights over their copyright work even if the works are owned by someone else.

In New Zealand, moral rights apply in specific situations and the Copyright Act 1994 includes many exemptions and qualifications. Moral rights are provided under Part 4 of the Act, and include:

- the right to be identified as the author or film director of a work (the right of attribution)
- the right to object to derogatory treatment of the work, that is, a change to the work that harms the reputation of the author or director (the right of integrity)
- the right not to have a work falsely attributed or credited to them.

The right of attribution and integrity lasts for the duration of the copyright protection for the literary, dramatic, musical or artistic work, or film.

The right relating to false attribution expires 20 years from the end of the calendar year in which the person who is entitled to the right dies.

Moral rights can’t be sold. The right relating to false attribution can be enforced by the author’s or director’s representative after their death.

Performers’ rights

Performers also have the right to consent to the live communication, and the recording, of their performances. A recording of a performance without the performer’s consent is referred to as an “illicit” recording. The performer can take legal action against any copying, playing, communication to the public or distribution of an illicit recording.

Consent is needed from all the performers involved regardless of whether they are a principal, lead or part of the supporting cast. Once a performer gives consent it can’t be withdrawn.
Where sound recording of a performance has been made with the consent of the performer, the performer’s consent is also required for any communication to the public, copying and issuing of the sound recording to the public.

Protected performances are defined in the Act by reference to the main categories of works protected by copyright – dramatic performances, musical performances, readings and recitations of literary works, and performances of a variety act. Activities that aren’t covered include audience participation and news reading.

Performers’ rights expire 50 years from the end of the calendar year in which the performance takes place.

Performers’ moral rights and the right to consent to the live broadcasting and recording of their performances can’t be assigned or otherwise sold, and can be enforced by the performer’s representative after his/her death. However, the performer’s rights in relation to a consented sound recording can be assigned or otherwise sold (usually to a producer/recording company).