

Moral Rights in the Australian Public Sector

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INTRODUCTION

Moral rights amendments to the Australian Copyright Act present a challenge and an opportunity for large public sector agencies. Their implementation is not straightforward and can be interpreted in a number of ways. Moral rights amendments require a proactive response, as much of the work in public sector agencies is governed by the Copyright Act.

The interpretation of the moral rights legislative changes should not only be viewed in terms of implementing legal requirements. The implementation of the moral rights amendments in public sector organizations also requires careful consideration of the corporate culture and objectives of the organization. The legislative amendments can provide impetus for positive cultural changes that improve corporate memory, promote innovation, and provide recognition and reward incentives when monetary rewards are not available or appropriate.

BACKGROUND

The Commonwealth of Australia's *Copyright Act 1968* provides for two types of intellectual property rights: *copyright* and *moral rights*. Both moral rights and copyright attach to 'works'. The owner of the copyright in a work may or may not be the author (creator) of the work. Ownership of copyright in a work gives the exclusive right to reproduce, publish, perform, communicate, and adapt it, and to enter into commercial and rental agreements in relation to it.

Amendments to the Copyright Act in December 2000 mean that employees can claim moral rights of authorship. The moral rights are:

- the right of an individual to be attributed as an author of a work, even if the copyright ownership of the work belongs to someone else
- the right not to have authorship falsely attributed

- the right of 'integrity of authorship', which means that a creator's work should not be distorted, used, or exhibited in a way that is detrimental to the author's reputation

Moral rights are relevant to authors, co-authors, and significant contributors in a 'work'. Importantly, only individuals have moral rights. Moral rights are non-economic rights because an author cannot sell or otherwise transfer them to another person, although an author can choose not to enforce all or any of their moral rights.

Moral rights are infringed when rights of authorship are not respected. However, it is not considered an infringement if the action is considered 'reasonable'. The interpretation of what is 'reasonable' depends on:

- the nature of the work
- the purpose for which the work is used
- the manner or context in which the work is used
- the practice in the industry where the work is used
- the voluntary code of practice in the industry where the work is used
- whether the work was made in the course of the author's employment or under contract for services
- if use of the work is required by law, or is required to avoid a breach of law
- the views of co-authors

MANAGING MORAL RIGHTS IN A PUBLIC SECTOR ORGANIZATION

The legislative changes concerning moral rights are relevant when employees' work has an intellectual, artistic, literary, musical, or creative element to it. Much of the work created by staff in public sector agencies is intellectual and is covered by the Copyright Act. A reasonable proportion has a creative element to it.

Public sector agencies have had to comply with the moral rights amendments from December 2000. In addition to this legal prerogative, there are a number of other issues that need to be considered. These include:

- the existing organizational culture, particularly concerning employee recognition and reward, and the ‘industry standard’
- the increased emphasis on encouraging innovation, commercial activity, and intellectual property management in the public sector around Australia
- organizational goals

The Legislative Imperative

The amendments to the Copyright Act in 2000 are both the primary rationale for managing moral rights and the most immediate issue to consider.

Work created by public servants during the course of their employment belongs to the relevant government (the ‘Crown’). However, the moral rights legislative changes mean that employees can claim moral rights of authorship.

Employees are increasingly aware of their moral rights under Australian law, although there is some confusion as to what these rights entail. For example, teachers contributing to the development of curriculum material have requested rights of authorship. Agencies need to address the changes in law to avoid being exposed to an action for infringement. In some cases, employees have confused moral rights of authorship acknowledgement with the economic rights associated with copyright ownership. Such confusion needs to be addressed.

Organizational Culture and Industry Practice

Some government departments have adopted the stance that it is ‘industry practice’ within government not to acknowledge moral rights, while others do acknowledge them. For example, the Victorian Department of Education and Training has assumed that it is industry practice not to acknowledge authorship, while the Commonwealth Attorney General’s Department has assumed that it is industry practice to acknowledge authorship on many types of works. Such confusion

in interpretation suggests that author attribution is an organizational standard in many cases, not an industry practice.

A distinction should also be made between attributing authorship internally and externally. It could be considered an ‘industry standard’ in the public sector that documents released as official departmental information or policy do not acknowledge individual authorship. However, in many government agencies it is the norm to acknowledge authorship for internal documents, primarily for reasons of maintaining corporate memory, and often it is not intended that these documents be used outside the agency. Such documents include project and other plans, and discussion or research papers. In some agencies authorship is often not acknowledged internally. Again, the differences between agencies suggest this is an organizational standard reflecting cultural differences, rather than an industry-wide standard.

Organizational culture can be viewed as a ‘negotiated reality’ (Whitely, 1995) that people experience as an objective reality as it becomes institutionalized and objectified as truths. It can be considered both a subjective reality, created by people and their perceptions, and an objective reality, shaping people’s actions and perspectives (Giddens, 1979). Culture is an important concept as it highlights the importance of social interpretations and recognizes that organizations are both enduring and able to change.

Unlike the university sector, with its emphasis on individual research excellence, publication rates, and international recognition of individual staff members, public sector agencies tend to encourage a team approach to respond to community issues. In some agencies, managers are not only credited for the input they had in the coordination and quality control of works, but are often given or take authorship credit for work developed by people in their area. Such a norm is challenged by the moral rights amendments, as it is now potentially illegal for a manager to claim authorship over a work created by their subordinate.

Intellectual Property Management as a Support for Innovation

Intellectual property management within public sector agencies is also influenced by pushes to encourage innovation and unlock the economic potential of government intellectual property, primarily for economic

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