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Moral of the story

Moral rights, an important aspect to copyright law and one that is very relevant to photographers, has been introduced into Australia's laws fairly recently. Unlike copyright laws, they are personal in nature.

Sharon Givoni elaborates.

In the past few legal columns I have written, the focus has been largely on copyright issues such as who owns copyright in photographs and licensing rights.

Copyright law, in simple terms, generally covers the "financial" side of photography, that is, rights associated with exploiting your copyright in photographs (for example, associated with reproduction of photographs and posting them online).

However, there is another important aspect to copyright law which is also very relevant to photographers, but not talked about as much as has only been introduced into Australia's laws fairly recently. This is the area of moral rights, which, unlike copyright, are personal in nature.

What are moral rights?

In essence, the Copyright Act provides that there are three moral rights in Australia. These are:

- the right to be attributed as author of the copyright work (ie the photograph);
- the right not to have authorship falsely attributed to someone else (for example, if a magazine wrongly states that a photograph was taken by someone other than you), and
- the right not to have work subjected to derogatory treatment ("derogatory treatment" includes the doing of anything in relation to the work that results in distortion or mutilation of, or alteration to the work that is prejudicial to the author's honour or reputation).

Moral rights cases

Examples of controversies that have involved moral rights issues in the past few years in Australia include: disagreement about redesign of the entry to the National Gallery of Australia in Canberra;

a legal action which was settled out of court taken by world-renowned architect Harry Seidler over alleged derogatory changes by a property owner to one of his designs; and

most recently, litigation by artist Vladas Meskenas over incorrect attribution by *Woman's Day* magazine of his portrait of Victor Chang (the judge in this case was not impressed by the fact that apparently no apology was provided).

In the last example, the Magistrate awarded thousands of dollars in relation to infringement of the artist's (Meskenas') moral right.

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In contrast, an example of a well known photograph that was used with permission of the photographer is Max Dupain's iconic 1939 photo Bondi photo of a man and woman standing together on the beach gazing out to sea, which has been etched into the façade of the building. It is understood this is the first time a photographic image has been incorporated into a building's facade in Australia in this way.

According to media reports, the builder, Multiplex, sought and was granted copyright consent from the Dupain family and Jill White, Max Dupain's long-time lab assistant, who holds copyright of his exhibition negatives.

Conclusion

The recent Meskenas *Woman's Day* decision demonstrates that the moral rights regime in Australia is not just a toothless tiger.

If you have taken a photograph that has been wrongly attributed (ie you actually took it but it has someone else's name as the photographer) or treated in a manner that you feel is "derogatory" in light of your reputation as a photographer (refer to definition above), you may wish to consult a lawyer and seek advice as to whether your moral rights have been infringed.

As a final note, bear in mind that the moral rights breaches are subject to some exceptions, for example, it would not be a breach of your moral right if it was reasonable not to attribute you as the photographer if the context or industry practise allows this (for example, photographs used in a commercial advertisement would generally not be attributed, an example on point being the "Who is James Boag?" campaign which used photographs and mysterious images of Helmut Newton with his permission before he died).

Disclaimer: The contents of this article are of a very general nature and cannot be relied on as a substitute for professional legal advice.

"Are you protecting your photography?"



For copyright or other intellectual property legal advice, call Sharon Givoni who has had ten years experience.

Mention this ad for a 20 minute consultation. On us.

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Do you have a legal question that you want Sharon Givoni to address? If so, send to drm@optusnet.com.au.