

Moral rights in construction

by DOUG JONES

IN the hard-nosed world of construction, what room is there for "moral" rights?

Under the new Copyright Amendment (Moral Rights) Act 2000, quite a lot.

Indeed, this new Commonwealth legislation may have some surprises for everyone in the property and construction industries.

The Copyright Act has long granted exclusive "economic" rights to the owners of copyright, essentially preventing the unauthorised copying of "works" of types defined in the Act.

Among other types of works, "artistic works" such as paintings, sculptures, drawings, engravings, photographs, buildings or models of a building are protected as copyright works.

Objects contained in or affixed to buildings — which are defined as including a structure of any kind — may be "artistic works" for the purposes of the Copyright Act even if they are merely utilitarian rather than decorative.

The new Moral Rights Act has now added to this Copyright Act protection of economic rights by granting additional "moral rights" to the authors of works in which copyright subsists.

These "moral rights" are:

A right of attribution of authorship

A right not to have authorship falsely attributed, and

A "right of integrity of authorship", meaning the right not to have the work subjected to "derogatory treatment".

"Derogatory treatment" is essentially defined as doing anything concerning the work which is prejudicial to the author's honour or reputation.

This includes anything which materially distorts, destroys, mutilates or alters the work and has this effect, or any public exhibition which has this effect because of the manner or location of the exhibition.

Unlike other types of intellectual property rights, the moral rights are always owned by the author of the copyright work.

This applies regardless of whether the author created the work in the course of his or her employment or as an independent contractor, and regardless of whether the author has assigned the economic copyright rights to another individual or corporation.

The moral rights themselves cannot be transferred.

And with certain exceptions, such as films, moral rights can only be owned by an individual, and not by a company.

Who is the "author" of a building or structure?

The "author" of a building or other structure will be the person who will have the moral rights to the structure. But the legislation does not identify this person.

It has been suggested by some writers that the builder will be the author if there is no architect, but the architect will be the author if the builder is merely following architectural plans.

In either case, though, the moral rights will be held by the individual employee or contractor of the firm of architects or drafting company who does the design work.

Infringements of moral rights

The Moral Rights Act applies to actions taken after 21 December 2000, even if the building, structure or other work to which the action relates was created before that date.

Building owners and tenants may now be asked by the authors of the building itself, or artistic works contained in or fixed to the building, to take action to ensure their authorship is properly attributed. Subject to a possible exemption discussed below, they must comply with these requests, ensuring that the identification is clear and reasonably prominent.

Further, the demolition or removal of an artistic work contained in or fixed to a building (or other structure), or the demolition of part of a building or other structure, may infringe the moral rights of the authors of the building and/or the work to prevent derogatory treatment.

This will depend on whether or not the act is prejudicial to the author's reputation or honour — and the Moral Rights Act does not provide any guidance on what will constitute this "prejudice".

Acts not constituting an infringement

As a general rule, a right of attribution of authorship and a right of integrity will not be infringed by an act if the person taking the action can prove it was "reasonable in all the circumstances".

The factors to be taken into account in deciding whether an act is reasonable are "the nature of the work", "any relevant industry practice" and "any difficulty or expense that would have been incurred to identify the author".

A possible example arises from the common construction industry practice of identifying builders and architects during the construction of a building or other structure but not after construction is completed. Accordingly, owners might be able to argue they do not have a duty to identify and attribute the authorship of buildings or other structures completed before 21 December 2000.

In addition to the general "reasonableness" exemption, the Moral Rights Act deals more specifically with the destruction and relocation of (a) moveable artistic works, (b) artistic works fixed to buildings and structures, and (c) buildings and structures themselves.

The destruction of a moveable artistic work will not be an infringement of the author's right of integrity of authorship if the author or a person representing the author is given a reasonable opportunity to remove the work first.

Similar procedures for qualifying for an exemption apply for:

The relocation, demolition or destruction of a building or structure itself, and

The removal or relocation of site-specific moveable artistic works which are situated in a publicly accessible place and were made for installation in that location.

Consent to an infringement

An author may consent to an act which would otherwise infringe his or her moral rights, provided this consent is freely given.

An employee may give a blanket consent in favour of his or her employer, subject to certain restrictions.

There are limitations on the extent of a consent in other situations (e.g. between principal and contractor).

Remedies

An aggrieved author may seek a variety of remedies, including injunctions, declarations and damages.

So what should you do?

The owners of buildings (and any other structures) now have an obligation to display an attribution of any artistic work which is contained in or fixed to their buildings.

Building owners who are contemplating demolition or reconstruction work should ensure that they follow the procedures set out in the Moral Rights Act.

All the parties to agreements for new projects or renovations of existing buildings or structures, including property developers, building owners or tenants, architects and builders, should ensure that these agreements contain effective consents, within the limits of the Moral Rights Act.

Finally, all employers in the property and construction industries, including architects and construction contractors, should review their agreements with their employees and subcontractors, and may wish to consider inserting effective consents.

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PEOPLE

□ **Graeme Hastie** is the new chief executive officer of Bovis Lend Lease in Asia Pacific. Hastie joined Lend Lease Group in 1982 and later became general manager of Lend Lease Process Services then managing director of Lend Lease Thailand, then gm of the infrastructure business unit in Australia then ceo of Lend Lease Projects in USA. In January 2000, he was appointed executive president of Bovis Lend Lease, USA. Now he has taken over from **Bob Johnston**, who has been transferred to Lend Lease's real estate investments division in the US.

□ **Dr Peter Grace**, an exponent on the greenhouse effect, has joined the environmental consulting division of **Sinclair Knight Merz** as manager of natural resources management systems. Grace, who is based in Brisbane, is an expert in soil and land management and is known for his work in maximising

productivity and minimising environmental aspects in agriculture.

□ For the first time ever, a current Sulman award winner has been elected president of the NSW chapter of the Royal Australian Institute of Architects. **Richard Francis-Jones**, design partner of MCT Architects in Sydney, won the award last year for the Scientia complex at University of NSW. He was elected president this year for a two-year term.

□ *Building Designers Association of Australia has accepted Allan Macdonald as its fourth president. Macdonald is a foundation member of the Building Designers Association of Western Australia and has been involved with the national association since it began. He takes over from Mike Alexander, of the NSW association, who has been national president for the last two years.*

□ Geotechnical, groundwater and environmental consultancy Douglas Partners has promoted eight of its senior technical personnel. It has appointed **Ronnie Tong** as a principal of the firm, ... **Victorian branch Greg Hawkins** and **Keith Preston** as senior associates, and **Arthur Castrissios, Glyn Eade, Konrad Schultz, Dave McLintock** and **Dave Murray** as new associates.



Peter Tasiopoulos ... **Victorian branch**

□ Lawyer and scientist **Arnold Dix** has been appointed a new partner in the property services division of law firm Phillips Fox. Dix, formerly of law firm Maddock Lonie and Chisholm, is a lawyer and scientist with expertise in

technical, scientific and environmental issues.

□ **Brevini Australia** has appointed **Peter Tasiopoulos** as state manager for its new Victorian branch office in Melbourne. Tasiopoulos has had 15 years experience in engineering and sales management.

□ Crane manufacturer **Grove** has appointed **Eugenio Frings** as district manager for Latin America. Frings joined Grove after working with **Finning** in Chile for 14 years where he most recently served in various Grove-related product and rental management positions.



Eugenio Frings ... **district manager**