



Copyright Amendment (Moral Rights) Act 2000

No. 159, 2000



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**An Act to amend the *Copyright Act 1968*, and for
related purposes**

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Copyright Amendment (Moral Rights) Act 2000

No. 159, 2000

An Act to amend the *Copyright Act 1968*, and for related purposes

[Assented to 21 December 2000]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Copyright Amendment (Moral Rights) Act 2000*.

2 Commencement

- (1) This Act, other than Schedule 2, commences on the day on which it receives the Royal Assent.

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- (2) If the *Copyright Amendment (Digital Agenda) Act 2000* commences on or before the day on which this Act receives the Royal Assent, Schedule 2 to this Act commences immediately after Schedule 1 to this Act commences.
- (3) If subsection (2) does not apply, Schedule 2 to this Act commences when the *Copyright Amendment (Digital Agenda) Act 2000* commences.

3 Schedule(s)

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Moral rights of authors

Copyright Act 1968

1A Subsection 55(2)

Repeal the subsection.

1 Part IX

Repeal the Part, substitute:

Part IX—Moral rights of authors of literary, dramatic, musical or artistic works and cinematograph films

Division 1—Preliminary

189 Definitions

In this Part, unless the contrary intention appears:

act of false attribution has the meaning given by subsection 195AC(2).

artistic work means an artistic work in which copyright subsists.

attributable act has the meaning given by subsection 193(2).

attributor has the meaning given by subsection 195AC(2).

author, in relation to a cinematograph film, means the maker of the film.

cinematograph film means the complete and final version of a cinematograph film in which copyright subsists.

deal means sell, let for hire, by way of trade offer or expose for sale or hire, exhibit in public, or distribute and, in Division 3, includes publish.

derogatory treatment has the relevant meaning given by Division 4.

director, in relation to a cinematograph film, has a meaning affected by section 191.

dramatic work means a dramatic work in which copyright subsists.

infringing article means:

- (a) an article that embodies a literary, dramatic, musical or artistic work, or a cinematograph film, whether or not the article bears or contains other material; or
- (b) a reproduction of, or of an adaptation of, a literary, dramatic or musical work; or
- (c) a reproduction of an artistic work; or
- (d) a copy of a cinematograph film;

being a work or film in respect of which a moral right of the author has been infringed, other than by derogatory treatment not involving the material distortion or alteration of, or the mutilation of, the work or film.

literary work means a literary work in which copyright subsists.

maker, in relation to a cinematograph film, means the director of the film, the producer of the film and the screenwriter of the film.

moral right means:

- (a) a right of attribution of authorship; or
- (b) a right not to have authorship falsely attributed; or
- (c) a right of integrity of authorship.

musical work means a musical work in which copyright subsists.

name, in Division 3, includes a pseudonym, initials or a monogram.

person representing the author, in relation to a possible infringement of any of an author's moral rights in respect of a work, means a person who, under subsection 195AN(1) or (2), is entitled to exercise and enforce the moral right concerned.

producer, in relation to a cinematograph film, has the meaning given by section 191.

right of attribution of authorship has the meaning given by Division 2.

right of integrity of authorship has the meaning given by Division 4.

right not to have authorship falsely attributed has the meaning given by Division 3.

screenwriter, in relation to a cinematograph film, means the person who wrote the script or screenplay of the film, as that meaning is affected by section 191.

transmit means:

- (a) broadcast; or
- (b) cause to be transmitted to subscribers to a diffusion service.

work means a literary work, a dramatic work, a musical work, an artistic work or a cinematograph film.

190 Moral rights conferred on individuals

Only individuals have moral rights.

191 Director, producer and screenwriter of cinematograph film

- (1) A reference in this Part to the director of a cinematograph film in the direction of which 2 or more individuals were involved is a reference to the principal director of the film and does not include a reference to any subsidiary director, whether described as an associate director, line director, assistant director or in any other way.
- (2) A reference in this Part to the producer of a cinematograph film is a reference to:
 - (a) the individual who was the producer of the film; or
 - (b) if there were 2 or more individuals involved in the production of the film—the individual who was the principal producer of the film;and does not include a reference to any subsidiary producer, whether described as an executive producer, associate producer, line producer, assistant producer or in any other way.

- (3) As only individuals have moral rights (see section 190), if the producer of a cinematograph film was a body corporate, the only moral rights in respect of the film are those of the director and screenwriter.
- (4) A reference in this Part to the screenwriter of a cinematograph film for which 2 or more individuals were involved in the writing of the script or screenplay is a reference to the principal screenwriter.

Note: If there were 2 or more principal directors, 2 or more individuals who were the principal producers, or 2 or more principal screenwriters, of a cinematograph film, section 195AZJ, 195AZK or 195AZL applies.

192 Rights to be additional to other rights

The moral rights of the author of a work are in addition to any other rights in relation to the work that the author or anyone else has under this Act.

Division 2—Right of attribution of authorship

193 Author's right of attribution of authorship

- (1) The author of a work has a right of attribution of authorship in respect of the work.
- (2) The author's right is the right to be identified in accordance with this Division as the author of the work if any of the acts (the *attributable acts*) mentioned in section 194 are done in respect of the work.

194 Acts giving rise to right of attribution of authorship

- (1) If the work is a literary, dramatic or musical work, the *attributable acts* are the following:
 - (a) to reproduce the work in a material form;
 - (b) to publish the work;
 - (c) to perform the work in public;
 - (d) to transmit the work;
 - (e) to make an adaptation of the work.
- (2) If the work is an artistic work, the *attributable acts* are the following:

- (a) to reproduce the work in a material form;
 - (b) to publish the work;
 - (c) to exhibit the work to the public;
 - (d) to transmit the work.
- (3) If the work is a cinematograph film, the *attributable acts* are the following:
- (a) to make a copy of the film;
 - (b) to exhibit the film in public;
 - (c) to transmit the film.

195 Nature of the identification of author

- (1) Subject to subsection (2), the author of a work may be identified by any reasonable form of identification.
- (2) If:
- (a) the author of a work has made known, either generally or to a person who is required under this Part to identify the author, that the author wishes to be identified in a particular way; and
 - (b) the identification of the author in that way is reasonable in the circumstances;
- the identification is to be made in that way.

195AA Identification of author to be clear and reasonably prominent

An identification of the author of a work must be clear and reasonably prominent.

195AB What is a reasonably prominent identification

When a literary, dramatic, musical or artistic work is reproduced in a material form, an adaptation is made of a literary, dramatic or musical work, or a copy of a cinematograph film is made, an identification of the author is taken to be reasonably prominent if it is included on each reproduction of the work or of the adaptation or on each copy of the film, as the case may be, in such a way that a person acquiring the reproduction or copy will have notice of the author's identity.

Division 3—Right not to have authorship of a work falsely attributed

195AC Author’s right not to have authorship falsely attributed

- (1) The author of a work has a right not to have authorship of the work falsely attributed.
- (2) The author’s right is the right not to have a person (the *attributor*) do, in respect of the work, any of the acts (the *acts of false attribution*) mentioned in the following provisions of this Division.

195AD Acts of false attribution of authorship of a literary, dramatic or musical work

If the work is a literary, dramatic or musical work, it is an act of false attribution in relation to the author of the work:

- (a) to insert or affix, or to authorise the inserting or affixing of, a person’s name in or on the work, or in or on a reproduction of the work, in such a way as:
 - (i) to imply falsely that the person is the author or an author of the work; or
 - (ii) to imply falsely that the work is an adaptation of a work of the person; or
- (b) to deal with the work with a person’s name so inserted or affixed, if the attributor knows that the person is not an author of the work or that the work is not an adaptation of a work of the person, as the case may be; or
- (c) to deal with a reproduction of the work, being a reproduction in or on which a person’s name has been so inserted or affixed, if the attributor knows that the person is not an author of the work or that the work is not an adaptation of a work of the person, as the case may be; or
- (d) to perform in public or transmit the work as being a work of which a person is the author or as being an adaptation of a work of a person, if the attributor knows that the person is not an author of the work or that the work is not an adaptation of the work of the person, as the case may be.

195AE Acts of false attribution of authorship of artistic work

- (1) This section applies if the work is an artistic work.
- (2) It is an act of false attribution in relation to the author of the work:
 - (a) to insert or affix, or to authorise the inserting or affixing of, a person's name in or on the work, or in or on a reproduction of the work, or to use, or to authorise the use of, a person's name in connection with the work, or in connection with a reproduction of the work, in such a way as to imply falsely that the person is an author of the work; or
 - (b) to deal with the work with a person's name so inserted or affixed, if the attributor knows that the person is not an author of the work; or
 - (c) to deal with a reproduction of the work, being a reproduction in or on which a person's name has been so inserted or affixed, if the attributor knows that the person is not an author of the work; or
 - (d) to transmit the work as being a work of which a person is the author, if the attributor knows that the person is not an author of the work.

195AF Acts of false attribution of authorship of cinematograph film

- (1) This section applies if the work is a cinematograph film.
- (2) It is an act of false attribution in relation to the director, producer or screenwriter of the film:
 - (a) to insert or affix, or to authorise the inserting or affixing of, a person's name on the film or on a copy of the film in such a way as to imply falsely that the person is the director, producer or screenwriter, as the case may be, of the film; or
 - (b) to deal with the film or a copy of the film if a person's name has been so inserted or affixed on the film or a copy, as the case may be, and the attributor knows that the person is not the director, producer or screenwriter, as the case may be, of the film; or
 - (c) to transmit the film as being a film of which a person is the director, producer or screenwriter, as the case may be, if the attributor knows that the person is not the director, producer or screenwriter of the film.

195AG Acts of false attribution of authorship of altered literary, dramatic, musical or artistic work

- (1) If the work is a literary, dramatic, musical or artistic work that has been altered by a person other than the author of the work, it is an act of false attribution in relation to the author of the work:
 - (a) to deal with the work as so altered, as being the unaltered work of the author; or
 - (b) to deal with a reproduction of the work as so altered, as being a reproduction of the unaltered work of the author;if, to the knowledge of the attributor, it is not the unaltered work or a reproduction of the unaltered work, as the case may be, of the author.
- (2) Subsection (1) does not apply if:
 - (a) the effect of the alteration is insubstantial; or
 - (b) the alteration was required by law to be made, or was otherwise necessary to avoid a breach of any law.

195AH Act of false attribution of authorship of altered cinematograph film

- (1) If the work is a cinematograph film that has been altered by a person other than the maker of the film, it is an act of false attribution in relation to the director, the producer and the screenwriter of the film to deal with a copy of the film as so altered, as being a copy of the unaltered film, if, to the knowledge of the attributor, the copy of the film is not a copy of the unaltered film.
- (2) Subsection (1) does not apply if:
 - (a) the effect of the alteration is insubstantial; or
 - (b) the alteration was required by law to be made, or was otherwise necessary to avoid a breach of any law.

Division 4—Right of integrity of authorship of a work

195AI Author’s right of integrity of authorship

- (1) The author of a work has a right of integrity of authorship in respect of the work.
- (2) The author’s right is the right not to have the work subjected to derogatory treatment.

195AJ Derogatory treatment of literary, dramatic or musical work

In this Part:

derogatory treatment, in relation to a literary, dramatic or musical work, means:

- (a) the doing, in relation to the work, of anything that results in a material distortion of, the mutilation of, or a material alteration to, the work that is prejudicial to the author’s honour or reputation; or
- (b) the doing of anything else in relation to the work that is prejudicial to the author’s honour or reputation.

195AK Derogatory treatment of artistic work

In this Part:

derogatory treatment, in relation to an artistic work, means:

- (a) the doing, in relation to the work, of anything that results in a material distortion of, the destruction or mutilation of, or a material alteration to, the work that is prejudicial to the author’s honour or reputation; or
- (b) an exhibition in public of the work that is prejudicial to the author’s honour or reputation because of the manner or place in which the exhibition occurs; or
- (c) the doing of anything else in relation to the work that is prejudicial to the author’s honour or reputation.

195AL Derogatory treatment of cinematograph film

In this Part:

derogatory treatment, in relation to a cinematograph film, means:

- (a) the doing, in relation to the film, of anything that results in a material distortion of, the mutilation of, or a material alteration to, the film that is prejudicial to the maker's honour or reputation; or
- (b) the doing of anything else in relation to the film that is prejudicial to the honour or reputation of the maker of the film.

Division 5—Duration and exercise of moral rights

195AM Duration of moral rights

- (1) An author's right of integrity of authorship in respect of a cinematograph film continues in force until the author dies.
- (2) An author's right of integrity of authorship in respect of a work other than a cinematograph film continues in force until copyright ceases to subsist in the work.
- (3) An author's moral rights (other than the right of integrity of authorship) in respect of a work continue in force until copyright ceases to subsist in the work.

195AN Exercise of moral rights

- (1) If the author of a work dies, the author's moral rights (other than the right of integrity of authorship in respect of a cinematograph film) in respect of the work may be exercised and enforced by his or her legal personal representative.
- (2) If the affairs of the author of a work are lawfully administered by another person (except under a law for the relief of bankrupt or

insolvent debtors), the author's moral rights may be exercised and enforced by the person administering his or her affairs.

- (3) Subject to this section, a moral right in respect of a work is not transmissible by assignment, by will, or by devolution by operation of law.
- (4) If:
 - (a) a cinematograph film; or
 - (b) a literary, dramatic, musical or artistic work as included in a cinematograph film;has 2 or more authors, the authors may enter into a written co-authorship agreement by which each of them agrees not to exercise his or her right of integrity of authorship in respect of the film or work, as the case may be, except jointly with the other author or authors.
- (5) A co-authorship agreement has effect according to its terms.

Division 6—Infringement of moral rights

195AO Infringement of right of attribution of authorship

Subject to this Division, a person infringes an author's right of attribution of authorship in respect of a work if the person does, or authorises the doing of, an attributable act in respect of the work without the identification of the author in accordance with Division 2 as the author of the work.

195AP Infringement of right not to have authorship falsely attributed

Subject to this Division, a person infringes an author's right not to have authorship of a work falsely attributed if the person does an act of false attribution in respect of the work.

195AQ Infringement of right of integrity of authorship

- (1) This section has effect subject to this Division.

- (2) A person infringes an author's right of integrity of authorship in respect of a work if the person subjects the work, or authorises the work to be subjected, to derogatory treatment.
- (3) If a literary, dramatic or musical work has been subjected to derogatory treatment of a kind mentioned in paragraph (a) of the definition of **derogatory treatment** in section 195AJ that infringes the author's right of integrity of authorship in respect of the work, a person infringes the author's right of integrity of authorship in respect of the work if the person does any of the following in respect of the work as so derogatorily treated:
- (a) reproduces it in a material form;
 - (b) publishes it;
 - (c) performs it in public;
 - (d) transmits it;
 - (e) makes an adaptation of it.
- (4) If an artistic work has been subjected to derogatory treatment of a kind mentioned in paragraph (a) of the definition of **derogatory treatment** in section 195AK that infringes the author's right of integrity of authorship in respect of the work, a person infringes the author's right of integrity of authorship in respect of the work if the person does any of the following in respect of the work as so derogatorily treated:
- (a) reproduces it in a material form;
 - (b) publishes it;
 - (c) transmits it.
- (5) If a cinematograph film has been subjected to derogatory treatment of a kind mentioned in paragraph (a) of the definition of **derogatory treatment** in section 195AL that infringes the author's right of integrity of authorship in respect of the film, a person infringes the author's right of integrity of authorship in respect of the film if the person does any of the following in respect of the film as so derogatorily treated:
- (a) makes a copy of it;
 - (b) exhibits it;
 - (c) transmits it.

195AR No infringement of right of attribution of authorship if it was reasonable not to identify the author

- (1) A person who does, or authorises the doing of, an attributable act in respect of a work does not, because the author of the work is not identified, infringe the author's right of attribution of authorship in respect of the work if the person establishes that it was reasonable in all the circumstances not to identify the author.
- (2) The matters to be taken into account in determining for the purposes of subsection (1) whether it was reasonable in particular circumstances not to identify the author of a literary, dramatic, musical or artistic work include the following:
 - (a) the nature of the work;
 - (b) the purpose for which the work is used;
 - (c) the manner in which the work is used;
 - (d) the context in which the work is used;
 - (e) any practice, in the industry in which the work is used, that is relevant to the work or the use of the work;
 - (f) any practice contained in a voluntary code of practice, in the industry in which the work is used, that is relevant to the work or the use of the work;
 - (g) any difficulty or expense that would have been incurred as a result of identifying the author;
 - (h) whether the work was made:
 - (i) in the course of the author's employment; or
 - (ii) under a contract for the performance by the author of services for another person;
 - (i) if the work has 2 or more authors—their views about the failure to identify them.
- (3) The matters to be taken into account in determining for the purposes of subsection (1) whether it was reasonable in particular circumstances not to identify the maker of a cinematograph film include the following:
 - (a) the nature of the film;
 - (b) whether the primary purpose for which the film was made was for exhibition at cinemas, for broadcasting by television or for some other purpose;
 - (c) the purpose for which the film is used;

- (d) the manner in which the film is used;
- (e) the context in which the film is used;
- (f) any practice, in the industry in which the film is used, that is relevant to the film or the use of the film;
- (g) any practice contained in a voluntary code of practice, in the industry in which the film is used, that is relevant to the film or the use of the film;
- (h) any difficulty or expense that would have been incurred as a result of identifying the maker;
- (i) whether the film was made in the course of the employment of the director, producer or screenwriter.

195AS No infringement of right of integrity of authorship if derogatory treatment or other action was reasonable

- (1) A person does not, by subjecting a work, or authorising a work to be subjected, to derogatory treatment, infringe the author's right of integrity of authorship in respect of the work if the person establishes that it was reasonable in all the circumstances to subject the work to the treatment.
- (2) The matters to be taken into account in determining for the purposes of subsection (1) whether it was reasonable in particular circumstances to subject a literary, dramatic, musical or artistic work to derogatory treatment include the following:
 - (a) the nature of the work;
 - (b) the purpose for which the work is used;
 - (c) the manner in which the work is used;
 - (d) the context in which the work is used;
 - (e) any practice, in the industry in which the work is used, that is relevant to the work or the use of the work;
 - (f) any practice contained in a voluntary code of practice, in the industry in which the work is used, that is relevant to the work or the use of the work;
 - (g) whether the work was made:
 - (i) in the course of the author's employment; or
 - (ii) under a contract for the performance by the author of services for another person;
 - (h) whether the treatment was required by law or was otherwise necessary to avoid a breach of any law;

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- (i) if the work has 2 or more authors—their views about the treatment.
- (3) The matters to be taken into account in determining for the purposes of subsection (1) whether it was reasonable in particular circumstances to subject a cinematograph film to derogatory treatment include the following:
- (a) the nature of the film;
 - (b) whether the primary purpose for which the film was made was for exhibition at cinemas, for broadcasting by television or for some other use;
 - (c) the purpose for which the film is used;
 - (d) the manner in which the film is used;
 - (e) the context in which the film is used;
 - (f) any practice, in the industry in which the film is used, that is relevant to the film or the use of the film;
 - (g) any practice contained in a voluntary code of practice, in the industry in which the film is used, that is relevant to the film or the use of the film;
 - (h) whether the film was made in the course of the employment of the director, producer or screenwriter who alleges that the treatment was derogatory;
 - (i) whether the treatment was required by law or was otherwise necessary to avoid a breach of any law.
- (4) A person who does any act referred to in subsection 195AQ(3), (4) or (5) in respect of a work that has been subjected to derogatory treatment of a kind mentioned in that subsection does not, by doing that act, infringe the author's right of integrity of authorship in respect of the work if the person establishes that it was reasonable in all the circumstances to do that act.

195AT Certain treatment of works not to constitute an infringement of the author's right of integrity of authorship

- (1) The destruction of a moveable artistic work is not an infringement of the author's right of integrity of authorship in respect of the work if the person who destroyed the work gave the author, or a person representing the author, a reasonable opportunity to remove the work from the place where it was situated.

- (2) A change in, or the relocation, demolition or destruction of, a building is not an infringement of the author's right of integrity of authorship in respect of an artistic work that is affixed to or forms part of the building if:
- (a) the owner of the building, after making reasonable inquiries, cannot discover the identity and location of the author or a person representing the author; or
 - (b) if paragraph (a) does not apply—the owner complies with subsection (2A) in relation to the change, relocation, demolition or destruction.
- (2A) This subsection is complied with by the owner of a building in relation to a change in, or the relocation, demolition or destruction of, the building if:
- (a) the owner has, in accordance with the regulations and before the change, relocation, demolition or destruction is carried out, given the author or a person representing the author a written notice stating the owner's intention to carry out the change, relocation, demolition or destruction; and
 - (b) the notice stated that the person to whom the notice was given may, within 3 weeks from the date of the notice, seek to have access to the work for either or both of the following purposes:
 - (i) making a record of the work;
 - (ii) consulting in good faith with the owner about the change, relocation, demolition or destruction; and
 - (c) the notice contained such other information and particulars as are prescribed; and
 - (d) where the person to whom the notice was given notifies the owner within the period of 3 weeks referred to in paragraph (b) that the person wishes to have access to the work for either or both of the purposes mentioned in that paragraph—the owner has given the person a reasonable opportunity within a further period of 3 weeks to have such access; and
 - (e) where, in the case of a change or relocation, the person to whom the notice was given notifies the owner that the person requires the removal from the work of the author's identification as the author of the work—the owner has complied with the requirement.
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- (3) A change in, or the relocation, demolition or destruction of, a building is not an infringement of the author's right of integrity of authorship in respect of the building, or in respect of any plans or instructions used in the construction of the building or a part of the building if:
- (a) the owner of the building, after making reasonable inquiries, cannot discover the identity and location of the author or a person representing the author, or of any of the authors or persons representing the authors, as the case may be; or
 - (b) if paragraph (a) does not apply—the owner complies with subsection (3A) in relation to the change, relocation, demolition or destruction.
- (3A) This subsection is complied with by the owner of a building in relation to a change in, or the relocation, demolition or destruction of, the building if:
- (a) the owner has, in accordance with the regulations and before the change, relocation, demolition or destruction is carried out, given the author or a person representing the author, or the authors or the persons representing the authors, whose identity and location the owner knows, a written notice stating the owner's intention to carry out the change, relocation, demolition or destruction; and
 - (b) the notice stated that the person to whom the notice was given may, within 3 weeks from the date of the notice, seek to have access to the building for either or both of the following purposes:
 - (i) making a record of the artistic work;
 - (ii) consulting in good faith with the owner about the change, relocation, demolition or destruction; and
 - (c) the notice contained such other information and particulars as are prescribed; and
 - (d) where the person to whom the notice was given notifies the owner within the period of 3 weeks referred to in paragraph (b) that the person wishes to have access to the building for either or both of the purposes mentioned in that paragraph—the owner has given the person a reasonable opportunity within a further period of 3 weeks to have such access; and
 - (e) where, in the case of a change or relocation, the person to whom the notice was given notifies the owner that the person
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requires the removal from the building of the author's identification as the author of the artistic work—the owner has complied with the requirement.

- (4) Subsections (2), (2A), (3) and (3A) do not limit the operation of section 195AG.
- (4A) The removal or relocation by a person (the *remover*) of a moveable artistic work that is situated at a place that is accessible to the public, and was made for installation in that place, is not an infringement of the author's right of integrity of authorship in respect of the work if the remover:
- (a) after making reasonable inquiries, cannot discover the identity and location of the author or a person representing the author; or
 - (b) if paragraph (a) does not apply—complies with subsection (4B) in relation to the removal or relocation.
- (4B) This subsection is complied with by the remover in relation to the removal or relocation of a moveable artistic work if:
- (a) the remover has, in accordance with the regulations and before the removal or relocation is carried out, given the author or a person representing the author a written notice stating the remover's intention to carry out the removal or relocation; and
 - (b) the notice stated that the person to whom the notice was given may, within 3 weeks from the date of the notice, seek to have access to the work for either or both of the following purposes:
 - (i) making a record of the work;
 - (ii) consulting in good faith with the remover about the removal or relocation; and
 - (c) the notice contained such other information and particulars as are prescribed; and
 - (d) where the person to whom the notice was given notifies the remover within the period of 3 weeks referred to in paragraph (b) that the person wishes to have access to the work for either or both of the purposes mentioned in that paragraph—the remover has given the person a reasonable opportunity within a further period of 3 weeks to have such access; and
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- (e) where the person to whom the notice was given notifies the remover that the person requires the removal from the work of the author's identification as the author of the work—the remover has complied with the requirement.
- (5) Anything done in good faith to restore or preserve a work is not, by that act alone, an infringement of the author's right of integrity of authorship in respect of the work.

195AU Infringement by importation for sale or other dealing

- (1) An author's moral right in respect of a work is infringed by a person who imports an article into Australia for the purpose of dealing with the article if the importer knew, or ought reasonably to have known, that, if the article had been made in Australia, it would have been an infringing article.
- (2) In subsection (1):
- dealing with* does not include distributing except where the proposed distribution is for the purposes of sale.

195AV Infringement by sale and other dealings

- (1) An author's moral right in respect of a work is infringed by a person who, in Australia, deals with an article if the person knew, or ought reasonably to have known, that the article was an infringing article or, in respect of an imported article, would, if it had been made in Australia, have been an infringing article.
- (2) In subsection (1):
- deals with* does not include:
- (a) distributes, except where the distribution is for the purposes of sale; or
 - (b) deals with by means of a dealing covered by paragraph 195AD(b), 195AD(c), 195AE(2)(b), 195AE(2)(c) or 195AF(2)(b) or subsection 195AG(1) or 195AH(1); or
 - (c) deals with by means of an exhibition that is an attributable act to which section 195AO applies or an exhibition to which subsection 195AQ(5) applies.

195AW Author's consent to act or omission—films or works in films

- (1A) This section applies to a work that is:
- (a) a cinematograph film; or
 - (b) a literary, dramatic, musical or artistic work as included in a cinematograph film.
- (1) It is not an infringement of a moral right of an author in respect of a work to do, or omit to do, something if the act or omission is within the scope of a written consent given by the author or a person representing the author.
- (2) A consent may be given in relation to all or any acts or omissions occurring before or after the consent is given.
- (3) A consent may be given in relation to:
- (a) a specified work or specified works existing when the consent is given; or
 - (b) a work or works of a particular description:
 - (i) the making of which has not begun; or
 - (ii) that is or are in the course of being made.
- (4) A consent may be given by an employee for the benefit of his or her employer in relation to all works made or to be made by the employee in the course of his or her employment.
- (5) A consent given for the benefit of the owner or prospective owner of copyright in the work or works to which it relates is presumed, unless the contrary intention appears in the consent instrument, to extend to his or her licensees and successors in title, and to any persons who are authorised by the owner or prospective owner, or by such a licensee or successor in title, to do acts comprised in the copyright.
- (6) Subsections (2) to (5), inclusive, do not limit the operation of subsection (1).

195AWA Author's consent to act or omission—work that is not a film or included in a film

- (1) This section applies to a literary, dramatic, musical or artistic work other than such a work as included in a cinematograph film.

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- (2) It is not an infringement of a moral right of an author in respect of a work to do, or omit to do, something if the act or omission is within the scope of a written consent genuinely given by the author or a person representing the author.
 - (3) Subject to subsection (4), a consent does not have any effect unless it is given:
 - (a) in relation to specified acts or omissions, or specified classes or types of acts or omissions, whether occurring before or after the consent is given; and
 - (b) in relation to either of the following:
 - (i) a specified work or specified works existing when the consent is given; or
 - (ii) a specified work, or works of a particular description, the making of which has not begun or that is or are in the course of being made.
 - (4) A consent may be given by an employee for the benefit of his or her employer in relation to all or any acts or omissions (whether occurring before or after the consent is given) and in relation to all works made or to be made by the employee in the course of his or her employment.
 - (5) A consent given for the benefit of the owner or prospective owner of copyright in the work or works to which it relates is presumed, unless the contrary intention appears in the consent instrument, to extend to his or her licensees and successors in title, and to any persons who are authorised by the owner or prospective owner, or by such a licensee or successor in title, to do acts comprised in the copyright.

195AWB Consent invalidated by duress or false or misleading statements

- (1) If a person applies duress to an author, or to a person representing an author, in connection with the giving of a consent for the purposes of section 195AW or 195AWA, the consent does not have any effect.
- (2) If:
 - (a) a person makes a statement to another person; and
 - (b) the person makes the statement knowing:

- (i) that the statement is false or misleading in a material particular; or
- (ii) that a matter or thing has been omitted from the statement without which the statement is false or misleading in a material particular; and
- (c) the person makes the statement with the intention of persuading the other person to give, or not to give, a consent for the purposes of section 195AW or 195AWA;
the consent does not have any effect.

195AX Acts or omissions outside Australia

It is not an infringement of an author's moral right in respect of a work to do, or omit to do, something outside Australia.

Division 7—Remedies for infringements of moral rights

195AY Definition etc.

- (1) In this Division:

action means a proceeding of a civil nature between parties, and includes a counterclaim.

- (2) In the application of this Division in relation to a counterclaim, references to the defendant are taken to be references to the plaintiff.

195AZ Actions for infringement of moral rights

If a person infringes any of the moral rights of an author in respect of a work, the infringement is not an offence but the author or a person representing the author may bring an action in respect of the infringement, subject to any co-authorship agreement in force under section 195AN to which the author is a party.

195AZA Remedies for infringements of moral rights

- (1) Subject to section 203, the relief that a court may grant in an action for an infringement of any of an author's moral rights in respect of a work includes any one or more of the following:
- (a) an injunction (subject to any terms that the court thinks fit);

- (b) damages for loss resulting from the infringement;
 - (c) a declaration that a moral right of the author has been infringed;
 - (d) an order that the defendant make a public apology for the infringement;
 - (e) an order that any false attribution of authorship, or derogatory treatment, of the work be removed or reversed.
- (2) In exercising its discretion as to the appropriate relief to be granted, the court may take into account any of the following:
- (a) whether the defendant was aware, or ought reasonably to have been aware, of the author's moral rights;
 - (b) the effect on the author's honour or reputation resulting from any damage to the work;
 - (c) the number, and categories, of people who have seen or heard the work;
 - (d) anything done by the defendant to mitigate the effects of the infringement;
 - (e) if the moral right that was infringed was a right of attribution of authorship—any cost or difficulty that would have been associated with identifying the author;
 - (f) any cost or difficulty in removing or reversing any false attribution of authorship, or derogatory treatment, of the work.
- (3) In deciding whether or not to grant an injunction under subsection (1), the court must consider whether the parties have made any attempt to negotiate a settlement of the action and whether it should adjourn the hearing or further hearing of the action for the purpose of giving the parties an appropriate opportunity to negotiate a settlement, whether through a process of mediation or otherwise.
- (4) If:
- (a) the work is a cinematograph film; and
 - (b) the action is brought by a person who is a screenwriter of the film; and
 - (c) the relief granted in the action consists of or includes damages; and
 - (d) the person has already been granted relief by way of damages in an action for an infringement of his or her moral rights as

an author of the dramatic work constituted by the script or screenplay for the film;

the amount of any damages that, apart from this subsection, would be awarded to the person in the action referred to in paragraph (b) is to be reduced by the amount of the damages awarded to the person in the action referred to in paragraph (d).

(5) If:

- (a) the work is a dramatic work constituted by the screenplay or script for a cinematograph film; and
- (b) the action is brought by a person who is an author of the screenplay or script; and
- (c) the relief granted in the action consists of or includes damages; and
- (d) the person has already been granted relief by way of damages in an action for an infringement of his or her moral rights as a screenwriter of the film;

the amount of any damages that, apart from this subsection, would be awarded to the person in the action referred to in paragraph (b) is to be reduced by the amount of the damages awarded to the person in the action referred to in paragraph (d).

(6) If, in respect of an act done after the death of an author of a work, damages are recovered under this section by the legal personal representative of the author, those damages devolve as if they formed part of the author's estate and as if the right of action in respect of the doing of the act had subsisted, and had been vested in the author, immediately before his or her death.

Note: Subsection (6) does not apply in relation to the right of integrity of authorship in respect of a cinematograph film, which ends on the author's death. See subsection 195AM(1).

195AZB Saving of other rights and remedies

- (1) Subject to this section, this Part does not affect any right of action or other remedy, whether civil or criminal, in proceedings brought otherwise than under this Part.
- (2) Any damages recovered in proceedings brought under this Part are to be taken into account in assessing damages in proceedings brought otherwise than under this Part and arising out of the same operation or transaction.

- (3) Any damages recovered in proceedings brought otherwise than under this Part are to be taken into account in proceedings brought under this Part and arising out of the same operation or transaction.

195AZC Jurisdiction of courts

- (1) The jurisdiction of the Supreme Court of a State or Territory in a matter arising under this Part is to be exercised by a single Judge of the Court.
- (2) Subject to subsection (3), a decision of a court of a State or Territory (however constituted) under this Part is final.
- (3) An appeal lies from a decision of a court of a State or Territory under this Part:
 - (a) to the Federal Court of Australia; or
 - (b) by special leave of the High Court, to the High Court.
- (4) The Federal Court of Australia has jurisdiction with respect to matters arising under this Part.

195AZD Presumption as to subsistence of copyright

In an action brought under this Part for an infringement of a moral right in respect of a work, copyright is presumed to subsist in the work if the defendant does not put in issue the question whether copyright subsists in the work.

195AZE Presumption as to subsistence of moral rights

In an action brought under this Part for an infringement of a moral right in respect of a work, if copyright is presumed or proved to have subsisted in the work when the infringement is alleged to have occurred, the moral right is presumed to have subsisted in the work at that time.

195AZF Presumptions in relation to authorship of work

- (1) Section 127 applies in respect of an action brought under this Part.
- (2) If a name purporting to be the name of the director, producer or screenwriter of a cinematograph film appeared on copies of the film that were issued when the film was made, then, in an action

brought under this Part, the person whose name so appeared is, if it was his or her true name or a name by which he or she was commonly known, presumed, unless the contrary is established, to be the director, producer or screenwriter, as the case may be, of the film.

195AZG Other presumptions in relation to literary, dramatic, musical or artistic work

Sections 128 and 129 apply in respect of an action brought under this Part.

Division 8—Miscellaneous

195AZH Parts of works

Moral rights in respect of a work apply in relation to a whole or a substantial part of the work.

195AZI Works of joint authorship

- (1) This section applies to a literary, dramatic, musical or artistic work that is a work of joint authorship.
- (2) The right of attribution of authorship in respect of the work is a right of each joint author to be identified as a joint author.
- (3) An act of false attribution in respect of the work infringes the right of each joint author not to have authorship of the work falsely attributed.
- (4) The right of integrity of authorship in respect of the work is a right of each joint author.
- (5) The consent of one joint author to any act or omission affecting his or her moral rights in respect of the work does not affect the moral rights of the other joint author or other joint authors in respect of the work.

195AZJ Cinematograph films that have more than one principal director

- (1) This section applies to a cinematograph film that has more than one principal director.
- (2) The director's right of attribution of authorship in respect of the film is a right of each director to be identified as a director.
- (3) An act of false attribution in respect of the direction of the film infringes the right of each director not to have the direction of the film falsely attributed.
- (4) The director's right of integrity of authorship in respect of the film is a right of each director.
- (5) The consent of one director to any act or omission affecting his or her moral rights in respect of the film does not affect the moral rights of the other director or other directors in respect of the film.

195AZK Cinematograph films that have more than one principal producer

- (1) This section applies to a cinematograph film of which more than one individual is the principal producer.
- (2) The producer's right of attribution of authorship in respect of the film is a right of each producer to be identified as a producer.
- (3) An act of false attribution in respect of the production of the film infringes the right of each producer not to have the production of the film falsely attributed.
- (4) The producer's right of integrity of authorship in respect of the film is a right of each producer.
- (5) The consent of one producer to any act or omission affecting his or her moral rights in respect of the film does not affect the moral rights of the other producer or other producers in respect of the film.

195AZL Cinematograph films that have more than one principal screenwriter

- (1) This section applies to a cinematograph film of which there is more than one principal screenwriter.
- (2) The screenwriter's right of attribution of authorship in respect of the film is a right of each screenwriter to be identified as a screenwriter.
- (3) An act of false attribution of authorship in respect of the script or screenplay of the film infringes the right of each screenwriter not to have the authorship of the script or screenplay of the film falsely attributed.
- (4) The screenwriter's right of integrity of authorship in respect of the film is a right of each screenwriter.
- (5) The consent of one screenwriter to any act or omission affecting his or her moral rights in respect of the film does not affect the moral rights of the other screenwriter or other screenwriters in respect of the film.

195AZM Application—right of attribution of authorship

- (1) The right of attribution of authorship in respect of:
 - (a) a cinematograph film; or
 - (b) a literary, dramatic, musical or artistic work as included in a cinematograph film;subsists only if the cinematograph film is made after the commencement of this Part.
- (2) The right of attribution of authorship in respect of a literary, dramatic, musical or artistic work other than such a work as included in a cinematograph film subsists in respect of a work made before or after the commencement of this Part but this Part only applies in relation to attributable acts done after that commencement.

Note: Subsection 22(1) explains when a literary, dramatic, musical or artistic work is taken to be made and paragraph 22(4)(a) explains when a cinematograph film is taken to be made.

195AZN Application—right not to have authorship falsely attributed

- (1) The right not to have authorship falsely attributed subsists in respect of a work made before or after the commencement of this Part but this Part only applies in relation to acts of false attribution done after that commencement.
- (2) Paragraph 195AD(b) or (c), 195AE(2)(b) or (c) or 195AF(2)(b) applies to an act of false attribution done after the commencement of this Part even if the name concerned was inserted or affixed before that commencement.

Note: Subsection 22(1) explains when a literary, dramatic, musical or artistic work is taken to be made and paragraph 22(4)(a) explains when a cinematograph film is taken to be made.

195AZO Application—right of integrity of authorship

- (1) The right of integrity of authorship in respect of:
 - (a) a cinematograph film; or
 - (b) a literary, dramatic, musical or artistic work as included in a cinematograph film;subsists only if the cinematograph film is made after the commencement of this Part.
- (2) Subject to subsection (3), the right of integrity of authorship in respect of a literary, dramatic, musical or artistic work, other than such a work as included in a cinematograph film, subsists in respect of a work made before or after the commencement of this Part.
- (3) This Part applies in relation to an infringement of a right of integrity of authorship that subsists in respect of a work referred to in subsection (2) that was made before the commencement of this Part only if the infringement occurs after the commencement of this Part. However, an act referred to in paragraph 195AQ(3)(a), (b), (c), (d) or (e) or (4)(a), (b) or (c) is not an infringement if the relevant derogatory treatment occurred before that commencement.

Note: Subsection 22(1) explains when a literary, dramatic, musical or artistic work is taken to be made and paragraph 22(4)(a) explains when a cinematograph film is taken to be made.

2 Section 238

Repeal the section.

3 Application

Part IX of the *Copyright Act 1968* as in force immediately before the commencement of this Schedule continues to apply, subject to section 238 of that Act as in force immediately before that commencement, in relation to acts done in respect of a literary, dramatic, musical or artistic work before that commencement.

Schedule 2—Consequential amendments of the Copyright Act 1968

1 Section 189 (definition of *transmit*)

Repeal the definition.

2 Paragraph 194(1)(d)

Repeal the paragraph, substitute:

(d) to communicate the work to the public;

3 Paragraph 194(2)(d)

Repeal the paragraph, substitute:

(d) to communicate the work to the public.

4 Paragraph 194(3)(c)

Repeal the paragraph, substitute:

(c) to communicate the film to the public.

5 Paragraph 195AD(d)

Omit “in public or transmit the work”, substitute “the work in public, or communicate it to the public,”.

6 Paragraph 195AE(2)(d)

Omit “transmit the work”, substitute “communicate the work to the public”.

7 Paragraph 195AF(2)(c)

Omit “transmit the film”, substitute “communicate the film to the public”.

8 Paragraph 195AQ(3)(d)

Repeal the paragraph, substitute:

(d) communicates it to the public;

9 Paragraphs 195AQ(4)(c) and (5)(c)

Repeal the paragraphs, substitute:

(c) communicates it to the public.

10 After section 195AV

Insert:

195AVA Matters to be taken into account

In determining whether a person has authorised the doing of an act that is an infringement of moral rights, the matters that must be taken into account include the following:

- (a) the extent (if any) of the person's power to prevent the doing of the act concerned;
- (b) the nature of any relationship existing between the person and the person who did the act concerned;
- (c) whether the person took any reasonable steps to prevent or avoid the doing of the act, including whether the person complied with any relevant industry codes of practice.

195AVB Communication by use of certain facilities

A person (including a carrier or carriage service provider) who provides facilities for making, or facilitating the making of, a communication is not taken to have authorised the doing of an act that is an infringement of moral rights merely because another person uses the facilities so provided to do such an act.

*[Minister's second reading speech made in—
House of Representatives on 8 December 1999
Senate on 7 November 2000]*

(238/99)
