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Moral rights laws pose problems for employers

Employers may need to review job contracts with some of their staff following recent changes to copyright laws. New legal rights granted to creators of some types of work call for review of their employment contracts. Prudent employers will act now to ensure that employment practices are properly aligned with the new laws.

The changes to the *Copyright Act 1968* recognise three categories of moral rights: firstly, 'the right of attribution and ownership'; secondly, 'the right against false attribution'; and thirdly, 'the right of integrity'. In practice, these mean basically that employees who have created a work are entitled to: be named as its author; not have it falsely attributed to somebody else; and not have it altered in ways which may be prejudicial to their reputation. Moral rights are granted only to individuals and not to companies. They cannot be assigned to other people. Employees who now enjoy the new rights are those involved in creation of any literary or artistic work. Anyone who, in the course of their employment, authors any literary, creative or artistic work has moral rights to that work. For ALIA, *inCite* articles, columns and designs are good examples. Employees who create works of this kind will normally have moral rights in them for as long as copyright exists — usually until fifty years after their death.

Moral rights can be infringed in several ways. Examples include: failure to attribute the work prominently, declaring the work to be that of another person, altering the work and suggesting it is the unaltered work of the author, and altering, distorting or displaying it in a derogatory fashion. There is a defence to infringement if it was reasonable, with regard to the type of work and custom and practice in a particular industry. But it may be dangerous to rely solely on this.

Most organisations at some time follow the practice of not attributing the work done by their staff but, rather, claiming it as the work of the employing body. These are often long standing arrangements. They could now

be illegal. Yet many agencies will still need to use work done by their staff in ways that make full attribution problematic. The employment relationship could be substantially undermined if the laws on moral rights were strictly applied in every circumstance. Recognising this, the new laws therefore allow for arrangements through which employees can consent to the technical infringement of their moral rights by their employers. This allows for specific consent, for a single instance, and general consent, whereby employees may agree to technical infringement in relation to all work done under the contract of employment.

Current employment arrangements in most organisations do not include moral rights provisions. With the new laws now in place this could be dangerous. Unless employers secure agreement to infringement of their moral rights from direct employees, independent contractors and consultants they may be vulnerable to legal action. Substantial damages could be awarded against them. The simplest way to avoid this is to have relevant people sign an agreement though which employees and contractors agree to technical infringement of their moral rights. But this will obviously require detailed consultation. Organisations, of course, vary greatly and no approach can be guaranteed to be entirely suitable for all of them. Solutions will need to be tailored to the needs of individual enterprises.

With the staff affected, employers should review all letters of appointment, formal employment contracts, personnel manuals and service agreements. In their present form it is doubtful if any of these will comply with new laws. Review should take place following advice to staff, many of whom may be unaware of their new rights. Naturally, employees should be allowed to obtain their own independent legal advice if they wish to do so, before being asked to sign any proposed agreement. Where they are uncertain, employers too should seek their own confirmation that proposals will stand up to legal scrutiny. ■

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