

Questions

I. Current law and practice

Please answer the below questions with regard to your Group's current law and practice.

References to "moral rights" below are used to encompass all legal rights and concepts used to provide protection to the non-economic rights of authors, regardless of whether they are referred to as "moral rights".

References to "moral rights" cover only moral rights in copyright law and not moral rights in related rights/neighbouring rights laws (e.g., rights on the performance), unless expressly stated otherwise¹.

Definition of moral rights

- 1) a) Does your legislation and/or case law regarding copyright recognize moral rights?

Yes.

- b) Are moral rights recognized outside copyright law?

Yes, such as the right of performers in related/neighbouring rights, and the general personality right in civil law.

- c) What is the purpose of moral rights (the philosophy behind moral rights), e.g., to protect the work itself, the author, the public, etc.?

Based on the presupposition of "the work reflects the personality", we should protect the reflection and extension of the author's personality contained in the work, and take into account the public interest. Moral rights especially the right of attribution and the right of integrity can maintain the integrity of literary, artistic and scientific works, and the identity of the author will not be tampered with, which is conducive to encouraging the creation and dissemination of works and the inheritance and prosperity of culture.

- 2) Are all types of works protected by moral rights or are moral rights restricted and/or excluded for certain categories of works (software, databases, architecture, etc.)?

In principle, all types of works are protected by moral rights. However, Regulations on the Protection of Computer Software does not stipulate that the software copyright owner has the right of integrity.

Categories of moral rights

¹ This also applies to Parts II and III.

- 3) What are the different categories of moral rights, e.g., right of attribution, rights of integrity (distortion or modification), rights of disclosure, rights of withdrawal, right to prevent use in association with a product, service, cause or institution, etc.? Please give a short definition of each category.

The right of disclosure: the right to decide whether to make a work available to the public;

The right of attribution: the right to claim authorship and to have the author's name mentioned in connection with the work;

The right of alteration: the right to alter or authorize others to alter one's work;

The right of integrity: the right to protect one's work against distortion and mutilation.

Exception and limitations to moral rights

- 4) Does your legislation and case law provide exceptions and/or limitations to moral rights, e.g., for specific categories of works, for the exercise of moral rights by author's heirs, in case of minor modifications of a work or in the absence of the name of the author for specific exploitations, in case of abuse of rights, etc.?

Specific categories of works

For audiovisual works, if the copyright owner permits others to film his/her work into an audiovisual work, he/she shall allow necessary alterations (limitation on the right of integrity); authors of audiovisual works, such as playwright, director, photographer, lyricist and composer, only have the right of attribution (limitations on the rights of disclosure, alteration and integrity).

For works of fine art and photographic works, the owner of the original copy of a work has the right to exhibit the original copy (limitation on the right of disclosure).

For software works, the owner of a lawful software copy may make necessary modifications to the software under special circumstances such as improving its functions (limitation on the right of integrity).

Special types of works

For special works made for hire (the works created mainly with the material and technical resources of the legal entity or unincorporated organization and under its responsibility, as well as the works for hire created by employees of newspapers, periodical presses, news agencies, radio stations, and television stations), the author only has the right of attribution (limitations on the rights of disclosure, alteration and integrity).

For Commissioned works, the ownership of copyright shall be agreed upon in a contract between the commissioning and the commissioned parties.

Besides, a newspaper or periodical publisher may make editorial modifications and abridgments in a work (limitation on the right of alteration).

Duration of moral rights

- 5) What is the duration of moral rights?

The rights of attribution, alteration and integrity of an author shall be unlimited in time.

For the right of disclosure of natural persons' work, the duration shall be the lifetime of the author and fifty years after his/her death, expiring on December 31 of the fiftieth

year after his/her death. In the case of a work of joint authorship, such duration shall expire on the fiftieth year after the death of the last surviving author.

For the right of disclosure of audiovisual works, works of legal entities or unincorporated organizations, and special works made for hire, the duration shall be 50 years, ending on December 31 of the 50th year after the creation of the work.

Ownership of moral rights

- 6) a) Who is the initial owner of moral rights, e.g., the author, co-author, investor, publisher, movie producer, etc.?

The author or co-author is the initial owner of moral rights.

The whole or part of the moral rights (particularly the rights of disclosure, alteration and integrity) to audiovisual works, special works made for hire, and works of legal entities or unincorporated organizations may be enjoyed by non-authors (producers of audiovisual works, employers, and organizations regarded as authors).

In addition, the law does not prohibit the agreed ownership of the moral right of commissioned works.

- b) Can legal entities, such as an association, a foundation, collective rights organizations, a corporate company, etc., be the initial owners of moral rights?

For audiovisual works, commissioned works, works of legal entities or unincorporated organizations, and special works made for hire, the legal entities or unincorporated organizations may be the initial owners of moral rights.

- c) Do the circumstances of the creation of the work influence who the initial owner is of moral rights (e.g., work made for hire, collective work, work created by employees, etc.)?

For works of legal entities or unincorporated organizations, all the moral rights are owned by the legal entities or the unincorporated organizations.

For special works made for hire, the author has the right of attribution, and the employer has other moral rights.

For audiovisual works, authors (playwright, director, photographer, lyricist, composer, etc.) have the right of attribution, and the producers of audiovisual works have the other moral rights.

For commissioned works, the ownership of copyright can be agreed upon in a contract between the commissioning and the commissioned parties.

- d) If the duration of the moral rights exceeds the duration of the author's life, who is the owner of the moral rights after the death of the author/owner?

The owner of moral rights will not change.

For the rights of attribution, alteration and integrity, after the death of the author, such rights shall be protected by his/her successor or legatee. In the absence of a successor or legatee, such rights shall be protected by the administrative departments for copyright.

For the right of disclosure, it may be exercised by the author's successor or legatee within a period of 50 years after the death of the author, unless the author had expressly stated otherwise. In the absence of a successor or legatee, the said right shall be exercised by the owner of the original copy of the work.

e) Who is the owner of moral rights of orphan works?

In the case of a work of an unidentified author, the copyright, except the right of attribution, shall be exercised by the owner of the original copy of the work. When/After the author is identified, the copyright shall be exercised by the author or his/her successor.

Moral rights and the owner of the tangible asset integrating the work

7) Are the property rights of the owner of a tangible asset integrating a work (painting, sculpture, architecture, etc.) limited by moral rights? For example, do moral rights prevent the owner of a building from updating or destroying it?

It is not clearly stipulated in legislation.

It is generally believed that for architectural works, the author cannot prevent the repair or destruction of buildings. However, necessary limitations should be imposed on the modification of architectural works in order to prevent the infringement of the author's right of integrity. For works of fine art, photography and sculpture, if the author transfers the original copy of a work which is unpublished to others, the transferee's exhibition of the original copy of the work does not constitute an infringement on the author's right of disclosure.

Moral rights and contracts

8) a) Can moral rights be subject of contracts?

It is not clearly stipulated in the legislation and still controversial in theory and practice. It may not be ruled out that moral rights can be the subject of a contract.

b) Can the initial owner of moral rights transfer (e.g., through a contract for valuable consideration or free of charge) these to third parties?

It is not clearly stipulated in the legislation and still controversial in theory and practice. It is generally believed that the right of attribution cannot be transferred.

c) Can the owner of moral rights renounce or waive them?

It is not clearly stipulated in the legislation and still controversial in theory and practice.

d) Can the law relating to moral rights be overridden by contractual provisions?

It is commonly believed that moral rights are legal rights, and contractual provisions cannot override the legal rights in principle.

Infringement of moral rights

- 9) Is infringement of moral rights qualified as is copyright infringement?
Yes.
- 10) What are the conditions for an infringement of moral rights to be recognized, e.g., proof that the infringement violates the honour, reputation, dignity, legitimate interests of the author, etc.?

Infringement of the right of disclosure: making the unpublished work public without the permission of the right owner, or obstructing the author from publishing the work, etc.

Infringement of the right of attribution: using another person's work without specifying the author's name, or signing one's own name on another person's work without taking part in the creation.

Infringement of the right of alteration: making modifications in the content of the work or editorial modifications without the permission of the author.

Infringement of the right of integrity: distorting or mutilating the work.

Moral rights on related rights

- 11) a) Does your related rights legislation recognize moral rights, for example for performers?

Yes. The performer has the rights to show his/her identity and to protect the character in his/her performance from distortion.

- b) If YES, please indicate if moral rights in related rights legislation are identical to moral rights in copyright law?

It's not exactly the same.

- c) If they are not identical, please indicate the main differences from moral rights in copyright law.

Among the related rights, only the performer has moral rights, including the right to show the performer's identity and protect the character in the performance from distortion, excluding the right of disclosure and alteration.

II. Policy considerations and proposals for improvements of your Group's current law

- 12) Could your Group's current law or practice relating to moral rights be improved? If YES, please explain.

Yes.

- 13) Could any of the following aspects of your Group's current law relating to moral rights be improved? If YES, please explain.

- a) The definition of moral rights

It is controversial whether it is necessary to add the definition of moral rights to the legislation.

b) Categories of moral rights

Yes. There is an overlap in the connotation between "the right of alteration" and "the right of integrity". "The right of alteration " loses its practical significance, so consideration can be given to removing it.

c) Exceptions and limitations to moral rights

Yes. The establishment of moral rights is to balance the rights and interests of different parties. Under special circumstances, it is necessary to set exceptions and limitations to moral rights.

d) The duration of moral rights

Yes. Rights related to the public interest can be permanently protected, such as the right of attribution and the right of integrity; only those related to private interest can be consistent with the duration of property rights, such as the right of disclosure and the right of alteration.

e) Ownership of moral rights

Yes. It is necessary to unify and systematize the relevant regulations on the special works made for hire, works of legal entities or unincorporated organizations, and so on.

f) Moral rights and the owner of the tangible asset integrating the work

Yes. We should balance the contradiction between the protection of moral rights and the protection of real rights.

g) Moral rights and contracts

Yes, on the premise of not violating the public order and good morals or harming the interests of the third party, the author should be allowed to agree not to exercise or authorize others to exercise moral rights, so as to maintain the validity of the contract of the transfer or waiver of moral rights.

h) The regime of moral rights

Not sure.

i) Infringement of moral rights

Yes. It can be made clearer whether the infringement of the right of integrity is based on harming the reputation of the author.

j) Moral rights and related rights

Yes. The current related rights laws stipulate that only performers enjoy moral rights, so consideration can be given to granting moral rights to other parties, such as broadcasting organizations.

- 14) Are there any other policy considerations and/or proposals for improvement to your Group's current law falling within the scope of this Study Question?

In the legislative design, consideration can be given to distinguishing moral rights from personality rights in civil law and making an appropriate breakthrough in the exclusivity of moral rights.

III. Proposals for harmonisation

Please consult with relevant in-house / industry members of your Group in responding to Part III.

- 15) Do you believe that there should be harmonisation in relation to moral rights?
Please answer YES or NO.

No.

If YES, please respond to the following questions without regard to your Group's current law or practice.

Even if NO, please address the following questions to the extent your Group considers your Group's current law or practice could be improved.

Definition of moral rights

- 16) a) Should moral rights be recognized? Please answer YES or NO.

Yes.

- b) If YES, should this be in copyright law?

Yes, it can also be protected in civil law.

- 17) a) If YES to question 16), should all types of works be protected by moral rights?
Please answer YES or NO.

Yes.

- b) If NO, for which categories of works should moral rights be restricted and/or excluded?

Categories of moral rights

18) What should be the different categories of moral rights? Please tick the boxes as appropriate and give a short definition of them:

✓right of attribution

To claim authorship and to have the author's name mentioned in connection with the work.

✓ right of integrity

To protect one's work against distortion and mutilation.

✓right of disclosure

To decide whether to make a work available to the public.

right of withdrawal

right to prevent use in association with a product, service, cause or institution

other, namely

Exception and limitations to moral rights

19) a) Should moral rights be subject to exceptions and/or limitations? Please answer YES or NO.

Yes.

b) If YES, which? Please tick the boxes as appropriate

✓for specific categories of works, namely

✓in case of minor modifications of the work

✓in case of abuse of rights

✓depending on the owner of moral rights (author, investor, employer, author's heirs, etc.)

✓other, namely

The exercise of moral rights should abide by the principles of good faith, public order and good morals, do not harm the social and public interest, and be conducive to the creation and dissemination of works.

Duration of moral rights

20) What should be the duration of moral rights?

Rights related to the public interest can be permanently protected, such as the right of attribution and the right of integrity; only those related to private interest can be consistent with the duration of property rights, such as the right of disclosure and the right of alteration.

Ownership of moral rights

21) a) Who should be the initial owner of moral rights?

The author in principle, and exceptions are allowed.

b) Should legal entities (i.e. others than natural persons) be able to be the initial owner of moral rights?

Yes. When the creation mainly reflects the will and needs of the legal entities other than the actual author, the legal entities can be the initial owner of moral rights.

c) Should the circumstances of the creation of the work influence who the initial owner is of moral rights?

Yes. For example, the capital contribution, whether it reflects the will of the collective, and so on.

d) If the duration of the moral rights exceeds the duration of the author's life, who should be the owner of the moral rights after the death of the author/owner?

The owner of the right shall remain unchanged, but the rights shall be protected by the heir, legatee or administrative authority.

e) Who should be the owner of moral rights of orphan works?

The owner of the right shall remain unchanged. The rights except for the right of attribution shall be exercised by the owner of the original copy of the work.

Moral rights and the owner of the tangible asset integrating the work

22) Should the property rights of the owner of a tangible asset integrating a work (painting, sculpture, architecture, etc.) be limited by moral rights? Please answer YES or NO. If YES, please explain how.

Yes. The work cannot be changed at will, and the contradiction between the protection of moral rights and the protection of real rights should be balanced.

Moral rights and contracts

23) a) Should it be possible to contract on moral rights? Please answer YES or NO and explain.

Yes. Contracts can be signed on some moral rights, but not in violation of public interest, public order and good morals, or the rights and interests of third parties.

b) Should the initial owner of moral rights be able to transfer these to third parties? Please answer YES or NO and explain.

Yes, but the right of attribution cannot be transferred in principle.

c) Should the owner of moral rights be able to renounce or waive them? Please answer YES or NO and explain.

Yes, but the right of attribution cannot be waived in principle.

d) Should it be possible to override the law relating to moral rights by contractual provisions? Please answer YES or NO and explain.

It is commonly believed that moral rights are legal rights, and contractual provisions cannot override the legal rights in principle.

Infringement of moral rights

24) Should infringement of moral rights be qualified as copyright infringement? Please answer YES or NO.

Yes.

25) What should be the conditions for an infringement of moral rights to be recognised?

It needs to be determined according to the definition of moral rights. In general, an act controlled by the relevant moral rights committed without permission constitutes infringement.

Moral rights on related rights

26) a) Should related rights law recognize moral rights, for example for performers? Please answer YES or NO.

Yes.

b) If YES, should moral rights in related rights laws be identical to moral rights in copyright law?

No, the protection level of the copyright law can be higher than that of the related rights law.

Other things

27) Please comment on any additional issues concerning any aspect of moral rights you consider relevant to this Study Question.

Special attention should be paid to the presupposition of moral rights: "works reflect personality", as well as the impact of the development of artistic practice, digital technology, aesthetic theory and philosophical concepts on this presupposition.

28) Please indicate which industry/cultural sector views provided by in-house counsel are included in your Group's answers to Part III.

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