

Creative Commons Canada and the Moral Right of Integrity

Prepared by:
Marcus Bornfreund
Creative Commons Canada

What are Moral Rights?

Under s.14.1(1) of the Canadian Copyright Act, an author of a work has a right to the integrity of their work ("integrity right") and to be associated with their work by name ("attribution right"), unless they choose otherwise. In Creative Commons-speak this is called the **ATTRIBUTION** licence element.



In copyright law, moral rights exist apart from economic rights. Unlike economic rights, moral rights cannot be assigned to another person, but they can be waived in whole or in part. According to s.14.1(2), the duration of moral rights is the same as for other copyrights.

The Basis of Moral Rights

The sale of a copyrighted work is not like the sale of any other article of commerce. With physical goods, all rights are relinquished on sale; there are no restrictions on what a new owner can do with the goods: keep, mutilate or destroy. However, an author who sells a manuscript "retains a species of personal or moral right in the product of his brain" (see *Morang and Co. v. LeSueur* (1911), 45 S.C.R. 95). The Canadian moral rights attempt to protect this special connection between a creator and his/her creative works.

What is the moral right to the integrity of a work?

This is the right that protects an author's work from mutilation or distortion. Regardless of whether the economic rights in a creative work have been sold, the work cannot be so modified as to constitute a mutilation or distortion that would harm the honour or reputation of the creator.

The right of integrity also protects creators from having their works associated with products, services, causes or institutions that would harm their honour or reputation. In Creative Commons-speak this is called the **INTEGRITY** licence element. Note: This element is currently being proposed and is not yet available.



How is the integrity right infringed?

In *Snow v The Eaton Centre*, the Supreme Court of Ontario held that Christmas ribbons, placed around the necks of a sculpture of 60 geese, constituted a prejudice to the sculptor.

The standard for determining infringement involves a subjective and an objective component. The subjective component is whether the author himself feels that his work is used in a manner which is prejudicial to his honour or reputation. The objective component is an evaluation of public or expert opinion.

The word of the author alone is not enough to establish infringement. To sustain a claim of infringement, an author must be supported by expert or public opinion. In *Snow*, the author's opinion was "shared by a number of other well respected artists and people knowledgeable in his field." In *Pollock*, several playwrights examined the offending screenplay and expressed the view that *Pollock's* work had been seriously distorted.

In the *Pollock* and *Snow* cases, both components were fulfilled and the Courts held that a serious issue was raised (sufficient for an injunction).

In *Richie* and in *Prise*, the authors felt that their works were used in a manner prejudicial to their reputations. However, they presented no evidence that public or expert opinion would corroborate their subjective opinion. Thus, the rulings held there was no infringement of the authors' integrity right.

Table 1: Outcome of cases concerning the 'integrity right'

Cases	Subjective Component	Objective Component	Finding
<i>Snow</i>	Yes	Yes	Serious Issue
<i>Pollock</i>	Yes	Yes	Serious Issue
<i>Richie</i>	Yes	No	No infringement
<i>Prise</i>	Yes	No	No infringement

Why would you want to waive your integrity right in a cclca licence

The major reason to waive your moral right to the integrity of your work is to give downstream users more certainty. If you retain your integrity right, potential users might avoid using your work because they do not want to accidentally offend your integrity right and face a lawsuit. In other words, potential users might fear being taken to court for reasons that they cannot predict or control – this discourages creativity.

If you believe in one of the following statements, then you should consider waiving your integrity right, thus removing a potential deterrent to downstream use:

- 1) Your intent, in using a cclca licence, is to get as much exposure of your work as possible.
- 2) You wish the commons to have the widest possible use of your work,
- 3) You feel that giving the greatest possible freedom to downstream creators is more important than protecting against modifications that offend your aesthetic.

Why would you NOT want to waive integrity right in cc-ca licence?

If you believe in one of the following statements, you might not want to waive your integrity right:

- 1) You don't want your works associated with particular products, services, causes or institutions and wish to restrict downstream creators' rights in order to achieve this.
- 2) You don't want your work modified in such a way as to offend your aesthetic.

Keep in mind that the standard for determining infringement involves a subjective and an objective component. The word of the author alone is not enough to establish infringement.

Remember, even though you reserve the integrity right in a cclca licence, you can still consent to any specific use of your work at any time, without waiving your moral rights. You can also agree to waive your moral rights in a very limited fashion through the use of a licence. For example, you could waive your moral rights for one particular individual or for one particular use.

References

- 1) *Prise de Parole Inc. v. Guérin, Éditeur Ltée*, [1995] F.C.J. No. 1583
- 2) *Ritchie v. Sawmill Creek Golf & Country Club Ltd.*, [2003] O.J. No. 3144
- 3) *Snow v. The Eaton Centre Ltd. Et Al.*, 70 C.P.R. (2d) 105
- 4) *Pollock v. CFCN Productions Ltd.*, [1983] A.J. No. 772