

Moral rights of Performers

Under a new provision in the Copyright (Amendment) Ordinance 2007 that will take effect on a date to be notified by the Government, a *performer* of an aural performance (i.e. a live aural performance or a performance which is fixed in a sound recording) will be granted moral rights in relation to his performance similar to the moral rights which authors of copyright works and directors of films are currently enjoying under the Copyright Ordinance.

Moral Rights of Performers

The new provisions confer two rights upon a performer of an aural performance which may be enforceable by the performer through civil proceedings in court:

(i) *the right to be identified as a performer in the performance*

When does this right arise?

This right arises when:

- the performance is staged in public, made available to the public live, broadcast live or included live in a cable programme service; or
- copies of sound recording in which the performance is fixed are issued or made available to the public, broadcast or included in a cable programme service;

given that that the performer has signed a written document notifying his/her intention to exercise his/her moral rights to be identified as the performer.

Exceptions

This right does not apply in a number of situations, including:

- where it is not reasonably practicable to identify the performer;
- in relation to performances reporting current events;
- in relation to performances advertising any goods or services or making announcements of matters of public interests; and
- in relation to the doing of certain permitted acts provided for in the Copyright Ordinance

(ii) *the right to object to derogatory treatment*

What is a derogatory treatment?

A treatment is derogatory if it amounts to distortion, mutilation or other modification that is prejudicial to the reputation of the performer.

Situations where this right may be infringed

- if a live aural performance, or a performance by means of a sound recording, is subjected to derogatory treatment when the performance is caused to be heard in public, broadcast, included in a cable programme service or made available to the public;
- where a performance which has been subjected to derogatory treatment and is fixed in a sound recording is caused to be heard in public, broadcast or included in a cable programme service or made available to the public.

Exception

There are a number of exceptions to the right, including:

- in relation to performances reporting current events;
- in relation to modifications which are consistent with normal editorial or production practice; and
- in relation to acts done for the purpose of avoiding the commission of an offence or complying with a duty imposed under an enactment.

Waiver of Moral Rights

A person entitled to moral rights can consent to any act that would otherwise infringe his/her rights. It is also possible for him/her to waive the rights, with or without conditions, in writing.

For further details of the relevant provisions, please refer to section 66 of the Copyright (Amendment) Ordinance 2007 which could be viewed at the website of the Intellectual Property Department at www.ipd.gov.hk/eng/copyright.htm.