QUEENSLAND HEALTH POLICY STATEMENT

Policy Title: Moral Rights

Effective date: 10 November 2007

Supersedes: Nil. New Policy.

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1. Overview:

Queensland Health’s (QH) objectives for the management of Moral Rights of original creators of copyright material used within QH, is to reduce the risk of QH infringing Moral Rights, by ensuring that the following things are done:

a. The name of an original creator is clearly attributed on the copyright material, where it is reasonable to do so;

b. Moral Rights consents are included in all written agreements with external organisations/consultants where copyright material is to be created; and

c. The copyright material is not altered by QH unless: i) it is reasonable to do so; or ii) the original creator has given their prior consent; or iii) the original creator has been given prior notification where required.

Scope and Legislation

This policy applies to the Moral Rights of original creators of copyright material when the copyright material is used within QH as required by Part IX of The Copyright Act 1968.

What are Moral Rights?

Moral rights are new legal rights granted to original creators of copyright material by The Copyright Act 1968 from December 2000. Specifically, original creators of copyright material now have the following two legal rights:

1. Right of Attribution: Basically, the right to be clearly attributed (ie. identified; acknowledged; referenced) as a creator of the copyright material, on the copyright material itself when it is used. This right includes:

- A right to prevent being falsely attributed (ie being named as an original

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1 For a more detailed introduction to “What are Moral Rights” and what types of copyright material Moral Rights apply to, see Chapter 11 of “The Queensland Public Sector Intellectual Property Guidelines”, (The Guidelines) located at the web site address given in the “Further Assistance” section below.
creator when in fact this was not the case); and
- A right to prevent others from claiming to be an original creator when in fact they were not;

And

2. **Right of Integrity**: Basically the right to prevent an original creator’s copyright work from being altered in a major way (eg. by destruction, distortion or alteration or any other treatment) that is unreasonable and prejudicial or derogatory to the honour or reputation of the creator.

**Why was the Moral Rights Legislation introduced into the Copyright Act?**

The Moral Rights legislation was introduced to give original creators of copyright material a limited level of control over how the copyright material that they created may be used. Now, users of copyright material are required to provide some level of recognition, respect and protection for an original creator’s creativity and personality as expressed in the copyright material they created.

Prior to December 2000, and in contrast to many nations throughout the world (predominantly Europe, the UK and the USA), Australia did not recognize the Moral Rights of original creators. In not recognizing Moral Rights, Australia was in breach of it’s obligations within international conventions.

Prior to December 2000, the Australian *Copyright Act* only protected the economic rights of the copyright owner ie: to sell or licence the use of the copyright material, and to protect an owners rights against infringers. As the original creator of the copyright material may not be the copyright owner, there were no rights to protect the creativity of the original creator.

**How does Moral Rights relate to Copyright?**

Moral Rights and Copyright are not the same. They are two separate rights.

Differences include:
- Moral Rights are personal rights that remain with an individual original creator only. All other legal entities such as companies or Governments can not have Moral Rights. In contrast, Copyright is an economic right of the owner of Copyright. All legal entities can own Copyright;
- Moral Rights can’t be transferred by sale or licence by the individual original creator to another person. They stay with the original creator, even when ownership of the Copyright is transferred. In contrast, Copyright is able to be transferred by sale or licence;
- As Moral Rights can’t be sold or licensed, they don’t have any economic value and therefore Moral Rights are not a type of intellectual property. In contrast, Copyright is a type of intellectual property.

Similarities include:
- Moral Rights only exist in materials that are also capable of gaining copyright protection;
- In general, Moral Rights expire at the same time that Copyright expires which is generally:
  - 70 years from the end of the year that the original creator dies; or
  - 50 years from the date of publication.
- Both Moral Rights and Copyright are able to be enforced after the death of the original creator/copyright owner respectively.

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2 Mainly the Berne Convention (Article 6bis (1))

3 For films, the Moral Right of integrity ends on the death of the film producer.
**When do Moral Rights issues arise in QH?**

Moral Rights issues arise when copyright material is used by QH employees in the course of providing QH’s services. Moral Rights issues arise mainly in the following two activities:

1. **Moral Rights of QH employees:** Where copyright material created by QH employees is used within QH; and
2. **Moral Rights of non QH employees:** Where copyright material created by non QH employees is used within QH.

**Where in QH do the two Moral Rights activities mainly occur?**

**Moral Rights of QH employees:**

The Moral Right mostly relevant to QH employees is:

<table>
<thead>
<tr>
<th>Moral Right</th>
<th>Relevant to:</th>
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<tbody>
<tr>
<td><strong>Right of Attribution:</strong> - the right of the QH employee to be clearly attributed as an original creator of “significant” copyright material, where it is reasonable to do so.</td>
<td>All QH employees who create “significant” copyright materials.</td>
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</table>

**Moral Rights of non QH employees:**

The Moral Rights of non QH employees for which QH employees must now take specific actions are:

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<thead>
<tr>
<th>Moral Right</th>
<th>Relevant to:</th>
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</thead>
<tbody>
<tr>
<td><strong>Right of Attribution:</strong> - the right of the non QH employee to be clearly attributed as an original creator of the copyright material where it is reasonable to do so.</td>
<td>All QH employees who use copyright materials created by non-QH employees.</td>
</tr>
<tr>
<td><strong>Right of Integrity:</strong> - the right of the non QH employee to not have their original material altered in any major way, unless:</td>
<td>All QH employees who use copyright materials created by non-QH employees; &amp; Capital Works and Asset Management Branch project managers and District Managers involved in demolition, redevelopment or removal of buildings or artworks.</td>
</tr>
<tr>
<td>i) it is reasonable to do so; or</td>
<td></td>
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<tr>
<td>ii) the non-QH employee has given their prior consent; or</td>
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<tr>
<td>iii) the original creator has been given prior notification where required.</td>
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**Why are Moral Rights important to QH?**

QH employees use a substantial amount of copyright material that is either: a) created by QH employees “in-house”; b) created by external organisations or consultants and paid for by QH; or c) used from existing sources, in the course of providing QH’s services.

Accordingly, QH is now required to take specific actions to ensure that any risk of QH “infringing” the Moral Rights of original creators of the copyright material is appropriately managed and minimized.

The risk to QH arising from the Moral Rights legislation, is that if QH “infringed” an original creator’s Moral Rights, the original creator could take legal action requiring QH to: a) restrict or stop using the copyright material; b) pay financial compensation; c) issue a public apology; and/or d) undo or reverse work that QH had invested time and money into. The end effect on QH could lead to:

- A detrimental cost and time effect on project management;
- A subsequent detrimental impact on QH’s service delivery; and
- The creation of “bad news stories” as a result of QH failing to comply with Federal Government legislation and Queensland Government policy.
### 2. Principles:

<table>
<thead>
<tr>
<th>Queensland Public Sector Moral Rights Principles:</th>
<th>Chapter 11 of the Queensland Public Sector “Intellectual Property Guidelines” approved by Cabinet in June 2006, requires Government Agencies to comply with the following Moral Rights principles when they use Copyright material:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The name of an original creator is clearly attributed where it is reasonable to do so;</td>
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</tr>
<tr>
<td>2. Moral Rights consents are included in all written agreements with external organisations/consultants where copyright material is to be created; and</td>
<td></td>
</tr>
<tr>
<td>3. The copyright material is not altered unless: i) it is reasonable to do so; or ii) the original creator has given their prior consent; or iii) the original creator has been notified where required.</td>
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<tr>
<td>The following are QH specific Moral Rights principles to comply with the Queensland Public Sector principles.</td>
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<tr>
<th>Principles for Moral Rights Management in QH:</th>
<th>Moral Rights of QH employees:</th>
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<tr>
<td>The general outcome that QH seeks to achieve where “significant” copyright material created by QH employees is used within QH is to reduce the risk of QH infringing Moral Rights by doing the following two main things:</td>
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<tr>
<td>✓ The names of the QH employee original creators are clearly attributed on where it is reasonable to do so; and</td>
<td></td>
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<tr>
<td>✓ Other QH units are freely able to alter the copyright materials without the need for consent from the originating QH employees.</td>
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### Principle 1:

**QH employees who are original creators of “significant” copyright material, must be clearly attributed where it is reasonable to do so:**

The risk to QH if this principle is not adhered to is:
- A QH employee could seek a court order to require QH to attribute the employee as an original creator of the copyright materials.

Practical assistance and procedures to achieve this principle are:

1. An original QH employee creator is one who actually created the copyright material. There may be multiple original creators.
2. Mundane editing or typing or merely having some minor input into the material is not enough to be considered an original creator.
3. There is no one correct way to attribute an original creator. All that is required is for the attribution to be clear and reasonably prominent.
4. If the QH employee requests to be attributed in a certain way (and this is reasonable) then attribute the employee in this way.
5. If an original QH employee creator does not want to be attributed, then don’t attribute them.
6. There is no formal application or registration process for Moral Rights. Where the copyright material is to be placed on the QH Intranet or Internet, then your Electronic Publisher should insert the original creators names in the process of publishing on-line.
7. Any disputes should be managed by the immediate Manager or Director of the unit responsible for the creation of the copyright material.

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4 Decision number 6585 of June 2006.
Principle 2:
It's reasonable for other QH units to alter copyright material originally created by QH employees to suit QH's purposes, without the need for approval from the original QH employee creator.

Practical assistance and procedures to achieve this principle are:
1. Where copyright material created by QH employees is being updated or amended by other QH employees and the amendments are not substantial, then it is unlikely that the QH employee revising the material is an original creator for the purposes of Moral Rights. In this case, the original creators only should continue to be attributed.
2. But if the amendments are substantial, eg. a new section has been added or the old material has been substantially updated, then the QH employee authors of the new section should also be attributed in addition to the original QH employee creators.

Moral Rights of non-QH employees:
The general outcome that QH seeks to achieve when copyright material created by non QH employees is used within QH, is to reduce the risk of QH infringing Moral Rights by doing the following four main things:

- When QH pays non-QH employees to create Copyright material for QH, that Moral Rights consent clauses are included in written agreements;
- The names of the original creators are clearly attributed where it is reasonable to do so, unless valid consents have been obtained;
- The copyright material is not altered by QH unless it is reasonable to do so, or valid consents have been obtained; and
- Prior notification is given to the Moral Rights holder by Capital Works and Asset Management Branch Project Coordination Unit Managers or District Managers, before undertaking any high profile, substantial alteration, relocation or demolition of buildings or artworks.

Principle 3
Non QH employee original creators of copyright materials used by QH, must be clearly attributed where it is reasonable to do so, unless a valid consent has been obtained:

The risk to QH if this principle is not adhered to is:
- A consultant could seek a court order to: a) Stop QH altering the copyright material; and b) Obtain financial compensation from QH.

Practical assistance and procedures to achieve this principle are:
1. When you use existing copyright material created by non-QH employees, at a minimum, attribute a) the name of the original creator; b) the source of the copyright material; and c) the owner of the copyright;
2. If the original creator requests to be attributed in a certain way (and this is reasonable) then attribute the creator in this way;
3. If the original creator does not want to be attributed, then don’t attribute them;
4. There is no one correct way to attribute non QH employee creators. All that is required is for the attribution to be clear and reasonably prominent.

Principle 4:
When QH pays external consultants to create copyright material for use within QH, Moral Rights consent clauses are included in a written agreement with the consultant:

The risk to QH if this principle is not adhered to is:
- A consultant could seek a court order to: a) Stop QH using the copyright
Practical assistance and procedures to achieve this principle are:

1. A Moral Rights consent clause is a legal approval given by an original creator of copyright material for a user of the material to do certain things with the material that without the consent, would infringe the Moral Rights of the original creator.

2. Moral Rights consent clauses are already included in QH’s standard agreements (eg. Consultancy and Services Agreements).

3. If Moral Rights consent clauses are not already included in an agreement that you are using, an example Moral Rights Consent Form is included at Appendix 4 at Chapter 11, on page 60 of the Queensland Public Sector “Intellectual Property Guidelines” located at the link in the Further Assistance section below.

4. The consultant may request that the standard QH Moral Rights consent clause be amended in their favour or removed entirely from the agreement. QH’s policy is not to amend the standard QH Moral Rights consent clauses, as to do so would unnecessarily restrict QH’s ability to use the material.

Principle 5:

Copyright material created by non-QH employees should not be altered by QH unless the alteration is reasonable or a specific Moral Rights consent has been obtained from the non-QH employee.

The risk to QH if this principle is not adhered to is:
- A consultant could seek a court order to: a) Stop QH altering the copyright material; and b) Obtain financial compensation from QH.

Practical assistance and procedures to achieve this principle are:

1. To check if a specific Moral Rights consent has been obtained from the non-QH employee, it is necessary to locate the original written agreement.

Principle 6:

Capital Works and Asset Management Branch Project Coordination Unit Managers or District Managers who are responsible for high profile, substantial alteration relocation or demolition of buildings or artworks, must notify the Moral Rights holder of the proposed works in writing prior to the work proceeding:

The risk to QH if this principle is not adhered to is:
- An Architect or Artist could seek a court order to: a) Stop QH from altering, relocating or demolishing the building/artwork; and b) Obtain financial compensation from QH.

Practical assistance and procedures to achieve this principle are:

1. Architects and Artists have Moral Rights in buildings and artworks owned by QH, because the buildings and artworks they create are examples of Copyright materials used by QH.

2. Any risk to QH can be nullified if the Architect/Artist is: a) given written notification prior to the work proceeding; then b) given time to make a record of their work and be consulted in regards to the proposed work.

3. The steps to follow to give the required written notification, is set out at Procedure MR1 – “The Moral Rights Prior Notification Process for Capital Works and Asset Management Branch and District Managers” located at the QH Intellectual Property website at the link provided in the “Further Information” section below.
### 3. Roles and Responsibilities:

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<tr>
<th>Role</th>
<th>Checklist of Key Responsibilities</th>
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| **All QH Employees**                             | When you create “significant” copyright materials in the course of your employment with QH:  
√ Include the names of all original creators on the copyright material where it is reasonable to do so.  
√ Understand that it is reasonable for other QH employees to alter copyright material originally created by you as a QH employee, to suit QH’s purposes without the need to obtain your prior permission and any such alteration therefore will not be an infringement of your Moral Rights.  

When you engage external organisations/individuals to create copyright material for QH, ensure that:  
√ You have a written agreement with the consultant and that the agreement includes QH’s standard Moral Rights consent clauses (essential where the cost is >$20,000);  
√ If the agreement does not include QH’s standard Moral Rights consent clauses, then you can use the Queensland Government Example Consent Form at Appendix 4 on page 60 of the Queensland Public Sector “Intellectual Property Guidelines” located at the link in the Further Assistance section below.  

When you use Copyright materials created by non-QH employees, ensure that:  
√ At a minimum, you attribute a) the name of the original creator; b) the source of the copyright material; and c) the owner of the copyright where it is reasonable to do so; and  
√ The copyright material is not altered in any substantial way unless the alteration is reasonable or a specific consent has been obtained. |
| **Capital Works and Asset Management Branch**    | If you are planning a high profile substantial alteration, relocation or demolition of existing buildings or artworks ensure that:  
√ You give the original architect or artist prior notification of the proposed work by completing and then sending them the template “Moral Rights Prior Notification Letter”, both of which are located at the QH Intellectual Property website at the link provided in the “Further Information” section below. |
| **Project Coordination Unit Managers;**          |                                                                                                                                                                                                                                    |
| **And**                                         |                                                                                                                                                                                                                                    |
| **District Managers**                            |                                                                                                                                                                                                                                    |
| **Non-QH employees/Consultants**                 | √ Understand that when QH engages you to create copyright material for use within QH, that QH will require you to sign a “Moral Rights Consent”, the general effect of which is to enable QH to use the Copyright Material unrestricted for the purpose of providing QH's public health services. The terms of the “Moral Rights Consent” is not negotiable. |
4. Definitions:

**Reasonable**
- Common sense;
- When the nature of the copyright material and the purpose, manner and context for which it has been used by QH is considered;
- Whether the use is in accordance with any standard industry practices;
- Taking into account the time, cost or difficulty involved to comply;
- Whether the copyright work was created by an employee within the course of employment or a contractor;
- Decisions made on a risk management rationale in order to effectively achieve QH’s public health service delivery objectives.

**Significant**
In this policy, QH employees Moral Rights only apply where the employee is an original creator of "significant" copyright material. This is necessary to add practicality to the policy and in recognition that the two Moral Rights ie Right of Attribution; and Right of Integrity only apply when it is “reasonable”.

As a general guide, “significant” copyright materials include:
- Major works of a technical nature that is the result of considerable creative effort and expertise eg: software, major policies and guidelines, training manuals, research documents, photographs and artworks.
- Copyright material that has cost over $20,000 to develop.

As a general guide, “significant” copyright materials would not include:
- Minor works of a purely administrative nature.

5. Further Assistance:

**What should I read?**
2. The Australian Copyright Council Information Sheet GO43 titled “Moral Rights” which is located under “M” from: http://www.copyright.org.au/publications/infosheets.htm#M

**Who can I speak with?**
The Intellectual Property Officer, Office of Health and Medical Research, Centre for Healthcare Improvement. Phone: 3234 1479  Email: ip_officer@health.qld.gov.au