

Moral rights reserved? Impact of Creative Commons Licenses: part 1

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One of the rationales behind public licence formats, such as the Creative Commons, is the idea that innovation and development will be accelerated in environments where it is easier to adapt and modify pre-existing works. However, while many are eager to participate in the open access community, it is understandable that some authors still possess certain reservations when it comes to the intellectual property protection afforded to their works.



Image source: Kawê Rodrigues from [Pexels](#)

What recourse does an artist have in instances where they upload a seemingly innocent painting to a website that governs its adaptation by others with public licenses, only to discover that someone has distorted it by editing hate symbols on it? What would happen if that image were to then 'go viral', resulting in consumers boycotting the author, even though he/she was not responsible for the adaptation?

The answer lies in the nature of moral rights of authors as it relates to works licensed under terms suggested by the Creative Commons.

The Creative Commons

The Creative Commons and their copyright licenses have been at the forefront of the open access copyright movement since the inception in 2001. Subsequently, since December 2002, they have offered several licence variations, which make it possible for the public to freely copy and/or adapt works with the consent of the author.

However, these licences are not unrestricted. Failure to comply with any of these licence terms will result in a termination of the licence itself.

The authors of the licensed works are still recognised as the authors and maintain certain limited proprietary interests in the work. As such, Creative Commons licences are usually described as a “Some Rights Reserved” system, as opposed to an “All Rights Reserved” system.



Trade marks: Global classifications of virtual goods and services - part 1

Kaajal Nagindas 12 Dec 2023



Moral rights

Moral rights fall under the scope of copyright law. In South Africa, they are governed by section 20 of the Copyright Act 97 of 1978 (Copyright Act), but are somewhat akin to personality rights in application. They are only exercisable by the author and cannot be licensed or assigned.

However, in most jurisdictions (including in South Africa) it is possible to waive moral rights. The author may also enter into an agreement to not enforce these rights. It is generally agreed that moral rights are extinguished upon the death of the author.

There are two main forms of moral rights to consider. Section 20 of the Copyright Act states that the author of a work shall have the right to claim authorship in the work. This is referred to as the right to paternity. Section 20 also states that the author shall have the right to object to any “*distortion, mutilation or other modification of the work where such action is or would be prejudicial to the honour or reputation of the author*”. This is referred to as the right to integrity.

Section 20 creates a further proviso to the enforcement of the right to integrity – regarding cinematograph films, television broadcasts or computer programs or works associated with a computer program – the author may not enforce their moral rights where the modification was absolutely necessary on technical grounds or for the purpose of commercial exploitation of the work.

The latest Creative Commons licences include a general waiver of moral rights. Section 2(b)(1) of the current CC BY 4.0 Legal Code states that, to the extent possible, the licensor of a work agrees to waive and/or not assert any such rights to the limited extent necessary to allow others the right to exercise the licensed rights, but not otherwise.

However, this standard waiver leaves many open questions.

In the [second part of this article](#), we will unpack the six licence variations offered by Creative Commons and delve further into the rights to paternity and integrity.

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