

Article Information

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Service: Corporate & Commercial, Dispute Resolution & Litigation, Intellectual Property, Intellectual Property & Technology, Intellectual Property Litigation

Moral Rights and Films - McCallum v Projector Films Pty Ltd

A recent Federal Court interlocutory decision underscores the moral rights of film directors under the *Copyright Act 1968 (Cth)* (Copyright Act) to proper attribution for cinematograph films. It also highlights the importance for authors and creators more broadly to be aware of and protect their moral rights.

In *McCallum v Projector Films Pty Ltd*, Stephen McCallum successfully obtained interim injunctive orders against the respondents, Projector Films Pty Ltd and fellow filmmaker, David Ngo. The Court restrained the screening or promotion of the film "*Never Get Busted!*" unless it included the credit "*Directed by Stephen McCallum.*" It also restrained the film from attributing credit to Mr Ngo until final determination at trial.

This is a novel decision because it traverses rarely examined provisions of the Copyright Act concerning directors' moral rights of attribution in cinematographic works. Although the proceeding is ongoing and listed for trial in September 2025, the performing arts industry can draw valuable lessons from this dispute to better safeguard their moral rights

Background

The background facts to this proceeding concerned the making and premiere screening of a documentary film entitled "*Never Get Busted!*" (**Documentary**). The Documentary, a film about a Texas narcotics officer, was due to premiere at the Melbourne International Film Festival on Friday, 8 August 2025, and then again on Sunday, 10 August 2025.^[1]

McCallum claimed that he was the "*Principal Director*" of the Documentary, rather than Mr Ngo, pursuant to a contract with Projector Films. Despite this, the respondents failed to recognise him as the Principal Director of the Documentary, either in the film's credits or in promotional materials. For example, screenings at the Sundance Film Festival in Utah did not refer to McCallum at all, while a screening at the Dances With Films Festival in Los Angeles only referred to McCallum as a "*Director*". Consequently, McCallum alleged that the respondents infringed his moral rights, engaged in misleading or deceptive conduct contrary to section 18 of the *Australian Consumer Law*, and breached the contract.^[2]

The respondents argued that Ngo carried out the substantive directorial work on the Documentary and, together with his wife, conceived its central idea. The film was based on the true story and life of Barry Cooper, a Texan narcotics officer in the 1990s who later turned against the police force and taught drug users how to avoid detection.

On about 10 July 2025, McCallum was notified by the respondents that the Australian premiere of the Documentary would be screened at the Melbourne International Film Festival, with the promotional materials for that premier stating that Mr Ngo was the sole "*Director*" of the Documentary and being "*at the helm*" of the film. These materials did not refer to McCallum at all. McCallum threatened injunctive relief. While Ngo's lawyers offered on 16 July 2025 to amend the credits to refer to McCallum as the "*co-Principal Director*", this was rejected as all other materials that had been published conveyed that only Ngo was the "*Principal Director*".^[3]

On 21 July 2025, McCallum filed an interlocutory application seeking interim injunctive orders preventing the respondents from causing or authorising the Documentary to be seen or heard in public, or promoted unless:

- it contained the credit "*Directed by Stephen McCallum*" and did not contain the credit "*Directed by David Ngo*"; or
- alternatively, instead of any directing credits being referred to at all, a statement is made to the effect that the "*directing credits are the subject of court proceedings.*"

Moral Rights under the Copyright Act

Moral rights are inalienable personal rights that connect creators to their work, and exist in relation to artistic, literary, dramatic and musical works and films. Only individuals may have moral rights,^[4] and in the context of cinematography, an “author” means the “maker of the film”.^[5] Moral rights cannot be assigned to a third party,^[6] although if an author dies, their moral rights may be exercised and enforced by their legal representative.^[7]

Specifically in the case of directors, section 191 of the Copyright Act provides that where two or more individuals were involved in the direction of the film, a reference in the Act to the “director” is a reference to the “principal director” and not to any “subsidiary director” however described.

Section 189 of the Copyright Act provides three types of “moral rights” for authors. These are:

- the right of attribution of authorship;
- the right not to have authorship falsely attributed; and
- the right of integrity of authorship.^[8]

In respect of the right of attribution of authorship, an author of a cinematograph film has the right to be attributed as author if the film is exhibited in public, communicated to the public or a copy of the film is made.^[9] Similarly, the right of false attribution of authorship prevents false implying another person is the director, producer or screenwriter of the film.^[10]

Requirements for Interlocutory Relief

The principles guiding the grant of interlocutory relief are well established. They are:

- whether the applicant has established that there is a serious question to be tried or a *prima facie* case, and, in this regard, it suffices to show a sufficient likelihood of success at trial if the evidence remains as it is;^[11] and
- whether the balance of convenience favours the granting of the injunction, which involves consideration of matters including, among other things, whether the relief will change the status quo, the potential harm that will be caused, whether damages are an adequate remedy, and whether there is any disentitling conduct.

Consideration

Justice Shariff determined that McCallum should be granted the primary injunctive relief.

At the hearing, McCallum referred to the contract between himself and Projector Films, a “**Director’s Agreement**”, which stated at clause 19 that the Documentary would credit him as “*Directed by Stephen McCallum*”. While Mr Ngo may have exercised control over some parts of the editing of the Documentary or its footage, this was not inconsistent with McCallum’s role as “*Principal Director*”.

The respondents argued that clause 6.2 of the Director’s Agreement provided a complete defence, as it referred to the “*the Director*” [McCallum] waiving all “*moral or other similar rights in respect of the Documentary...*”,^[12] which was argued to constitute a consent to omit McCallum’s name from the Documentary for the purposes of section 195AW(1) of the Copyright Act. McCallum submitted that section 195AW contemplated express written consent, rather than a “*waiver*”, and that clause 6.2 in any event presupposed the giving of a consent before or after any such act or omission.^[13]

Serious Question to be Tried

Justice Shariff found that there was a serious question to be tried in respect of an infringement of his moral rights, not least because of the terms of the contract expressly recording that McCallum was to be the “*Principal Director*” of the Documentary and to perform work in that capacity. There was nothing to suggest that contract had been terminated, or any allegations of breach or repudiation.^[14]

Further, his Honour was also satisfied that there was a serious question to be tried for contraventions of the *Australian Consumer Law*, due to actions by the respondents since the 16 July 2025 offer to convey McCallum and Ngo as “*co-Principal Directors*”, such as representations in various promotional materials, such as the Melbourne International Film Festival website and program.^[15]

Balance of Convenience

The Court also found that the balance of convenience favoured the grant of the interim relief. First, McCallum would suffer serious harm to his reputation and standing within the film industry greater than any that Mr Ngo would suffer. The Documentary was to be Mr Ngo’s directorial debut, and the relief that McCallum sought would not prevent Mr Ngo from

being recognised as a director.^[16]

In contrast, McCallum was not given any recognition in relation to the Documentary's premier in Melbourne and only limited recognition overseas. The media had reported the film as being directed by Mr Ngo and that Mr Ngo had promoted himself as the director of the Documentary, such as being a "Guest of the Festival" and being involved in Q&As with audiences.^[17] McCallum was unable to take part in these kinds of things due to being "sidelined".^[18]

Conclusion and Take-Aways

While the proceeding is listed for trial in September 2025, this interlocutory decision is still valuable for the rare discussion by the Court on moral rights, particularly in respect of cinematograph films.

For authors, being aware of the moral rights to proper attribution and not to be falsely attributed is important to avoid unnecessary potential disputes with parties using their work.

When intending to use a copyrighted work, it is preferable to expressly document whether the author consents to any acts or omissions that might otherwise infringe their moral rights. Avoid language that implies a "waiver" of moral rights. Instead, ensure that any consents are clearly expressed — whether consent given through the execution of the relevant agreement or by separate written consents obtained from the author shortly thereafter.

The Copyright Act itself is complex, with slightly different moral rights regimes for different classes of works (literary, dramatic, musical, artistic, cinematograph film, etc.). When drafting agreements which contemplate moral rights and copyright, it is important to be mindful of these differences.

Piper Alderman has a nationally recognised intellectual property team. Please contact Tim O'Callaghan, Partner, and Travis Shueard, Special Counsel, should you require intellectual property advice.

^[1] Ibid [1].

^[2] Ibid [4].

^[3] Ibid [10].

^[4] *Copyright Act 1968* (Cth) s 190.

^[5] Ibid s 189.

^[6] Ibid s 195AN(3).

^[7] Ibid s 195AN(1).

^[8] Ibid s 189.

^[9] Ibid s 194(3).

^[10] Ibid s 195AF(2).

^[11] *Australian Broadcasting Corp v O'Neill* (2006) 227 CLR 57, [65] (Gleeson CJ and Crennan J); *Castlemaine Tooheys Ltd v South Australia* (1986) 161 CLR 148 (Mason ACJ); *Australian Broadcasting Corporation v Lenah Game Meats Pty Ltd* (2001) 208 CLR 199, [13] (Gleeson CJ), *Samsung Electronics Co Limited v Apple Inc* (2011) FCAFC 156, [52]-[74] (Dowsett, Foster, Yates JJ).

^[12] *McCallum v Projector Films Pty Ltd* [2025] FCA 903.

^[13] Ibid [49] – [52].

^[14] Ibid [57].

^[15] Ibid [58].

^[16] Ibid [77].

^[17] Ibid [80].

[\[18\]](#) Ibid [81].