

Article Information

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Roll the Credits: Moral rights after McCallum v Projector Films

In the landmark decision of McCallum v Projector Films Pty Ltd (Liability Hearing) [2026] FCA 173, the Federal Court has, for the first time, ruled that a general contractual waiver of moral rights is unenforceable. The decision also provides judicial guidance as to the meaning of "director" and "principal director" for the purposes of the Copyright Act 1968 (Cth).

Background

At the centre of the dispute was a documentary titled '*Never Get Busted!*' which examines the life of Mr Barry Cooper, a former Texan-based narcotics officer who, after becoming disillusioned during the height of the 'war on drugs' in the 1990s, became a drug reform campaigner.^[1] The applicant, Mr McCallum, was engaged under various agreements by the first respondent, Projector Films Pty Ltd, to be the director of the film.^[2] McCallum contended that he was the principal director of the film while the second respondent, Mr Ngo, who created the idea of the film together with his wife and was also a producer and principal writer, argued that he was also a principal director of the film.^[3]

Under the *Copyright Act 1968* (Cth) (**Act**), only the "principal director" of a film has moral rights:

- a right of attribution of authorship;
- a right not to have authorship of work falsely attributed; and
- a right of integrity of authorship.^[4]

These are inalienable personal rights that recognise authorship of a work. Unlike copyrights, moral rights can only be vested in individuals and cannot be assigned to third parties.^[5]

The key issues to be resolved were:

- what it means to be a "director" and "principal director" of a film under the Act;
- whether McCallum was the sole principal director of the documentary or whether McCallum and Ngo were principal directors;
- whether McCallum's moral rights as a principal director had been validly waived;
- whether Projector Films and Ngo had infringed McCallum's moral rights; and
- whether the parties had breached the Director's Agreement or engaged in misleading or deceptive conduct.^[6]

Findings

Principal Director

The definitions of "director" or "principal director" for the purpose of the Act had not previously been judicially considered, meaning that Shariff J had to apply the ordinary principles of statutory construction to determine their meanings.^[7] In doing so, his Honour had regard to the fact that films are unique as a form of art as they are generally the product of collaboration rather than the product of a single individual.^[8]

His Honour concluded that the word "director" means "*the person who ordinarily has management, control, supervision and/or responsibility in respect of the creative process and decisions involved in translating a script or idea into the medium of a film*", however noted that the extent of the nature of that management and responsibility would be fact

dependant and would vary from project to project.[9] For example, a director might have control and responsibility over all creative decisions, while in other cases may only supervise them or make a contribution to them.[10]

Further, his Honour concluded that the “*principal director*” means the “*chief or main person amongst others who has management, control, supervision and/or responsibility over the creative process to translate a script or idea into the medium of a film.*”[11] Importantly, this involves analysis of the actual duties performed by a person, rather than just what is stipulated in a person’s contract.[12]

Following analysis of McCallum’s involvement in the pre-production and production stages of the creation of the film, Shariff J was satisfied that McCallum was a principal director of the film.[13] However, his Honour was not satisfied that Ngo was also a *principal* director.[14] This was because Ngo’s contributions, although sufficient to render him a director, did not demonstrate that he was the *main* person who had management, control, supervision, and/or responsibility over the creative process to translate the script or idea for the film into the final product.[15]

General Waiver of Moral Rights

Following determination that McCallum was the sole principal director of the film, Shariff J had to consider whether or not, by way of the Director’s Agreement, McCallum had waived his moral rights or whether he had consented to the infringement of those rights.[16]

Clause 6.2 of the Director’s Agreement provided as follows:

*“The Director **waives all moral or other similar rights** in respect of the Documentary or the Development Materials that the Director may be entitled to under the laws of any jurisdiction throughout the world in perpetuity.*

*To the extent that **the foregoing waiver** is not enforceable in any jurisdiction of the world the Director **unconditionally and irrevocably consents**, for the benefit of the Producer and all of its assignees, licensees and sublicensees to material alterations to the Documentary (including, without limitation, any copying, editing, adding to, taking from, adapting and / or translating the Documentary in any manner or context) for any purpose.” [17]*

(emphasis added)

The Act does not contain any express prohibition against a person generally waiving their moral rights. As such, Shariff J performed an analysis of the text, context and purpose of the Act, particularly in regard to its legislative history and the nature of moral rights themselves, to conclude that the scheme of Part IX of the Act was inconsistent with a right holder being able to grant a general waiver of moral rights.[18]

Central to his Honour’s reasoning was the fact that section 195AW of the Act provides that a moral right is not infringed where the author has provided written consent to the relevant act or omission. His Honour concluded that Parliament had enacted a specific regime which was “*deliberate and calibrated to strike a balance*” between recognition of moral rights and making provision for legitimate infringement of those rights by third parties, for example by employers in respect of works created by employees during the course of their employment.[19] Permitting a general waiver would render this consent regime otiose, undermining the balance Parliament intended to strike.

Further, his Honour emphasised the “*distinct nature of a moral right as a right that is inalienable as between the author and the relevant artistic work, ie a right that by reason of its essential nature is incapable of waiver*”.[20] Because moral rights are not transmissible and are not characterised as personal property (unlike copyright), there is no need to prohibit waiver; such rights are incapable of being waived absent an express statutory power to do so.[21] As such, his Honour held that the first sentence of clause 6.2 of the Director’s Agreement was invalid to the extent that it sought to give rise to a general waiver of moral rights.[22]

Moral Rights Infringement

Given that the general moral rights waiver was unenforceable, the next question that arose was whether Projector Films and Ngo had infringed McCallum’s moral rights through use of credits that stated the film was “*written and directed by*” Ngo and that only gave McCallum the credit “*director*”.[23] Shariff J was satisfied that the effect of the credits was that McCallum had not been attributed as the principal director of the film and that Ngo had instead been falsely attributed.[24] His Honour therefore held that Projector Films had infringed McCallum’s moral rights, and that Ngo had authorised that infringement.[25]

Breach of Director’s Agreement/Misleading or Deceptive Conduct

The remaining issues for determination were whether the parties had breached the Director’s Agreement or engaged in

misleading or deceptive conduct contrary to section 18 of the *Australian Consumer Law*.

Shariff J found that Projector Films had breached the Director's Agreement by:

- failing to provide McCallum with a director's credit as agreed under clause 9.1;
- adding a director to the credit line without McCallum's agreement as required by clause 9.2;
- failing to pay certain of McCallum's fees as agreed under clause 3 and Schedule 2; and
- failing to provide cuts of the film for McCallum's notes and approval under clause 5(b).[26]

However, his Honour also concluded that McCallum had breached the Director's Agreement by bringing adverse notoriety to Projector Films.[27] This was because McCallum's agent had made statements to a financier of the film which conveyed that Projector Films did not recognise the creative contribution of McCallum and therefore was suggestive of the fact that Projector Films was being dishonourable.[28]

Finally, his Honour found that Projector Films had engaged in misleading or deceptive conduct by causing representations to be made on IMDb and in relation to the Sundance and Melbourne International Film Festivals which conveyed that Ngo was a principal director of the film.[29]

Key Takeaways

This decision confirms that contractual clauses purporting to provide a broad waiver of moral rights will likely be deemed unenforceable for the purposes of the *Copyright Act*. As held in *McCallum*, the *Copyright Act* does not provide for the waiver of moral rights; rather, it allows for the consent of infringement of those rights by other parties.[30]

If authors wish to consent to conduct that would otherwise infringe their moral rights, care should be taken to ensure that such a clause is framed as a "consent" and that it is specific to the acts or omissions over which consent is given.

McCallum is a novel case, as it considers the unique nature of films under the *Copyright Act*. Due to the collaborative nature of film production, as Shariff J remarked, it is best to properly document each person's role and contribution to the film. Similarly, care must be taken to ensure that proper attribution is made in the film, having regard to the moral rights of principal directors, principal producers and principal screenwriters.[31]

Piper Alderman has a nationally recognised [intellectual property and technology](#) and technology team, with experience in copyright litigation. Please contact [Tim O'Callaghan](#), Partner, if you require intellectual property advice.

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[1] *McCallum v Projector Films Pty Ltd (Liability Hearing)* [2026] FCA 173 [2] ("*McCallum v Projector Films*").

[2] *Ibid* [4]

[3] *Ibid* [4]-[6].

[4] *Copyright Act 1968* (Cth) s 191(1).

[5] *Ibid* ss 190, 195AN(3). See also s 195AN(4)(a), which provides that in the case of a cinematograph film, where there are 2 or more authors, they may enter into a written co-authorship agreement where each of them agrees not to exercise their right of integrity of authorship of the film, except jointly with other authors.

[6] *McCallum v Projector Film* (n 1) [9].

[7] *Ibid* [147].

[8] *Ibid* [169].

[\[9\]](#) Ibid [177].

[\[10\]](#) Ibid [178].

[\[11\]](#) Ibid [180].

[\[12\]](#) Ibid [181].

[\[13\]](#) Ibid [582].

[\[14\]](#) Ibid [583].

[\[15\]](#) Ibid [584].

[\[16\]](#) Ibid [586].

[\[17\]](#) Ibid [641].

[\[18\]](#) Ibid [689].

[\[19\]](#) Ibid [674] – [678]. See *Copyright Act 1968* (Cth) ss 195AW, 195AWA and 195AXJ.

[\[20\]](#) Ibid [680].

[\[21\]](#) Ibid.

[\[22\]](#) Ibid [690].

[\[23\]](#) Ibid [755]-[756].

[\[24\]](#) Ibid [775].

[\[25\]](#) Ibid [777] – [798].

[\[26\]](#) Ibid [831], [834], [849], [852].

[\[27\]](#) Ibid [969].

[\[28\]](#) Ibid.

[\[29\]](#) Ibid [884], [897], [902], [914], [916].

[\[30\]](#) *Copyright Act 1968* (Cth) ss 195AW, 195AWA, 195AXJ.

[\[31\]](#) Ibid ss 191, 195AZJ, 195AZK, 195AZL.