

MORAL RIGHTS: THE RIGHT TO PRIVACY IN CERTAIN PHOTOGRAPHS AND FILMS

Ronan Deazley and Kerry Patterson

1. Introduction

UK law provides protection regarding the moral right of privacy in privately commissioned photographs and films. This guidance considers the implications of this right for non-commercial digitisation initiatives.

2. Practical implications

Typically, this moral right should not present many problems for those digitising historic and other cultural heritage collections, for the two reasons detailed below: first, the scope of the right is limited to work that has been commissioned for private and domestic purposes; second, more significantly, the moral right only relates to material created on or after 1 August 1989.

3. Legislative Context

In addition to the bundle of economic rights that make up the scope of copyright protection, the *Copyright Designs and Patents Act* (the CDPA) also provides for certain moral rights in relation to certain types of work (ss.77-89). There are four types of moral right to be aware of:

- the right to the privacy of privately commissioned photographs or films
- the right to object to false attribution of the work
- the right to be identified as the author of the work
- the right to object to the derogatory treatment of a work

In this note we consider how the moral right to privacy in privately commissioned photographs and films might impact the digitisation of these types of material held in archive and other cultural heritage collections. Details about the nature of this right are set out in sections 85-89 of the CDPA.

4. The right to the privacy of privately commissioned photographs or films

Under the CDPA a person who, for private and domestic purposes, commissions the taking of a photograph or the making of a film has the right to prevent copies of the work being issued to the public, to prevent the work being exhibited or shown in public, or having the work communicated to the public which would include having the photograph or the film made available online.

It is important to note that this provision does not concern all photographs and films but only those that have been *commissioned* by the subject(s) for *private and domestic purposes*. Everyday snapshots, whether domestic or work-related, will not fall within the scope of the moral right: only works that have been *commissioned*.

If someone does enjoy a right of privacy in a commissioned work, whether a photograph or a film, the CDPA does provide for certain exceptions in which the use of the work will not infringe the moral right, however, they have little relevance in relation to the digitisation of archive and other heritage material (see s.85(2) for further details).

5. Works made before 1 August 1989

It is important to note, however, that the moral right of privacy does not apply to photographs taken or films made before 1 August 1989. That is, the right does not apply to any work created before the CDPA came into force. Only when dealing with photographs and films created *on or after* 1 August 1989 will this statutory right to privacy be of relevance.

6. Legal References

Copyright Designs and Patents Act 1988 c.48 (www.legislation.gov.uk/ukpga/1988/48/)

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