

EDUCATION, SCIENCE AND TRAINING

SENATE LEGISLATION COMMITTEE – QUESTIONS ON NOTICE 2005-2006 BUDGET ESTIMATES HEARING

Outcome: CSIRO
Output Group: CSIRO

DEST Question No. E198_06

Senator Carr provided in writing.

Question:

- (a) Why is CSIRO seeking to get Moral Rights Consents from all staff as a matter of routine?
- (b) What possible effect might such a requirement have on CSIRO's reputation for integrity in the external use of its research reports?
- (c) Could such a requirement have any effect on the reputation of professionals within CSIRO?
- (d) What capacity could such a blanket requirement have in enabling external contractors of CSIRO research the capacity to manipulate scientific results or conclusions for political or commercial ends?

Answer:

CSIRO has provided the following response.

Moral rights

- a) CSIRO understands the intention of the moral rights clauses in the *Copyright Act 1968* (Cth) and CSIRO does not, as a matter of routine, seek Moral Rights Consents from its staff. In fact CSIRO Divisions report that it is unusual for staff to be requested to provide Moral Rights Consents.

However there have been occasions over the past three years where, as a condition of obtaining funding for projects, CSIRO has been required by its contractual partners to obtain Moral Rights Consents from authors and the relevant staff agreed to provide their waiver. Approximately half of CSIRO's Divisions report such occasions of having requested Moral Rights Consents from the staff directly involved in the relevant projects. In many cases, the Consents have been a clause in standard form contracts sent to CSIRO from other Commonwealth Government entities [including ACIAR and DEST (with whom we have since developed an alternative clause in place of a Moral Rights Consent clause), AGO, AusAID, DAFF, DOHA and DVA].

CSIRO does not readily agree to this condition and will attempt to negotiate an alternative arrangement with the contractual partner. If the partner is not prepared to remove the Moral Rights Consent issue from the agreement, then CSIRO's preferred position is to seek an arrangement whereby the Moral Rights Consent clause is replaced by an agreement that in the event that an author should allege that his or her moral rights have been infringed, the parties will work towards a practical solution (including taking into account the views of the author making the allegation) as appropriate. CSIRO believes that this arrangement is consistent with the underlying philosophy of the moral rights provisions of the *Copyright Act 1968* (Cth) and the Attorney-General's Guidelines in relation to Moral Rights.

CSIRO cannot require its staff to agree to a Moral Rights Consent waiver and any Moral Rights Consent waiver from a staff member that is not given voluntarily by the author would be void.

- b) See answer to Question (a) above. Further, in order to maintain the integrity of its research reports during external use, CSIRO commonly seeks to contractually restrict the manner of use of CSIRO's research reports by clients and collaborators (for example, to restrict any right to publish these to such publication being in the same substantive form as was the report as provided by CSIRO). In addition to any rights contained in the contract between CSIRO and the client, CSIRO could have recourse under the rights of action contained in the *Copyright Act 1968*, for passing off under the common law, and/or misleading or deceptive conduct under the *Trade Practices Act 1974*.
- c) See answers to Questions (a) and (b) above. CSIRO seeks to uphold the professional reputation of its staff, whether or not they have voluntarily provided a Moral Rights Consent waiver.
- d) See the answers to Questions (a) – (c) above. There is no blanket requirement for CSIRO staff to provide a Moral Rights Consents waiver and any waiver that is not given voluntarily by the author would be void.

Considering the limited cases where CSIRO does request and is provided with a Moral Rights Consents waiver by relevant staff then, were the copyright work containing the scientific results or conclusions to be manipulated for political or commercial ends, CSIRO would review its legal position and the likely avenues for legal recourse.