"Creepings" and "Glimmers" of the Moral Rights of Artists in American Copyright Law

Brian T. McCartney

I. INTRODUCTION

Artistic control is essential to the creative arts, and today it is universally accepted that creators of artistic and literary works have a property right in their creations.[1] In the United States, the rights of "creative artists"[2] have historically been protected by granting the artist traditional property rights in her work: most commonly a temporary monopoly over the exploitation of the artist's protected work.[3] However, other countries safeguard the rights of "creative artists" in a more comprehensive fashion. For example, many European countries provide creative artists with a moral right in their work in addition to the traditional property right.[4] This moral right gives a creative artist "the exclusive right to control the reproduction and the performance or

---

[1] Arthur S. Katz, *The Doctrine of Moral Right and American Copyright Law—A Proposal*, 24 S. CAL. L. REV. 375-376 (1951).

[2] Throughout this article I will employ the term "creative artists" to refer broadly to all creative artists, for example authors, choreographers, composers, dancers, musicians, painters, sculptors, etc.

[3] *See* Raymond Sarraute, *Current Theory on the Moral Right of Authors and Artists under French Law*, 16 AM. J. COMP. L. 465-67 (1968).

[4] *Id.*

exhibition of [her] creation."[5] Thus, the artist's interest in her work transcends the physical embodiment of the work itself.

In 1988, the United States signed on to the Berne Convention, which expressly recognizes the moral rights of creative artists.[6] At that time, the House of Representatives declared that existing federal and state law satisfied the Berne Convention requirements.[7] However, the case law and commentators do not seem to support this assertion.[8] This paper examines seventeen recent cases that have mentioned the moral right and it attempts to determine whether the United States does, in fact, recognize the moral right of artists.[9] This paper concludes that, although Congress professes to protect moral rights through existing law, American courts are still reluctant to embrace the moral right of artists.[10]

II. HISTORY

A. European Recognition of the Moral Right

The moral right can be distinguished from traditional property rights in that it purports to protect the personal rights of creative artists, as distinguished from their merely economic rights. For many years, French law has recognized a "droit moral" or "moral right" that creative artists have in association with their creative works.[11] This "moral right" extends beyond a simple property interest to include "non-property attributes of an intellectual and moral character which give legal expression to the intimate bond which exists between a literary or artistic work and its author's personality; it is intended to protect his personality as well as his work."[12]

---

[5] *Id.*

[6] *See infra* § II C.

[7] H.R. Rep. No. 100-609 at 32-34 (1988). *See infra* notes 30-31.

[8] *See infra* Section III; *see also* 3 T. SELZ ET AL., ENTERTAINMENT LAW § 24.01 (3rd ed. 1992).

[9] *See infra* Section III.

[10] *See infra* Section IV.

[11] *See* Sarraute, *supra* note 3, at 465-67.

[12] *Id.* Interestingly, while England appears to recognize the moral rights of artists in their creative works to a greater extent than America, the converse is true for

In his landmark 1935 examination of the moral right, French commentator Michaelides-Nouaros defined the right as:

> the right of the author to create, or not to create, to present the creation to the public in a form of his choice, or to withhold it, to dispose of this form as he alone desires, and to demand that his personality be respected in so far as it relates to his status as an author.[13]

In an earlier German work, Smoschewer employed the term "*das Urheberpersönlichkeitsrecht*" to refer to a creative artist's right of personality.[14] Both Michaelides-Nouaros and Smoschewer sought to address the connection between the physical embodiment of a creative artist's work and the personality interest that the artist has in her work.[15] Under this view, moral rights are more than simply moral preferences; they are legally enforceable rights vested in creative artists.[16] The key distinction between American "property" rights and the European "moral right" is that, even after an artist has transferred her purely economic property rights, she retains two important rights

---

recognizing the rights of "creative artists" in their own personas. *Compare* White v. Samsung Electronics, 971 F.2d 1395, 1399 (9th Cir. 1992) (recognizing a common law "right of publicity" claim of game show hostess Vanna White), *with* Gorden Kaye v. Andrew Robertson and Sport Newspapers, 1991 F.S.R. 62 (1990) (finding no right of action in English law for the breach of a television star's "right of publicity" after a tabloid photographer snuck into Kaye's hospital room and published pictures of Kaye recovering from an automobile accident).

[13] G. Michaélidès-Nouaros, LE DROIT MORAL DE L'AUTEUR (1935), 68 (trans. Katz, *supra* note 1, at 391 n.84). Michaélidès-Nouaros's original definition reads:

> Le droit moral est le droit pour l'auteur de creer, de presenter ou non sa creation au public sous une forme de son choix, de disposer de cette form souverainement et d'exiger de tout la monde le respect de sa personalité en tant qu'elle est lieé á sa qualité d'auteur.

[14] *Das Persönlichkeitsrecht im Allgemeinen und im Urheberrecht*, found in 3 L'ARCHIV FÜR URHEBER—FILM—UND THEATERRECHT (Germany 1930), 365. Katz translates "*das Urheberpersönlichkeitsrecht*" as "the author's (creator's) right of personality." Katz, *supra* note 1, at 390.)

[15] *See* Katz, *supra* note 1, at 390-91.

[16] "[T]he moral right doctrine is *not* concerned with rights whose enforceability is a matter of moral suasion divorced from legal sanction. The *moral rights* of an author are *legal rights*, and enforceable as such." *Id.* at 390.

associated with her creative work: the rights of integrity and paternity.[17]

B. Integrity and Paternity

The right of integrity prevents alteration of a creative artist's work that would injure her honor or reputation.[18] More broadly defined, the right of integrity protects a creative artist against acts that would undermine the artist's personality expressed in her work. The right of integrity prohibits the public presentation of a creative artist's work in a context or manner harmful to her reputation or contrary to her "intellectual interests, personal style, or literary, artistic or scientific conceptions."[19] Thus, the artist has the right and power to preserve her work from alteration or mutilation. Only the artist can decide when her work is ready to view, and she retains the sole right to make changes to her work even after it has been sold.

The right of paternity is a creative artist's right "to be publicly identified with his or her work and to avoid misattribution of authorship."[20] Thus, an artist has the right to: (1) have her name associated with her work, (2) disavow her association with a work, and (3) prevent having another's name associated with her work.[21]

The idea behind these rights is that a creative artist's interest in her work transcends the physical embodiment of the work itself and continues long after the artist has completed and parted with the work.

---

[17] *See generally* John Henry Merryman, *The Moral Right of Maurice Utrillo*, 43 AM. J. COMP. L., 445 (1995); Adolf Dietz, *ALAI Congress: Antwerp 1993 The Moral Right of the Author: Moral Rights and the Civil Law Countries*, 19 COLUM.-VLA J.L. & ARTS 199 (1995); Gerald Dworkin, *The Moral Right of the Author: Moral Rights and the Common Law Countries*, 19 COLUM.-VLA J.L. & ARTS 229 (1995); Roberta Rosenthal Kwall, *Copyright and The Moral Right: Is an American Marriage Possible?*, 38 VAND. L. REV. 1 (1985).

[18] Thomas F. Cotter, *Pragmatism, Economics, and the Droit Moral*, 76 N.C. L. REV. 1, 13 (1997); *see also* Katz *supra* note 1, at 390-91; Sarraute, *supra* note 3, at 465-67.

[19] Cotter, *supra* note 17, at 13 (quoting Neil Weinstock Netanel, *Copyright Alienability Restrictions and the Enhancement of Author Autonomy: A Normative Evaluation*, 24 RUTGERS L. J. 347, 387 (1993)).

[20] 3 T. SELZ, *supra* ENTERTAINMENT LAW, at § 22.02.

[21] *See* Cotter, *supra* note 18, at 12.

In *Gilliam v. American Broadcasting Co.*,[22] the court stated that "[t]o deform an artist's work is to present him to the public as the creator of a work not his own, and thus makes him subject to criticism for work he has not done."[23] The *Gilliam* court noted that it is the creative artist that "suffers the consequences of the mutilation, for the public will have only the final product by which to evaluate the work."[24] As Roeder explains:

> When an artist creates, be he an author, a painter, a sculptor, an architect or a musician, he does more than bring into the world a unique object having only exploitative possibilities; he projects into the world part of his personality and subjects it to the ravages of public use.[25]

Clearly, creative artists have more at stake in their work than simply economic interests and many European countries have sought to protect the additional interests of artists through the moral right. The United States, however, has been reluctant to recognize the moral right.[26] This reluctance was highlighted by America's debate over joining the Berne Convention.

---

[22] 538 F.2d 14 (2nd Cir. 1976).

[23] *Id.* at 24[16] (quoting Martin Roeder, *The Doctrine of Moral Right: A Study in the Law of Artists, Authors, and Creators*, 53 HARV. L. REV. 554, 569 (1940)).

[24] *Id.*

[25] Roeder, *supra* note 23, at 557.

[26] *See* Katz, supra note 1, at 410. However, some American decisions have employed common law doctrines to protect the moral rights of artists. *See e.g.* Granz v. Harris, 198 F.2d 585, 589 (2d Cir. 1952) (finding that the sale of abbreviated jazz recordings without the album producer's permission constituted either breach of contract *or* the tort of unfair competition). Judge Frank's concurrence in *Granz* made clear that he did not reject the moral right:

> Whether the work is copyrighted or not, the established rule is that, even if the contract with the artist expressly authorizes reasonable modifications (e.g., where a novel or stage play is sold for adaptation as a movie), it is an actionable wrong to hold out the artist as author of a version which substantially departs from the original.

Granz at 589. However, Judge Frank felt that the case should not rest on the moral right when it was not necessary to do so in the case. *Id.*

Although *Gilliam*, *supra* note 22, is frequently cited in discussions of the moral right in America, *Gilliam* relied heavily on the contract right that Monty Python retained in their television script. Because few creative artists retain the types of contract rights that Monty Python did in this case, *Gilliam* is actually quite limited in its holding and

C. America Joined Berne but Expressly Disclaimed Recognition of the Moral Right

Article 6*bis* of the Berne Convention for the Protection of Literary and Artistic Works recognizes the moral rights of integrity and paternity in creative artists. Article 6*bis* provides, in pertinent part:

> Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation.[27]

Thus, signatories to the Berne convention are assumed to recognize artists' moral rights. However, Article 6*bis* and the concept of moral rights presented a serious problem for the United States because the U.S. had historically disclaimed recognition of the moral right.[28]

In 1988, after nearly 100 years of debate, the United States finally joined the Berne Convention.[29] Although the United States became a signatory to the Berne Convention, the U.S. expressly declined to add any new recognition of a "moral right" in the Berne Convention Implementation Act.[30] Instead, Congress neatly sidestepped the issue

---

is underpinned by contractual rights just as much as moral rights. *See* Cotter, *supra* note 17, at 25.

Another prior "glimmer" of the moral right in American law is Smith v. Montoro, 648 F.2d 602 (9th Cir. 1981) (applying § 43(a) of the Lanham Act and finding that an actor in the movie *Convoy Buddies* whose name had been replaced on the film's credits had a claim against the film's distributors for "express reverse passing off.").

[27] Berne Convention for the Protection of Literary and Artistic Works, September 9, 1886, art. 6*bis*, Treaty Doc. No. 27, 99th Cong., 2d Sess. 41 (1986).

[28] *See e.g., Carter v. Helmsley-Spear, Inc.*, 71 F.3d 77, 82 (2d Cir. 1995) ("The obligation of the United States to provide *droit moral* . . . was the single most contentious issue surrounding Berne adherence.").

[29] *Id.*

[30] The Berne Implementation Act ("the Act") declares that the Berne Convention is not self-executing; rather, "[t]he obligations of the United States under the Berne Convention may be performed only pursuant to appropriate domestic law." Pub. L. No 100-568, § 2(1), (2) 102 Stat. 2853 (1988). The Act states that "[t]he amendments made by this Act, together with the law as it exists on the date of the enactment of this Act, satisfy the obligations of the United States in adhering to the Berne Convention and no further rights or interests shall be recognized or created for that purpose." *Id.* at § 2(3).

of moral rights by declaring that American law already adequately protected the analog of an artist's moral rights through existing law in the areas of unfair competition, copyright, contract, defamation, and privacy.[31] In effect, the United States joined the Berne convention but chose to ignore one of its provisions by proclaiming that the moral right was already adequately protected.[32] However, Congress' position would soon shift towards a limited recognition of a moral right.

D. The Visual Artists Rights Act Now Purports to Add Limited "Moral Rights" Protection

In 1990, two years after declining to recognize the moral right, Congress changed course by enacting the Visual Artists Rights Act of

---

However, Section 3(b) of the Act expressly disclaims recognition of moral rights:

> The provisions of the Berne Convention, the adherence of the United States thereto, and satisfaction of United States obligations thereunder, *do not expand or reduce any right of an author of a work*, whether claimed under Federal, State, or the common law —
>
> (1) *to claim authorship of the work; or*
>
> (2) *to object to any distortion, mutilation, or other modification of, or other derogatory action in relation to, the work, that would prejudice the author's honor or reputation.*

(emphasis added).

[31] The House of Representatives concluded that the protection of a creative artist's "moral right" was already adequately protected by analogous and existing American laws:

> According to this view, there is a composite of laws in this country that provides the kind of protection envisioned by Article 6*bis*. Federal laws include 17 U.S.C. § 106, relating to the derivative works; 17 U.S.C. § 115(a)(2), relating to distortions of musical works used under the compulsory license respecting sound recordings; 17 U.S.C. § 203, relating to termination of transfers and licenses, and section 43(a) of the Lanham Act, relating to false designations of origin and false descriptions. State and local laws include those relating to publicity, contractual violations, fraud and misrepresentation, unfair competition, defamation, and invasion of privacy. In addition, eight states have recently enacted specific statutes protecting the rights of integrity and paternity in certain works of art. Finally, some courts have recognized the equivalent of such rights.

H.R. Rep. No 609, 100th Cong., 2d Sess. 32-34 (1988).

[32] This approach was not novel. For example, see Roeder's similar argument that American common law already provides artists with rights similar to moral rights. Roeder, *supra* note 22, at 578.

1990 ("VARA").[33] VARA was designed to grant limited integrity and paternity rights to a discrete group of visual artists.[34] Codified at 17 U.S.C. § 106A, VARA provides that certain creative artists:

> (1) shall have the right —
>
> (A) to claim authorship of that work, and
>
> (B) to prevent the use of his or her name as the author of any work of visual art which he or she did not create;
>
> (2) shall have the right to prevent the use of his or her name as the author of the work of visual art in the event of a distortion, mutilation, or other modification of the work which would be prejudicial to his or her honor or reputation; and
>
> (3) subject to the limitations set forth in section 113(d), shall have the right—
>
> (A) to prevent any intentional distortion, mutilation, or other modification of that work which would be prejudicial to his or her honor or reputation, and any intentional distortion, mutilation, or modification of that work is a violation of that right, and
>
> (B) to prevent any destruction of a work of recognized stature, and any intentional or grossly negligent destruction of that work is a violation of that right.

However, VARA's scope is limited by it's a narrow definition of "work of visual art."[35] Thus, VARA fails to protect anything falling

---

[33] Pub. L. No. 101-650, tit. VI, 603(a) 104 Stat. 5089, 5128-33 (1990).

[34] *See* H.R. Rep. No. 101-514, at 5 (1990). Essentially, "works of visual art" are equated with "fine art"—"works that exist in only a single copy or works published in signed and numbered editions of no more than 200 copies." GOLDSTEIN, COPYRIGHT, PATENT, TRADEMARK AND RELATED STATE DOCTRINES, 786, 800 n.4 (4th ed. 1997).

[35] A "work of visual art" is defined in 17 U.S.C. § 101 as:

> (1) a painting, drawing, print, or sculpture, existing in a single copy, in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author, or, in the case of a sculpture, in multiple cast, carved, or fabricated sculptures of 200 or fewer that are consecutively numbered by the author and bear the signature or other identifying mark of the author; or
>
> (2) a still photographic image produced for exhibition purposes only, existing in a single copy that is signed by the author, or in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author.
>
> A work of visual art does not include—

outside its narrow definition, and many types of art, "digital art" for example, are left without VARA protection.[36] Additionally, many uses of "visual art" are expressly exempted from VARA protection.[37]

III. HAS THE MORAL RIGHT BEEN RECOGNIZED IN AMERICAN COURTS FOLLOWING AMERICA'S SIGNING OF THE BERNE CONVENTION AND THE ENACTMENT OF VARA?

Congress' assurances that American law adequately protects moral rights, coupled with the enactment of VARA, suggest that America is on the road to recognizing the moral right of creative artists. The following federal and state decisions following VARA's enactment examine this proposition and lead to the conclusion that America's recognition of the moral right is actually quite limited.

A. *Non-VARA cases*

In *Seshadri v. Kasraian*,[38] a University of Wisconsin graduate student published an article in the *Journal of Applied Physics*.[39] A

(A)(i) any poster, map, globe, chart, technical drawing, diagram, model, applied art, motion picture or other audiovisual work, book, magazine, newspaper, periodical, data base, electronic information service, electronic publication, or similar publication;

(ii) any merchandising item or advertising, promotional, descriptive, covering, or packaging material or container;

(iii) any portion or part of any item described in clause (i) or (ii);

(B) any work made for hire; or

(C) any work not subject to copyright protection under this title.

[36] *See* Note, *Visual Artists' Rights in a Digital Age*, 107 HARV. L. REV. 1977, 1978 (1994) ("[A]lthough the traditional Anglo-American copyright system would be capable of embracing digital technology, VARA's mixture of those theories with Continental-European moral rights principles poses a challenge to this assimilation in the area of visual art.").

[37] See GOLDSTEIN, *supra* note 34, at 800-01 ("Section 106A's most significant limitation is its exemption from liability of virtually all significant commercial uses of artistic works, including reproduction in books, magazines, newspapers, motion pictures and works made for hire.").

[38] 130 F.3d 798, 803-04[7] (7th Cir. 1997) (Posner, C.J., joined by Judge Bauer and Judge Evans).

University of Wisconsin engineering professor sued the graduate student for copyright infringement, alleging that he had authored the entire article.[40] The graduate student responded that the article was a joint work, which entitled him to copyright the article and license the copyright to third parties, "subject only to a duty to account to his coauthor for any profits."[41] The district court granted the graduate student's motion for summary judgment, finding that there was no genuine issue of material fact as to the graduate student's joint authorship.[42] The United States Court of Appeals for the Seventh Circuit affirmed, but Judge Posner addressed the author's moral right in dicta:

> If a joint work is marred by errors reflecting unfavorably on his coauthor, with quantifiable adverse effects on the coauthor's career, the coauthor might conceivably have some legal remedy, but it wouldn't be under the Copyright Act. We don't know what it would be under: possibly the law of contracts; in Europe it might be a violation of the author's "moral right" (*droit moral*), the right to the integrity of his work; and there are glimmers of the moral-rights doctrine in contemporary American copyright law. But all that matters here is that a joint author does not lose his copyright by being a lousy scholar; were that the rule, rights of joint authorship would be in legal limbo.[43]

Although Judge Posner recognized "glimmers" of the moral right in American law, it is interesting to note that he distinguished the "European" concept of moral right from an artist's remedies under America's Copyright Act. Thus, Judge Posner declined to afford the professor any moral right to paternity in the article—i.e. if the professor really was a joint author, as the opinion seems to concede, then his right to paternity was violated by not being listed as one of the

---

[39] *Id.* at 801. The article was entitled *Double-Grating Thin-Film Devices Based on Second-Order Bragg Interaction*, 75 J. APPL. PHYS. 7639 (1994).

[40] *Id.*

[41] *Id.*

[42] *Id.*

[43] *Id.* at 803-04[7] (citing Lee v. A.R.T. Co., 125 F.3d 580, 582-83 (7th Cir. 1997); Weinstein v. University of Illinois, 811 F.2d 1091, 1095 n.3; WGN Continental Broadcasting Co. v. United Video, Inc., 693 F.2d 622, 625 (7th Cir. 1982); Carter v. Helmsley-Spear, Inc., 71 F.3d 77, 81-82 (2d Cir. 1995); Gilliam v. American Broadcasting Cos., 538 F.2d 14, 24 (2d Cir. 1976)) (internal citations omitted).

article's authors. Furthermore, the professor's right of integrity was likely violated, since the professor was probably not allowed to participate in the editing process that the article underwent before its publication in the *Journal of Applied Physics*.

Judge Posner soon revisited the moral right in *Ty, Inc. v. GMA Accessories, Inc.*[44] In *Ty*, the manufacturer of the "Beanie Babies"—a popular line of stuffed animals—brought a copyright infringement action against a competitor.[45] The manufacturer ("Ty") contended that the defendant ("GMA") had copied Ty's "Squealer the Pig" and "Daisy the Cow" stuffed animals.[46] The District Court granted Ty's motion for a preliminary injunction, and the Seventh Circuit affirmed, holding that Ty had established a likelihood of success on the merits and proof of irreparable harm.[47] Dicta in the opinion referred to the moral right; however, this time it was used in support of the artist. Judge Posner stated that the award of a preliminary injunction "draws additional sustenance from the doctrine of 'moral right,' the right of the creator of intellectual property to the preservation of the integrity of his work—a doctrine that is creeping into American copyright law."[48]

Although one way for a doctrine to "creep" into American law is through dicta, in this case the artist's rights were clearly protected by other existing copyright concepts. Thus, the reference to the moral right in dicta was not sufficient to make it law. Rather, Judge Posner followed American tradition of talking about moral rights but declining to legally recognize them.

In *Rey v. Lafferty*,[49] Margaret Rey ("Rey"), the author of the Curious George books, brought a suit against the licensees of rights to create a series of animated Curious George films and ancillary products associated with the films.[50] Rey alleged that the licensees had violated federal copyright, trademark, and unfair-competition statutes by

---

[44] 132 F.3d 1167 (7th Cir. 1997) (Posner, C.J., with Judge Bauer and Judge Flaum).

[45] *Id.* at 1169.

[46] *Id.*

[47] *Id.* at 1172-73[11], [12].

[48] *Id.* at 1173 (citing *Seshadri*, 130 F.3d 798, 803-04 and the cases cited therein).

[49] 990 F.2d 1379 (1st Cir. 1993).

[50] *Id.* at 1384.

continuing to produce unauthorized Curious George books and videos.[51] In addition, Rey alleged that the licensees had breached their contract with her, and she sought an injunction against further violations and damages in the form of unpaid royalties.[52] The United States District Court for the District of Maine found that the licensees had breached their contract with Rey; however, the court also found that Rey had unreasonably withheld approval of a number of ancillary products.[53]

On appeal, the First Circuit affirmed in part and reversed in part. The court stated that "under copyright law, while a licensor has no 'moral right' to the quality of licensed depictions, she may insist, contractually, on approval provisions to assure quality control and high standards in the exploitation of her creative work."[54] However, the court did find that Rey was entitled under the contract to withhold her approval of the licensed ancillary items on "reasonable" grounds.[55] Because the *Rey* court found that Rey was "reasonable" in withholding

---

[51] *Id.*

[52] *Id.*

[53] *Id.* The products included, among other things, Curious George pajamas that were to be marketed by Sears Roebuck Co. and a plush Curious George toy that was to be marketed by Eden Toys Inc. *Id.* Rey had objected to the pajamas because "the pajama material was 'hard, ugly, [and] bright yellow,' and that the sketch of Curious George was 'plump' and 'not recognizable.'" *Id.* at 1383.

[54] *Id.* at 1392 n.10. The court took note of Clifford Ross Co. v. Nelvana, 710 F. Supp. 517, 520 (S.D.N.Y. 1989):

> Clifford Ross is particularly instructive, as it too involved a "classic literary property," the "Babar" children's book character. Upholding a contractual provision which called for the copyright holder's participation in the selection of licensing agents for the character, and enjoining the issuance of further licenses absent the holder's approval, the court concluded that there would be "irreparable harm" to the future profitability of "Babar," and to the artistic reputation of the holder, "if the exploitation of Babar continue[d] without regard to [the licensor's] high standards of quality control.

Compare Geisel v. Poynter Products, Inc., 295 F. Supp. 331, 333 (S.D.N.Y. 1968) (issuing an injunction under the Lanham Act and finding a likelihood of "irreparable harm" to Theodor Seuss Geisel's reputation where "Dr. Seuss" toys, which Geisel found "tasteless, unattractive and of an inferior quality," were marketed by the owner of the copyright to Geisel's early drawings).

[55] *Id.* at 1396.

her approval, the court reversed the lower court's award of damages to the licensees.[56]

Thus, the court chose to employ contract law rather than recognize the moral right. Indeed, the earlier cases the *Rey* court had cited, involving Babar the elephant and Dr. Suess products, also relied on contract law rather than the moral right. For example, the Dr. Suess case, now nearly thirty years old, provided Suess with the equivalent of the moral right of paternity by allowing him to disassociate his name from a set of dolls designed by the licensees of his early cartoon characters.[57] The court held that Suess did not have a claim for the "appropriation" of his cartoon characters, but he did have a right to prevent labels on the dolls that suggested he was involved in the dolls' design.[58]

In *Boosey & Hawkes Music Publishers, Ltd. v. Walt Disney Co.*,[59] the assignee of the rights to Igor Stravinsky's composition "The Rite of Spring," ("Boosey & Hawkes"), sued Walt Disney Co. ("Disney"), for copyright infringement after Disney released the videocassette version of *Fantasia*.[60] Boosey & Hawkes argued that, although "The Rite of Spring" was in the public domain, Disney had violated § 43(a) of the Lanham Act[61] "by mutilating 'The Rite of Spring' and by impairing the

---

[56] *Id.*

[57] Geisel v. Poynter Products, Inc., 295 F. Supp. 331 (S.D.N.Y. 1968).

[58] *Id.* at 357.

[59] 934 F. Supp. 119 (S.D.N.Y. 1996).

[60] *Id.* at 121.

[61] Section 43(a) of the Lanham Act, codified at 15 U.S.C. § 1125(a), provides:

> Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which –
>
> (A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person, or
>
> (B) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities,
>
> shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.

integrity of that work, in violation of Stravinsky's moral right of authorship."[62] Boosey & Hawkes also cited the Article 6*bis* of the Berne Convention for the proposition that the author had, at the minimum, "the right to claim authorship of the work and to object to any distortion, mutilation, or other modification of or other derogatory action in relation to, the said work, which shall be prejudicial to his said honor or reputation."[63] The court rejected this argument, holding that §43(a) does not preclude the modification or mutilation of a work; thus, the "[p]laintiff's claim based upon the mutilation of 'The Rite of Spring' must fail as a matter of law."[64]

In *Choe v. Fordham University School of Law*,[65] Jerry Choe ("Choe"), the author of a comment[66] in the *Fordham International Law Journal* ("*ILJ*"), sued the Fordham University School of Law ("Fordham") and the *ILJ*.[67] Choe claimed that Fordham and the *ILJ* had mutilated his comment in the *ILJ* and thus violated his common law "moral rights" and § 43(a) of the Lanham Act.[68]

According to Choe, he had written the note for the *ILJ* and reviewed the note with the *ILJ's* editors before the note was published.[69] Once the note was published, however, Choe was "horrified to discover numerous alleged substantive and typographical errors."[70] Choe approached two Fordham law professors about his grievances, and they agreed that Choe and the *ILJ* had three options.[71] The *ILJ* could: (1) publish an errata sheet, (2) republish a corrected bound reprint of Choe's comment that could be placed next to the original bound volume, or (3) republish a corrected version of Choe's comment in a new issue of the *ILJ* and "send a sticker to be placed on

---

[62] *Id.* at 125.

[63] *Id.* at 126.

[64] *Id.*

[65] 920 F. Supp. 44 (S.D.N.Y. 1995)

[66] Choe, Jerry, *Parent-Right Invocation of Rights for U.S. Subsidiaries of Japanese Companies under U.S.-Japan Treaty of Friendship, Commerce, and Navigation*, 15 FORDHAM INT'L L.J. 1130 (1992).

[67] 920 F. Supp. at 45.

[68] *Id.*

[69] *Id.* at 45-46.

[70] *Id.* at 46.

[71] *Id.*

the front page of the original article to all subscribers, alerting them to the reprinted Comment."[72] Although Choe, the professors, and the *ILJ* initially agreed that the third option was the best, the professors reconsidered after reading Choe's comment and the changes suggested by Choe.[73] When negotiations with Fordham and the *ILJ* failed to satisfy Choe, he brought a suit against them in the United States District Court for the Southern District of New York.[74]

The court first distinguished Choe's claims from those in *Gilliam*, noting that Choe presented no evidence that a reader of his comment would be so confused by the mistakes in the comment that the reader would fail to understand the comment's meaning.[75] The court then turned to Choe's moral rights claim and quickly dispatched it.[76] The court stated that "[t]here is no federal claim for violation of plaintiff's alleged 'moral rights.'"[77] Furthermore, the court rejected Choe's argument that Article 6*bis* of the Berne Convention gave him a cause of action for the violation of his moral rights in federal court.[78] The court then held that:

> because the law of this Circuit does not recognize an author's common law "moral rights" to sue for alleged distortion of his written work, plaintiff's purported "moral rights" claim is dismissed. Absent federal jurisdiction, there is no reason to hear plaintiff's pendent state law claims in this court, and they too are dismissed.[79]

Thus, the *Choe* court flatly dismissed the claim of a moral right violation in 1995, long after the supposed "implementation" of Berne.

---

[72] *Id.*

[73] *Id.*

[74] *Id.* at 47.

[75] *Id.* at 48.

[76] *Id.* at 49.

[77] *Id.*

[78] *Id.* The court found that the "Convention itself, as adopted, does not create federal common law action for violation of author's 'moral rights.'" *Id.* (*citing* 2 MELVILLE NIMMER AND DAVID NIMMER, NIMMER ON COPYRIGHT § 8D.02[D], 8d-15-30 (1994).

[79] *Id.*

B. *VARA cases*

Although VARA was designed to protect moral rights, VARA has not always been effective in protecting the rights of creative artists. VARA has three distinct shortcomings. First, it protects only a specific type of artist.[80] Second, it protects only certain types of art.[81] Finally, even when the VARA definitions of "visual artist" and "visual art" are met, a number of exceptions may still operate to prevent the artist from being protected.[82] One particularly interesting area is where VARA rights come into direct conflict with private and public property rights.

In *Carter v. Helmsley Spear, Inc.*,[83] the plaintiffs sought a permanent injunction that would prevent the defendant,[84] a commercial building owner, from destroying, modifying, or removing a large work of visual art that the plaintiff artists had been commissioned to install by the defendant's tenant.[85] The District Court enjoined the building's manager and owner from altering the work during the lifetime of the three artists.[86] On appeal, the United States Court of Appeals for the Second Circuit examined the relationship between VARA and moral rights.[87] The *Carter* court commented that American courts typically declined to inject the concept of moral rights into American law, opting instead to recognize moral rights under the guise of other legal theories.[88] However, the court also noted VARA, *Gilliam*,[89] and the enactment in eleven states of moral rights statutes as evidence that moral rights are being addressed in American law.[90] The *Carter* court took a detailed look at VARA, but ultimately held that the artists' work was a work made for hire and thus exempted from VARA protection.

---

[80] *See supra* Section II *D.*

[81] *Id.*

[82] *Id.*

[83] 71 F.3d 77 (2d Cir. 1995) (J. Cardamone, with Judges Altimari and Meskill).

[84] A management company owned by the colorful and notorious Leona Helmsley.

[85] 71 F.3d at 79.

[86] *Id.* at 81.

[87] *Id.* at 81-83.

[88] *Id.* at 82. "[S]uch as copyright, unfair competition, invasion of privacy, defamation, and breach of contract."

[89] *See supra* note 26.

[90] *Carter*, 71 F.3d at 81-82.

Accordingly, the *Carter* court reversed the lower court's order enjoining the building's manager and owner from altering the work.[91]

In *Lee v. A.R.T. Co.*,[92] the artist Annie Lee ("Lee") sued the A.R.T Company ("A.R.T.") for copyright infringement after A.R.T. purchased a number of Lee's small lithographs and note cards, mounted them on ceramic tiles, and resold them.[93] Lee argued that the tiles were derivative works, and she cited 17 U.S.C. § 106(2) and *Mirage Editions, Inc. v. Albuquerque A.R.T. Co.*[94] in support of her position.[95] Although the facts in *Lee* were quite similar to *Mirage Editions*, the Seventh Circuit rejected Lee's claims that the tiles constituted derivative works.[96]

The Seventh Circuit's opinion in *Lee* has two important implications. First, the court declined to follow *Mirage Editions*. Rather than following the Ninth Circuit's prior decision on nearly identical facts that this was copyright infringement, the Seventh Circuit balked:

> If Lee (and the ninth circuit) are right about what counts as a derivative work, then the United States has established through the back door an extraordinarily broad version of author's moral rights, under which artists may block any modification of their works of which they disapprove. No European version of *droit moral* goes this far. Until recently, it was accepted wisdom that the United States did not enforce any claim of moral rights; even bowdlerization of a work was permitted unless the modifications produced a new work so different that it infringed the exclusive right under § 106(2).[97]

Second, the court interpreted the overlap of the copyright act and VARA narrowly, holding that "It would not be sound to use § 106(2) to provide artists with exclusive rights deliberately omitted from the Visual Artists Rights Act."[98] Thus, VARA, which was intended to

---

[91] *Id.* at 88.
[92] 125 F.3d 580 (7th Cir. 1997).
[93] *Id.*
[94] 856 F.2d 1341 (9th Cir. 1988).
[95] Lee, 125 F.3d at 580.
[96] *Id.* at 581-83.
[97] *Id.* at 582.
[98] *Id.* at 583.

inject moral rights into American law, was used here to limit the extent of moral rights. Because Lee's work did not fit the VARA definition, she was denied protection even though the Ninth Circuit had protected an artist under very similar facts *before* VARA was enacted.[99]

In *English v. BFC & R East 11th Street LLC*,[100] six artists ("English") who had created an "installation"[101] of artwork in a community garden sued the City of New York ("the City") and the developers of an affordable housing complex ("BFC") under VARA.[102] English sought to enjoin the City and BFC from development of the garden, and the City and BFC moved for summary judgment.[103] The *English* court recognized that "VARA was intended to protect the 'moral rights' of artists."[104] Moreover, the court stated that "a violation of VARA constitutes a prima facie showing of irreparable injury."[105] However, the court found that VARA was inapplicable to the case at

---

[99] *Id.* The court noted that § 106A(a)(3)(A) gives artists the right to "prevent any intentional distortion, mutilation, or other modification of that work which would be prejudicial to his or her honor or reputation." The court stated that Lee had "disclaimed any contention that the sale of her works on tile has damaged her honor or reputation." *Id.* Furthermore, the court held that Lee's artwork did not fall within § 106A's definition of a "work of visual art" because the note cards and lithographs were neither unique works nor limited editions of 200 copies or fewer that were consecutively numbered and signed by the artist. *Id.*

[100] No. 97 Civ. 7446 (WB), 1997 WL 746444 (S.D.N.Y. Dec. 3, 1997).

[101] London's Tate Gallery has defined installation art as "art works which may occupy all or any parts of a space, in or out of doors, and be made of any materials, natural or manufactured, that fit the artist's purpose." (*reprinted in* Gordon Burn, *Why So Hard to Swallow?*, THE INDEPENDENT—LONDON, Nov. 10, 1993, *available at* 1993 WL 10893117). Here, the installation consisted, *inter alia*, of: five murals and five sculptures that, in the context of the garden itself, constituted "a large environmental sculpture encompassing the entire site and comprised of thematically interrelated paintings, murals, and individual sculptures of concrete, stone, wood and metal, and plants." *English*, 1997 WL 746444 at *1.
Installations are frequently site specific. *See* Elizabeth Beauchamp, *Entertainment*, THE EDMONTON JOURNAL, June 28, 1991, *available at* 1991 WL 7685319. Because installations are designed for a specific space, they are virtually destroyed when removed from that space.

[102] *English*, 1997 WL 746444, at *1.

[103] *Id.*

[104] *Id.* at *3.

[105] *Id.*

hand because English's artwork was placed on the property illegally. Thus, the court held that "VARA is inapplicable to artwork that is illegally placed on the property of others, without their consent, when such artwork cannot be removed from the site in question."[106]

In *Martin v. City of Indianapolis*, the City of Indianapolis ("City") granted sculptor Jan Randolph Martin ("Martin") permission to construct a large stainless steel sculpture on land owned by John Lafollette ("Lafollette").[107] Martin worked on the sculpture during weekends and holidays, and he completed it after two and one-half years.[108] Five years later, the City determined that it was necessary for the City to acquire the land on which the sculpture was located.[109] Martin protested, and he also proposed donating his sculpture to the City if the City agreed to pay for the cost of removing and reinstalling the sculpture.[110] The City subsequently acquired the land on which the sculpture was located, and Martin again offered to donate the sculpture.[111] The City disregarded Martin's protests, however, and contracted to have the sculpture demolished.[112] When the sculpture was demolished, Martin brought suit in the United States District Court for the Southern District of Indiana, alleging that the City had violated his right of integrity under VARA.[113]

The City moved for summary judgment against Martin, asserting four affirmative defenses.[114] First, the City argued that Martin had failed to show that his sculpture was a work of recognized stature.[115] Second, the City argued that Martin's sculpture was advertising and

---

106 *Id.* at *4.

107 982 F. Supp. 625, 628 (S.D. Ind. 1997).

108 *Id.*

109 *Id.*

110 *Id.*

111 *Id.* at 629.

112 *Id.*

113 *Id.* at 630. 17 U.S.C. § 106A(a)(3)(B) provides that "the author of a work of visual art . . . shall have the right to prevent any destruction of a work of recognized stature, and any intentional or grossly negligent destruction of that work is a violation of that right.").

114 *Martin*, 982 F. Supp. at 630.

115 *Id.*

thus not protected under VARA.[116] Third, the City argued that Martin's sculpture was a "work made for hire" and thus not protected under VARA.[117] Finally, the City argued that Martin had waived his VARA rights.[118]

The *Martin* court rejected each of the City's affirmative defenses in turn. First, the court found that Martin had "produced significant evidence, including exhibits and affidavits, tending to show that [his sculpture] was a work of recognized stature."[119] Because the City failed to advance any factual dispute as to Martin's evidence, the court held that Martin's sculpture was, in fact, a work of recognized stature.[120]

The court then turned to the City's argument that Martin's work was advertising that did not enjoy VARA protection.[121] The *Martin* court found that "no reasonable construction of the facts in this case could make [the sculpture] merely a piece of advertising material," and the court denied the City's motion for summary judgment on that issue.[122] The court also found that Martin's sculpture was "a personal project not actuated by a purpose to serve [Lafollette]" and rejected the City's argument that Martin's sculpture was a "work made for hire."[123]

Finally, the *Martin* court examined the City's claim that Martin had waived his VARA rights by signing a project agreement when he obtained a variance from the city to build the sculpture.[124] The court reviewed the agreement between Martin and the City and found that: (1) the contract obligated the City "to provide Martin with 90 days'

---

[116] *Id.*

[117] *Id.*

[118] *Id.*

[119] *Id.* at 631. Martin's evidence included newspaper articles and letters with favorable comments about the sculpture's design, structure, and construction. *Id* at 630.

[120] *Id at 631.*

[121] *Id.*

[122] *Id.* at 632. The court noted that the sculpture's inclusion in Lafollette's advertising materials could not transform the sculpture into advertising "any more than a photograph of the State Capitol included in an advertising medium would turn the State Capitol into mere advertising." *Id.*

[123] *Id.* at 635.

[124] *Id.*

written notice to remove the sculpture," and (2) the contract "in no way discusses or contemplates destruction of the sculpture."[125] After dispensing with this last of the City's affirmative defenses, the *Martin* court then denied the City's motion for summary judgment.[126]

The court then turned to Martin's motion for summary judgment. Initially, the court noted that VARA:

> protects both the reputations of certain visual artists and the works of art they create. It provides these artists with the rights of "attribution" and "integrity" . . . . These rights are analogous to those protected by Article 6*bis* of the Berne Convention, which are commonly known as "moral rights." The theory of moral rights is that they result in a climate of artistic worth and honor that encourages the author in the arduous act of creation.[127]

The *Martin* court then found that: (1) Martin was the author or creator of the work, (2) the sculpture met VARA's definition of a work of visual art, and (3) the sculpture was protected under VARA's scope of protection.[128] Because Martin also showed that his sculpture was intentionally destroyed by the City, the court held that Martin had successfully established a VARA claim and granted Martin's motion for summary judgment.[129]

C. *State Moral Rights Statutes*

In the late 1970s, a number of states began to pass state moral rights statutes. Today, fourteen state statutes protect the moral rights of artists, but the scope and protection of these statutes vary significantly.[130] In areas where the state statutes and VARA protect the

---

[125] *Id.* at 636.

[126] *Id.* at 638.

[127] *Id.* at 629-30. (quoting Carter v. Helmsley-Spear, Inc., 71 F.3d 77, 83 (2d Cir.1995) and H.R. Rep. No. 514, 101st Cong., 2d Sess. 5 (1990)).

[128] *Id.* at 637-38.

[129] *Id.* at 638. Although the court determined that Martin was entitled to judgment, the court directed the parties to brief the issue of damages or request an evidentiary on that issue before the court entered its final judgment. *Id.*

[130] *See* Geri J. Yonover, *The Dissing of Da Vinci: The Imaginary Case of Leonardo v. Duchamp: Moral Rights, Parody, and Fair Use*, 29 VAL. U. L. REV. 935, 957-962 (1995). *See also* P.R. Laws Ann. tit. 31, §§ 1401-1401(h) (1993)

same subject matter and provide equivalent rights, VARA expressly preempts the state statutes.[131] Furthermore, implied preemption may occur, even when state statutes are not "equivalent" under § 301, where the state statutes frustrate VARA's objectives.[132]

1. California

California's Art Preservation Act ("CAPA")[133] is designed to prevent people who acquire "fine art" from altering or destroying it.[134] CAPA begins with a legislative finding and declaration:

> [T]he physical alteration or destruction of fine art, which is an expression of the artist's personality, is detrimental to the artist's reputation, and artists therefore have an interest in protecting their works of fine art against any alteration or destruction; and that there is also a public interest in preserving the integrity of cultural and artistic creations.[135]

CAPA protects integrity by prohibiting anyone other than the artist from intentionally altering, defacing, destroying, or mutilating a work of fine art.[136] In addition, these prohibitions apply to framers, conservers, or restorers of art who alter, deface, or mutilate a work of fine art through gross negligence.[137] Remedies for artists who are

---

(Puerto Rico's statutory provisions that recognize an author's exclusive rights analogous to the moral right—*i.e.* the creative artist's exclusive enjoyment of the benefits of her artwork and the complete power dispose of her work in any manner she feels appropriate).

[131] 17 U.S.C. § 301 (1992).

[132] *See* Yonover, *supra* note 129, at 957.

[133] CAL. CIV. CODE § 987 (West Supp. 1996). *See generally* G.L. Francione, *The California Art Preservation Act and Federal Preemption by the 1976 Copyright Act—Equivalence and Actual Conflict,* 18 CAL. W. L. REV. 189 (1982); John G. Petrovich, *Artists' Statutory "Droit Moral" in California: A Critical Appraisal*, 15 LOY. L.A. L. REV. 29 (1981).

[134] CAL. CIV. CODE § 987 (West Supp. 1996).

[135] *Id.* at § 987(a). CAPA was enacted with two goals in mind. First, "to uphold the artist's reputation, since fine art is 'an expression of the artist's personality' thereby triggering the artist's interest in protecting the work; and [second] to promote the 'public interest in preserving the integrity of cultural and artistic creations.'" Yonover, *supra* note 128, at 957.

[136] CAL. CIV. CODE § 987(c)(1).

[137] *Id.* § 987(c)(2).

injured by violations of CAPA include injunctive relief, actual and punitive damages, reasonable attorneys' and expert witness fees, and "[a]ny other relief which the court deems proper."[138]

In *Lubner v. City of Los Angeles*,[139] a substantial amount of the life's work of two artists, Lorraine and Martin Lubner, was destroyed when a City of Los Angeles trash truck parked atop a hill rolled down and smashed through their home, damaging the couple's artwork, which included drawings, paintings, posters, and prints.[140] The Lubners disputed the value of the art with their homeowners insurance carrier, and they recovered approximately $260,000 for the artwork in arbitration.[141] The Lubners then filed an action in negligence against the City of Los Angeles ("the City") for damages to their artwork that exceeded their insurance policy.[142] At trial, the Lubners sought to introduce evidence showing their experience and stature as artists;[143] however, the evidence was precluded by rulings on the City's motions *in limine*.[144]

On appeal, the Lubners argued that, under CAPA, they had "the right to be compensated for damages to their artistic reputation resulting from the destruction of their paintings."[145] The California Court of Appeal, Second District, disagreed, holding that CAPA did not provide a claim for damages when the destruction of fine art was

---

[138] *Id.* § 987(e)(1-5) ("In the event that punitive damages are awarded, the court shall, in its discretion, select an organization or organizations engaged in charitable or educational activities involving the fine arts in California to receive any punitive damages.") *Id.* at
§ 987(e)(3).

[139] 53 Cal. Rptr. 2d 24 (1996).

[140] *Id.* at 26.

[141] *Id.*

[142] *Id.*

[143] *Id* Mr. Lubner had been an instructor of drawing and painting at the University of Southern California, the University of California at Los Angeles, and the College of Creative Studies in Santa Barbara. His paintings "have been exhibited throughout the United States, Italy, England, and Scotland," and Ms. Lubner's works "have been exhibited throughout California and London." The Lubners' artistic works had been sold to collectors, museums, and various public collections since 1954. *Id.*

[144] *Id.* at 26-27.

[145] *Id.*

the result of simple negligence.[146] Furthermore, the court found that CAPA appeared to have been preempted by VARA.[147] Thus, the *Lubner* court found no error in the trial court's preclusion of evidence concerning the Lubners' loss of reputation.[148]

Earlier California cases have reached varying results when determining the scope of CAPA. In *Robert H. Jacobs, Inc. v. Westoaks Realtors, Inc.*,[149] the California Court of Appeal, Second District, held that architectural plans were not covered by CAPA.[150] However, in *Botello v. Shell Oil Co.*,[151] the same California Court of Appeal held that a mural painted on the wall of a service station was protected by CAPA.[152]

In *Botello*, the plaintiffs were artists who had been hired by Shell Oil Company ("Shell") to paint a large mural on the wall of a Shell service station.[153] The mural, entitled "Filling Up On Ancient Energies," portrayed themes of Hispanic culture and covered roughly 1200 square feet.[154] The artist's names and addresses were included in the mural, and they received favorable publicity from it.[155] Eight years later, Shell destroyed the mural to build a parking lot.[156] The plaintiffs then brought an action seeking damages under CAPA.[157]

---

[146] *Id.* at 29.

[147] *Id.* at 28 ("[I]t appears that section 987 has been preempted by the Visual Artists Rights Act [of 1990]").

[148] *Id.* at 29. The court also held that there is no implied remedy under CAPA for the destruction of an artist's work due to simple negligence, and that the Lubners were not entitled to recover damages for emotional distress resulting from the negligent destruction of their artwork. *Id.*.

[149] 205 Cal. Rptr. 620 (1984).

[150] *Id.* at 624 (concluding that architectural plans are not protected by CAPA because they do not fall under the definition of "fine art" as "an original painting, sculpture, or drawing, or an original work of art in glass, of recognized quality, but shall not include work prepared under contract for commercial use by its purchaser" (citing CAL. CIV. CODE § 987(b)(2)).

[151] 280 Cal. Rptr. 535 (1991).

[152] *Id.* at 540.

[153] *Id.* at 536.

[154] *Id.*

[155] *Id.*

[156] *Id.*

[157] *Id.*

At trial, the plaintiffs presented evidence that the mural could have been removed from the wall; thus, the mural was not exempted from CAPA protection by the exception for art that cannot be removed from a building without damage to the art or the building.[158] The defendants argued that a mural was not one of the types of art protected by CAPA.[159]

The *Botello* court found that a mural was a form of painting and then concluded that California's legislature "intended the term 'fine art' to include paintings in the form of murals that otherwise qualify for protection under [CAPA]."[160]

2. Connecticut

Connecticut's Art Preservation and Artists' Rights statute provides that "[n]o person, except an artist who owns and possesses a work of fine art which the artist has created, shall intentionally commit, or authorize the intentional commission of, any physical defacement or alteration of a work of fine art."[161] In addition, the artist maintains the right to retain authorship at all times.[162] To effectuate the rights of artists, the statute allows artists to seek injunctive relief, actual damages, reasonable attorneys' and expert witness fees, and any other relief that the court deems proper.[163]

3. Illinois

Illinois statutes do not provide a creative artist with any specific moral right protections. However, the Illinois Consignment of Art Act ("ICAA")[164] holds art dealers "strictly liable for the loss of or damage to [a] work of fine art while it is in the art dealer's possession."[165]

---

158 *Id.*

159 *Id.*

160 *Id.* at 540.

161 CONN. GEN. STAT. ANN. § 42-116t(a) (West 1992).

162 *Id.* § 42-116t(b).

163 *Id.* § 42-116t(c). (unlike the California statute, the Connecticut statute does not provide for punitive damages).

164 ILL. COMP. STAT. ANN. ch. 815, §§ 320/1 to /8 (West 1993).

165 *Id.* § 320/2(5).

Under ICAA, when an artist delivers one of their works of fine art to a dealer, the art becomes "trust property and the art dealer is trustee for the benefit of the artist until the work of fine art is sold to a bona fide purchaser or returned to the artist."[166] ICAA allows the art dealer to display or use the artwork "only if notice is given to users or viewers that the work of fine art is the work of the artist."[167] Thus, ICAA does provide a limited analog for the right of paternity—the right to be associated with their art when it is displayed by an art dealer. However, this statutory right is of questionable value since such identification is already commonplace and typically covered by the contractual consignment agreement in any event.

If an art dealer violates the ICAA, the dealer may be subject to a $50 fine as well as "actual damages, if any, including the incidental and consequential damages, sustained by the artist by reason of the violation and reasonable attorneys' fees."[168]

One of the few decisions in which an artist's moral rights were found not to have been preempted by VARA arose in Illinois. In *Gegenhuber v. Hystopolis Production, Inc.*,[169] plaintiff John Gegenhuber ("Gegenhuber") was part of an ensemble that wrote, designed, constructed, produced, and performed puppet shows in the Chicago area.[170] As part of the ensemble, Gegenhuber adapted Elmer Rice's play *The Adding Machine* for performance as a puppet show, and he also created and constructed many of the major character puppets for *The Adding Machine*.[171]

The Adding Machine was successful with the critics and the public, but Gegenhuber left the ensemble after the show's successful initial run.[172] Without Gegenhuber's knowledge, the ensemble presented another extended run of *The Adding Machine*.[173] The second run's playbill credited Gegenhuber as only one of several people who had

---

166 *Id.* § 320/2(3).

167 *Id.* § 320/5(2).

168 *Id.* at § 320/7(2).

169 No. 92-C-1055, 1992 WL 168836 (N.D. Ill. July 13, 1992).

170 *Id.* at *1.

171 *Id.*

172 *Id.*

173 *Id* (the second run of *The Adding Machine* ran from October of 1990 until May of 1991).

contributed to the production.[174] Gegenhuber discovered this and sued in state court, alleging that the ensemble had violated: (1) his right of attribution, (2) his right to his fair share of the profits, and (3) his ownership interest in certain puppets.[175] The defendants argued that VARA preempted Gegenhuber's claims, and they sought to remove the case from Illinois state court to federal court.[176]

The *Gegenhuber* court first noted that VARA's definition of "work of visual art" is silent as to many types of copyrightable artwork, including choreographed works, dramatic, literary, and musical works, pantomimes, and sound recordings, "presumably because these types of works are not generally perceived to be visual in nature."[177] The *Gegenhuber* court then observed that works which were not included in VARA's definition of "visual art" provided authors no right to attribution under VARA, even if the work was otherwise copyrightable.[178] Accordingly, the court held that Gegenhuber's attribution claim was not preempted by VARA and remanded the proceeding back to Illinois state court.[179]

On remand, the trial court entered a judgment in favor of Gegenhuber and a co-plaintiff for $50,000 and issued a permanent injunction prohibiting the defendants from performing *The Adding Machine* without properly crediting Gegenhuber.[180] Thus, although state moral rights statutes have become substantially limited after the enactment of VARA, they do retain some viability in areas that VARA does not address.

---

174 *Id.*

175 *Id.* at *3.

176 *Id.*

177 *Id.*

178 *Id.*

179 *Id.* at *5.

180 This judgment was upheld on other grounds by the Illinois Court of Appeals, First District in Gegenhuber v. Hystopolis Prod., Inc., 660 N.E.2d 107 (1995).

4. Louisiana

The Louisiana Artists' Authorship Rights Act ("LAARA")[181] prohibits anyone other than the artist or a person acting with the artist's consent from knowingly displaying, making accessible, publishing, or reproducing an artist's work in a modified, mutilated, defaced, or altered form.[182] Moreover, LAARA prohibits the knowing display or publication of artistic work:

> if it is in its original or reproduced form and is displayed, made accessible to the public, or published as being the work of the artist, when the work is known to be generally regarded by the public as that of the artist, or under circumstances in which it would be reasonably regarded as being the work of the artist, and damage to the artist's reputation is reasonably likely to result therefrom."[183]

Finally, anyone who alters, defaces, modifies, or mutilates a work of fine art through gross negligence is also liable under LAARA.[184] Artists aggrieved under LAARA are provided with a cause of action for both "legal and injunctive relief."[185]

5. Maine

Maine's art preservation statute ("MAPS") covers both of the two main moral rights concepts.[186] MAPS protects integrity by prohibiting the knowing display or publication of a:

> work of fine art of [an] artist or a reproduction of a work of fine art of that artist in an altered, defaced, mutilated or modified form if the work is displayed, published or reproduced as being the work of the artist or under circumstances under which it would reasonably be regarded as being the work of the artist, and damage to the artist's reputation is reasonably likely to result from the display, publication or reproduction.[187]

---

[181] LA. REV. STAT. ANN. §§ 51:2151-2156 (West 1996). *See generally* Jimmy A. Frazier, *On Moral Rights, Artist-Centered Legislation, and the Role of the State in Art Worlds: Notes on Building a Sociology of Copyright Law*, 70 TUL. L. REV. 313 (1995).

[182] LA. REV. STAT. ANN. § 51:2153(1) & (2).

[183] *Id.* § 51:2153(3).

[184] *Id.* § 51:2155(A).

[185] *Id.* § 51:2156(A).

[186] ME. REV. STAT. ANN. tit. 27, § 303 (West Supp. 1995).

[187] *Id.* § 303(2).

MAPS also protects paternity by providing the artist with the right at all times to claim or disclaim authorship of her work of fine art.[188] Finally, MAPS protects artists against grossly negligent conservation work on a piece of fine art.[189] MAPS provides aggrieved artists with a cause of action for both legal and injunctive relief.[190]

6. Massachusetts

The Massachusetts Art Preservation Act ("MAPA")[191] begins with a declaration and finding by the general court that reads exactly the same as that of the California legislature's.[192] MAPA gives creators of fine art both of the major moral rights protections. MAPA protects integrity by prohibiting anyone other than the artist from intentionally committing or authorizing the intentional commission of any physical alteration, defacement, destruction, or mutilation of a work of fine art.[193] MAPA covers the right of paternity by providing the artist with the right to claim or disclaim authorship of her work of fine art.[194] Remedies for artists aggrieved under MAPA include actual damages, declaratory relief, injunctive relief, reasonable attorneys' and expert witness fees, and any other relief that the court deems proper.[195]

In *Moakley v. Eastwick*, the one reported decision under MAPA, the Supreme Judicial Court of Massachusetts held that MAPA did not

---

[188] *Id.* § 303(3).

[189] *Id.* § 303(4).

[190] *Id.* § 303(5).

[191] MASS. ANN. LAWS ch. 231, § 85S (Law Co-op. 1996). *See generally* Vance R. Koven, *Observations on the Massachusetts Art Preservation Act*, 71 MASS. L. REV. 101 (1986).

[192]

> [T]he physical alteration or destruction of fine art, which is an expression of the artist's personality, is detrimental to the artist's reputation, and artists therefore have an interest in protecting their works of fine art against such alteration or destruction; and that there is also a public interest in preserving the integrity of cultural and artistic creations.

MASS. GEN. LAWS ANN. ch. 231, § 85S(a). *Compare* CAPA's legislative declaration and finding, *infra* section III *C(1)*.

[193] MASS. ANN. LAWS ch. 231, § 85S(c).

[194] *Id.* § 85S(d).

[195] *Id.* § 85S(e).

apply retroactively to cover works of fine art that were created before the date when MAPA became effective.[196]

7. Nevada

Nevada statutes also protect the moral rights of creative artists.[197] The right of integrity is protected by a prohibition on the display or publication of an artist's work or a reproduction of an artist's work in an altered, defaced, or mutilated form.[198] Granting the artist the right to have her name associated or disassociated with her work protects the right of paternity.[199] Artists who are aggrieved under the Nevada statutes may bring an action for damages, reasonable attorney's fees, and costs.[200]

8. New Jersey

New Jersey's Artists' Rights Act ("NJARA")[201] provides moral rights protection to the creator of a work of fine art.[202] NJARA protects the right of integrity by providing that no person other than the artist, or a person acting with the artist's consent, shall knowingly display, publish, reproduce, or otherwise make accessible to the public,

---

[196] 666 N.E.2d 505 (Mass. 1996).

[197] NEV. REV. STAT. ANN. §§ 597.720 to .760 (Michie 1994). *See also Property; Intellectual Property— Artists' Droit Moral*, 1989 PAC. L.J. REV. NEV. LEGIS. 177.

[198] NEV. REV. STAT. ANN. § 597.740(1).

[199] *Id.* § 597.730.

[200] *Id.* § 597.740(2).

[201] N.J. REV. STAT. ANN. §§ 2A:24A-1 to 24A-8 (West 1987). The New Jersey Legislature's findings and declarations include:

> a. The physical state of a work of fine art is of enduring and crucial importance to the artist and the artist's reputation;
>
> b. There have been cases where works of art have been altered, defaced, mutilated or modified, thereby destroying the integrity of the artwork and causing a loss to the artist and the artist's reputation;
>
> c. Alteration, defacement, mutilation or other modification of an artist's work may be prejudicial to his career and reputation; and
>
> d. There are circumstances when an artist has the legal right to object to the alteration, defacement, mutilation or other modification of his work or to claim or disclaim authorship of a work of art.

Id. § 2A:24A-2.

[202] *Id.* § 2A:24A-3.

"a work of fine art of that artist in an altered, defaced, mutilated or modified form, if damage to the artist's reputation is reasonably likely to result and if the work is displayed as being the work of the artist."[203] NJARA also provides paternity rights by providing the artist with the right to claim or disclaim authorship at all times.[204] In addition, negligent conservation work may result in a violation of NJARA.[205] Artists aggrieved under NJARA have a cause of action for both legal and injunctive relief.[206]

9. New Mexico

New Mexico's Fine Art in Public Buildings Act ("FAPBA"),[207] the oldest of the state moral rights statutes, protects the moral rights of integrity and paternity so long as the work fits New Mexico's definition of fine art of recognized quality.[208] FAPBA protects the moral right of integrity by prohibiting anyone other than the artist from intentionally altering, defacing, destroying, or mutilating "a work of fine art in public view."[209] FAPBA protects the right of paternity by providing the artist with the right to claim or disclaim authorship credit in a work of fine art.[210] FAPBA provides artists with the right to seek damages, injunctive relief, reasonable attorney's fees, and "any other relief which the court deems proper."[211]

10. New York

New York's Artists' Authorship Rights Act ("AARA")[212] protects both integrity and paternity.[213] AARA protects integrity by prohibiting

---

[203] *Id.* § 2A:24A-4.
[204] *Id.* § 2A:24A-5.
[205] *Id.* § 2A:24A-6(c).
[206] *Id.* § 2A:24A-8(a).
[207] N.M. STAT. ANN. §§ 13-4B-1 to 13-4B-3 (Michie 1997 Repl.).
[208] *Id.* § 13-4B-2B.
[209] *Id.* § 13-4B-3A.
[210] *Id.* § 13-4B-3B.
[211] *Id.* § 13-4B-3C.
[212] N.Y. ARTS & CULT. AFF. § 14.03 (McKinney Supp. 1996).

anyone other than the artist from knowingly displaying or publishing a work of fine art or a reproduction of the work in a mutilated, modified, defaced, or altered form.[214] AARA protects the moral right of paternity by providing the artist with the right to claim or disclaim authorship of a work at all times.[215] Under AARA, artists my sue for legal and injunctive relief.[216]

Creative artists have had little success in obtaining relief under AARA. First of all, claims under AARA can be preempted by the federal Copyright Act. For example, in *Tracy v. Skate Key, Inc.*,[217] an artist hired to paint a "graffiti" styled mural in a Bronx roller skating rink sued the owners of the rink after owners manufactured and sold merchandise with his mural design on flyers, jackets, skate bags, and T-shirts.[218] The artist ("Tracy") claimed violations of the Copyright Act, the Lanham Act, and AARA.[219] Defendant Skate Key moved for summary judgment, and the United States District Court for the Southern District of New York allowed Tracy to proceed under the Lanham Act and a theory of fraudulent misrepresentation.[220] However, the court held that Tracy's AARA claim had been preempted by the Copyright Act.[221]

In *Morita v. Omni Publications Int'l, Ltd.*,[222] Minoru Morita ("Morita") designed a poster for The American Peace Posters Exhibition to commemorate the 40th anniversary of Hiroshima's

---

213 *Id. See generally* Edward J. Damich, *The New York Artists' Authorship Rights Act: A Comparative Critique*, 84 COLUM. L. REV. 1733 (1984); Sarah A. Smith, Note, *The New York Artists' Authorship Rights Act: Increased Protection and Enhanced Status for Visual Artists*, 70 CORNELL L. REV. 158 (1984).

214 N.Y. ARTS & CULT. AFF. § 14.03(1).

215 *Id.* § 14.03(2).

216 *Id.* § 14.03(4)(a).

217 697 F. Supp. 748 (S.D.N.Y. 1988).

218 *Id.* at 749.

219 *Id.*

220 *Id.* at 751.

221 *Id.* (AARA "was preempted by the Copyright Act because it tracks the rights protected by the Copyright Act."). Tracy proceeded with his other claims and ultimately prevailed without AARA. *See* Tracy v. Skate Key, Inc., 1990 WL 9855 (S.D.N.Y. 1990).

222 741 F. Supp. 1107 (S.D.N.Y. 1990).

bombing.[223] The poster juxtaposed photographs of four pieces of a glass peace dove that appeared to be shattering in flight with a red spot resembling a pool of blood.[224] It bore the words "Give Peace a Chance" and "Hiroshima Appeals."[225] Morita filed an application for copyright registration of the poster, and a certificate of registration was issued.[226] The poster received several awards, and it is now part of the Hiroshima Museum of Modern Art's permanent collection.[227]

Three years later, one of the photographers ("Kan") who had helped create the poster authorized Omni Magazine to use an unused "out-take" from the dove photography session as part of the cover photograph for Omni's May 1988 issue.[228] The cover story's headline read *Nuclear Renaissance: Reactors Are Back and the Reactions Are Good*, and the cover photograph was credited not to Morita, but to Kan.[229] However, the cover photograph's credit indicated that the unused out-take was "[p]art of the permanent collection of the Hiroshima Museum of Modern Art" and "shot by New York-based photographer Kan to commemorate the fortieth anniversary of the bombing of Hiroshima."[230]

Morita sued, asserting claims for copyright infringement, violation of § 43(a) of the Lanham Act, and § 14.03 of the New York Arts and Cultural Affairs Law ("AARA").[231] Morita's AARA claim alleged that the defendants had altered, defaced, mutilated, and modified his anti-nuclear sculpture by placing it in a pro-nuclear context without his consent, thereby damaging his reputation.[232] The United States District Court for the Southern District of New York disagreed, holding that "the picture on the Omni magazine cover is not a mutilation or alteration of Morita's work at all. Nothing about it was changed

---

223 *Id.* at 1109.
224 *Id.*
225 *Id.* at 1110.
226 *Id.*
227 *Id.*
228 *Id.*
229 *Id.*
230 *Id.*
231 *Id.* at 1109.
232 *Id.* at 1114.

between its creation and the use about which Morita is complaining. Juxtaposition with a magazine headline is not an alteration, defacement, mutilation or modification."[233] Accordingly, the court rejected Morita's AARA claim.[234] Thus, the *Morita* court found that the placing of Morita's anti-nuclear artistic concept in Omni's pro-nuclear context did not amount to a mutilation or alteration under AARA.

Wojnarowitz v. American Family Association[235] is one of the few reported decisions that actually holds for a plaintiff under AARA, yet its holding is fairly limited. The plaintiff, David Wojnarowicz ("Wojnarowicz"), was a multi-media artist,[236] and many of his works focused upon "the devastation wrought upon the homosexual community by the AIDS epidemic."[237] The defendant, American Family Association ("AFA"), was a non-profit corporation "chartered for the declared purposes, *inter alia*, of promoting decency in the American society and advancing the Judeo-Christian ethic in America."[238] AFA had been actively campaigning against the subsidization of art that the AFA had characterized as "blasphemous" and "offensive" by the National Endowment for the Arts.[239]

In 1990, the AFA published and distributed a pamphlet as part of their efforts to halt public funding of artwork it deemed offensive.[240] Without Wojnarowicz' permission, the AFA photocopied fourteen fragments of Wojnarowicz' works that the AFA found particularly offensive and reproduced those fragments in their pamphlet.[241] Wojnarowicz sued, claiming that the fragmented and photocopied reproductions of his work violated the AARA[242] The court granted both a prohibitive injunction that prevented any further publication of

---

233 *Id.* at 1114-15.

234 *Id.* at 1115.

235 745 F. Supp. 130 (S.D.N.Y. 1990).

236 *Id.* at 133 (Wojnarowicz' work "includes paintings, photographs, collages, sculptures, installations, video tapes, films, essays and public performances").

237 *Id.*

238 *Id.*

239 *Id.*

240 *Id.* at 134.

241 *Id.*

242 *Id.* at 141.

Wojnarowicz' work by AFA and a mandatory injunction requiring the AFA to conduct a corrective mailing that would ensure Wojnarowicz' right of disattribution under AARA.[243] However, the court found that Wojnarowicz had not proved any actual damages, so it awarded him with only nominal damages in the amount of one dollar.[244]

11. Pennsylvania

Pennsylvania's Fine Arts Preservation Act ("FAPA")[245] protects both of the basic moral rights. FAPA protects integrity by prohibiting anyone other than the artist from altering, defacing, destroying, or mutilating a work of fine art.[246] FAPA provides an artist with the right of paternity by granting the author the right to claim or disclaim authorship of her work at any time.[247] An artist aggrieved under FAPA is provided with the right to actual and punitive damages, injunctive relief, reasonable attorney and expert witness fees, and any other relief that the court deems proper.[248]

12. Rhode Island

Rhode Island's Artists' Rights Act ("RIARA")[249] protects integrity by prohibiting anyone other than the artist from knowingly displaying or publishing fine art "in an altered, defaced, mutilated, or modified form."[250] RIARA also provides artists with paternity rights by providing them at all times with the right to claim or disclaim authorship of their works of fine art.[251]

The statute allows for either legal or injunctive relief.[252]

---

243 *Id.* at 148-49.
244 *Id.* at 149.
245 PA. STAT. ANN. tit. 73, §§ 2101-10 (1993).
246 *Id.* § 2104.
247 *Id.* § 2103.
248 *Id.* § 2105.
249 R.I. GEN. LAWS §§ 5-62-2 to 62-6 (1987).
250 *Id.* § 5-62-3.
251 *Id.* § 5-62-4.
252 *Id.* § 5-62-6(a).

13. South Dakota

South Dakota provides limited moral rights protection to artists whose artwork has been acquired by the state of South Dakota.[253] The South Dakota statute protects integrity by providing the artist with the "right to prevent degradation, mutilation or aesthetic ruining of the work."[254] South Dakota protects paternity rights by providing artists with the right to claim authorship and have their names associated with their work, but the statute is silent as to disassociation.[255]

14. Utah

Utah's Arts Development Act ("UADA")[256] provides a moral right protection, but the Utah statute is extremely limited. UADA only extends protections to artists who are commissioned by Utah's Percent-for-Art Program to create a work of art.[257] Furthermore, those artists that do qualify are provided only with paternity rights to claim authorship and "to deny further association of the artist's name with or authorship of the work of art if conservation work is done by a person other than the artist, which in the opinion of the artist damages its integrity."[258] Integrity rights are protected through two very narrow provisions.[259] First, the artist has the right of first refusal "to conduct all repair and conservation work on the work of art in accordance with accepted principles of professional conservation."[260] Second, the statute gives artists the right of first refusal to buy their work back from Utah should the state decide to sell it.[261]

---

253 S.D. CODIFIED LAWS § 1-22-16 (1992).
254 *Id.* § 1-22-16(3).
255 *Id.* §§ 1-22-16(1) & (2).
256 UTAH CODE ANN. § 9-6-409 (1992).
257 *Id.*
258 *Id.* §§ 9-6-409(2) & (5).
259 *Id.* § 9-6-409(4).
260 *Id.* § 9-6-409(4)(a).
261 *Id.* § 9-6-409(4)(b).

IV. CONCLUSION

Many of America's neighbors and trading partners protect the moral rights of artists. For example, both Canada and Mexico protect moral rights.[262] England has long recognized the moral rights of artists,[263] and the European Union also recognizes the moral right.[264]

---

[262] Canada's moral rights provisions are located in Canada's Copyright Act at R.S.C. ch. C-42, amended by R.S.C. ch. 10 (1st Supp. 1985), ch. 1 (3d Supp. 1985), ch. 41 (3d Supp. 1985), ch. 10 § 14.1(3) (4th Supp. 1985). Mexico's moral rights provisions are located in Mexico's Ley Federal de Derochos de Autor, D.O., Dec. 21, 1963, art. 3, *translated* in UNESCO, Copyright Laws and Treaties of the World (1993).

For an interesting comparison of Canada's monist view of the moral right (similar to that of Germany's) and Mexico's dualist view (similar to that of France's) see Stephen Fraser, *Berne, CFTA, NAFTA, & GATT: The Implications of Copyright Droit Moral and Cultural Exemptions in International Trade Law*, 18 HASTINGS COMM. & ENT. L.J. 287, 293-95 (1998).

[263] *See* Clark v. Associated Newspapers Ltd., 1 All E.R. 959 (Chancery Div. 1998) (finding that a newspaper's parody of a Conservative party politician's diaries along with a photograph of the politician and his name violated both the "the common law tort of passing off and the statutory tort of false attribution of authorship"); Morrison Leahy Music Ltd. v. Lightfoot Ltd., Chancery Div., Transcript: Marten Walsh Cherer, (Hearing Date March 21, 1991) (finding that a remix of five George Michael compositions by the licensees of the compositions entitled Michael to an injunction and costs where the license agreement expressly reserved Michael's moral rights); Joseph v. National Magazine Co., 3 WLR 366, 369 (Chancery Div. 1958) (finding that the author of an article about jade "was entitled to write his own article in his own style, expressing his own opinions, and was not bound to submit to have his name published as the author of a different article expressing other opinions in a different style" and granting the author £200 damages); Frisby v. British Broadcasting Corp., 2 WLR 1204, 1218 (Chancery Div. 1967) (finding that the removal of one line of plaintiff's play was an impermissible "structural" change in the play which violated the plaintiff's rights under a screenwriter's guild agreement).

[264] *See* Radio Telefis Eireann v. European Commission, 1995 FSR 530, para. 73 (E.C.J.) (The European Community's highest court states that "copyright also includes moral rights and that the protection of those interests is so important a component of copyright that it must necessarily be taken into consideration in defining the essential function of copyright."); Collins v. Imtrat Handelsgesellschaft, 1994 FSR 166, 171 (E.C.J.) ("The specific purpose of these rights, as governed by national law, is to protect the moral and economic rights of their owners. The

France and Germany, the two leading countries in originating the concept of the moral right, continue to recognize it.[265] Finally, the Republic of Singapore recognizes the moral right.[266]

America's enactment of VARA and the state moral right statutes are both positive steps towards recognizing the moral right of creative artists, and some courts have recently suggested that the doctrine of moral rights is "creeping" into American law. However, *Botello, Gegenhuber, Martin,* and *Wojnarowicz* are the only four of these seventeen moral rights cases to actually uphold the moral rights of creative artists. Otherwise, these cases show that, although there may be "creepings" and "glimmers" of the moral right in American law, America is still a long way from recognizing the moral right. Therefore, America's protection of the moral rights of artists must be carefully examined and refined in order to bring America's recognition of the moral right closer into line with Berne's requirements and the protections afforded by America's trading partners. In doing so, America will acknowledge the arts as a valuable cultural and economic resource by protecting its creative artists. More importantly, as technological advances and changes in trade agreements draw together the countries of the world, America cannot afford to be hindered by its copyright policy of limited moral rights recognition.

---

protection of moral rights enables authors and artists to resist any distortion, mutilation or other alteration of the work which would be prejudicial to their honour or reputation."); Independent Television Publications Ltd. v. EC Commission, 1991 FSR 678, 679 (Ct. First Instance) (Moral rights of copyright holders are protected "within the meaning of Article 36 EEC, which is to protect the moral rights in the work and ensure a reward for the creative effort, while respecting the aims of, in particular, Article 86 EEC.").

[265] *See supra* § IIA for historical information on French and German moral rights recognition.

[266] *See* Creative Technology, Ltd. v. Aztech Systems Ltd., 1997 FSR 491, para. 83 (Singapore Ct. App.) (finding that copyright owners who sell their copyrighted work retain both economic and moral authorship rights described as "valuable incorporeal rights").