

MORAL RIGHTS OF AUTHOR

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ABSTRACT

This Research paper deals with the overall aspects related with Moral Rights of Author are representative of social values concerning authorship, creativity and artistic work. The paper also deals with application of rights as well as various perspectives related to the copyright act. Through kinds of rights it deals with economic and moral rights of author. The paper also consists of various case laws describing moral ethics and principles.

INTRODUCTION

Moral rights are representative of social values concerning authorship, creativity and artistic work. They are based on a belief that artistic creation is something more than an attempt to earn a livelihood. Moral rights flow from the fact that a literary or artistic work reflects the personality of the creator, just as much as the economic rights reflect the author's need to keep body and soul together. The creativity impulse and the work are of value to society, through his work, the artist provides an important service to society. By recognizing these aspects of artistic life, moral rights bring a culture focus to copyright law.

The world of Intellectual Property Rights (IPR) law is at a crossroads. The pervasive use of digital technologies is making us question the basic premises underlying Intellectual Property Rights and how it should be managed so as to ensure that "Free Culture" remains free, the public domain continues to be enriched, while ensuring creativity gets due returns.¹

The definition of moral rights is given under many laws. Moral rights are the embodiment of the natural rights of an artist has over what he has created.² Moral rights are personal legal rights belonging to the creator of copyright works and not be transferred, assigned or sold.³

In the international drive towards standardization of copyright norms, one aspect of copyright law remains conspicuously exempt. This is the area of droit moral or amoral rights which offers legal protection for the personal, moral interests of authors and artists in their works. Interestingly, an author's moral rights have been recognized as especially important for the

¹ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2487029

² Anurag k.Agrawal & S.S.Sagar Priyathan, Moral Rights in Copyright Law

³ Stephen M.Stewart, International Copyright & Neighbouring Rights (1983), P.59

protection of creativity in the environment of digital technology. However, moral rights have generated persistent international controversy and efforts to harmonize protection have been consistently unsuccessful. International copyright standards have largely been developed through three distinct processes: the TRIPs/WTO system, the World Intellectual

Property Organization (WIPO) and the Copyright Harmonization Directives of the European Union, whose international influence far exceeds their regional effects, In all three processes, attempts have been made to include moral rights, but none of them has been able even to generate a proposal for an internationally viable standard.

Moral rights in the continental tradition are normally thought to be inalienable. The Berne Convention speaks of an author retaining such rights even after relinquishing the copyright. Raymond Sarrate² refers to them as the inalienable, unbearable and perpetual nature of the French moral right

Application of Moral rights

“Literary works such as most written material and including computer programs

“Artistic works such as photographs, sketches, plans, maps, paintings, three dimensional works from pottery to statuary and buildings, craft work and murals

“Musical works

“Dramatic works such as plays and screenplays

“Cinematograph films both feature films and documentaries, as well as television programs, commercials, and music videos. kinds of Moral Rights.

Moral rights are continental European concept. According to this concept there are mainly three rights:-

1. Droit de Divulgation (Right to Publication) this is the first moral right of an author. The right gives author the right to decide whether he is going to publish or not to publish his artistic or literary work.
2. Droit de Paternité (The right to Paternity):- this right gives author the right of authorship of his artistic or literary work. Author can also prevent others from using

his name in their works.

3. Droit Respect de l' oeuvre (The right of integrity):- it gives the author the right to prevent alternation, mutilation or distortion and other action that may damage the author's honour or reputation. This right arises in the case of assignment and after assignment when any one creates such type of distortion or mutilation which is against author's reputation or honor.

THE “COPYRIGHT PERSPECTIVE” ON MORAL RIGHTS

There is undoubtedly some truth in the suggestion that there is a “copyright perspective” on moral rights. Moral rights laws in copyright jurisdictions tend to exhibit certain common features. Where rights are granted, they exist as individual, separate entitlements – as moral rights (plural) - rather than as particular reflections of a single overarching principle. In this respect, they differ, for example, of le droit moral in French law. Moral rights laws in copyright jurisdictions are generally drafted in a common legislative style, leaning more towards detailed delineation than broad principle.

They also have common features of substance:

- They do not go much beyond the international baseline provided by Art 6bis of the Berne Convention. As a consequence, rights which are not covered by this provision (such as the divulgation and withdrawal rights) are not generally protected.
- In order to establish a breach of the right of integrity, an author usually has to demonstrate harm to reputation – that is, that he or she has suffered damage, measured from the perspective of third parties.
- The duration of moral rights is limited to the copyright term (at longest).
- While the transfer of moral rights is not permitted (except on death), waiver is often possible.
- Finally, copyright jurisdictions tend to maintain a broad range of pragmatic exclusions from protection for particular forms of creation – most notably, for works created in the course of employment.

Moral Right in Different Laws

Being a member of Bern, WTO a country automatically becomes the member of TRIPs Agreement. TRIPs Agreement does not compel the member's country to protect moral rights of the author as it has been given under Bern Convention.

The Bern Convention for the protection of literary and Artistic works talks about author's moral rights. It provides that "the right of paternity and the right of integrity are available to the author in his work."⁴

Moral rights have always been controversial in committed states. They raised a host of difficult philosophical and implementation questions. The most obvious among them is the issue of the interference of moral rights with the free editing and publication.⁵

Before 1990 the protection of moral rights was not available in U.S. American copyright does not recognize moral rights to author. But in 1990 moral rights were protected under visual Artistic Rights Act, 1990 (VARA)

Indian Position on moral Rights with Case laws

In Indian copyright Act, 1957, the provision related to moral rights has been given. Indian copyright does not directly provides moral rights to the author but it provides special right to author, that are moral rights. These rights are independent and parallel of the author's economic rights. This provision is based on Article 17 bis of Bern Convention.

The language of section 57 is of wide aptitude and includes not just literary works but also visual and audio manifestations. The moral rights are as follows:-

1. Paternity right (right to claim authorship of the work)
2. The integrity right (the right to protect his honour and reputation)
3. A general right (not to have a work falsely attributed to him)

The Copyright Act, 1957 provides copyright protection in India. It confers copyright protection in the following two forms:

(A) Economic rights of the author, and

⁴ <http://www.lowyzucker.com/page2/copyr.htm> (accessed on 15-10-07)

⁵ Info@copyright.org.au

(B) Moral Rights of the author.⁶

Economic Rights of Author:

The copyright subsists in original literary, dramatic, musical and artistic works; cinematographs films and sound recordings. The authors of copyright in the aforesaid works enjoy economic rights u/s 14 of the Act.^[iv] The rights are mainly, in respect of literary, dramatic and musical, other than computer program, to reproduce the work in any material form including the storing of it in any medium by electronic means, to issue copies of the work to the public, to perform the work in public or communicating it to the public, to make any cinematograph film or sound recording in respect of the work, and to make any translation or adaptation of the work. In the case of computer program, the author enjoys in addition to the aforesaid rights, the right to sell or give on hire, or offer for sale or hire any copy of the computer program regardless whether such copy has been sold or given on hire on earlier occasions. In the case of an artistic work, the rights available to an author include the right to reproduce the work in any material form, including depiction in three dimensions of a two dimensional work or in two dimensions of a three dimensional work, to communicate or issues copies of the work to the public, to include the work in any cinematograph work, and to make any adaptation of the work. In the case of cinematograph film, the author enjoys the right to make a copy of the film including a photograph of any image forming part thereof, to sell or give on hire or offer for sale or hire, any copy of the film, and to communicate the film to the public. These rights are similarly available to the author of sound recording.

In addition to the aforesaid rights, the author of a painting, sculpture, drawing or of a manuscript of a literary, dramatic or musical work, if he was the first owner of the copyright, shall be entitled to have a right to share in the resale price of such original copy provided that the resale price exceeds rupees ten thousand.

The court has taken view in the case of **Mannu Bhandari vs. Kala Vikas Pictures Ltd.**⁷ and in **Willey Eastern Ltd vs. Indian institutes of management.**⁸

⁶ <https://www.lawctopus.com/academike/moral-rights-author/>

⁷ AIR.1987 Del 13

⁸ (1995) 58D.L.T.449

In Manu Bhandari case,⁹ the dispute related to author's moral right came before the court. In this case the plaintiff, Mannu Bhandare is author of Hindi novel 'Aap ka Bunt' she assigned her some rights in raised objection about the title of the film which was resolved by the parties and the end of the film. In the end of the novel the child was admitted in hostel by his natural father while in the film it was showed that the child died of starvation, the author said that it was against her integrity and honour. It was held that the contract of assignment has to be read subject to the provisions of section 5. It held that the remedy of a restraint order or damages can be claimed even after the assignment either wholly or partially of the said damages further it was held that the section 57. Clearly overrides the terms of the contract of assignment of the copyright.

Section 57(1) (c) prohibits any mutilation or distortion of the authors work. Section 27 provides the bundle of rights, which are in tune with the international agreements and the treaties. One such a very far reaching case is Amar Nath Sehgal V. Union of India & Anr¹⁰

Factual Background:

Mr. Amar Nath Sehgal is the world-renowned sculpturist and has been conferred with several awards for his beautiful creations and contribution to the Indian heritage. In the year 1957, the Government of India commissioned Mr. Sehgal for the creating bronze mural for the most prominent International Convention Hall in the Capital of the Country.

The Bronze sculpture of about 140ft. span and 40ft. sweep took five years to complete and was placed on the wall of the Lobby in the Convention hall. This embellishment on a national architecture became a part of the Indian art heritage.

The background of the present dispute was set in the year 1979 when government pulled down the sculpture from the walls of 'VigyanBhawan' and dumped it in the storeroom.

When Mr. Sehgal came to know of this ill treatment, he made representations to the government authorities for restoration of the mural. Unfortunately, all his pleas fell on deaf ears. Aggrieved by the apathy of the government officials, Mr. Sehgal filed a petition in the Delhi High Court for recognition and enforcement of his rights on the mural.¹¹

⁹ <https://www.lawctopus.com/academike/moral-rights-author/>

¹⁰ 2005 (30) PTC 253

¹¹ <http://www.lawinfowire.com/articleinfo/amar-nath-sehgal-v-union-india-delhi-high-court-2005-ptc-30-253> as accessed on 25th Oct, 14.

K.P.M. Sundhram v. Rattan Prakashan Mandir¹² the plaintiff and his co-authors entered into an agreement with the defendant giving them sole and exclusive licence to print and publish their works. The plaintiffs claimed that the defendants mutilated and distorted the original works by publishing various books in modified form. The defendants admitted the modifications made. The plaintiffs revoked the agreement. The Court held: With the revocation of agreement by the plaintiffs, no right was left with the defendants to continue to publish and sell the works. Interim injunction is also granted. Therefore, the moral rights remain with the author and are enforceable even if all the economic rights have been licensed/assigned. Similarly, there is a catena of case-law in support of the author's moral rights. The Indian courts have been sensitive towards the moral rights of authors and the abovementioned cases buttress this fact.

Contentions of the parties

Mr. Sehgal contended that the mural created by him was a part of the national heritage and hence was valuable not only for him but for the entire country. The mutilation of the work was prejudicial to his reputation as it reduced the volume of the corpus of his work. He further argued that where the right to integrity is violated, the remedy is not limited to injunction or damages. The author has the right to preserve the mutilated work as well. Mr. Sehgal contended that his suit was not barred by limitation as his moral rights subsist throughout his life. All through the interposing period of 13 years, he was seeking administrative relief.

Mr. Sehgal prayed for the relief of permanent injunction for restraining Union of India from further distorting or mutilating the mural and a sum of Rs. 50 lac as compensation for humiliation, hurt, injury and loss of reputation caused to him. Mr. Sehgal also prayed for a decree of delivery-up, directing UOI to return the mural to him and also bear the cost of such restoration.

UOI, on the other hand, argued that it was the owner of the mural and had the right to consign the work to the storeroom. The mural was taken from the Mr. Sehgal for a good consideration and therefore, he had no right over the mural. Also the legal action was barred by limitation as the suit was filed after a period of 13 years from the date when cause of action arose.

¹² AIR 1983 Del 461

Issues for determination

The main issues for determination before the Court were (a) whether the suit was barred by limitation (b) whether Mr. Sehgal had moral right over the mural even when the copyright vested with the UOI (c) Has UOI infringed moral rights of Mr. Sehgal (d) whether Mr. Sehgal has suffered any damage (e) Relief.

Decision

On the question as to whether the suit was barred by limitation, the Court ruled that the correspondence between UOI and Mr. Sehgal contain the acknowledgement by the former of the right of the latter over the mural and therefore the suit is not barred by limitation. The Court examined at length the national and the international framework for protection of the moral rights of the Author. The Court was of the opinion that it is a narrow view the derogatory treatment of the creative work would mean deletion to, distortion, mutilation or modification to, or the use of the work in setting which is entirely inappropriate. The broad view is that mutilation is nothing but the destruction of the work as to render it imperfect and is therefore prejudicial to the reputation of the author.

Recognizing the moral rights of the Mr. Sehgal over the Mural, Pradeep Nandrajog J. ruled: “mural whatever be its form today is too precious to be reduced to scrap and languish in the warehouse of the Government of India. It is only Mr. Sehgal who has the right to recreate his work and therefore has the right to receive the broken down mural.

He also has the right to be compensated for the loss of reputation, honour and mental injury due to the offending acts of UOI”.

The Court passed mandatory injunction against the UOI directing it to return the mural to Mr. Sehgal within two weeks from the date of judgment. Court passed a declaration transferring all the rights over the mural from UOI to Mr. Sehgal and an absolute right to recreate the mural and sell the same. The Court also granted damages to the tune of Rs.5 lacs and cost of suit to Mr. Sehgal against UOI.¹³

The Court has given a wide construction to the moral rights of the author under the copyright law. The Statute only provides for the grant of injunction and damages in cases where any distortion, mutilation, modification or other act in relation to the work if such distortion etc

¹³ <http://indiankanoon.org/doc/1990275/as> accessed on 25th Oct, 14.

would be prejudicial to his honour or reputation. Court has read into the forgoing provision the right of the author to receive the copyrighted work for the purposes of restoration and sell it'. The ratio of the case is establishes the proposition that 'where the owner (not being the author) of the copyright work, treats the work in a manner that is prejudicial to the reputation and honour of the author, the Court may transfer all rights over the work to the author'.

Describing the aspects of moral rights protect the interest of author in maintain their standing and reputation. In India, the statues and the ruling of the courts indicate only integrity right and paternity rights as moral rights as far as India alone is concerned, though the legislation in this regard has been limited in the India statute on copyright but the courts are favouring a wider interpretation of these rights.

Conclusion

A consideration of moral rights on the international scene reveals a pervasive dilemma. On one hand, awareness of the author's moral interests, particularly in the environment of new technologies, appears to be growing. On the other hand, international negotiators seem to have reached a stalemate in their efforts to develop a harmonization programme for moral rights. The controversy over the author's moral interests runs deep. Classification of this aspect of intellectual property rights at the international level requires the resolution of complex and fundamental conflicts — divergent legal traditions, the appropriate social role of creative authorship and the very logic of internationalization itself.

On balance, it seems that the maintenance of a separate regime for the protection of moral rights, independent of the global trends towards copyright harmonization may produce more negative than positive results. When moral rights do not enjoy a status equal to that of economic rights of authorship, important cultural values fall under attack. Internationalizing moral rights would allow them to keep pace with other aspects of copyright. Their presence in international copyright law could also bring a renewed cultural focus to a sphere of regulation that has become almost exclusively commercial and commodity-driven. Lastly, spreading awareness about copyright issues amongst the legal fraternity will surely go a long way in providing proper and adequate recognition to the moral rights of authors.