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Author(s): James M. Treece

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JAMES M. TREECE

American Law Analogues of the Author's "Moral Right"

Professor Kaplan has suggested that there exist in American law various forms of protection cognate to copyright that have grown up in an unprincipled way outside the federal statute.¹ Since the federal statute does not itself speak in explicit terms about moral rights, American authors must rely on Professor Kaplan's "forms of protection cognate to copyright" to confer benefits that resemble the benefits available in France under the moral right concept.

To assess the prospects of future interaction in the "moral rights" realm between the French and American law of intellectual property, it will be necessary, *first*, to set forth the teaching about the French doctrine on moral rights provided by M. Sarraute;² *second*, to identify those non-statutory cognates in American law that confer protection analogous to that conferred by the French moral right; and *third*, to determine whether the continued existence and development of these analogues is threatened by the contemplated revision of the federal copyright statute or by recent judicial pronouncements describing the pre-emptive quality of existing national policy.

I. THE RIGHT OF DISCLOSURE

The moral right in France, according to M. Sarraute, reflects the intimate union between an author's personality and his work. It protects this union during the period of creation as well as after the work has been made public. During the period of creation the moral right concept gives to the author the right without limitation of time to determine when the work has been realized; after publication the concept gives to the author the right to have his authorship acknowledged, the right to have the integrity of his work respected and the right, in the case of publishing contracts, to withdraw the work.

In French law, the moral right protects the author and his work during the period of creation. Until he determines that his work has matured he can refuse to entrust it to one who has contracted for its completion, and he can keep others from exploiting it after he has abandoned or discarded it, at least where it remains identified as a product of the author's creativity.

JAMES M. TREECE is Professor of Law, University of Texas, Austin, Texas.

¹ B. Kaplan, *An Unhurried View of Copyright* 79, 88-99 (1967).

² Sarraute, "Current Theory on the Moral Right of Authors and Artists Under French Law," 16 *Am. J. Comp. Law* 465 (1968).

In the United States it is the common law copyright that protects the author or artist and his work during the period of creation and after creation but before exploitation. The common law copyright is sometimes called the right of first publication.³ It accords to the creator the right to exploit what he has created. Under the common law copyright concept a work that has not been exploited—that has not been “published”⁴—can be withheld from circulation by the creator or his successors even where the physical property in the work, as opposed to the common law “copyright” in it, is owned by a stranger.⁵ Mark Twain’s literary heirs, for example, enjoined the publication of one of his short stories by a person who purchased the manuscript at auction long after the author’s death.⁶

Assuming the Mark Twain manuscript to have been a completed work (the report of the case states that the author submitted it to the editor of the *Atlantic Monthly* for publication in 1876) the common law copyright concept expressed in that case offers the author or artist and his heirs a prospect of protection much more pervasive than the right of disclosure illustrated by the *Whistler* and *Rouault* cases discussed by M. Sarraute.⁷ Under the French examples the artists and, apparently, their heirs can withhold from the public at least those works that can be said to be “incomplete.” In the American example, the successive owners of the literary property formerly belonging to Mark Twain, if they are of like mind, can withhold what appears to be a completed manuscript from the world forever.

In the United States it is not absolutely clear that an author or artist could, by his own pronouncement that a work was incomplete, withhold it from an attaching creditor or a trustee in bankruptcy or an acquisitive spouse in a community property state. Dictum from an old case has it that:

. . . [T]here is no law which can compel an author to publish. No one can determine this essential matter of publication but the author. His manuscripts, however valuable, cannot without his consent, be seized by his creditors as property;⁸

³ *Pushman v. New York Graphic Soc., Inc.*, 287 N.Y. 302, 39 N.E.2d 249 (1942).

⁴ “Publication” is the word of art used to describe the quantity or quality of exploitation that signals an end to the right of the author or owner to claim the protection of common law copyright. It is a conclusory term.

⁵ *Berry v. Hoffman*, 125 Pa. Super. 261, 189 A. 516 (1937).

⁶ *Chamberlain v. Feldman*, 300 N.Y. 135, 89 N.E.2d 863 (1949). American cases dealing with succession to the author’s copyright in personal letters mailed to others are in accord. *E.g.*, *Baker v. Libbie*, 210 Mass. 599, 97 N.E. 109 (1912) (letters of Mary Baker Eddy); *Eyre v. Higbee*, 22 How. Prac. 198 (N.Y. Sup.Ct. 1861) (letters of General George Washington).

⁷ Sarraute, *supra* note 2, at 467, 469.

⁸ *Bartlett v. Crittenden*, 2 Fed. Cas. 967, 968 (No. 1,076) (C.C.D. Ohio 1849).

and at least one writer has written that creditors of an author cannot levy upon his unpublished works to satisfy his debts,⁹ even, apparently, if the author were to concede that the work was "completed."

*Banker v. Caldwell*¹⁰ nearly, but not quite, presented the question. Plaintiff had a common law copyright in a work seized by defendant, the county sheriff, in executing a judgment rendered against plaintiff. The sheriff, who was a mere custodian holding property for public sale, in the interval between the levy and the public sale himself made copies of the plaintiff's book. The court held that neither plaintiff's common law copyright in the seized book nor his ownership of the book itself was divested by the sheriff's seizure, and ruled that the sheriff could be enjoined from exploiting his copies. The power of the sheriff to transfer the copyright in the "unpublished" book by a later public sale was not determined.

*Dart v. Woodhouse*¹¹ actually presented the question directly and the court, citing *Banker v. Caldwell*, or, rather, mis-citing it held that an unpublished manuscript cannot be reached by a judgment creditor. The court stated that the decision to make a work public was peculiarly personal to the author and clearly beyond the compulsion of a court. To permit nevertheless an unpublished manuscript to be seized would be meaningless, thought the court, if a purchaser at an execution sale could not exploit it without the consent of the author. On the assumption that the author's consent was beyond the court's power, the property in the manuscript itself was also declared exempt from execution.¹²

There are no reported modern cases that deal with the power of a judgment creditor to reach a common law copyright; apparently counsel are content to assume that a common law copyright is exempt, although, for the most part, state statutes do not expressly exempt authors' rights in unpublished matter.¹³

Statutory copyright is, of course, another matter, since in nearly all cases to secure it the author will, except, perhaps, in the case of Section 12 copyrights, have made the personal decision to "publish" his work. It

⁹ Stevenson, "Moral Right and the Common Law: A Proposal," *6ASCAP Copyright Law Symposium* 89, 96-97 (1955).

¹⁰ 3 Minn. * 94 (1859) (reported at 3 Minn. Rep. 46, J. Gilfillan, editor).

¹¹ 40 Mich. 399 (1879).

¹² *Washington Bank v. Fidelity Abstract & Security Co.*, 15 Wash., 487, 46 P. 1036 (1896), is *contra* on the question whether a set of abstracts, as opposed to the copyright in them, is subject to levy and sale under execution.

¹³ New York, for example, in listing personal property exempt from application to the satisfaction of judgments, has no category that can be said to include author's rights in unpublished works, N.Y. Civil Practice Law and Rules § 5205 (McKinney 1963), and California exempts "oil paintings and drawings drawn or painted by any member of the family," Cal. Code of Civil Procedure § 690.2 (West 1955), but does not deal with other forms of literary property.

seems clear that the federal copyright is reachable by a creditor's bill,¹⁴ particularly where Congress has consented,¹⁵ as it has in the Bankruptcy Act.¹⁶

Community property raises related problems. The institution of community property is recognized in the United States by a substantial minority of the states; it provides that husband and wife are joint owners of property that falls within the definition of community property. Since literary property, including common law copyright, appears to be subject to the community property laws,¹⁷ one might expect to find cases dealing with the rights of a non-creative spouse in the product of a creative spouse's mind¹⁸—cases that would cast light upon the question of the inviolability under American law of the author's decision to make public his work. Can the non-creative spouse in a divorce proceeding assert a joint ownership interest in the creative spouse's incomplete or complete but unpublished work? As a joint owner, can the divorced non-creative wife or the married non-creative husband convey his joint interest in the common law copyright in the "community's" unfinished or unpublished work? Is the decision to publish the creator's or the community's?

If answers to these and similar questions, when they are forthcoming, suggest that the non-creative spouse's interest in literary property vests at the same time when the creator's interest vests, which would be, I suppose, at least when the earliest draft of the work becomes fixed in a tangible medium, the author's right to resist compulsory disclosure of his work will, in one sense, not have been diminished; the author concept will merely have been expanded to include a second personality. Still, the prospect of an estranged spouse trafficking in a draft of a work regarded as incomplete by its creator might be a bit unsettling to the French.

Still, the creative person fares quite well in American law in his relations with persons other than a community-property spouse. It is a black-letter rule of American contract law that contracts for personal services are not specifically enforceable, and an American artist or author could, if he chose, resist a demand from his patron that he complete a work that he contracted to perform.¹⁹ If a work were "com-

¹⁴ *Stephens v. Cady*, 55 U.S. (14 How.) 528 (1853). See *Ager v. Murray*, 105 U.S. 126 (1881) (patents).

¹⁵ *Stevens v. Gladding*, 58 U.S. (17 How.) 447 (1855).

¹⁶ Bankruptcy Act § 70(d)(2), 11 U.S.C.A. § 110(a)(2) (1953). See *In re Howley-Dresser Co.*, 132 F. 1002 (S.D.N.Y. 1904).

¹⁷ *Nimmer*, *Copyright* § 80.1 (1963).

¹⁸ *Cf. Belford, Clarke & Co. v. Scribner*, 144 U.S. 488 (1892).

¹⁹ *5A Corbin, Contracts* § 1204 (1964). But *cf.*, *Associated Newspapers v. Phillips*, 294 F. 845 (2d Cir. 1923), where a newspaper feature writer who had agreed to provide feature articles for the *New York Globe* for a period of time was enjoined from providing similar articles for anyone else during the contract period.

pleted" in the sense that a painting or sculpture or manuscript was in existence prior to a contract of sale and was thereafter "sold," it is doubtful that an American artist's word that the work was incomplete or unrealized would preclude a judge from deciding otherwise, and ordering the work delivered in compliance with a contract of sale. Yet if the judgment creditor cases are any authority, it would seem that an American author or artist should be able to resist a demand that he let go of his work as agreed, regardless of the status of the work as realized or unrealized.

In addition to tangible works of art, there are kinds of intellectual conceptions that can be said to be in a constant state of becoming, even though substantial increments of time, energy and material have been consumed in their development and even though there has been some substantial exploitation of the product of the creative effort. For example, Sir Arthur Conan Doyle's character Sherlock Holmes was developed more fully each time it appeared in a new work, yet each story in the adventures of Sherlock Holmes was a separately copyrightable work. Obviously much can be said for permitting Conan Doyle to part fully with his copyright in a Sherlock Holmes adventure while retaining, at least for a time, the exclusive right to develop further the Holmes character in later works. Similarly, an artist should be able to exhibit the original version of his work, even to thousands of viewers, without losing the right to change it or multiply copies of it, and a player or group of players ought similarly to be able to develop continuously the quality of a performance during the run of a play, without diminishing the effectiveness of present or future performances by losing the right to control the exploitation of past efforts.

Under American law a Conan Doyle can in certain circumstances dispose of all of his proprietary rights in a work, yet keep for himself the possibility of further developing a character presented in the work. *Warner Bros. Pictures Inc. v. Columbia Broadcasting System, Inc.*²⁰ so holds. In that case, Dashiell Hammett, who wrote "Maltese Falcon," a novel featuring a character called Sam Spade, gave by contract all of his proprietary rights in the work to two publishers and the Warner Bros. Motion Picture Company. None of the contracts mentioned rights in the character "Sam Spade." After the transfer of rights in "Maltese Falcon" Hammett continued to write "Sam Spade" stories, and years later licensed third parties to use the character "Sam Spade" on radio and television. Under this later grant CBS produced for radio "The Adventures of Sam Spade." Warner Brothers claimed that its right to exploit "Maltese Falcon" in motion pictures and on radio and television gave it exclusive rights in the "Sam Spade" character, at least in the motion picture, television, and radio media. The court held that Ham-

²⁰ 216 F. 2d 945 (9th Cir. 1954), *cert. denied*, 348 U.S. 971 (1955).

mett retained rights to use the characters of "Maltese Falcon" in subsequent works and was entitled to license third parties to use the characters. It felt that, particularly where a work is susceptible to treatment as part of a series of detective stories, the author's right to continue to exploit his character should be assumed to survive a transfer of copyright in the work, at least absent express language purporting to divest the author of the exclusive right to develop further his characters.

The protection available to authors for characters under the *Maltese Falcon* case²¹ is similar to the French right of disclosure inasmuch as it exists outside the statutory copyright penumbra, and would appear to be potentially available for the life of the author, assuming the principles of unfair competition were met, even though early works introducing the character were in the public domain.²²

Unfair competition doctrine, then, permits an author to part fully with a work and nevertheless retain the possibility of exploiting exclusively a character portrayed in the work.

Similarly, under American law, an artist can exhibit a painting and still retain exclusive rights in it, an architect can deposit with a public authority plans for a building and still retain exclusive rights in the plans, and artists can perform dramatic, musical or choreographic works and still retain exclusive rights in their performance. But the articulated reason for protecting performers, architects and artists is different than the articulated reason for protecting characters. In the case of performers, architects and artists the courts say that performances, deposits of plans and exhibitions of paintings are not "publications." By using this convenient term courts deprecate facts showing exploitation, distribution, disclosure or dissemination, and treat as incomplete a creative effort which is not fixed in a tangible medium and transferred beyond the creator's control.

Cases that hold that depositing an architect's plans with a public official does not divest the architect of a cause of action against a rival who copies from the deposited plans²³ are merely examples of cases that hold that a discreet traffic in a completed work will not forfeit a future interest in a "first publication."²⁴ Cases holding that exhibiting a work of art, without more, does not constitute a "publication" of the work so

²¹ See also *Prouty v. National Broadcasting Co., Inc.*, 26 F.Supp. 265 (1939).

²² But see *Patten v. Superior Talking Pictures, Inc.*, 8 F.Supp. 196 (S.D.N.Y. 1934). The court granted the author of the "Frank Merriwell" stories a preliminary injunction in a suit to halt defendant motion picture distributor's unlicensed use of the name Frank Merriwell in film titles. The court suggested that plaintiff's right to relief on unfair competition grounds was clear during the life of the copyrights on the Frank Merriwell stories and less clear after the expiration of the copyrights. But see *CBS Inc. v. DeCosta*, 337 F.2d 315 (1st Cir.1967).

²³ *E.g.*, *Edgar H. Wood Assoc., Inc. v. Skene*, 197 N.E.2d 886 (Mass. 1964). There are contrary cases. See *Nimmer, Copyright* § 55 (1964).

²⁴ See *White v. Kimmell*, 193 F.2d 744 (9th Cir. 1952), *cert. denied*, 343 U.S. 957 (1952), where the author was indiscreet.

that the artist's rights in his work are not lost by reason of his consent that a substantial segment of the public view the work also fit, in a rather loose way, the limited publication classification. In addition the artist's claim to a continuing right to exclude copyists despite the public view is buttressed by the point that no members of the public, not even public officials, obtain a possessory interest in the work or a tangible copy of it.²⁵

A performance is also usually said not to be a publication of the performance in American law. Here again a performance of chamber music by a trio is likely to be witnessed by a relatively small audience, and a repertory company playing night after night to a full house plays at any one time to a small number even if the house is a large house. In a sense, then, performers who perform to small groups perhaps can be said to have been selective enough about their audiences to warrant a judicial rule that rights in the performance—to record it or film it, for example—remain properly in the players and not in the public. But a literary, dramatic or musical work *can* be performed before millions of television viewers or radio listeners, and in these circumstances it has also been held that a performance was not a "publication."²⁶

The American concept of "common law copyright" offers American artists and authors a good deal of protection; in several senses, more protection than the right of disclosure in French law. Common law copyright protects during the period of creation, not only to the point where the work is realized but thereafter until the work is first "published." The author or artist and his heirs have, in a sense, a perpetual right not to divulge the work to the public, although their judgment on the question whether a work has been completed in cases where promisees are seeking to compel a transfer of promised work will probably be given less weight than would be a French artist's or author's word in similar circumstances. In addition, by manipulation of the concept of publication, American artists, authors and performers are given a good deal of protection on the theory that the period of creation is potentially endless. And, in the case of fictional characters, the American concept of unfair competition will protect an author's or artist's rights in characters even after the characters have been "published" in a work that has been "published." It is difficult to conclude that the moral right in the French system offers to creative persons the prospect of greater security prior to the final realization of their work than the

²⁵ "However, a number of American cases have held that mere public exhibition of a work of art constitutes a publication thereof." Nimmer, *Copyright* § 54 (1963).

²⁶ See *King v. Mister Maestro, Inc.*, 224 F.Supp. 101 (S.D.N.Y. 1963), and *Columbia Broadcasting System, Inc. v. Documentaries Unlimited, Inc.*, 42 Misc.2d 723, 248 N.Y.S.2d 809 (1964). Cf. *Lennon v. Pulsebeat News, Inc.*, 143 U.S.P.Q. 309 (N.Y. Sup.Ct. 1964).

American system accords under the labels of common law copyright, publication and unfair competition.²⁷

II. THE RIGHTS OF PATERNITY, INTEGRITY AND WITHDRAWAL

M. Sarraute has described the moral right in French law as serving authors and artists not only during the period of creation but after a work is made public. The moral right confers, he states, a paternity right—the right to have authorship acknowledged; a right to the integrity of the work—the right that a work not be mutilated; and a right of withdrawal—the right to withdraw from the public, upon equitable terms, a work that has been made public.

American law has, relatively speaking, a callous disregard for the paternity rights of creative persons. Section 26 of the Copyright Act provides that “the word ‘author’ shall include an employer in the case of works made for hire.”²⁸ Under a “work made for hire” arrangement the person whose mind generates the creative process can be regarded as a mere employee and his employer, perhaps a corporation, can be regarded as the “author.” The “work for hire” arrangement severs completely the relation between the creator and ownership of his work. An employee who creates for hire can scarcely be concerned with an author’s right in American law to have his authorship acknowledged, for by Congressional *ipse dixit* the author label has been shifted beyond his grasp.

An author or artist who retains his identity by avoiding the employee pitfall still finds that under American law he can compel one who publishes his work to communicate his authorship only if he can point to a clause in a contract binding the publisher in question to identify the author when exploiting the work. In *Vargas v. Esquire, Inc.*,²⁹ the artist Vargas produced a number of drawings for Esquire magazine, transferred to Esquire all of his rights in the drawings and then failed in an attempt to compel Esquire to attribute authorship to him when his drawings were published. The court stated that the artist had no basis for bringing suit, having failed to extract from Esquire an enforceable promise to attribute authorship.

*Granz v. Harris*³⁰ shows that a contract between creator and distributor is the repository of all that American law recognizes in the way of

²⁷ See Roeder, “The Doctrine of Moral Right: A Study in the Law of Artists, Authors and Creators,” 53 *Harv. L. Rev.*, 554 (1940) (the doctrine of moral right is recognized by the common law, to a certain extent), and Note, “Moral Right in the United States,” 35 *Conn. B.J.* 509 (1961) (moral right is recognized enough in the United States for United States to forego fears about incurring treaty obligations).

²⁸ 17 U.S.C.A. § 26 (1952).

²⁹ 164 F.2d 522 (7th Cir. 1947).

³⁰ 198 F.2d 585 (2d Cir. 1952).

paternity rights.⁸¹ Granz sold defendant's assignor three record masters. The assignor agreed to use at all times the phrase "presented by Norman Granz" in distributing records cut from the masters. The court, in the course of an opinion ruling upon other points, stated that ordinarily the defendant could present records made from the Norman Granz masters without informing the public of Norman Granz's connection with the product, but stated that in this case to omit a reference to Norman Granz would breach the contract.⁸²

In *Clemens v. Press Pub. Co.*,⁸³ William Clemens agreed to give defendant a 20,000 word version of a longer manuscript in return for \$200, 25 galley proofs, and "out-of-town syndication" rights. Clemens delivered the manuscript, and defendant delivered the galleys but informed Clemens that publication would be without a by-line (although Clemens was given a by-line in the galleys). Defendant did not publish the work at all and Clemens sued, apparently, for the \$200. Judge Gonegan, for the court, said that the defendant must pay \$200 and may then do as it wishes—it may publish or not, with credit or without.

Judge Seabury, concurring, said that the agreement requires that the author be given credit, so that failure to give Clemens a by-line would be a breach of contract. Seabury went on to say that Clemens was entitled to have his work published in the form in which he wrote it. Clemens, said Seabury, offered defendant a manuscript with his name on it and that is what defendant accepted and agreed to publish. For Seabury, absent an express provision enabling defendant to omit the author's name, the general rule that a publisher may not garble an author's work would control the case. Assuming that in American law an author or artist can complain if a work is garbled, it is difficult to find authority for the proposition that omission of the author's name amounts to garbling (although it may have been significant in the *Vargas* case that most and perhaps all of the drawings involved there were furnished to Esquire by Vargas unsigned).⁸⁴

⁸¹ *Accord*, *American Law Book Co. v. Chamberlayne*, 165 F. 313 (2d Cir. 1908); *DeBekker v. Frederick A. Stokes Co.*, 168 App. Div. 452, 153 N.Y.S. 1066 (1915); and *Jones v. American Law Book Co.*, 125 App. Div. 519, 109 N.Y.S. 706 (1908). See Monta, "The Concept of 'Copyright' versus the 'Droit d'Auteur,'" 32 *So. Calif. L. Rev.* 177, 179 (1959). Cf. *Luster Enterprises, Inc. v. Twentieth Century-Fox Film Corp.*, 156 U.S.P.Q. 422 (N.Y. Sup.Ct. 1967).

⁸² Compare *McIntyre v. Double-A Music Corp.*, 166 F.Supp. 681 (S.D. Calif. 1958), motion for rehearing denied, 179 F.Supp. 160 (1959), where the court ruled that one who pirated the plaintiff's arrangement of a musical work owed the plaintiff no duty to credit plaintiff with authorship (although in the particular case the court disbelieved that plaintiff's creative efforts were substantial enough to merit calling him an author in any context). Cf. *Desclee & Cie, S.A. v. Nemmers*, 190 F.Supp. 381 (E.D. Wisc. 1961).

⁸³ 67 Misc. 183, 122 N.Y.S. 206 (Sup.Ct. 1910).

⁸⁴ As one might expect in a legal system recognizing the concept of an "author of a work for hire," American law permits an author by contract to give away

Whether American law protects an author whose work has been garbled is, of course, another question. M. Sarraute assures us that in France, under the moral right doctrine, an author or artist can command respect for the integrity of his work. The right to the integrity of the work picks up where the right of disclosure leaves off, and assures the creator that his work will not be altered or destroyed.

Otto Preminger produced the most celebrated attempt yet to persuade an American court to save an artistic work from mutilation. Preminger tried to enjoin Columbia Pictures from distributing his picture "Anatomy of a Murder" to television stations under agreements permitting or calling for cuts in the picture and permitting or calling for interruption of the picture for commercial messages.

Preminger and Carlyle Productions, as owners of all rights in the picture, could in licensing television rights by contract confer on the licensee the right to edit, cut, and interrupt the picture. Similarly, they could elicit from the licensee a promise not to edit, cut or interrupt the picture for commercial messages. In the actual case Preminger gave Columbia Pictures television rights in a contract that did not speak of cuts or interruptions, although Columbia apparently consented not to cut the film while, of course, insisting on the right to interrupt the telecast for commercial messages. The court ruled that Preminger, having failed to cover clearly the issue of cuts and interruptions in the contract, must have given to Columbia Pictures whatever the custom of the industry regarded as comprised by the phrase "television rights." In the context of custom, said the court, one who receives television rights, unfettered, receives the right to interrupt for commercials and to make minor cuts to accommodate time segment requirements.

In dictum the court suggested that if Preminger's 161 minute feature were cut to 53 minutes or even to 100 minutes such cuts would amount to mutilation, and Preminger would be entitled to injunctive relief. Judge Rabin, dissenting, buttressed the majority's dictum on cuts by stating that a producer has a common law right to have the picture shown as he produced it—especially where a contract requires that the producer be identified by name in television screenings. Judge Rabin also held the view that unlimited interruptions for commercials might conceivably result in a presentation of an uncut version of the film that would offend against a producer's common law right to an uncut screening.⁸⁵

George Stevens, producer and director of the photoplay "A Place in the Sun," in a suit similar to Preminger's, fared slightly better than Preminger. Stevens sought to enjoin NBC from cutting or interrupting

paternity rights. See *Harris v. Twentieth Century-Fox Film Corp.*, 43 F.Supp 119 (S.D.N.Y. 1942).

⁸⁵ *Preminger v. Columbia Pictures Corp.*, 148 U.S.P.Q. 398 (N.Y. Sup.Ct.) *aff'd*, 149 U.S.P.Q. 872 (App. Div.), *aff'd*, 150 U.S.P.Q. 829 (Ct. App. 1966).

his photoplay when televising it. Judge Nutter delivered an oral opinion the day after receiving the file on the case for the first time, and since he spoke only to the question of relief it is difficult to know the facts in Stevens' case. Apparently, however, there was no contractual clause speaking to television rights as there was in the Preminger case. The court enjoined NBC from inserting commercials in a way that would distort materially the mood, effect, and continuity of the picture. Judge Nutter, in explaining his ruling, stated that the ruling of the court permitted NBC to insert commercials, but not in a way that adversely affects or emasculates the artistic or pictorial quality of the film or distorts materially its mood or continuity. Nutter was clear that commercial interruptions of televised movies could alter the production so that it would not contain the same dramatic qualities that the producers sought to bring forth. He suggested that Hamlet's famous soliloquy could not be interrupted for a commercial message without generating a likelihood that the mood and effect of the production would be altered.³⁶

Both the Preminger and Stevens cases suggest the existence of a cause of action outside the copyright statute for distorting substantially a movie producer's creative efforts by a truncated or fragmented television screening. The cases do little in the way of defining mutilation of a motion picture production³⁷ let alone mutilation of another form of creative effort.³⁸ Gene Autry, who had or claimed property interests in

³⁶ *Stevens v. National Broadcasting Co.*, 148 U.S.P.Q. 755 (Calif. Super. Ct. L.A. County 1966). After Judge Nutter's decree was handed down, NBC televised Stevens' movie, interrupting it nine times for commercials, always at changes of scenes, and cutting a total of ten and one-half seconds out of the film. Stevens brought contempt proceedings against NBC, but Judge Wells ruled that, in view of the discretion given NBC by Judge Nutter's decree, the defendants could not be held in contempt for exercising it as they did. The judge suggested that nine interruptions approached, perhaps even reached, the limits of permissibility, but did not constitute contempt because of the strength of the film. *Stevens v. National Broadcasting Co.*, 150 U.S.P.Q. 572 (Calif. Supreme Court, Los Angeles County 1966). See *Ettore v. Philco Television Broadcasting Co.*, 229 F.2d 481, 496 (3d Cir. 1956), where the court stated that the omission in a telecast of round three of a fight that ended in the fifth round amounted to no more than a *de minimis* injury to the performance rights of one of the boxers.

³⁷ But see *Fairbanks v. Winik*, 206 App. Div. 449, 201 N.Y.S. 487 (1923). Films starring Douglas Fairbanks which had been released as features [the opinion below so states, 119 Misc. 809, 198 N.Y.S. 299 (Sup.Ct. 1922)] fell into the hands of the defendant, who intended to cut, splice and re-edit the footage to obtain a group of "two-reelers" to be marketed as serials. Fairbanks obtained an injunction pendente lite, although no persuasive grounds for such extraordinary relief were advanced by the court. Compare *Manger v. Kree Institute of Electrolysis*, 233 F.2d 5 (2d Cir. 1956), where defendant's alteration and publication of plaintiff's letter on "Why I Choose Electrolysis As A Career" was deemed to vitiate plaintiff's consent to publish so that a cause of action under New York's "privacy" statute became available to her.

³⁸ See *Meliodon v. School Dist. of Philadelphia*, 328 Pa. 457, 195 A. 905 (1908), where a sculptor's well-documented case of injury to professional reputation by unconsented mutilation of work was defeated by the technical defense of sovereign immunity.

films in which he appeared in starring roles, could not object, under these cases, that commercially sponsored television screenings of films featuring him violated any right he may have had to an unmutated presentation of his performance merely by reason of interruptions of films for television commercials.³⁹ The possibility that Autry's performance could be so distorted by the demands of television that a cause of action could accrue remains, but the Preminger and Stevens cases answer none of the hard questions generated by the possibility.⁴⁰

Whatever safeguards against mutilation are conferred upon authors or artists who have parted with the property rights and copyright in a work, it may be that, under American law, there is no duty to refrain from destroying, as opposed to mutilating, a created work. *Crimi v. Rutgers Presbyterian Church*⁴¹ so holds. Alfred D. Crimi did a fresco mural painting for the Rutgers Presbyterian Church in 1938. He received \$6800 for his work and agreed that the work should become part of the church building when attached to the wall and agreed that a copyright in the work should be obtained and assigned to the church. Eight years later the congregation redecorated the church and painted over the mural without consulting Crimi. He sued to compel the church to remove the offending paint, or to compel the church to permit him to remove the mural from the church at the church's expense, or for damages. He lost. The court said that even if it were customary that an artist's work, if accepted for display in public or semi-public institutions open to the public, will not be altered, mutilated, obliterated or destroyed, the Rutgers church was not such an institution.

Anyway, said the court, even in France it may be that a mural that cannot be mutilated can be destroyed.⁴² The clear distinction in American law between the property right in a work and the copyright suggests that one who owns a copy of a book could burn it with impunity. And

³⁹ See *Autry v. Republic Prods. Inc.*, 213 F.2d 667 (9th Cir. 1954). Compare *Gieseking v. Urania Records, Inc.*, 155 N.Y.S. 2d 171, 172 (Supreme Court 1956), where the court said: "A performer has a property right in his performance that it shall not be used for a purpose not intended, and particularly in a manner which does not fairly represent his service."

⁴⁰ *Shostakovich v. Twentieth Century-Fox Film Corp.*, 196 Misc. 67, 80 N.Y.S.2d 575 (N.Y. Sup.Ct. 1948), *aff'd*, 275 App. Div. 697, 87 N.Y.S.2d 430 (1949), for example, undoubtedly remains good law: using public domain compositions of Russian composers as background music in a movie having an "anti-soviet" theme will not be recognized by a court as "mutilation." Quite clearly *Edgar Rice Burroughs, Inc. v. Metro-Goldwyn-Mayer, Inc.*, 138 U.S.P.Q. 254 (Calif. Sup. Ct. L.A. Co. 1965), is undisturbed: an author who grants to a motion picture producer a right to create and exploit in a motion picture a story using the Tarzan character and a right to reissue and remake the movie cannot get an additional slice of the financial pie by claiming that a remake that updates clothing, dialogue, mood and tempo and uses modern color and camera techniques violates contractual or common law rights of the creator of the Tarzan character.

⁴¹ 194 Misc. 570, 89 N.Y.S.2d 813 (Sup. Ct. 1949).

⁴² Citing *LaCasse et Welcome c. Abbé Quénard* (Cour de Paris, April 27, 1934, D.H. 1934, 385).

one who owns the property right but not the copyright, federal or common law, in the only copy of a painting or manuscript would similarly appear to be immune from a successful suit by the copyright owner for damages for destruction of property,⁴³ although courts of equity doubtless would do equity on behalf of a copyright owner who invoked its aid prior to the destruction by the owner of the sole copy.⁴⁴

Mutilation is at best an uncertain tort, and private legislation in the form of contract gives the best assurance that an author can obtain against the use of his work by another in a way he finds offensive. Even a contract that speaks merely to the right to make a motion picture from a particular novel obligates the licensee to retain and express the theme and main action of the underlying work.⁴⁵ A contract in which the author of the underlying work reserves the right to veto alterations or additions by one licensed to exploit it in another medium virtually guarantees that the author will have the desired deference paid to his work.⁴⁶ And, to return to an earlier point, a contract is the only sure way to protect against that form of mutilation which consists of using the work without attributing authorship to its creator.⁴⁷

It is perhaps some consolation to authors who fail to contract wisely with those who exploit their works that authors have always been accorded, under American tort law, a right distinct from copyright, not to have work presented as theirs which is not theirs. This right applies even though the work in question is in the public domain⁴⁸ and enables the plaintiff who could not complain that something has been deleted from his work to complain that something has been added.⁴⁹

The third element in M. Sarraute's recital of the post-publication protection available under the French *droit moral* is the right of with-

⁴³ See *Baez v. Fantasy Records, Inc.*, 144 U.S.P.Q. 537 (Calif. Sup. Ct. San Fran. Co. 1964). In 1958, Joan Baez made an audition tape for defendant when she was eighteen. She entered no contractual arrangements with defendant, or if she did, timely disavowed them upon reaching 21. Six years after the tape was made defendant started exploiting it commercially by distributing duplicate tape recordings and phonorecords made from the tape. The court enjoined defendant, saying, puzzlingly, that defendant had no right, title or interest in the 1958 tape, and ordered defendant to deliver to Baez all master tapes and duplicate tapes of the 1958 recording. I read the decree as reaching all reproductions deriving from the audition tape, but not the audition tape itself. If the decree reaches the original, as the "no right, title and interest" language of the opinion suggests, then the case constitutes a startling preference for the rights of the owner of literary rights in an uncopied work over the rights of the owner of the physical property in the work.

⁴⁴ Cf. Note, "Property Rights in Letters," 46 *Yale L.J.* 493, 496 (1937).

⁴⁵ *Curwood v. Affiliated Distributors, Inc.*, 283 Fed. 219 (S.D. N.Y. 1922); *Packard v. Fox Film Corp.*, 207 App.Div. 311, 202 N.Y.S. 164 (1923). See *Lille v. Warner Bros. Pictures, Inc.*, 139 Cal. App. 285, 34 P. 2d 835 (1934).

⁴⁶ See *Manners v. Famous Players-Lasky Corp.*, 262 Fed. 811 (S.D. N.Y. 1919); *Royle v. Dillingham*, 53 Misc. 383 (N.Y. Sup. Ct. 1907).

⁴⁷ See *Granz v. Harris*, 198 F.2d 585 (2d Cir. 1952).

⁴⁸ *Drummond v. Altemus*, 60 Fed. 338 (C.C. E.D. Penna. 1894).

⁴⁹ See *Locke v. Benton & Bowles, Inc.*, 253 App. Div. 369, 2 N.Y.S.2d 150 (1938).

drawal or renunciation. It confers upon an author who is party to a publishing contract a power to withdraw a work, upon compensating the publisher, if a work has been overcome by history or by a developing artistic style.

M. Sarraute says the power of withdrawal is neither well-established nor very useful in France; it is safe to say that it is not established at all in the United States. In America an author or artist cannot take back a published work, even on a trademark theory. Gene Autry, the western star, argued unsuccessfully to the Ninth Circuit that an exhibition on television of his old films depicting him in outmoded garb mouthing trite phrases injured his present career. The court refused to allow Autry's claim, saying it involved a risk inherent in the performer's art.⁵⁰ Samuel Clemens, imaginative even when acting through attorneys, attempted to enjoin the publication of a collection of his works written under the Mark Twain pen name by asserting that he had an exclusive right, analogous to a trademark right, to use the *nom de plume*. Clemens lost. The court ruled that anyone can publish public domain material and designate its author, whether the author uses a true name or a *nom de plume*.⁵¹

An American author or artist who wishes to control the use of his name can avoid the trials of authorship by shielding true identity with a pseudonym, as did the mysterious Englishman Walter of "My Secret Life" and the celebrated French author Pauline Réage of "Story of O."

Few artists and authors are willing to stand apart from their work, however. When David Slavitt, author of several volumes of poetry and a serious novel, "Rochelle," agreed in 1966 to write "The Exhibitionist," a Bernard Geis Associates Sextravaganza, under the pseudonym Henry Sutton, he could not resist leaking to the world, almost at once, the secret of the true identity of Henry Sutton. He apparently plans to continue to write under the Sutton name, but to make a personal distinction between the works of Henry Sutton and the works of David Slavitt.

If Slavitt ever becomes disenchanted with the works of Henry Sutton, he will be unable to recall them or force publishers to delete references to Henry Sutton, but he may be able to enjoin the use by a publisher of the name David Slavitt in connection with a work written by Slavitt under the Sutton name, particularly in states where a cause of action for unauthorized commercial exploitation of a personal name is recognized.⁵²

⁵⁰ Autry v. Republic Prods., Inc., 213 F.2d 667 (9th Cir. 1954). But see Fairbanks v. Winik, 206 App.Div. 449, 201 N.Y.S. 487 (1923).

⁵¹ Clemens v. Belford, Clark & Co., 14 Fed. 728 (N.D. Ill. 1883). See Chamberlain v. Columbia Pictures Corp., 186 F. 2d 923 (9th Cir. 1951), where the literary heirs of Samuel Clemens failed to enjoin the advertising use of "Mark Twain" in connection with a bowdlerized movie version of the public domain story, "The Celebrated Jumping Frog of Calaveras County."

⁵² See Ellis v. Hurst, 66 Misc. 235, 121 N.Y.S. 438 (Sup. Ct. 1910).

III. PROSPECTS FOR THE FUTURE

After publication there is little an author or artist can do in the United States, if a contractual obligation has not been imposed upon the defendant, to assure that his authorship will be acknowledged, that his work will be respected or that its dissemination will be halted if the decision to publish is renounced. In the post-publication sphere, the analogue to French moral right most likely to develop in the United States is the right of an author or artist, adumbrated in *Preminger* and *Stevens*, to prevent the exhibition or distribution of a mutilated version of his work.

The United States is a federal state and its tort law is, in the main, made up of the various and varying pronouncements of the courts and legislatures of 50 sovereign states. If one or some or all of these states develop a judicially enforceable right of respect for the work of an artist the event will be neither more nor less remarkable than the development of a right to privacy by the courts of Georgia⁵³ and Kentucky⁵⁴ or a right to control publicity by the legislature of New York.⁵⁵ A new tort cause of action for mutilating a creative work would parallel prior developments in the law protecting aspects of personality and reputation, and would not collide with a federal copyright statute implementing a national scheme for granting for limited times a monopoly in literary property.

But the market, if that is the right word, for literary property is peculiarly national in the United States, and much can be said for a single national scheme for the protection of literary, musical, and artistic work. The compatibility of a federal copyright scheme with the various forms of protection cognate to copyright that have grown up under the labels of common law copyright and unfair competition is for that reason unclear. In fact, that portion of American law that most closely parallels French moral right doctrine is most in danger of drastic revision, and the impetus for limiting the forms of protection available under the common law to authors and artists during the period of creation comes from both the federal Congress and the Supreme Court of the United States.

In 1967 the House Committee on the Judiciary reported favorably without amendment on H. R. 2512, a bill to revise the out-dated federal copyright statute.⁵⁶ Section 301 of the House bill states that after the bill becomes effective all rights in the nature of copyright in works that come within the subject matter of copyrights as specified by the bill, whether published or unpublished, are governed exclusively by the

⁵³ See *Pavesich v. New England Life Insurance Co.*, 122 Ga. 190 (1904).

⁵⁴ See *Brents v. Morgan*, 221 Ky. 765 (1927).

⁵⁵ See N.Y. Civil Rights Law §§ 50, 51 (McKinney, 1916).

⁵⁶ Committee on the Judiciary, Copyright Law Revision, H.R. Rep. No. 83, 90th Cong., 1st Sess. (1967) [hereafter cited as House Copyright Revision Report].

federal statute.⁵⁷ Thereafter, section 301 continues, "no person is entitled to copyright, literary property rights, or any equivalent legal or equitable right in any such work under the common law or statutes of any state."⁵⁸ The purpose of section 301 is to pre-empt state competence to protect under common law copyright matter eligible for protection under the federal statute. As one author puts it, the proposed bill works a quiet revolution in copyright by eliminating the "publication" concept as a determinant of the validity or invalidity of copyright.⁵⁹

The revision bill does not purport to pre-empt state protection for unpublished works of authorship not fixed in any tangible medium of expression.⁶⁰ Until a work becomes "fixed" it is eligible for protection under common law; when it is "created" it becomes eligible for federal statutory protection. The possibility of an hiatus between "fixation" and "creation" is dispelled by the definitions section of the bill, where a work is said to be "created" when it is fixed in a copy or a phonorecord for the first time.⁶¹ "Created" does not, therefore, mean realized or completed. As the bill makes clear,⁶² a sculptor will be protected by the federal statute from the time he first forms his clay into some remote precursor of a future finished work, and a playwright who creates a final version of a play by agonizing revisions of a series of drafts will find protection under the federal statute, according to the revision bill, for the first draft and the last, even though the first draft is a poor thing that he would never consent to publish.

Under the revision bill, the author or artist is protected during the period of creation, and the decision to divulge remains his. The difference under pre-emption is that the protection runs out, in the general case, fifty years after the death of the author.⁶³ The author is protected during his lifetime, and his literary heirs may withhold his manuscript from the public for an additional fifty years after his death. At that time, if the work has not been destroyed, all who can gain access may copy, exhibit or perform the work with impunity.

The proposed bill ends the prospect that the literary heirs of Samuel Clemens can both preserve a Mark Twain manuscript and withhold forever permission to exploit it. However, the bill does not cut down, in the general case, the quality of protection available to authors and artists during the period of creativity or during their lifetime after a work is created. The proposed bill offers better protection for artists and authors than the present scheme because the possibility that an author

⁵⁷ H.R. 2512, 90th Cong., 1st Sess. (1967) [hereafter cited 1967 *Bill*].

⁵⁸ § 301(a), 1967 *Bill*.

⁵⁹ Cary, "The Quiet Revolution in Copyright: The End of the 'Publication' Concept," 35 *Geo. Wash. L. Rev.* 652 (1967).

⁶⁰ § 301(b)(1), 1967 *Bill*.

⁶¹ § 101, 1967 *Bill*.

⁶² *Id.*

⁶³ § 302(a), 1967 *Bill*

will so exploit his work as to lose common law protection without investing it with federal protection is substantially lessened. In a sense, the federal statute as modified by the revision bill will pick up where the developments under the common law have left off, and the protection analogous to the moral right now available at common law will remain available under the federal statute, although not in perpetuity. Even the performer's right in performances captured by film, tape, phonorecord or other medium will under the proposed scheme be governed by the federal statute.⁶⁴

By pre-empting state competence to confer upon artists and authors any legal or equitable right equivalent to copyright under common law or state legislation, the revision bill cuts off the possibility that state protection contravening the "limited time" and "public domain" concepts underlying the federal statute will be forthcoming. Perpetual rights in unpublished manuscripts will be no longer possible.

But what about state protection for the character "Sam Spade"? Presumably, a state, if it wishes, may continue to confer upon Dashiell Hammett an exclusive right to continue to develop the "Sam Spade" character even after parting with a work featuring the character. Characters seem not to fall within the subject matter of the revision bill and so seem eligible for protection under state law. The consuming public could conceivably view a "Sam Spade thriller" as the product of a particular although perhaps unknown author. To the extent that a substantial segment of the consuming public reacts to a character name, as an indicator of the contents of a book, a basis exists for excluding authors other than the originating author from using a well-known character name to market a book in a manner likely to deceive consumers into purchasing a work of one author thinking it to be the work of another. Such protection, if a state chooses to confer it, will not conflict with the federal copyright statute and, so long as the protection is afforded only to the originating author, it will not confer protection cognate to copyright protection at a point in time when copyright protection, if it were available, would have expired. State laws requiring those who exploit a work to acknowledge its authorship or a state law permitting an author to sue one who would garble or mutilate his work seem similarly compatible with the pre-emption facet of the revision bill, but a state doctrine that would permit an author to recall a work after it was published would seem quite inconsistent with the proposed law; especially if it purported to enable an author to take back what he had done and thereafter forever withhold it from public scrutiny.

At this writing the copyright revision bill has not passed the 90th Congress, and prospects for its passage are dim. While wholesale revision of the existing federal statute is inevitable and devitalization of the

⁶⁴ § 102(7), 1967 *Bill*. See House Copyright Revision Report 18.

present significance of common law copyright likely, one cannot say precisely when it will occur.

In the meantime state common law copyright doctrines continue to develop uninhibited by the federal scheme. Or do they?

The Supreme Court in *Sears Roebuck & Co. v. Stiffel Co.*,⁶⁵ and *Compco Corp. v. Day-Brite Lighting, Inc.*,⁶⁶ ruled that a state could not evolve its law of unfair competition uninhibited by federal patent policy. Clearly the broad principle of *Compco* and *Stiffel* applies in the copyright sphere. Federal policy confers a copyright monopoly for a limited time in a published work; common law copyright protects unpublished works. If Knopf were to publish a John Updike novel without securing federal copyright protection and were to distribute thousands of copies through normal marketing channels it cannot be supposed that a state could pronounce the work "unpublished" and protect it on a common law copyright theory. In the short run and in the abstract there is no evil inherent in a state's protecting John Updike's novel, especially if state protection fills in gaps left by silly or technical federal notice requirements. There is long run harm in the scheme, however. If state protection is as effective as federal protection and state protection is for an unlimited time, then authors will ignore the federal scheme and rely on the state scheme. The federal Constitution-based policy of copyright protection for a limited time only would be contravened. Even if state doctrine were deemed limited by the patent clause of the federal Constitution so that the period of protection available under state law did not differ substantially from the period of protection under federal law, the supremacy clause of the federal Constitution would be transgressed, for when a state scheme clashes with a validly enacted federal scheme, the federal is to be preferred.

Quite clearly, then, the patent clause or the supremacy clause or both place a limitation upon the protection available under common law copyright. There is, necessarily, a federal limitation on common law copyright developments. *Compco* and *Stiffel* stand for at least that much.

As with the revision bill, the *Compco-Stiffel* doctrine, whatever its emanations and penumbras, will have no drastically devitalizing effect on American law analogues of *le droit moral*. The protection available to an author during the period of creation will be as complete after *Compco* and *Stiffel* as before, perpetual protection aside and a discreet traffic in the work assumed. Development of a paternity right and further development of a right to respect for a work would seem not to be impeded by *Compco* and *Stiffel*, while a development permitting recall of a work after publication and exploitation seems clearly unlikely in the

⁶⁵ 376 U.S. 255 (1964).

⁶⁶ 376 U.S. 234 (1964).

face of existing federal copyright policy even without the gloss of *Compro* and *Stiffel*.

IV. CONCLUSION

There are American law analogues of the French moral right. The protection available to the American author or artist during the period of creation is relatively extensive and clearly comparable to the protection inherent in the French right of disclosure. The American law analogues are fewer and less spectacular where protection is sought for a work after it is made public. The right of withdrawal or renunciation, while not pervasive in France, is nonexistent in the United States, and prospects for its development are nil. There is a similar disparity between French and American law on the question of the paternity right. It is fair to say that the right does not exist in the United States unless written into an enforceable contract, but it is also unusual in the United States that an author's efforts in fact go unacknowledged. There is, therefore, little need for a paternity right to evolve, but if a need is perceived there is also no reason why pride of authorship cannot be acknowledged equally in the United States and France. Of course an American author presently has a right to prevent another from passing off as his own the work of the first.

Quite clearly a right to the integrity of an artistic work is evolving in the United States. To the extent that it presently exists, it must be said to focus on mutilation. What is mutilation is for the moment unclear and will likely in the future vary from medium to medium. Lopping 10% from a statue would be more likely to have a devastating effect on the work than lopping 10% from a two-hour motion picture, for example. In the matter of integrity of created works there is some possibility that developments in American law will have as much impact on French law as developments in French law will have on American law. The present French law of respect for artistic works varies from medium to medium and is itself in the initial stages of development.

Whatever may be the prospects for interaction between the French and American systems of protection for literary, musical, and artistic works, it seems clear that the phrase "moral right" is the wrong phrase for heralding American law developments. As William Strauss has pointed out, the "moral right" varies from civil law country to civil law country. In Germany, for example, it expires with the copyright while in France it is said to be perpetual.⁶⁷ Even in France, says Strauss,

⁶⁷ W. Strauss, *The Moral Right of the Author* 124, Study No. 4, *Copyright Law Revision Studies*, 89th Cong., 1st and 2d Sess. (1960-61). See Stevenson, "Moral Right and the Common Law: A Proposal," 6 *ASCAP Copyright Law Symposium* 89, 107-109 (1955), who writes that the moral right doctrine finds expression in about 55 countries

the notion that the moral right is inalienable is riddled with exceptions: the courts consistently permit reasonable changes without the author's consent in collective works and in adaptations—where changes are necessary—and courts enforce express as opposed to tacit waivers of the moral right.

Judge Jerome Frank⁶⁸ and John F. Wicher⁶⁹ both have suggested that the term "moral right" is too unspecific to be urged upon or used by an American court.⁷⁰ It seems appropriate and desirable, therefore, that American courts refrain from using the term "moral right," but it is also appropriate and desirable that American courts continue to consider the pleas of authors and artists for protection analogous to some aspects of *le droit moral*.

with surprising lack of uniformity—in only six is it inalienable, and in only 18, perpetual. My examination of the UNESCO English language compilation of the copyright laws and treaties of the world gave me an impression of the lack of uniformity described by Stevenson. *UNESCO, Copyright Laws and Treaties of the World* (1967).

⁶⁸ *Granz v. Harris*, 198 F.2d 585, 590-91 (2d Cir. 1952) (concurring opinion).

⁶⁹ J. F. Whicher, *The Creative Arts and the Judicial Process: Four Variations on a Legal Theme* 26, 32 (1965).

⁷⁰ See *Shostakovich v. Twentieth Century-Fox Film Corp.*, 196 Misc. 67, 80 N.Y.S.2d 575 (N.Y. Sup. Ct. 1948), *aff'd*, 275 App.Div. 697, 87 N.Y.S.2d 430 (1949), where the court used the term moral rights in a very general way, never defining the term or referring it to a particular system of law.