

Moral Rights in Works of Visual Art in the U.S.

When we refer to copyright law in the U.S., we are generally referring to the economic rights in copyright such as reproduction and public performance. Both international and U.S. copyright laws, however, also provide for “moral rights”. The purpose of economic rights are to provide some money – payment for rights in copyright – to the author/copyright owner. The purpose of moral rights is to protect the personality or reputation of an author (and not necessarily the owner) of a copyright-protected work. Moral rights stem from the leading international copyright treaty, the Berne Convention. Article 6*bis* of Berne states:

(1) 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.

Like all provisions in Berne, Berne member states, including the U.S., must meet the minimum standards set out in Berne. Thus, each member state must provide for moral rights of paternity and integrity. Countries are free to go beyond these minimums and provide further rights such as the right of association or to withdraw permission to use a work. Note that moral rights are separate from economic rights and even authors who have assigned their economic rights may have moral rights. In some countries, moral rights may be waived (Canada) whereas in other countries (France) authors may not waive their moral rights and may always exercise them. Also, the duration of moral rights vary from country to country expiring on the death of the author, to 50 years after his death (Canada) to perpetual existence (France.)

Right of Paternity

This right refers to the author’s right to have his name on a work, to use a pseudonym and to remain anonymous. Generally, an author has this right whenever he has economic rights in a work, and this right applies in relation to uses covered by the economic rights. For example, an author has the right to have his name on the cover of his book.

Right of Integrity

The second component of moral rights, as set out in Berne, is the right of integrity. This is the right of the author to object to any changes to his work that may harm his reputation as an author. This harm would be a question of fact to be determined in court through the testimony of witnesses. For example, painting a moustache on the Mona Lisa (were the Mona Lisa still protected by copyright) would likely be a violation of Da Vinci’s moral rights. Closer to home, manipulating a scanned photograph may also be a violation of moral rights, if prejudicial to the honor or reputation of the author of the photograph.

Moral Rights in the U.S.

The moral rights set out in Berne are intended to apply to all types of copyright-protected works. However, when joining the Berne Convention in 1989, the U.S. took a narrower interpretation of the requirements in Berne (and in some circles, a controversial one as to whether the U.S. is in fact complying with Berne). In the U.S., moral rights are arguably protected under various federal and state laws including explicit protection (through an amendment in the U.S. Copyright Act by the Visual Artists Rights Act (“VARA”) of 1990).

Unlike Berne, VARA protects only one group of authors – visual artists, or more accurately, those who create “works of visual art.” These works include paintings, drawings, prints, sculptures, and photographs, existing in a single copy or a limited edition of 200 signed and numbered copies or fewer. Posters, maps, globes, motion pictures, electronic publications, and applied art are explicitly excluded from VARA.

VARA gives visual artists the right to claim authorship in their work, and to prevent the use of their name in association with a work. In addition, artists are granted the right to prevent the intentional distortion, mutilation or other objectionable modification of their works. Artists who qualify for federal moral rights protection can also prevent any destruction of certain works.

Under VARA, moral rights are not transferable by license or assignment, but are waivable (in writing.) The rights end with the life of the author (unlike economic right which endure for 50 years after the death of the author.)

Some states such as New York and California also have state moral rights protection for visual artists.