

Other Nations Bar Mutilation Of Works

U.S. ARTISTS: FIGHT FOR MORAL RIGHTS

■ BY JEFFREY L. GRAUBART

U.S. law has never before formally recognized the internationally recognized concept of the author's "moral rights." But, in passing the legislation known as the Visual Artists Rights Act (VARA), Congress, for the first time, has recognized the "moral rights" of visual artists. This legislation, which went into effect June 1, deals only with works by graphic artists, but the music industry should take note of it.

In many other countries, moral rights are already a fact of life. The 1973 Brazilian Copyright Act, for instance, requires that the names of all composers, lyricists, and performers be broadcast at the time a song is played on the air. And in 1978, an Amsterdam court ruled that a composer or lyricist is entitled to enjoin the performance of his song if it is performed in such a way as to distort or mutilate the work.

Three different approaches to artists' rights have emerged in the past century:

- In the U.S., protection of artists' economic rights has been exalted, but the artists' moral rights have been ignored.

- In many nations that are original signatories to the international treaty known as the Berne Convention on Copyright (1866), minimum standards of artists' moral rights are part of each nation's copyright law.

- In France, where moral rights have been recognized since the French Revolution, *les droits moraux* continue to be highly protected.

Among the moral rights are the following:

- *Right of attribution*, defined as the right to be identified as the author of a work, or to disclaim authorship.

- *Right of integrity*, to prevent mutilation or modification of the work that would prejudice it or hurt the professional reputation of the author.

- *Other moral rights* include the right to prevent publication, the right to modify the work before (or after) its utilization, and the right to withdraw it from circulation. Congress, in

tistic worth, political beliefs, or moral concepts) this right should be tested. In contrast, the French court, in *Le Chant du Mond vs. Soc. Fox Europe*, halted the exhibition of the motion picture on the grounds that the moral rights of the composers had been violated. Although the music was in the public domain and therefore no economic harm could be shown, the

ic incentive for artistic and intellectual creation that serves as the foundation for American copyright law . . . cannot be reconciled with the ability of artists to obtain relief for mutilation or misrepresentation of their work to the public on which the artists are financially dependent."

In enacting the VARA, Congress has taken the Second Circuit's lead but has limited the recognition of U.S. moral rights to graphic artists—i.e., painters, sculptors, and the like.

Meanwhile, creative forces within the motion picture industry, spurred on by the "colorization" issue, lobbied for a moral rights law of their own. In 1988, Congress passed the National Film Presentation Act, but that watered-down legislation is about to expire. Accordingly, U.S. film directors and screenwriters are lobbying for an extension of moral rights in hearings before the House Committee on Intellectual Property and Judicial Administration.

After dragging their feet on moral rights for more than a century, creative entities in the U.K. recently succeeded in having Parliament enact a vitiated moral rights law, but it was made ineffective by the insistence of the major record companies and music publishers that the new law allow for blanket waivers of moral rights (see *Commentary*, *Billboard*, April 27).

U.S. music publishers and record companies may also counter the intuitively appealing arguments of U.S. musicians in favor of moral rights. But in any event, the time has come for U.S. musical artists to make their voices heard—at least as loudly as that of their counterparts in the motion picture industry—for legislation to ensure that their artistic personalities are protected as well as those of artists in other countries.



'The time has come for U.S. artists to make their voices heard'

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enacting the Visual Artists Rights Act, limited artistic protection to the rights of attribution and integrity.

Except for this statute and various state laws protecting graphic artists, there are almost no U.S. laws on moral rights, and the majority of American courts have not otherwise recognized the doctrine of moral rights. A number of years ago, for example, the Soviet composers Dmitri Shostakovich, Aram Khachaturian, and Sergei Prokofieff asked for an injunction in a New York court to prevent the use of their public domain music in a motion picture with an anti-Soviet theme. Simultaneously, they brought the same case in a French court. The New York court, in *Shostakovich vs. 20th Century Fox Film Corp.*, denied the composers any remedy, questioning on what standard (good taste, ar-

court recognized that the composers had sustained moral damage (e.g., the violation of the authors' right of respect).

In 1976, the U.S. Second Circuit Court of Appeals gave some relief to the creators of "Monty Python's Flying Circus" in a case involving the unauthorized editing of their programs. Although the court's holding was based on the contract between the parties, the appellate judges did discuss the attitude of U.S. case law toward moral rights:

"American copyright law, as presently written, does not recognize moral rights or provide a cause of action for their violation, since the law seeks to vindicate the economic, rather than the personal, rights of authors," the opinion said. Nevertheless, the judges added. "The econom-