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Legal Moral Rights of The United States and Britain

INTRODUCTION: Creator's rights and Copyright

The rights of creators are protected under what is called copyright. The laws of copyright grew out of the technological development of the printing press in the fifteenth century. With this invention grew a need to develop a system to protect authors' works. The "world's first copyright statute"[1] appeared in the law of the United Kingdom, the Statute of Queen Anne, 1709. Basically this act consisted of the right to copy a book, after initial publication. The official title of the act spells this fact out clearly:

> An Act for the Encouragement of Learning by vesting the Copies of printed Books in the Authors or Publishers of such Copies during the Times therein mentioned.[2]

The primary purpose of this law was not to protect author's rights.[3] In fact, it could be argued that this act was supporting a publisher's right to protect their own business.[4] But it did recognize that the source of copyright was in the creation by the author, and not the "enterpreneurship of the printer."[5] This law was the ancestor of both the British and the American form of copyright.

Copyright can best be defined as "a form of legal protection given to a wide variety of creative works;"[6] it "gives protection to the creators of a wide variety of types of subject matter."[7] The definition here given for copyright is so general because the specifics vary depending on whether one is speaking of a particular state, national, or international copyright laws. The specific focus of the law in this paper will be the federal level of the United States; the United

Kingdom, and the International trade agreement of the Berne Copyright Union of the Paris Act of 1971.

Copyright also varies depending on the subject matter and rights under consideration. The specific subject matter that will be the subject of this paper is artistic works, and the right analyzed is moral rights. "Moral rights is an international legal concept which not only protects the personal rights of artists, authors and musicians, but also the artistic work itself. It is based on the belief in the perpetual and inalienable bond between the artist and his work once the art work has been disclosed to the public."[8] These rights granted may vary from country to country, but they all essentially provide means for a creator to "preserve his artistic integrity and reputation."[9]

This paper will examine what moral rights exist for artists in the United Kingdom, The United States, and under the Berne Convention, as a means of demonstrating how far the laws of these two countries have progressed in the area of moral rights, and how far they still may go. First, it will examine past conflict over artists rights in the U.K. and the U.S.. Second, it will observe the moral rights of the U.S. and the U.K. and demonstrate how they do or do not comply to the Berne Convention.

THE INITIAL CONFLICT

Moral rights is a concept that both the British and the American systems have had a difficult time acknowledging.[10] Perhaps the strongest reason for their resistance is the bases of their copyright laws. As discussed at the beginning of this paper, both the U.K. and the U.S. have systems of protecting "author's rights" that are related. Both rest on the Statute of Anne, an act that has been described as "practical and commercial," whereas copyright laws from the Soviet Union and France appear to be more "idealistic," due to their birth from

the ardor and "the philosophy of [their respective] particular revolution."[11] Copyright in England has "traditionally" been viewed "in economic terms, and largely ignored such considerations as the author's honour."[12] It is perhaps for this reason, over all others, that the British have resisted using the term "author's rights" in place of "copyright" as many other languages have. After all, this change might "symbolize some preference for creator over enterpreneur."[13] The economic bases of copyright lies in the conception of this legal principle as a form of property right. In the U.K. Copyright Act of 1956 there is a reference to "ownership of copyright."[14] The U.S. conceives of copyright in a similar manner. As written in the opinion of Gilliam v. ABC, inc.:

> American copyright law, [has not] recognize[d] moral rights or provide[d] a cause of action for their violation, since the law seeks to vindicate the economic, rather than the personal rights of authors.[15]

In the U.S., the courts have also shyed away from the concept of moral rights for more than economic reasons. Justice Jerome Frank, in Granz v. Harris, expressed his belief that the 'right of privacy' induces "novel and valuable judicial perspectives," while the label "moral rights"suggests something "not legal." Also he points out that this phrase is to excessively general in meaning.[16] But it has also been observed that it is not due to weakness in the doctrine that it has been rejected, but "because it has not received the serious intellectual examination... to which it is entitled."[17] It has been neglected, probably due to its lack of economic concern. "Moral rights are independent of ownership of the copyright in the work or film, and are of most importance where the copyright does not belong to the author."[18] Thus, moral rights go beyond the scope and basis of U.S. and U.K. copyright, that is until recently.

THE BERNE CONVENTION — more to cpt pg

The underlying factor that resulted in the change in the U.K. and the U.S. standing on moral rights is the stipulation of these rights from one of the oldest, largest (76 members), and important international copyright agreements, the Berne Convention for the Protection of Literary and Artistic Works.[19] Under this agreement, the member states were each to offer the same level of copyright protection to other member countries that it offers its own citizens.[20] The "literary and artistic works" covered by the Berne Union "shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression."[21] Specifics of what exactly is covered are left up the the individual members to determine through legislation.[22] The convention does assert that it does not cover "news of the day" or "miscellaneous facts having the character of mere items of press information."[23] Britain has been a member of the Berne Union since it was conceived in 1886. It was latter revised at several conferences, the last revision being in Paris in 1971. The United States joined the Union at this last revision. The Berne Convention has become the center of development of international policy on "new technologies and the cross- border exploitation of copyrighted works,"[24] making this union one of great political value for the U.S and compliance increasingly essential for the U.K.

RIGHT OF ATTRIBUTION

Under the Berne agreement, the doctrine of moral rights for authors' covers several rights, but probably what is considered crucial to the concept of protecting the artist's reputation is the right of attribution. This right is simply the right to be identified as the author of a work that is published or exhibited. The French call this droit å la paternité.[25] This right is the first moral right introduced in the Rome Conference of the Berne Convention of 1928 in Article 6[26]. This article at that time left the conditions, duration, and means of redress

it to individual states in the Union. Later conditions were added to extend the rights of the article to the present condition in which the author is granted the rights until "after his death... [for] at least the expiry of the economic rights,"[26] the copyright. The person to exercise this right was left to "the legislation of the country where protection is claimed."[27]

Now ~~in the United Kingdom~~, it would seem likely that ~~this country~~ would automatically comply with all aspects of the convention. Britain was, after all, a founding member of the first Berne Union of 1886.[28] But up until recent legislation in 1988, "this country hald] not complied with the obligations of Article 6*bis*."[29] Under the controlling copyright laws prior to 1988, paternity rights of authors were not recognized, and in fact the offense of paternity given to a non-author was recognized instead.[30] As stated earlier, the U.K. had its reasons for non-conformance, but eventually they did change their position.

With the passage of the Copyright, Designs and Patents Act 1988, came a legislative movement toward compliance with the Berne Union, and this included the inclusion of the right to attribution. Under this act, the author of a work, or the director of a film has the right to be identified with it under varying conditions, depending on the type of subject matter:

> (a)In the case of a literary or dramatic work (other than a lyric)- the commercial publication, performance in public, broadcasting or cable transmission of the work or an adaptation of it, or the issue to the public of copies of a film or sound recording including the work or an adaptation.
> (b)In the case of a musical work or lyric-the commercial publication of the work or an adaptation of it, or the issue to the public of copies of a film whose sound-track includes the work or an adaptation of it.
> (c)In the case of an artistic work- the commercial publication or exhibition in public of the work, or the broadcast or cable transmission of a visual image of the work, or the showing in public of, or issue to the public of copies of, a film including a

visual image of the work.
(d)In the case of a building, a model for the building, a sculpture or a work of artistic craftsmanship- also the issue to the public of copies of a graphic work representing or a photograph of the work.
(e)In the case of a building- also the construction of the (or if there are several, the first) building constructed to the design.
(f) In the case of a film- the showing of the film in public, the broadcast or cable transmission of the film, or the issue of copies of the film to the public.[31]

However the particular work is identified, identification must be "clear and reasonably prominent."[32] (Note that, for the U.K. in this paper, unless stipulated, a work implies a "literary, dramatic, musical, or artistic work, and... film."[33] ~~And that~~ An "artistic work" by the U.K. legal definition under copyright is a "graphic work, photograph, sculpture or collage, irrespective of artistic quality, a work of architecture being a building or a model for a building, or a work of artistic craftsmanship."[34] ~~And this~~ The "director" is the person with whom arrangements are necessary for the making of a film.[35])

The right of attribution is not automatically guaranteed in the U.K., for this country has taken advantage of making its own laws to protect its own interests by requiring that these rights must be asserted by the author or director. They can be asserted in "an assignment of copyright in the work."[36] "An assignment is in essence a transfer of ownership (however partial)."[37] (Note that the creator of the work can assert the right in an assignment, but he can not give these rights away through assignment.[38]) Or the author can specify his rights in writing. The right can also be asserted in the event of exhibition, provided that the first owner or author is attached to it somewhere. Or any display of a copy made by a licensor of the right to copy must be attributed to the author if the author asserts that right in the license.[39] "A license is in essence permission to do

what otherwise would be infringement,"[40] such as making copies for display. Apparently, anyone who receives a copy right assignment, license, or is brought notice to a creator's written statement asserting identification is required to attribute the work correctly. [41] Delays in asserting this right should be considered when the court is considering cases of infringement of this right.[42] Thus, Britain has moved toward giving moral rights to authors, artists, and directors, but has attached certain strings.

The United Kingdom's granting of the right of attribution is not all inclusive, for there are works that are excluded from this right. They include works the author or director of whom died before commencement of the legislation, or works under the copyright of someone other than the author at the time of commencement of this act.[43] Significantly, the legislation also excludes works whose original copyright holders are the employers of the author or director, that is if the works are done in the scope of employment.[44] In addition, the act specifically stipulates that computer programs, computer generated works, and typeface design are excluded from this right. Also not included in requiring the right of attribution are works made for reporting current events, and works that are to appear in a newspaper, magazine or other periodicals, or in a collective reference work.[45] In addition, works bearing a Crown or Parliament copyright are also excluded; that is to say, all government documents are not given the right to attribute authorship. (Works involving international organizations are also excluded.) If the author has appeared on the excluded works of government documents or in a work internationally connected, then the right can be applied.[46] There are also certain other exceptions to the right of identification, which include incidental inclusion in an artistic work, sound recording, film, broadcast or cable programme, fair dealing for reporting by the

use of recording, film, broadcast, cable, examination questions, parliamentary or judicial proceedings, Royal commissions, statutory inquiry, industrial design, and acts permitted under the assumption that copyright has expired.[47]

The United Kingdom also contains a right that is related to attribution, but is not included specifically in the Berne Union; this is the right of False Attribution. The concept of false attribution can be defined as protecting a person from not having a "work falsely attributed" to him as either author or director.[48] In the past there have been two means by which British subjects could have rectified this situation. If due to an infringement of this right the public thinks that they are "getting a known author's work in the course of trade," then the offense of passing off is applied. This is a common law remedy It is available for use by "anyone whose business, goods or trading style are so closely emulated by a competitor as to confuse the public or to lead the public to assume that there is some connection between them when there is not."[50] In the case of passing off, the defendant must prove that he has a substantial enough reputation to be harmed by the false attribution.[51] It also must be demonstrated that ~~their~~ there is a "badge of recognition" by which the reputation is founded. In the case of literary and artistic work, this badge may be considered to lie in the work, performance, or even in a "character" from either.[52] The second outlet involves the work being of such poor quality, that the author or director's reputation is lowered. If this is the case, then the author can sue for damages.[53] Under ~~the~~ new copyright legislation this commercially based remedy has been extended as a personal right of authors and directors not to have a literary, dramatic, musical or artistic work either "express or implied" falsely as their own.[54] This right is infringed when a work, falsely attributed, is distributed publicly, exhibited, performed, or broadcasted.[55] It also may be infringed if dealt with in a business

manner, either as a copy, or as the original.[56] This business manner or "dealing" includes "selling or letting for hire, offering or exposing for sale or hire, exhibiting in public, or distributing," and it includes adaptations and copies falsely attributed.[57] In each of the acts of false attribution listed above, the infringement applies if the person knows or has reason to believe that there is such an attribution. Thus, Britain has taken the Berne concepts and generalizations and specifically defined them for their own benefit and use by their authors and directors.

In the United States the right to attribute authorship first appears in federal legislation as recently as 1990, in response to the U.S. joining the Berne Union of 1971. As stipulated earlier, the United States has been reluctant in the past to give official notice to these rights. Never the less, these rights now appear in section 106A of chapter 17 of the United States Code governing copyright, and have been referred to as the Visual Artists Rights Act of 1990. Under this provision an author is granted the right "to claim authorship of that work" and "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."[58] Before this, for an author to assure these rights he had to stipulate them in contract,[59] at least as far as attribution of authorship was concerned. As for the right not to be credited with a work that one did not commit, this has appeared in the form of a provision of the Lanham Act, the federal trademark law, which prohibits works from being given a "false designation of origin," and gives the right to pursue "civil action... by any person who believes that he is or is likely to be damaged by the use of any such false description or representation."[60] In a case before the Supreme Court, Dodd v. Fort Smith Special School Dist. No. 100[61], it was determined that this clause not only covers trademarks, but any situation "to protect the consumers or any person who

is likely to be damaged by its use from a false designation of origin."[62] This case involved a book being falsely attributed to the wrong author. In another case, a concept similar to the United Kingdom's "Passing- off" was used . This case, Smith v. Montoro, involved an actor whose name was replaced with another's in the film credits, when it was distributed in the United States. The court found this as a violation of the Lanham Act and they relied on what is called reverse palming off; this concept is conduct where an individual purchases a good and replaces the name on the good with his own.[63] These rights, therefore, have existed in this country, but they have never before been officially claimed. As stated in the Dodd case, the court has previously "rejected the view that an individual had a liberty or property interest in their reputation."[64] Now the visual arts are recognized as having some form of this right. Visual arts are defined under the new legislation 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.[65]

(Note that in this paper the term "work" is equivalent to the above definition of a visual work of art, but only in reference to the U.S. legislation.) This is a much more narrow perspective on what works are protected than under the United Kingdom's legislation. As with Britain, there are exceptions to this definition. The act does not cover:

> 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;.. any merchandising item....; any work for hire; or any work not subject to the copyright protection under this title.[66]

According to the copyright code, a work for hire is" a work prepared by an employee within the scope of his or her employment," or "a work specially ordered or commissioned.. if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire.."[67] Also listed with this definition is a list of materials that fall under the concept of "work for hire." It reads like the list of exceptions to visual art. In fact in a case before the Supreme Court, Community For Creative Non-Violence V. Reid, a commissioned statue was declared not to be a type of work that would fall under a work for hire.[68] Now these works that do fall under the Visual Arts Act still require a written agreement as works for hire to be excluded from protection, unless they are created as a result of employment that is permanent and not for the sole purpose of a special project. It is interesting to note how limited the definition of visual arts is in the U.S. in comparison to the list of works that fall under the U.K.'s Moral Rights Act. Both do exclude some form of work for hire, news, magazines, compiled works, computer programs, movies, and designs. (Since movies are excluded by the U.S., directors do not have these rights in the United States.) It is also significant that the U.S. code excludes any "reproduction, depiction, portrayal, or other use of a work in, upon, or in any connection with any item described" in the code as a "work of visual art" from this right,[69] while the U.K. includes adaptations of certain works. And finally that in both cases these rights are the sole owner of the author or co-authors, regardless of who owns the copyright.[70] But the U.K. requires an assertion of these rights, while the U.S.,

surprisingly, does not.

RIGHT OF INTEGRITY: IN THE U.K.

Now for a return to the Berne Connection in order to move to the next right accredited in some degree or another to artists, authors, or directors; ~~this is~~ the right of integrity. This is defined in the Berne Paris Act of 1971 as the right 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 honour or reputation."[71] This right is called droit au respect de l'oeuvre in French.[72] This right gives the author the right, "however explicitly [he] may initially give the adapter his head,... to object to the new version, when he sees it.... Only his approval after he has seen it will bind him."[73] As with the right of attribution, this right is granted to the length of copyright, after the death of the creator of the work, and it also must be instilled and the means of redress incorporated in the legislation of the country involved in the protection claimed. Both the United Kingdom and the United States now legislatively recognize this right.

In the United Kingdom, the right to prevent derogatory treatment is acknowledged under section eighty of the 1988 Copyright, Designs and Patents Act. Under the provisions of this right 'treatment' refers to "any addition to, deletion from or alteration to or adaptation of the work, other than- a translation of a literary or dramatic work, or an arrangement.. of a musical work involving no more than a change of key or register."[74] In addition this treatment, to fall under this right, must result in a "distortion or mutilation of the work" or is prejudicial to the author or director's "honour or reputation."[75] In the past this right has appeared as a common law tort "to allow objection to prejudicial alteration."[76] But without legislation it would always be difficult to determine if the court would grant this right, for it required the finding of a lowering in reputation of

the author "in the eyes of right thinking members of the public."[77] The author could also have protected his right through contractual agreement; this was the case in Frisby v. BBC. The question presented for the court was whether the BBC could delete a line from a play . The contractual agreement involved stipulated that the author could object to any form of structural alteration. The court agreed with the author, especially considering the fact that the BBC only had a limited license over the play, and not an assignment (ownership).[78] Up until the 1988 Act, the author had to insure that his right was stipulated in contract in order to reduce the risk of being denied this right. These contractual agreements could vary in how much they protected and from what they protected works. The acts which are primarily incorporated under the present legislation as derogatory treatment are as follows:

> (a) In the case of a literary, dramatic or musical work- the commercial publication, public performance, broadcasting or cable transmission of a derogatory treatment of the work, or the issue to the public of copies of a film or sound recording of or including a derogatory treatment of the work.
> (b) In the case of an artistic work (other than a building)- the commercial publication or exhibition in public of a derogatory treatment of the work, or the broadcasting or cable transmission of a visual image of a derogatory treatment of the work, or the showing in public of, or issue to the public of copies of, a film including a visual image of a derogatory treatment of the work.
> (c) In the case of a model for a building, a sculpture or a work of artistic craftsmanship- also the issue to the public of copies of a graphic work representing or a photograph of a derogatory treatment of the work.
> (d) In the case of a building- if the architect is identified on a building and it is the subject of derogatory treatment, he is entitled to require the identification to be removed.
> (e) In the case of a film- the showing in public, broadcasting or cable transmission of a derogatory treatment of the film, or the issue of copies of a derogatory treatment of the film to the

public.
(f) In the case of a film- also, along with the film, the playing in public, broadcasting, cable transmission, or issue to the public of copies of a derogatory treatment of the sound-track.[79]

It is also an infringement if works possessed in the course of business, sold, hired out, offered or exposed for sale or hire, in the course of a business exhibited or distributed in public, or other distributions" that affect prejudicially the honour or reputation of the author or director;" and if it is known, or there are reasons to believe, that it or the copy has received derogatory treatment and has been, or is likely to, fall under one of the primary infringement of the right to object to derogatory treatment.[80] All of these conditions extend to parts as well as the whole of a work. If a part that has received derogatory treatment may be falsely attributed to the author of the whole, then this right extends to that part.[81] The works considered to fall under the infringement of the right to object to derogatory treatment are very similar to what falls under the right to attribution, in the U.K.

As with the right of attribution in the U.K., there are works that are exceptions to the right of integrity. These exceptions include "computer-generated work," works made for the "purpose of reporting current events, [and] to acts permitted in relation to copyright because of authorized assumptions that copyright has expired."[82] The right also excludes newspapers or other periodicals, compiled works of reference (either made for the purpose of publication in or made available with the author's permission for such a publication) "but in the case of derogatory treatment this exclusion extends further to subsequent exploitation elsewhere without any modification of the published version."[83] Also excluded from derogatory treatment are any actions taken to avoid the making of an offense or to comply with statutory law, provided

that any such actions are prominently indicated, and that the action is labeled as having been done without the author or director's consent.[84] Under certain forms of works, the copyright can make alterations, regardless, unless the author is identified. But even if identified, there are no infringements in the case of these works, if there is sufficient labeling that the alterations were made without consent. Among these excluded works are works whose original copyrights rest in the employer's hands of the author or director (like the work for hire clause of the U.S.), or an international organization, or in which the government holds the copyrights.[85] Again, note the similarity with the U.K.'s exceptions to the right of attribution.

It is significant to note here that an aspect of the right to integrity in the U.K., the right to object to derogatory treatment, has a clause connected to it which is listed under the right to object to false attribution. This is the concept that works in the course of business, having been altered after parting from the author, that are attributed as being unaltered, and copies of altered works accredited as being copies of an unaltered work, with knowledge or suspicion of alteration, are infringements of the right to object to both false attrition and derogatory treatment.[86] There must be an express or implied representation that there has not been any alteration- "it is not enough merely for the work to be recognizable as being by the artist," for there to be an infringement.

THE U.K. SOLE RIGHT: FILMS AND PICTURES

The United Kingdom has stepped beyond the generalization of the Berne, but this time they have done more than include a right that falls under a right of the Paris Act; they have created a new right of privacy for photographs and films. Under this right, a person who commissions a photograph for private and domestic purposes, or the making of a film in which copyright has been granted, has the

right not to have copies issued, the work exhibited, shown, broadcasted, or in a cable programme. The right is not infringed in the instance of incidental inclusion, parliamentary and judicial proceedings, Royal Commissions and statutory authority, anonymous or pseudonymous works, or acts permitted with the assumption that copyright has expired.[88] Thus in the case of photos and films, the employer in essence owns the copyright, not the creator or artist. The terms of this right are the same as for the other rights under U.K. legislation. This right covers a part, as well as the whole, of the work. It does not apply to photos or films made before the 1988 Act ~~was~~ commenced. And an "infringement is actionable as a breach of statutory duty owed to the person entitled."[89] Thus, the United Kingdom has created their own artistic right that is neither in the Berne agreement, nor in United States legislation.

RIGHT OF INTEGRITY: IN THE U.S.

While the United States may not posses the British right to privacy act for film and photographs, it does protect works from "any intentional distortion, mutilation, or modification...., and.. prevent[s] any destruction of a work of recognized stature, and any intentional or grossly negligent destruction of that work;"[90] this is the right of integrity. (Observe that it must be a work with "recognizable stature." This is not stipulated in British legislation, though it is assumed that the artist must have a "reputation" to defame for infringement to occur.) Until recently, it has been the opinion of the courts of the U.S. that if an artist wanted to assure that his rights were protected, he should seek contractual agreements stipulating these rights.[91] An important trial case involving the concept of integrity, was an injunction sought by Monty Python against a television station that intended to broadcast edited versions of three of its programs.[92] The network had received permission to broadcast the programs,

but Monty Python contended that the right to protect the works from mutilation had not been waived away in any agreement. In the opinion of the court, the concept of droit moral was stipulated as the legal claim of Monty Python. It was defined as including "the right of the artist to have his work attributed to him in the form in which he created it."[93] The court used the Lanham Act of trademarks, using the concept that a violation occurs if "a representation of a product, although technically true, creates a false impression of the product's origin."[94] This is a misrepresentation that could injure business or personal reputation. The court also recognized that due to the inability to reconcile the economic basis of copyright law with "the inability of artists to obtain relief for misrepresentation of their work to the public on which the artists are financially dependent,"[95] the courts have had to rely on theories outside of copyright legislation to grant artists' relief from misrepresentation. These other theories include the Lanham Act, contract law, and the protection from unfair competition.[96] Here it is important to note, that though the court in this instance recognized the artist's moral right to integrity, it does not guarantee this right. Now with the new legislation, whether the right exists is no longer a question left hanging for the courts to muse over. This case was an exception, not at the time it went to court, the rule. Thus the current legislation was crucial to insuring that in the future the courts would examine and protect this right.

As with the right of attribution, there are exceptions to what is covered. Anything that is not defined in the copyright laws as a visual work of art is of course excluded. But specifically there are three permitted sets of circumstances of loss of integrity stipulated under the Visual Artists Rights Act of 1990. First, "the modification of a work of visual art which is a result of the

passage of time or the inherent nature of the materials" is allowed. Second, "the modification of a work of visual art which is the result of conservation, or of the public presentation, including lighting and placement, of the work is not a destruction,distortion, mutilation, or other modification... unless the modification is caused by gross negligence."

And third, any "reproduction, depiction, portrayal, or other use of a work" as defined under "work of visual art" is not an infringement of the right of integrity.[97] Thus again, the U.S. excludes adaptations, while the U.K. includes them under protection. Thus, the U.S. has brought its own brand to the concept of the right of integrity under the Berne Convention.

DURATION OF RIGHTS

Now this paper will examine a concept that both the United States and the United Kingdom consider in regard to the moral rights of artists ~~that they have stipulated,~~ the duration of the rights. Recall that under the Berne Agreement of Paris 1971 the term of their rights was suggested to last at least to the termination of economic rights after the death of the author. Under the United Kingdom's legislation the term of droit moral is, in accordance with the Berne Union, to the termination of copyright. This term is covered by all moral rights under the U.K. copyright law, except false attribution. This right exists for twenty years after the author's death.[98] After the death of the author the right may be bequeathed to someone specifically. If there is no such direction and the copyright is part of the estate, then the right passes with the copyright. If neither is the case, then the right is "exercisable by [the author's] personal representatives."[99] If the estate copyright falls to more than one person, each possesses the right to assert or implement the author's moral rights. If one waves these rights, it does not limit the rights of the other. Any stipulations concerning the author's rights before death are still binding post mortem. Any

infringement of the moral rights are actionable by the author's personal representatives, and any damages collected shall become part of the estate.[100] The United States has taken a slightly different perspective on the concept of the duration of what the U.S. Legislation has stipulated as the rights of "visual artists." If the works were created before implementation of this legislation, then the terms of the rights are until the death of the author, and no further. If the title has not been past from the authors hands, as of the implementation of the Act, then the rights last for the duration of copyright. If the work is jointly owned, then the rights endure for the term of the life of the last surviving author. All rights run to the end of the calendar year in which they would otherwise expire.[101] Overall, once the author dies, then so do his rights to the moral integrity of his work, in the United States, while the U.K. allow for the rights to extend until copyright terminates.

WAIVER OF RIGHTS

Now we come to an issue of the new legislation of the U.S. and the U.K. which demonstrates their mutual historical connection as a basis for copyright; a need of economic protection has been the seed of copyright, and not moral right protection. This concept is the addition of an ability for authors, however they are stipulated, as having the right to waive their rights. Under both systems, the creators of works may by writing, in a copyright agreement, or by contract, deny their rights to attribution, to integrity, or any moral rights that fall within the stipulations of these countries individual moral right legislation. Though these rights are not assignable, they are waivable.[102] Thus, both countries have a back door for escape from the moral rights of authors. This waiver ability, along with the U.K.'s requirement of assertion of rights, seems to portray a lack of enthusiasm in both countries to honour the moral rights stipulated in their new

legislation. It seems to show a preference for what is commercially convenient. In the end, whether this legislation works, will depend on the insistence of the artists pursuit of contractual agreement that do not waive these rights.[102]

IN CONCLUSION

This paper in a sense has come full circle, for despite the United States and the United Kingdom's obvious differences in how they each define what falls under their respective moral right legislation, neither can escape their shared history. Thus, both have allowed for means for rights to be waived that might in any way effect the economic fabric. And surprisingly, the British system is almost as restrictive as the United States system. For though the U.S. may protect only "visual" arts, the British do not even posses these rights unless they assert them. Because of the relative youth of both of these sets of legislation, it is difficult to access their effect, strengths and weaknesses. It should prove interesting to see just how much they truly protect rights, and how much they really serve as just more legislative red tape.

A I'm impressed! This is working of a law student in a "Copyright" class + probably better written than most.

ENDNOTES

1 200 Years of English and American Patent, Trademark & Copyright Law. (Chicago: American Bar Center, 1977), 82.
2 Whale, R.F. Whale on Copyright. (Oxford: ESC Publishing Limited, 1983), 16.
3 200, 121.
4 Whale, 17.
5 200, 121.
6 Norwick, Kenneth and Jerry s. Chasen. The Rights of Authors, artists, and other Creative People. (Carbondale: Southern Illinois University Press, 1992), 5.
7 Stone, Peter. Copyright Law in the United Kingdom and the European Community. (London: Athlone Press, 1990), 1.
8 Van den Heuvel, J.A. Moral rights for artists: the development of a federal policy. (American University Thesis: UMI dissertations on law, 1988.), 2.

9 Cornish, W.R. Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights. (London: Sweet & Maxwell, 1981), 392.
10 Id.
11 200, 86.
12 Stone, 130.
13 Cornish, 297.
14 United Kingdom Copyright Act of 1956. Sec. 37.
15 538 F. 2nd 14 (2nd Cir 1976), 24.
16 198 F. 2nd 585, 590-1.
17 Katz, Arthur. "The Doctrine of Moral Rights and American Copyright Law- a Proposal." v. 24 Southern CA Law Review, 470.
18 Stone, 130.
19 Norwick, 42.
20 Berne Copyright Union, Paris Act, 1971. Art. 2, sec. 6
21 Id., Art. 2, sec. 1.
22 id., Art. 2 sec., (2)- (7).
23 id., Art. 2, sec 8.
24 Norwick, 42.
25 Cornish, 393.
26 Berne.,Art 6^{bis}(2)
27 id.
28 200, 88.
29 Copinger and Skone James on Copyright. London: Sweet & Maxwell, 1980.
30 id.
31 Stone, 133.
32 Copyright, Designs and Patents Act 1988. Sec.77(7).
33 Id., Ch. IV.
34 Id., Ch. I. (4).
35 id., 9 (2) (a).
36 id., 78 (2) (a).
37 Cornish, 382.
38 Copyright. 1988. Sec. 94.
39 id., 78 (3)
40 Cornish, 389.
41 Copright 78 sec, 4
42 id., 78 (5)
43 Stone, 132.
44 Copright , 79 (3)
45 id., 79 (5)

46 id., 79 (7)
47 id., 79 (4)
48 Stone, 136.
49 Cornish, 394.
50 Whale, 244.
51 Cornish, 475.
52 id., 476
53 id., 394
54 Copyright, sec. 84 (1)
55 id., 84 (2) (3)
56 id., 84 (5)
57 id., 84 (7)-(8)
58 17 U.S.C. sec. 106A (a) (1) (A) to (B)
59 Van den Heuvel, J.A. Moral rights for artists: the development of a federal policy. (American University Thesis: UMI dissertations on law, 1988.), 40..
60 15 U.S. C. sec. 1125(a)
61 666 F. Supp. 1278 (W.D. Ark. 1987)
62 id., 1284.
63 id. or 648 F. 2nd 602 (9th Cir. 1981)
64 id., 1283, n. 61.
65 17 U.S.C. 101
66 id.
67 id.
68 490 U.S. 730, 731.
69 17 U.S.C. 106(A) (c) (3)
70 17 U.S.C. 106(A) (b), and Stone, 132.
71 Berne, Art 6bis (1)
72 Cornish, 393.
73 id.
74 Copyright, Sec. 80 (2) (b)
75 id., Sec. 80 (2)(b)
76 Cornish, p.395.
77 id. p.395.
78 id., 390
79 Stone, 137-8
80 Copyright., sec. 83
81 id., sec. 80 (7)
82 Stone, 134.
83 id., 135.

84 Copyright, sec. 81 (6)
85 id., sec. 82.
86 id., sec 84 (6)
87 Cornish, 395.
88 Copyright., sec. 85.
89 Stone, 138.
90 17 U.S.C. 106A (3) (A) & (B)
91 Norwick, p. 49.
92 Gilliam v. ABC, Inc. 538 F. 2nd 14 (2nd Cir. 1976)
93 id., 24
94 id.
95 id.
96 id.
97 17 U.S.C. 106 A (c) (1) & (2) & (3)
98 Copyright, sec. 95 (1)
99 id.
100 id., sec. 95 (2)- (6).
101 17 U.S.C. 106 (A) (d)
102 Stone, 131.