

**MORAL RIGHTS:
COULD THERE BE A EUROPEAN HARMONISATION?
A comparative study of the common law and civil law approach**

MARINA PERRAKI*

INTRODUCTION

Copyright and related rights aim to encourage creativity and investment in creativity by protecting authors, performers, broadcasters and record and film producers from unauthorised reproduction and dissemination of their works, performances, broadcasts, recordings and films.

Within this framework the discussion on moral rights has become a very important issue. It is now quite clear that these rights are significant for the satisfaction of the author's basic moral demands relative to his work. One of the purposes of the legal protection of intellectual property is the encouragement of artistic creation. This can be achieved by remunerating the author financially; but the moral remuneration is equally important. It would be a deterrent from creation for an author to lose every bond with his work after the transmission of the economic rights. This bond, precisely, is the object of protection of the moral rights legal framework.

Because of their immaterial nature these rights are easily infringed. Their opposition to economic interests of other individuals has led to compromises, on the part of the courts or even of the authors themselves. In this essay the general features of UK moral rights' law, in relation to

* LL.M.: Attorney-at-Law, Athens Bar.

the respective French and Greek legal framework will be considered. Even though all three countries are signatories to the Bern Convention¹, several differences exist between them. By focusing on only one type of moral rights – the right of integrity – it will be easier to mark the outlines of the legal framework and courts' attitude towards the authors.

I. HISTORICAL BACKGROUND

Moral rights are fundamental as can be seen from the United Nations Universal Declaration of Human Rights (art. 27), which provides that "everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production, of which he is the author".

Another international treaty, the Bern Convention, sets the minimum content of moral rights for member states in article 6*bis*, which requires the signatories to provide, in principle, independent rights to claim authorship (paternity right) and to object to modifications or other derogatory action in relation to a work which would be prejudicial to the author's honour or reputation (integrity right). The Convention has been ratified by many countries, including the UK, the USA, France as well as Greece. The Convention came as a partial recognition of the developments taking place in the continental countries with regard to moral rights, towards the protection of the personality of the author as expressed in his creations alongside his economic interests in exploitation. In the legislative schemes of French and German law and their many derivatives, moral rights are equal to economic rights. France is, actually, considered as the 'home' of moral rights: they were first recognised by the *Cour de Cassation*, in the case of *Cinquin v. Leconq*². French law has, traditionally, protected the work as the product of the author's sensibility, his soul and, therefore, his personality. The French conception, which has prevailed since the 18th century, considers the author's right to be a natural right.

During that period, there was no direct concern for moral rights in the common law countries. The notion of these personal rights was totally alienated with the functional view of author's rights adopted in these countries. The primary concern was the economic exploitation of the

¹ The Bern Convention for the Protection of Literary and Artistic Works, signed in 1886, and repeatedly revised (Paris 1896, Berlin 1908, Bern 1914, Rome 1928, Brussels 1948, Stockholm 1967, Paris 1971).

² D.P. 1903. I.5.

works and neighbouring rights. In 1977, the Whitford Committee stated the basic philosophy of Copyright: "the fruits of a man's creative labour should be protected, so far as profitable exploitation is concerned"³.

II. RECENT DEVELOPMENTS IN THE UK

A. Legal protection of moral rights

Unlike what one would tend to think, moral rights did not lack protection under English Copyright Law. Indeed, the Fine Arts Copyright Act 1862⁴ gave some limited protection in respect of unauthorised changes of artistic works. But it was not until 1952 that attention became more focused on moral rights. In that year, in its report on Copyright Law⁵, the Gregory Committee had to consider the nature of the UK's obligations under article *6bis* of the Bern Convention.

The Committee found that the common law provisions which dealt with these matters were adequate; therefore, there was no UK obligation to legislate. Remedies for moral injuries existed under the general law. First of all, under the law of contract, the author of a work could avail himself of a remedy. In the contracts regarding the economic exploitation of his work he could, theoretically, include a term that his moral rights be recognised by the other party. The right to object to alterations could be expressly reserved by contract⁶; in publishing contracts a term limiting the right to make alterations may sometimes be implied⁷. Yet, in practice, the author is usually in a weaker bargaining position and cannot impose his claims on the contracting party⁸. Besides, the terms of each contract, even if they include moral rights provisions, only operate *inter partes*; they do not have an effect against third parties.

Secondly, under the law of defamation the author could get protection, to the extent that he was regarded with "hatred, ridicule, or contempt by

³ Report of the Committee to consider the Law on Copyright and Designs (1977), Cmnd. 6732.

⁴ Fine Arts Copyright Act 1862, section 7.

⁵ Report of the Copyright Committee (1952), Cmnd. 8662, par. 219-226.

⁶ *Frisby v. British Broadcasting Corporation*, [1967] 2 All ER 106.

⁷ *Joseph v. National Magazine Co Ltd.*, [1959] 3 All ER 106.

⁸ *Schroeder Music Publishing Company Ltd. v. Macaulay*, [1974] 3 All ER 616 where it was held that a contract giving the author the sole right to decide on publication issues restricts free trade.

the ordinary-minded folk"⁹. This could happen in the case of false attribution of authorship or the alteration of a work¹⁰. In *Moore v. News of the World Ltd*¹¹, a false attribution of authorship was found defamatory and the plaintiff was on that ground awarded damages. Also, in *Moseley v. Stanley Paul and Co*¹², the publication of a serious work under an unsuitable cover was held capable of cheapening the author's reputation. However, infringement of the moral right does not always cause a defamation of the author in the public's eye. The author himself may be the only one to believe that his personal or professional reputation is affected by the infringing act.

Thirdly, the law of passing-off could provide a remedy for moral right infringement, in case of false attribution. However it could only be based on the proof of the plaintiff's 'good will' in his reputation and the damage of it by the moral right infringement.

B. New Remedies Under the 1988 Copyright, Design and Patents Act

All the above remedies are still available to British authors, but the legal 'weapons' of the latter have increased, because of the specialised provisions of the 1988 Copyright, Design and Patents Act (hereinafter: CDPA).

What is interesting to see is that regardless of common or civil law jurisdictions, the moral rights debate has started quite early, even since the 19th century. Artistic works always had a multi-dimensional status that made them something more than mere economic objects of exploitation. In one way or another, justice protected the right of the author to have his name and his work equally respected.

So, eventually, the 1956 Copyright Act, stated under section 43 that it was a breach of statutory right to insert or affix a person's name to a work of which he was not the author, or to sell an altered artistic work as being the unaltered work of the author. Many lawyers doubted whether this Act actually fulfilled UK obligations under the Bern Convention¹³.

⁹ J. Philips and A. Firth, *Introduction to Intellectual Property* (3rd edition, Butterworths 1995) 247.

¹⁰ Cf. text to note 9. *supra*; also W.R. Cornish, *Intellectual Property* (3rd edition, Sweet and Maxwell, 1996).

¹¹ [1972] 1 QB 441.

¹² Macg Cop Cas [1917-23] 341.

¹³ For further information see, among others: G. Dworkin, *The Moral Right and English Copyright Law*, 12 *ICC* 1981, 476.

By 1981, the government accepted that it should clearly recognise a paternity and an integrity right. These are introduced by Chapter 4 of the CDPA, and apply to literary, dramatic, musical and artistic works and films. False attribution remains a breach of statutory right and a new right to privacy of certain photographs and films has been granted.

These new developments have been criticised by many scholars. However the question remains whether they secure enough protection on the authors; and therefore are in accordance with the Bern Convention provisions. Sometimes the comments are negative. According to W.H. Cornish the new CDPA provisions were "timid things, venturing little further than their common law forbears"¹⁴.

III. GENERAL FEATURES: COMPARATIVE STUDY

In order to understand the new developments, it would be useful to compare the characteristics of moral rights in the UK with those of other countries. We will focus on France, as a representative of the continental framework and Greece, for its relatively new establishment of thorough author's rights jurisprudence. It should be mentioned, though, that Greece, unlike common law countries, has always recognised the existence of moral rights. In the past this used to be through the protection of the right to personality (article 57 of the Greek Civil Code). But, the recent Law on Intellectual Property (Law 2121/1993), states explicitly that the moral right, in combination with the economic right, forms the *sui generis* right of intellectual property, distinct from both the right of ownership as well as the right to the author's personality.

A. Legal Nature

Let us start by considering the legal nature of moral rights. Two major approaches prevailed regarding that issue. On the one hand, the monist approach that saw economic and moral rights as inextricably linked and interdependent facets of one and the same right. On the other hand, the dualist approach viewed both sets of rights as distinct and separate. Different court decisions would consider one of the two elements as more important than the other. The monist approach tended to prevail in Ger-

¹⁴ See W.R. Cornish, *Moral Rights under the 1988 Act*, 12 *EIPR* 1989, 449.

man and Austrian law. In contrast, the dualist theory seemed more consistent with the philosophy of French law¹⁵.

According to UK law, moral rights are not part of copyright. The moral and economic rights, although both included in the copyright part of the new Act, do not form together the right of the author – they are not equal in status. As far as the legal nature of the *droit moral* in France is concerned, there is still no common view shared by legal scholars. Nevertheless, legislation and case law tend to support the notion that the author should have his creations viewed as emanations of his artistic personality. French law divides pecuniary and purely personal interests into separate patrimonial, i.e. capable of pecuniary evaluation, and extra-patrimonial rights, i.e. incapable, by their nature, to be evaluated in monetary terms. The latter precede the pecuniary rights. The moral right is born in the person of the author at the moment the whole work takes shape¹⁶. In Greece, the moral rights are seen as equal parts of the right of intellectual property together with the economic right. In all three countries, however, the moral rights are essentially concerned with the personal relationship and the protection of the close bond between the authors and their works; as opposed to the economic or cultural value of the work itself.

B. Basic Characteristics

1. Duration

A major issue closely linked with the discussion on the legal nature of intellectual property rights is the duration of those rights. There have been several views, supporting either the duration for the life of the author only; or the duration for the same period as the economic right; or for perpetuity¹⁷. The Bern Convention, in article 6*bis*(2), settled for a minimum period equal to that of the economic rights. The 1988 CDPA adopts, in section 86(1), this minimum and states that moral rights subsist until the expiry of the economic right. There is only one exception con-

¹⁵ On these theories, among others, Sam Ricketson, *The Bern Convention for the protection of literary and artistic works: 1886-1986*, GB 1987, 455-458. See also G. Koumantos, *Πνευματική Ιδιοκτησία* [=Intellectual Property] (Athens 1992), 42 *et seq.*

¹⁶ For an analysis of the French legal framework on intellectual property, see C. Marvin, *Author status in the U.K. and France*, 20 *ICLQ* 1971, 675.

¹⁷ See G. Dworkin, *Moral rights in English Law – The shape of rights to come*, 8 *EIPR* 1986, 329.

ferred for the right of false attribution, which lasts only twenty years after the author's death (s. 86 (2)).

By contrast, the *droit moral* in France is perpetual. This characteristic emanates from the personal character of the right and of the great value given to creation. The eternal bond, existing between the work and its creator, should never be interrupted.

In Greece Law 2121/1993 also adopts, in article 29 paragraph 1, the minimum duration provided in the Bern Convention: the moral right lasts as long as the economic right. As already indicated, both sets of rights are treated as equal. After the termination of the protection of the intellectual property, the public domain still exercises (through the Minister of Culture) the paternity and integrity rights¹⁸.

2. *Inalienability*

Another characteristic that derives from the personal nature of moral rights is the fact that they are inalienable. The inalienability of moral rights means that they cannot be assigned by contract. Even after the transfer of the economic right, the moral one remains within the powers of the author. This is a regulation adopted in all national legislations: section 94 of the British CDPA, article 12 of the Greek Law 2121/1993 as well as in the French law. The person to whom the moral rights are accorded may not transfer them by assignment, *inter vivos*. However, they are heritable and upon the author's death they pass either to the person nominated in the will; or to the person to whom the copyright passes; or to his personal representatives (s. 95, CDPA). According to Greek law, the moral right, upon the author's death, is transferred to his heirs¹⁹.

3. *Waiver*

It is not an infringement of a moral right to do anything to which the owner of the right has consented (section 87(1) CDPA). There is no requirement that the consent be in writing and, accordingly, it can be made orally or even be implied.

English law permits the waiver of moral rights. This means that it is possible for the author to surrender his right, even in advance of the time an issue actually arises; for instance, before the publisher's decision to

¹⁸ Article 29, paragraph 2 of Law 2121/1993.

¹⁹ Article 12(2)(b) of Law 2121/1993.

exclude an author's name from the pending publication. Section 87 provides that such a waiver should be by an instrument in writing signed by the person giving up the right. The waiver may relate not only to a specific work in existence, but also to a class of works or even works in general, and to future works. Moreover, the section allows for informal waivers or other transactions arising under the general law of control or estoppel.

The Bern Convention, in article 6*bis*, does not expressly refer to the inalienability of moral rights. Indeed, there is nothing that prohibits national laws from allowing authors to assign their moral rights either temporarily or permanently. The French law, which provides for high standards of moral right protection (higher than the ones set by the Bern Convention), does not allow the waiver of moral rights. As for the Greek law, that only allows the author to give his consent to certain acts, but not waive them *a priori*²⁰.

4. Types

Moral rights can be encountered in different types, within different jurisdictions. The Bern Convention provides for two types of moral rights: the paternity and the integrity rights. These are the basic rights protected in the jurisdictions of all States parties to the Convention.

The UK has also adopted, under the CDPA, the right to object to false attribution of the work; as well as the right to privacy for some photographs and films.

French law recognises the right to divulge the work: article 19.1. of the Law of March 1957; the right to respect for the author's name: article 6.1. of the Law of March 1957; the right to integrity: article 19 of the Law of March 1957; and the right to correct or retract work: article 32 of the Law of March 1957.

Under Greek Law (article 5 of Law 2121/1993) the moral rights include: the right to divulge work, the paternity and integrity right, the right to correct or retract work and the right to have access to work.

5. Remedies

The Bern Convention leaves the choice of remedies to the States. So, the UK law recognises that infringement of moral rights is a breach of

²⁰ Article 6 of Law 2121/1993.

statutory right (section 103(1)). The infringement is actionable only by the person entitled to the right (the author). In addition, as we have seen above, the author has all the other remedies available. In France, one can claim for damages or follow penal proceedings. In Greece, there may also be a claim for damages (article 65 of Law 2121/1993); or criminal sanctions (article 66); or even confiscation (article 64).

IV. THE RIGHT OF INTEGRITY

We have examined the general principles with regard to moral rights within three different jurisdictions, all falling within the scope of the Bern Convention. It would be interesting to see how the protection of the rights functions in these legal frameworks. We will focus on the right to integrity, since it is one of the basic moral rights and it is included in almost all legislations. We shall examine the theoretical framework of this particular right and then proceed to study some cases drawn from the UK and France.

A. The Theoretical Framework in the UK

Under section 80(1)(2) of the CDPA, the right to object to derogatory treatment is given to authors of literary, dramatic, musical and artistic works as well as to directors with regard to their films. In order for the right to be protected it must be demonstrated that: a) the work is subject to addition, deletion, alteration or adaptation; and that b) this "amounts to distortion, or mutilation of the work, or is otherwise prejudicial to the honour or reputation of the author or director".

In relation to the provisions of the Bern Convention, this stipulation seems narrower, as it does not include any "other derogatory action in relation to [the work]"²¹. As a result the protection actually afforded depends for the most part upon the interpretation given by the English judges: they should have in mind the protection not only of the work itself, but also of the bond between that and the author. On the other hand, they should, as well consider the restriction the exercise of this moral right may impose upon somebody else's freedom to act and to choose. In every case that involves the juxtaposition of two conflicting interests, there should always be a judiciary calculation and evaluation of these interests. Usually, one of them prevails to the detriment of the other.

²¹ Article 6*bis* of the Convention.

Moral rights (including naturally the right to object to derogatory treatment), should prevail against any economic contradicting interests, because of their connection with the personal right. It is undeniable that intellectual property is exploitable and seen as means of economic proliferation. This is, precisely, the point of the existence of moral rights: to stress the difference between intellectual property and any other property in its merely economic sense.

Common law jurisdictions always had a more economic legal approach to this matter. The whole framework of protection of creation (copyright), still functions under the principle: "what is worth copying is worth protecting"²². At the end of the day, it is up to the judges to implement and interpret the law and to form the actual shape of moral rights and their real value with regard to authors.

B. Considering Particular Issues

1. "Derogatory treatment"

By virtue of section 80 CDPA, the court has the task to give the precise meaning of the word "derogatory". Let us consider some examples that could only be given a judicial solution *ad hoc*: what would the court decide in a case where a sculpture is exhibited within a context that reduces its value, subjecting it to criticism or ridicule? Would the sole claim of the plaintiff, that this action is derogatory, be enough? The court is rather unlikely to take the plaintiff's reaction as being determinate in this context.

An interesting case relates to the invocation of the moral right to integrity for the first time in the area of the music industry (*Morrison Leahy Music Ltd. v. Lightbond Ltd.*)²³. It was brought before the court on 21 March 1991. The plaintiff sought an injunction to restrain a record company from manufacturing and selling a record entitled "Bad Boys Megamix", because of infringement of the author's moral right of integrity. In fact this record embodied sound recordings of segments of five musical works composed in whole or in part by George Michael, the famous singer and composer. The latter contended that his right not to have his work treated derogatorily had been infringed by the defendants by reason of the manner in which his musical works had been treated in the

²² Stated in the case *University of London Press Ltd v. University Tutorial Press*, [1916] *per* Peterson J.

²³ *EMLR* 1993, 144.

said record. The Court held it arguable that the selection of short snatches of music with the accompanying lyrics to form a compilation altered the character of the original compositions by removing some parts of the original context and embodying them in a new context²⁴. In this case there had, indeed, been a treatment of the work – but was it “degradatory”?

In France, what is taken under consideration is basically the author’s reaction. In the case *J. Lindon et SACD v. La Compagnie Brut de Beton et Bruno Boussagol*²⁵, S. Beckett, the author of “Waiting for Godot”, objected to his play being performed by women. The sole will of the author, clearly expressed with regard to his play being performed by men, was sufficient to establish a violation of the moral right to integrity; and to surpass the freedom of the play’s director.

It is interesting to note a similar English case, decided in 1967, that is before the CDPA was adopted, and examine the attitude of the judges towards the author’s claim of his work being altered without authorisation. They also based their decision mainly on the author’s wishes. The plaintiff had been commissioned by the BBC to write a television play. The dispute related to whether the BBC could delete one line relating to sex, which the author considered to be of basic importance to the play; in contrast, the BBC regarded this deletion as a minor alteration. The issue of the nature of the contract was also taken into consideration, especially whether it was a licence or a limited assignment of the copyright to the BBC. Although it was held to be a licence, the Court readily accepted a term limiting the licensee’s freedom to make alterations. Eventually, weight was given to the author’s view as to the significance of the deleted line – and the plaintiff succeeded²⁶.

2. *Meaning of the terms “additions” and “alterations”*

The interpretation of the word “addition”, if used broadly, could enhance the protection of the moral right to integrity. The famous ruling of 29 April 1959, handed down by the Cour de Paris, found against a distributor who had added a musical soundtrack to the film “The Kid”, without Chaplin’s consent. The extent of protection is quite broad in France. A French court granted damages to the estate of Albert Camus

²⁴ See J. Laddie, P. Prescott and G. Victoria. *The Modern Law of Copyright and Designs* (2nd edition, Butterworths, London 1995) 1015.

²⁵ 155 *RIDA* 1993, 225.

²⁶ *Frisby v. BBC*, [1967] Ch. 932.

against his publisher, when the British sub-licensee produced a book which criticised Camus' personal integrity²⁷. This is also evident from cases where the courts have ordered the commissioner of a space sculpture or the commissioner of a television series to complete work on the author's design or script, once execution has begun²⁸. In the first case the Cour de cassation held that the failure to complete the structure and the demolition of a part already constructed would infringe the author's integrity right.

Translations are excluded from the definition of "treatment" in the CDPA²⁹, although this might be quite arbitrary. Why should an author be unable to object to a really bad and inaccurate translation, that would alter his work and damage his reputation? As opposed to the UK position, France has accepted the claim of an author to prevent the public performance of his play in a translation and in a production that seriously distorted the original meaning³⁰.

It is not clear whether the CDPA prevents the destruction of a work created by the author, but owned by someone else. This is, evidently, a case of conflict between the author's moral right and the owner's possession of the physical object. The act of destruction may be seen as the ultimate mutilation and could be prejudicial to the author's honour or reputation. On the other hand, it could be argued that destruction does not even have the sense of mutilation³¹.

A particular issue that is raised with regard to derogatory treatment, which is prejudicial to the author's honour or reputation, is the one relating to parodies. In fact, the mere characterisation of a work as a parody or a satire of another work does not necessarily imply that the integrity right is infringed. Parody is a way of producing laughter through political and social criticism. Indeed, in France there is a special preclusion for this particular case (article 41 of the Intellectual Property Code)³². Courts should be both indulgent and careful in considering both parties' interests and rights.

²⁷ *Gallimard v. Hamish Hamilton*, [1985] EEC 574.

²⁸ See *Renault v. Dubuffet* [1983] EEC 453; *Affaire TF1, RIDA* 1981, 172.

²⁹ Section 80(2) CDPA. The exclusion applies also to the transposition of the key or register of a musical work.

³⁰ *Leonide Zorine v. Le Lucernaire*, [1987] EEC 54.

³¹ See J. Ginsburg, *Droit d'auteur et propriété de l'oeuvre de l'art, RIDC* 1994, 813.

³² It is doubtful whether the director of "*Anthony and Cleopatra*" was harmed by the release of a film called "Carry on Cleo".

3. *Exceptions*

There is a number of other cases where the integrity right is excluded under the CDPA, especially so in provisions relating to employment, the press and current affairs. The integrity right does not apply to computer programs or computer generated works (section 81). It does not apply, under certain conditions, to the publication of any literary, dramatic, musical or artistic work in a newspaper, magazine or similar periodical or in an encyclopaedia, dictionary or other collective book of reference. All these exceptions have been criticised and accused of reducing the effectiveness of the moral rights protection accorded to the author. But, on the other hand, they were justified by the fact that they would facilitate the economic activities related to the exploitation of the same works.

Where copyright upon a work is the subject of Crown or parliamentary copyright or the copyright originally vested in an international organisation by virtue of section 169 CDPA, or in the author's or director's employer, the right does not apply to anything done in relation to such a work by or with the authority of the copyright owner. In such cases, the right of paternity is also precluded. Consequently, the employed, for example authors or directors, are deprived of all moral rights. This has been severely criticised, especially by continental commentators. There are no such provisions in France or Greece, where the said persons are considered as the initial authors and owners of the copyright. Yet, for some lawyers the range of non-infringing acts is very narrow; as it does not include, for example, fair dealing exceptions for the purposes of criticism or review. Indeed, a person who has no connection with the author should be able to engage in selective quotations for such purposes of criticism. It remains to be seen whether courts or even the authors themselves would be willing to recognise a sufficient degree of derogation.

V. THE IMPACT OF NEW TECHNOLOGIES ON THE RIGHT OF INTEGRITY

The impact of new technologies on moral rights is a big issue that should be taken into consideration. Multimedia, digitisation of audio and visual works and video arts: the effect they can have on author's works is obvious. We are beyond the era when photocopying and taping were considered to be the ultimate threat to copyright and moral rights. The new technology, widespread and available for private use, would make the integrity right look rather diminished. The current problems remain within the context of television and radio broadcasts. The courts have

settled new types of conflicts over modifications of a work made in relation to new techniques. The issues of current interest are: the colourisation of films, the cuts for advertising and the insertion on the screen of the logos of TV channels.

Let us first consider the colourisation of films. In the case *A. Houston v. Turner Entertainment*³³, a controversy opposed the heirs of film director J. Houston against the French television station Channel 5 (*Le Cinq*) and its licensor, Turner Entertainment. The defendants sought to broadcast a colourised version of Houston's black and white film "The Asphalt Jungle". Plaintiffs, John Houston's children and Ben Maddow, the script writer, asserted that broadcast of a colourised version violated the author's moral right of integrity. The lower courts issuing preliminary relief, and the Paris Cour d'appel found for the defendants³⁴. The principal issue concerned matters of conflict of laws between the French and the US, copyright law and the definition of the term "author". But, moral rights were also put forward. The Cour de Paris held that, to the extent that Houston had standing, his moral rights were violated. However, the colourisation constituted an adaptation and, in the court's reasoning, if the work is a licensed and well executed adaptation it cannot violate the moral rights of the author. Eventually, the appeal decision was reversed by the Cour de cassation. According to W.H. Cornish, "so fundamental was the right adjudged that it was applied (in France), even though it was subject to American contractual agreements allowing the addition of colours".

Advertising has become a very important economic factor for TV and radio networks. The cutting or rearranging of films for the sake of advertising could result to an infringement of integrity right. The Paris Court of First Instance had to decide on such a case in 1989, in a dispute between Channel 1 (TF1) and the authors of a film which had been broadcast in two parts, without their consent, whereas the film had been produced as a unique work. The channel wanted to place three sequences of advertising in the work, instead of one. The Court held that such a practice constituted a violation of the author's integrity right³⁵.

³³ [1992] ECC 334.

³⁴ Cour d'appel de Paris, judgment of 6 July 1989. *RIDA* 1989, 329.

³⁵ See also *Gilliam v. BBC*, where the defendants broadcast a 90-minute (Monty Python) programme and they deleted 24 minutes of the original material to make advertising space available. (The case is earlier than the CDPA but shows that an explicit integrity right would have the same outcome, even on a different legal basis).

We shall draw again from the French law to show how the superimposition of the television station's logo on a broadcast film can be deemed to violate the work's integrity. Most TV channels, either private or public, usually insert their logo in a corner of the screen for purposes of their own advertisement. The courts recently heard a case concerning the superimposition of the "La Cinq" logo, during the broadcasting of a TV film. The author had explicitly refused any advertising message as well as the insertion of the channel logo. According to the judgment, published on 9 June 1989, the insertion of the logo had no technical or artistic justification and aimed in fact, at a permanent advertising for the network itself. The decision acknowledged the infringement of the author's integrity right and gave it protection against economic interests of the channel.

VI. LATEST DEVELOPMENTS ON HARMONISATION: THE EU PERSPECTIVE ON MORAL RIGHTS

In a more general framework the crucial role that copyright and related rights play in the emerging single market for the information society has long been discussed and debated upon. It has recently taken the form of a legislative initiative. In order to enhance legal certainty in the information society, the European legal framework on copyright needed to adjust to the new technology demands. In that context, the Commission issued the Proposal for a European Parliament and Council Directive on the harmonisation of certain aspects of copyright and related rights in the information society³⁶. The main purpose of this proposal was to implement the new international WIPO obligations³⁷ at Community level, to prepare for ratification of the new WIPO conventions by the Community, and to provide for a level playing field for the content of the new services in the information society.

³⁶ COM (97) 0628-C4-0079/98-97/0359(COD)), OJ C 108, 7 April 1998, 6.

³⁷ On 20 December 1996 the delegations taking part in the Diplomatic Conference on issues relating to copyright and neighbouring rights held by the World Intellectual Property Organisation (WIPO) in Geneva adopted two treaties relating to intellectual property. The first, the *WIPO Copyright Treaty* (WCT), deals with copyright; the second, the *WIPO Performances and Phonograms Treaty* (WPPT), deals with neighbouring rights. The provisions of the treaties cover the exploitation of works both by traditional means and by means of new technologies. They are of particular importance in the latter case, this being the first time that international treaties have dealt with the opportunities and implicated by new technologies and put forward appropriate solutions before such risks arise.

The issue of moral rights is in fact addressed only by the WIPO Performances and Phonograms Treaty, article 5 of which on the 'Moral Rights of Performers' provides that: "Independently of a performer's rights, the performer shall, as regards his live aural performances fixed in phonograms, have the right to claim to be identified as the performer of his performances, except where omission is dictated by the manner of the use of the performances and to object to any distortion, mutilation or other modification of his performances that would be prejudicial to his reputation".

The paternity and integrity rights are recognised and protected explicitly in the WIPO Treaty. However, they remain *outside* the scope of the draft Directive³⁸. No harmonisation exists at the European level on moral rights as yet, even if it is an issue discussed for several years and was the subject of a consultative hearing held in November 1992³⁹.

This can be interpreted in two ways. According to the first one, it is a conscious choice of the Commission, based on the subsidiarity principle, to leave the matter to national laws while respecting the differences between the common and civil law traditions⁴⁰. Under a different approach, this lack of Community will to regulate the area of moral rights could be interpreted as a hesitation of the European legislator to recognise the legal value and the increased importance of guaranteeing the enforceability of moral rights as opposed to that of the economic facet of intellectual property rights. This is in view of the fact that the recognition of moral rights would impose further limitations to free trade in the single market; limitations that are not considered proportionate to the aim that they serve, namely the preservation of the author's power (other than the economic exploitation) over his works.

The proposal was reviewed by the European Parliament (first reading) and was approved in February 1999 with several amendments, none of them introducing or addressing the issue of moral rights⁴¹.

³⁸ Cf. text to n. 32. *supra*.

³⁹ See, Commission Press Release on 4 January 1993, IP/93/1. See also an opinion by the Economic and Social Committee (ESC), OJ C 19, 1993, 3.

⁴⁰ This difference in concept, albeit worth being respected, could lead to the creation of barriers in the free movement of goods and services in the Community. See also, Dominique Kaesmacher, *Droit d'auteur, droits voisins, nouveaux droits intellectuels et droit communautaire*. *Journal des tribunaux - Droit européen*, 20 juin 1996, 121-125.

⁴¹ Legislative resolution embodying Parliament's opinion on the proposal for a European Parliament and Council Directive on the harmonisation of certain aspects of copyright and related rights in the Information Society. COM (97) 0628-C4-0079/98-97/0359(COD)), PV 70. Provisional Edition, PE 276.722.

Undoubtedly, the levels of protection vary considerably from one Member-State to another as far as moral rights are concerned. So far, the impact of these differences on the proper function of the market has been limited and this is the reason why, despite all the debates, there has been a distinct lack of action on the European Community level.

Nevertheless, in view of the relevant provision in the WIPO Treaty, the moral rights of artists-performers have been reinforced at the international level and the impact that this will have on the Single Market must be evaluated.

It should be better understood with further debate and analysis whether the developments related to the use of works and services carried out within the new technological environment will affect the functioning of the single market by endangering more serious infractions to moral rights.

CONCLUSION

We have considered some basic issues relating to moral rights; and we have closely examined the right of integrity. Moral rights is a doctrine that has recently been incorporated in the UK legislative framework, although it has long been recognised by some continental countries. Intellectual property rights, whether economic or moral, have raised controversies in the academic as well as in the judiciary circles. This is mostly due to the fact that they often limit free trade or restrain economic or other activities. There are a lot of discrepancies with regard to the treatment of these rights in different countries. However, ever since it was recognised that authors need and deserve special protection, a big step has been made. The protection of artistic creation preserves the bond between the person of the author and his work, in which the moral right is embodied. This is why moral rights provisions should be interpreted in such a way by the courts, as to enhance the legal protection given to authors. Indeed, moral rights emanate from the influence of "morality" on legal thought and jurisprudence – and as such, they must be comprehensively respected.