

# Moral Right(s) from a Copyright Perspective

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# The discourse of “copyright” v. “authors’ rights”

- Complicating the story
  - Unity of the “copyright world”?
  - Moral rights in the “copyright world” only partially developed?

# Common features of moral rights laws in the “copyright world”

- Tendency to view rights as separate and individual, rather than as derived from a single principle
- Legislative style – drafted in extensive detail
- No protection beyond *Art 6bis*, BC
  - No divulgation/withdrawal rights
  - Circumscribed integrity right

# Common features of moral rights laws in the “copyright world”

- Protection limited to the copyright term (at most)
- Waiver generally permitted (but no transfer)
- Pragmatic exclusions – employees, for example

# Diversity within the “copyright world”

- Works covered
- Rights granted
- Term of protection
- Exclusions
- Exceptions
- Waiver
- Relationship with other forms of legal protection

# Second complication

- Moral rights in the “copyright world” partially developed?
- Metaphors of development

# The incomplete journey

“...[T]he United States lags woefully behind other countries in its adoption of moral rights...”

(RR Kwall, *The Soul of Creativity* (2010), 34)

# Immaturity

“...[T]he United Kingdom paternity and integrity rights are recognisable only as the sickly children of the Berne parent.”

(G Davies & K Garnett, *Moral Rights* (2010) 80)



# Immaturity

“...[A] widely held belief...that the concept of moral rights is a relatively novel intruder into common law copyright systems; and that such systems...are being compelled, *kicking and screaming*, to dilute their pure economic approach with alien personality rights.”

(G Dworkin, “Moral Rights and the Common Law Countries”, Proceedings of ALAI Antwerp Congress (1993) [italics added])

# Metaphors of development

- Images of journey and growth based on the same fundamental assumption
- Existence of an *ideal form* of moral rights protection
- Optimism – copyright systems will, in time, develop towards this ideal state

# Evidence of “progress” / “growth”

- Implementation of the WPPT
- Introduction of more author-protective legislation – Copyright Amendment (Moral Rights) Act 2000
- India – *Amar Nath Sehgal v Union of India* (2005) (Delhi High Court)

# Evidence of resistance

- International / supranational law
- Limited case-law
- Persistence of considerable uncertainty
- Narrow interpretation of statutory rights
- Lanham Act protection (US) – *Dastar* and subsequent jurisprudence

# Reasons for resistance

- Economic interests?
- Adherence to principles of freedom of contract / property?
- A concern for “fit” / the integrity of legal systems

# The end of the road? Coming of age?

- Broadening of the scope of the integrity right?
- Extension of the duration of moral rights

# Conclusion

- Need for a nuanced approach to the “copyright world”
- No assumption of further “development”  
– moral rights in the “copyright world” as products of complex policy choices