

BOOK REVIEW

MORAL RIGHTS: PRINCIPLES, PRACTICE AND NEW TECHNOLOGY, MIRA T. SUNDARA RAJAN, OXFORD UNIVERSITY PRESS, 2011. Pages 572. Price: ₹ 1, 250.

“An exploration of moral rights in the world’s legal systems reveals a robust doctrine.” This is how Dr. Mira T. Sundara Rajan concludes her seminal work on moral rights. Though moral rights appear to be a small component of copyright law, this book portrays the development of the concept on the world canvass. Moral rights did not find place in the Agreement on Trade-Related Aspects of Intellectual Property Rights (‘TRIPS’) but it resurfaced through the WIPO Performances and Phonograms Treaty (‘WPPT’). The author has effectively used comparative methodology in its widest amplitude to avoid a myopic treatment to the subject and has come out with this comprehensive work on moral rights.

The highlight of this book is the narration of the growth of moral rights in a developing economy like India and a post-socialist economy like Russia. The author’s earlier work was based on a socialist perspective of moral right but in this book she has given a world-view of the subject.¹ The book also takes into account how moral rights interact in the digital environment. The author has also linked the subject to the issue of protection of cultural heritage as she has described the Amarnath Sehgal situation as an ‘unjustified destruction of an artistic work in the care of the government’.

The author has made an attempt to negate the criticism that moral right is a civil law doctrine and is incompatible with the common law perspective of copyright. She has done so by referring to the case of *Donaldson v. Beckett*² that recognized an author’s right to decide when to publish an unpublished work. This book exemplifies that moral rights can be treated and recognized as closer to human rights than copyright.

The author has emphasized on an intimate connection between an author and his work that justifies protection of moral rights, a proposition that holds true, even in today’s world of collaborative work with open access licensing systems. Her initiative to start a discourse on waiver of moral rights, hitherto an unexplored area of research, will open up a new dimension for other scholars of copyright law.

A fundamental question is raised in the chapter titled ‘Moral Rights in the Virtual Age’ to address the issue of digital transformation of

¹ MIRA T. SUNDARA RAJAN, COPYRIGHT AND CREATIVE FREEDOM: A STUDY OF POST-SOCIALIST LAW REFORM (2006).

² (1774) 2 Bro PC 129; 1 ER 837.

knowledge that influences a new degree of separation between the work and its original creator. The French term, *droit moral*, has been translated imperfectly and has been improvised considerably in the present form of moral right as it is found in Art. 6bis of Berne Convention for the Protection of Literary and Artistic Works ('Berne Convention') and Art. 5 of WPPT. She has also discussed the question of whether computer generated work should be considered an extension of the author's personality and thereby be eligible for moral right protection. The disintegration of collaborative works like cinema will raise the question as to whose extension of personality the work should be deemed to be the writer, composer, director or producer? The author sums up the chapter by highlighting the point that moral rights represent the human side of copyright and thus, help us to see the human face of an author.

The chapter entitled 'History of an Idea' describes the historical evolution of the concept of moral rights in France, Germany and England. Nineteenth century France and Germany looked at moral rights through the lens of romanticism. Roman law recognized and developed respect for the personality of an individual author to the fullest extent. The recognition of moral rights was reflected in the importance of authorship in Russian culture. The intricacy of moral rights in modern French law,³ however, makes it one of the most comprehensive pieces of legislation on moral rights. The French concept of moral rights protects 'name, quality of authorship and work' and makes it permanent and inalienable. The decision of the *Cour de cassation* has, however, reduced the ambit of moral right protection in France considerably. This was so when the court rejected the claim of the great-great-grandson of Victor Hugo to prevent the making of a sequel of *Les Misérables*, on the argument that moral rights may be asserted in France without any limitation in time.

In the chapter entitled 'A Theory in Flux,' the author points out the differences between French, German, Austrian and English law on moral rights succinctly. French law not only allows the author to determine the circumstances in which his work is first published, but also offers a right to withdraw a published work from circulation. The right of integrity has been drafted broadly to include the 'right to respect for one's work' instead of interpreting it narrowly by linking it to the honour and reputation of an author. French law prohibits the waiver of moral rights but recognizes a ghost writer's right to be anonymous or write under a pseudonym. It also recognizes the moral right of all those who contribute to the making of a film and thus, offers co-authorship to authors of screenplay, dialogue writers and music composers of the film. Even the author of a work of parody enjoys moral rights under French law. In German law on the other hand, there is no specific prohibition on the waiver of moral rights and these rights are protected only for the duration of economic rights. German law includes the right to be recognized as the author as well as

³ Code de la Propriété Intellectuelle, 1992 (France).

the right to claim anonymity within the right of attribution. The question of reputation does not arise in case of the right of integrity in German law as it uses the author's interest as a criterion to determine the application of the said right. Austrian law does not consider right to disclosure as a moral right. As per the Austrian approach, the right of integrity is a right for the protection of works that does not allow for any alteration without the consent of the author. Moral rights were not recognized in the English copyright statute.⁴ While French law has tried to extend moral right protection to technological works, English law has excluded this protection from the same. In England, moral rights are generally inalienable and may be waived.

It has been recorded by the author that countries from Mali to Bulgaria and Azerbaijan to Tunisia, have all adopted moral rights in their copyright law system. Canada became the first common law country to recognize moral rights. In the US, the Visual Artists Rights Act, 1990 created moral rights for visual artists. Australia identifies destruction of artwork as a violation of the right of integrity and has considered offering moral right protection to the Australian aboriginal culture. §57 of the Indian Copyright Act, 1957 protects an author's right of attribution and integrity by delineating the special rights of an author. The case of *Amar Nath Sehgal v. Union of India*⁵ has recognised moral rights as an instrument for protecting cultural works of importance in India. Japan's copyright law accommodates the right of disclosure, attribution and integrity within the ambit of moral rights protection. The author has pointed out that Japan is one of the very few countries that permit companies to hold moral rights. Russia has offered a strong moral right of integrity since 1911. In Russia, the personal nature of moral rights is exemplified by the fact that it can be inherited only by an author's heirs and not by other successors. The Russian Copyright Act, 1993 extended moral rights even after the expiration of economic rights and offered moral rights to performers as well.

In the chapter entitled 'Moral Rights in Information Technology', the author has observed that information technology represents a test case for moral rights in the digital context. The Berne Convention and TRIPS have not explicitly mentioned moral rights in a computer program. The Indian Copyright Act, 1957 and the Designs and Patents Act, 1998 have followed the same standard. Indian copyright law, according to the author, seems to implicitly recognize programmers' rights.

Moral rights protection of visual arts is the central theme of the chapter entitled 'Moral Rights in Arts and Artifacts'. Visual arts, being different from other forms of creative expression, raise unique moral rights issues. The Visual Artists Rights Act, 1990 includes two rights of attribution:

⁴ Copyright Act, 1956 (UK). This has now been replaced the Copyright, Designs and Patents Act, 1988.

⁵ 2005 (30) PTC (Del).

right to claim authorship and right against false attribution of other's work to author. The moral right of integrity in visual work is an unconditional right in Canada. The condition in which the work is displayed may not lead to the violation of moral rights in Canada. The position in India is the same. American law prohibits intentional or grossly negligent destruction of work of recognized stature. Aboriginal moral rights vested in the community may be designed to prevent cultural appropriation. Moral rights can protect cultural heritage more effectively than an international agreement. The author has opined that the moral right of attribution can be instrumental in repatriation as held in the case of *Nataraja Bronze*.⁶ A photograph of an artistic work may create a new moral right in the image. A virtual gallery of such images may lead to a moral right issue if open access is given to the same. Moral rights should be made available for arts in public domain as well.

The chapter entitled, 'Moral Right and Open Access' deals with the challenge copyright law is facing in the digital age and its implication on moral rights. The question is whether a Creative Commons license influences the moral rights of an author. The Google Books project definitely undermines the authors' moral right of disclosure.

The trajectory of moral right has shown remarkable growth. The author has documented the growth of moral rights and the book is a tribute to authors as recognizing authors' moral right is in a way honouring creators and creative works.

—Anirban Mazumdar*

⁶ India (Union) v. Bumper Development Corp., (1995) 171 AR 166 (QB).

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