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Abstract

In the wake of United States adherence to the Berne Convention and the attendant examination of the doctrine of moral rights, the 101st Congress is giving considerable attention to the possible passage of legislation that would specifically afford to authors and artists the rights of attribution and integrity.

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In the wake of United States adherence to the Berne Convention and the attendant examination of the doctrine of moral rights, the 101st Congress is giving considerable attention to the possible passage of legislation that would specifically afford to authors and artists the rights of attribution and integrity. The most thoroughly developed proposals—S. 1198¹ introduced by Senators Kennedy and Kasten, and H.R. 2690 introduced by Representative Kastenmeier—take the form of a Visual Artists Rights Act. These are based in large measure upon the ten state statutes² that grant attribution and integrity rights to creators of a variety of works of art. Also under consideration, and the subject of several congressional hearings, are more comprehensive moral rights laws that would reach beyond the visual arts and would embrace a larger variety of creative works, including motion picture films and conceivably literary and musical works.

It is the purpose of this commentary to point out some of the reasons for serious doubt regarding the wisdom of the more comprehensive form of moral rights legislation. At first blush it may seem churlish, indeed "immoral," to attempt to counter the intuitively appealing arguments of the moral rights advocates. Yet, I believe that there are a

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For the past three years, I have served as consultant to the law firm of Proskauer Rose Goetz & Mendelsohn, in which capacity I recently prepared a memorandum on the subject of moral rights at the request of an ad hoc group of representatives of film producers and book and magazine publishers. That memorandum afforded me an opportunity to explore more deeply the arguments for and against the introduction of comprehensive moral rights legislation in the United States. This article states my own views, and is not presented on behalf of the law firm or of the ad hoc group.

1. See appendix, *infra* at 451, for a full reproduction of the proposed Kennedy bill.

2. See Damich, *State "Moral Rights" Statutes: An Analysis and Critique*, 13 Colum-VLA J. Law & Arts 291 (1989); Note, *Moral Rights: The Long and Winding Road Toward Recognition*, 14 NOVA L. REV. 435, 444 (1990).

significant number of industries and creative works for which a great disservice would be done by the adoption of wide-ranging requirements of attribution and proscriptions upon alterations (and so-called distortions) of creative works. Such legislation may inhibit creativity more than it fosters creativity. As will be noted below, I believe that the Kennedy and Kastenmeier bills, because of their focus upon essentially singular works of fine arts, are not subject to most of the concerns I have about more comprehensive moral rights legislation—and I believe those two bills are deserving of support.

I am deeply committed to the purposes of our copyright system: the promotion and dissemination of information and of the arts, the support of literary, artistic and musical creativity, and the enrichment and preservation of our cultural heritage. Proponents of moral rights legislation are generally motivated by the same objectives. They believe that the arts will be nourished and protected by granting the rights of paternity (or attribution) and integrity. Nonetheless, my own study of moral rights and of the United States cultural and entertainment industries to which comprehensive moral rights legislation would be applied gives me great pause.

Such comprehensive legislation is likely to be ill-advised. It is likely to be impracticable in its application, to be unsettling in its impact upon longstanding contractual and business arrangements, to threaten investment in and public dissemination of the arts, to sharply conflict with fundamental United States legal principles of copyright, contract, property and even constitutional law, and ultimately to stifle much artistic creativity while resulting in only the most speculative incentives to such creativity.

I should like, at the outset, to point out certain characteristics of the arts and entertainment industries—particularly motion picture films (both theatrical and television films) and book, newspaper and magazine publishing—that are pertinent to moral rights legislation.

Most of the product of these industries is intensely collaborative. In film, for example, the producer brings together a director, screenwriter, designers of sets and costumes, cinematographer, composer, actors and all manner of technical and creative contributors. The producer takes the economic risks and exercises business and, commonly, creative control.

Magazine and newspaper publishing is also a collaborative enterprise, where there must be centralized business and creative control in order to coordinate—often under the most exigent time constraints—the work of news writers, feature writers, photographers, lay-

out designers and others. Book publishing, particularly educational publishing, is also collaborative, with the publisher exercising essential control from overall planning to the details of content and writing and pictorial style.

The second pertinent feature of the arts and entertainment industries is their utilization of their works in a variety of "subsidiary" uses. Motion picture films are shown not only in theaters, but also on broadcast and cable television, over satellites and on airplanes, and in foreign nations, and they are marketed in cassette and disc form through rentals and sales. These uses contemplate all varieties of editing in terms of time-frame and content, commercial interruptions, dubbing in foreign languages, and the like.

Published books are also commonly exploited through revised editions and in subsidiary markets, including updated versions, abridgments, foreign-language editions, television and theatrical film versions, and adaptations that take advantage of new technological advancements, such as audiotapes (for trade books) and computer materials (for educational books). Educational books also contemplate frequent revisions in order to update text and pictorial content.

This wide variety of revisions and adaptations of all kinds has made the so-called "subsidiary" uses in fact often the principal determinant of whether an artistic or entertainment vehicle will become profitable, will attract investment, and will therefore be developed and marketed to the public at all.

A third pertinent feature of the entertainment and cultural industries in the United States is that they have historically been regulated through elaborate contractual arrangements, voluntarily negotiated, and often negotiated on behalf of the principal creative contributors by strong and sophisticated labor organizations. These arrangements establish employer-employee relationships among most of the contracting parties and are negotiated within the framework of the "work made for hire" provisions of section 201(b) of the 1976 Copyright Act. They commonly deal with such matters as the creative participation of directors, authors and the like in the development of subsidiary and derivative uses, and the credit to be given in connection with the exhibition, sale and advertising of the work.

The principal entertainment and cultural industries of the United States, in summary, are highly collaborative, contemplate and depend upon a wide variety of derivative forms in their distribution to the public, and are historically regulated by individually and collectively negotiated agreements. The introduction into these industries of a

right—exercisable by any one of a host of collaborative contributors—to protest the alleged distortion or modification of a particular literary or artistic contribution is extremely problematic. At best, it introduces an element of instability and uncertainty, as well as the frequent possibility, because of the increased threat of litigation, of delay in public access to and enjoyment of entertainment vehicles. At worst, it threatens to prevent altogether the dissemination to the United States and international public of a host of cultural and entertainment materials in forms that are varied, appealing and affordable. Any significant limit upon the ability of producers and publishers to disseminate works in these secondary markets—dissemination which commonly can mean the difference between a losing and a profitable business venture—runs a substantial risk of chilling investment in the arts and entertainment fields. This may in turn reduce the financial support of innovative creative endeavor—a result that will obviously be harmful to the public interest. Introduction of moral rights into these industries (particularly if these rights are statutorily declared to be inalienable and non-waivable) will also unsettle the network of contractual agreements that have been developed over many years in the various industries and that appear on the whole to be working quite successfully and fairly.

Before such a drastic step is taken, it would seem that the burden is upon those challenging the present system to show that it has caused serious and pervasive hardships or injustice. The industries under discussion are effectively generating creative works, bringing them to the American public, making them attractive to consumers overseas and thereby dramatically aiding in the United States balance of trade. All of these beneficent effects have been brought about through voluntary arrangements in the commercial marketplace. I do not believe that the case has been made for substituting for these arrangements a congressionally granted power of aesthetic veto to a wide range of creative contributors. In sum, it may be that comprehensive moral rights legislation is a drastic cure for what is a relatively undiscernible malady.

It is natural to ask whether untoward consequences have flowed from the incorporation of moral rights doctrine into the legal systems of many European and Latin American nations. Many of these nations appear to have flourishing creative communities in the arts and entertainment fields. Surely, however, the United States is the world leader in these fields. Whether that is to any major extent attributable to the greater legal and business flexibility accorded producers, publishers, and other copyright owners and licensees under our legal system is

difficult to determine empirically—as it is to determine whether, say, the creative arts in France³ or Italy⁴ would flourish to a greater degree were moral rights abandoned or sharply limited. One can reasonably assume, however, attributing economic rationality to those who invest in the arts and entertainment industries, that such investment will be promoted under a legal system in which authors—many of them working in the context of collaborations or of employment relationships—will not be accorded the right to exercise an aesthetic veto over the initial and secondary marketing of films, magazines, books and the like.

Even apart from economic modeling, moral rights abroad have indeed resulted in some odd limitations upon the display and marketing of works by copyright owners and licensees. Owners of buildings have been limited in making structural changes or in tearing down walls with murals.⁵ In a noteworthy case decided under the Canadian moral rights statute, a sculptor who had conveyed to a shopping center his sculpture of geese in flight was afforded an injunction against the center's bedecking the geese with ribbons at Christmas time.⁶ Creators of music in the public domain have successfully challenged the use of that music in motion pictures deemed inconsistent with the political views of the composer,⁷ and artists have been permitted to challenge the exhibition of their works in a physical or artistic context they believed unsuitable. A textwriter of a book successfully challenged the publisher's selection of an illustrator on the ground that the illustrations were inferior in quality.⁸ A songwriter (apparently after having transferred the copyright to another) has secured redress against the performance of his song with parody lyrics.⁹ Courts have been invited to sit in judgment upon the nature and number of commercial interrup-

3. France, Law of March 11, 1957, No. 296., arts. 6, 19, 25.

4. In Italy the moral rights of the architect are included. Italy, Law of April 22, 1941, No. 633, § II, arts. 20-22.

5. See NIMMER & GELLER, INTERNATIONAL COPYRIGHT LAW AND PRACTICE at 74, n. 297 (1987).

6. Snow v. The Eaton Centre Ltd, 70 C.P.R.2d 105 (1982).

7. Soc. Le Chant de Monde v. Soc. Fox Europe et Fox Americaine Twentieth Century, Judgment of Jan. 13, 1984 1 Gax Pal. 191 (1954) D.A. 16, 80 (Cour d'Appel Paris).

8. Pres. Dist. Ct. Utrecht, 27 Nov. 1975, discussed in NIMMER & GELLER, *supra* note 5, at 45.

9. Pres. Dist. Ct. Amsterdam, 21 Dec. 1978, discussed in Merryman, *The Refrigerator of Bernard Buffet*, 27 HASTINGS L.J. 1023, 1030-31 (1976).

tions in films shown in television. Set designers have successfully challenged the deletion of a theatrical scene in which their set was to appear,¹⁰ and stage directors have successfully challenged the modification or omission of their stage directions.¹¹

Moreover, speaking more generically and summarily, employees have asserted rights over employers in the exploitation of works made for hire,¹² one joint author has been able to stop the marketing of a work prepared along with other joint authors, and authors have been able to override negotiated contract provisions with publishers regarding the editing and marketing of their works.

Not to neglect consideration of the right of attribution, foreign courts have ordered radio stations to mention the names of all composers, lyricists, and performers of all broadcast music;¹³ have accorded redress to an architect whose name was not mentioned at the ceremony opening his building or in the attendant newspaper articles;¹⁴ and have permitted an author to ignore his contractual promise to produce certain works under a pseudonym.

To some extent, then, moral rights doctrine as developed abroad has indeed resulted in some disturbing inhibitions upon the rights of copyright owners and licensees, and property owners, seeking to disseminate or adapt creative works. It appears however that the arts and entertainment industries abroad have learned to live with moral rights by largely ignoring those rights or substantially watering them down. Rights of attribution and integrity have—by statute or judicial decision—not been enforced when a user is taking action that is consistent with “proper usage” or with the “accepted manner and extent” or that is “reasonable” or “de minimis.” A most significant limitation upon the integrity right, applied in most foreign nations, is the right given to licensees to make alterations and modifications that are appropriate in light of the nature of the work and the purpose of the use; these are

10. *Leger v. Reunion des Theatres Lyriques Nationaux* (1955), 6 R.I.D.A. 146 (Tribunal Civil de la Seine).

11. See Judgment of Aug. 14, 1975, LGE Frankfurt-on-Main, discussed in Da-Silva, at 31.

12. See Perwin, *Drafting "Works for Hire" Agreements After Reid*, 14 NOVA L. REV. 459 (1990).

13. NIMMER & GELLER [Brazil] *supra* note 5, at 77-8. (A broadcaster who fails to comply with the requirements must “disclose the identity of the author or performer . . . for three consecutive days, at the time of day at which the offense was committed.” Copyright Act of 1973, Art. 126.)

14. NIMMER & GELLER [Switzerland,] *supra* note 5, at 74.

deemed allowable "adaptations" and are distinguished from "distortions," after the court considers whether the modifications preserve the "spirit, character, and substance of the work."¹⁵

In many nations, sharp limitations are placed upon moral rights in certain kinds of works, such as musical compositions, useful articles, computer programs, and materials prepared for news publications or broadcasts. Despite the sometimes recited theory to the contrary, it is commonplace to permit moral rights to be waived, either in written or oral agreements or pursuant to the industry's customs and usages. In almost every foreign jurisdiction that recognizes the right of integrity, the author is required to assert that right in a fair, reasonable and good faith manner; the right will not be enforced if it is asserted "arbitrarily" or "vexatiously" or is "misused." A number of national laws incorporate the doctrine of fair use as a defense against moral rights claims (as with copyright claims), or permit certain educational uses or parodies. Frequent adjustments are made for moral rights asserted by employees, or by joint authors, or by creative collaborators in works such as motion picture films, encyclopedias and periodicals.

These exceptions to moral rights have been incorporated in the law of foreign jurisdictions over time and through adjustments that take account of the special dimensions of particular societies and cultures in a variety of nations. It cannot be expected that such ameliorative doctrines could be legislatively incorporated whole-cloth into United States law if a comprehensive moral rights law were to be enacted here. It would be particularly unfortunate if such a law were to be read by our courts as an invitation to strict application, without these ameliorative

15. The difficulty of making these distinctions, and the unsettling financial impact of uncertainty and litigation, are exemplified by the recent French litigation instituted by the children of film director John Huston, seeking an injunction against the showing over French television of a "colorized" version of Huston's black-and-white film, "The Asphalt Jungle." Apart from the difficult issues whether moral rights in the film, made in the United States, were to be governed by United States law and were properly to be asserted by the film producer or by the director, the court had to decide whether the color version constituted an impermissible distortion or an appropriate adaptation. The lower court concluded the former, and the appeals court concluded the latter. Judgement of July 6, 1989, cours d'appel, Paris (*La Societe Turner Entertainment Co., appealing from Angelica and Daniel Huston and Societe Realisation de Filmes (S.R.F.) v. La Societe D'exploitation de la Cinquieme Chaîne de Television, la Cinq*). Note, *Artistic Integrity, Public Policy and Copyright: Colorization Reduced to Black and White*, 50 Ohio St. L.J. 1013, 1028-29 (1989). The higher court was influenced in part by the desirability of making the film more readily accessible to the French television-viewing public.

doctrines. However it would not be much better—from the point of view of persons undertaking investment in the arts and entertainment fields—to leave it to the courts to introduce piecemeal a variety of needed exemptions and defenses, particularly when the foreign experience suggests that these exemptions and defenses will almost inevitably turn upon aesthetic and subjective assessments which go well beyond the expertise and proper role of judges and juries.

Perhaps my greatest concern about the comprehensive incorporation of moral rights into United States law is the flat inconsistency between moral rights and a number of fundamental United States legal principles relating to copyright law, to the public domain, to property, to contract, to constitutional law, and to the judicial role.

Moral rights will inevitably conflict with our copyright law by permitting an author to veto certain uses of a work contemplated by the current copyright owner. The copyright owner holds the exclusive right to prepare derivative works. As noted above, the right to adapt, edit, translate, abridge, and the like are perhaps the most important rights of the copyright owner today; they may determine whether investors will support the creation and distribution of that work to the United States and foreign public. No moral rights law with which I am familiar successfully accommodates the rights of the author and of the copyright owner after copyright has been transferred. Also as noted above, moral rights held by individual authors will inevitably conflict with the copyright interests of other joint authors and of employers with works made for hire.

Our legal system has a number of policies that support the cultural enrichment of our public domain. Our fair use doctrine and a host of statutory exemptions contemplate educational uses, news reporting and cultural criticism, parodies and the like. The first amendment to the Constitution incorporates the same values, and the patent and copyright clause of the Constitution contemplates statutory protection for only a limited time.¹⁶ All of these concerns for the public domain—and for fair dissemination and comment—may be jeopardized through the adoption of comprehensive moral rights legislation—particularly if, as in a number of foreign nations, moral rights are deemed to last perpetually, or at least for a longer period than the copyright.

Property laws give the owners of a chattel—including a painting or sculpture—the right to place it, display it, frame it, or store it in any

16. U.S. CONST., art. I, § 8, cl. 8.

reasonable location or manner (and even probably in unreasonable ones). Owners of structures are commonly understood to have the right to make adjustments in those structures or even to destroy them. The compatibility of moral rights with these property ownership rights has been difficult to ascertain (witness the Canadian Geese litigation).

Moral rights legislation will also create conflicts with the variety of individually and collectively negotiated contracts that permeate the film, broadcasting, and magazine, newspaper and book publishing industries. In the United States legal system, we have traditionally valued the use of freely negotiated contracts to allocate rights and duties of the various participants in an enterprise. Examples are the employment agreement, the agreement among collaborative authors, and the author-publisher agreement. Government will sometimes step in to dictate the terms of contracts, but this is generally done only when the present contractual agreements are regarded as significantly unjust or abusive, or unprotective of central social values. It does not seem to me that the case has been made that the present system of private relationships in the various industries is so dysfunctional as to warrant governmental intervention. It is not clear to me precisely what injustices are being worked by that system.

Finally, as has been suggested above in discussing the foreign experience, the comprehensive incorporation of moral rights into United States law will inevitably bring before judges and juries matters of aesthetics for which they are ill-suited. How will it be determined whether there is prejudice to an author's honor and reputation, or whether certain changes are "adaptations" rather than "distortions," or whether a plaintiff's claims are abusive, or whether a fair use doctrine will apply (and how will it compare to the fair use doctrine in copyright)? Will these standards be determined by a subjective or an objective test? And how will they accommodate the policies that underlie the first amendment?

It is true that certain comparable questions of scope and defenses are treated in the context of other legal doctrines such as defamation, privacy, copyright, and the Lanham Act. But the latter are more familiar to our legal system and those charged with interpreting our legal rules; and those doctrines already take into account a number of countervailing policies that are attentive to the public interest in access to information and culture, such as the first amendment, fair use, the requirement of public confusion in trademark cases, and the termination of the pertinent tort claims upon the death of the plaintiff.

Whether or not similar defenses are incorporated amidst the unfa-

miliar contours of moral rights, the result will be the introduction of great uncertainty and unpredictability into our law. Uncertainty and unpredictability are surely a common feature of our legal system. But I believe that we should be reluctant to introduce them into cultural and entertainment industries that are flourishing, that are attracting investment and providing United States artistic leadership in the world, and that touch upon concerns for free expression and creativity at the core of our constitutional and social system.

Congress has in effect decided, in connection with the enactment of the Berne Convention Implementation Act of 1988,¹⁷ that the United States already accords rights equivalent to moral rights through various existing state and federal laws. I am in substantial agreement with that view. I believe that the most worrisome abuses of authors' and artists' rights can be rectified through our laws of unfair competition, contract, defamation, privacy, trademark, copyright, and artists' rights statutes now in effect in ten states.¹⁸ It is true that even the totality of the United States counterparts falls short of the most far-reaching applications of moral rights theory abroad. But I believe that the limitations in these United States law comport with our obligations under the Berne Convention and, as just noted, that they are on the whole satisfactory if not indeed beneficent as a matter of public policy.

In conclusion, I would note that most of the criticisms I have expressed in this statement with regard to comprehensive moral rights legislation do not apply within the sphere of concern of S. 1198 and H.R. 2690, the Visual Artists Rights Act of 1989. Those bills would bar the physical distortion, mutilation or destruction of what might be called singular works of art (as distinguished from mass-produced works, commercially oriented works, and works made for hire). The works of art protected by the bills do not emerge from a commercial setting akin to that described above in the film and publishing industries. Art works are the product of individual inspiration and not are collaboratively produced under entrepreneurial supervision. Their prin-

17. Although the United States has recently adhered to the Berne Convention, which requires in Article 6*bis* that signatory nations accord to authors the moral rights of attribution and integrity, the Berne Convention Implementation Act made no explicit reference to moral rights. The relevant congressional sources reflect a belief that such explicit incorporation would have been redundant, in view of the fact that equivalent rights were sufficiently accorded under existing law. See, e.g., H.R. 100-609, 100th Cong., 2d Sess. 32-8 (1988).

18. These states are California, Connecticut, Louisiana, Maine, Massachusetts, New Jersey, New York, Pennsylvania, Rhode Island, and Utah.

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cial economic value typically rests in their singular manifestation and only rarely in their exploitation in derivative forms and subsidiary markets, and there is typically lacking any kind of elaborate network of contractual relationships that surround the production and marketing of the work. The kind of conduct that the bills would forbid rarely has any redeeming social value or artistic purpose. As Senator Kennedy stated upon introducing S. 1198: "This bill addresses a narrow and specific problem—the mutilation and destruction of works of fine art which are often one-of-a-kind and irreplaceable."¹⁹ As Senator Kasten said: "Works protected by this bill are one of a kind or very limited editions. When these works are altered or destroyed, they are gone—forever. We have a duty to protect them."²⁰

The kinds of works protected by the bills, and the kind of conduct they proscribe, all contribute to making a strong claim for this type of moral rights legislation and enactment would have far fewer negative ramifications than I have outlined above regarding more comprehensive moral rights legislation. The fact that artists' rights laws already exist in ten states—including those with greatest importance to artists and to the institutions that support the art market and art world—provides further support for the contention that federal artists' rights legislation will provide valuable uniformity while working very little disruption in existing commercial practices.

Advocates of the moral rights of visual artists should not, however, be unqualifiedly pleased should the proposed federal legislation become law. Both the Kennedy and Kastenmeier bills afford narrower protection in significant respects than do certain of the most important state visual artists statutes, and yet both bills have a broad preemption provision that would displace state laws. Modeled on section 301 of the Copyright Act, which preempts state laws equivalent to copyright, the bills provide that "all legal or equitable rights that are equivalent to any of the rights conferred [herein] with respect to works of visual art to which [those rights] apply are governed exclusively"²¹ by the federal law granting rights of attribution and integrity. Although this seemingly unobjectionable provision is well motivated by a desire for national uniformity, as is true of the Copyright Act generally, it carries

19. 135 Cong. Rec. S6810-03 (daily ed. June 16, 1989) (statement of Senator Kennedy).

20. 135 Cong. Rec. S6810-03 (daily ed. June 16, 1989) (statement of Senator Kasten).

21. See The Visual Artists Rights Act of 1989 (Kennedy Bill), *infra* at 451.

with it the likelihood of eliminating significant state protections currently available to artists.

The California statute,²² for example, which is shaped by the policy of protecting the state's cultural heritage at least as much as the policy of protection the "personality" of artists, does not require that the plaintiff prove prejudice to honor or reputation. Such proof would, however, be necessary under the federal bills, which would rather clearly displace the more lenient state laws on this issue and impose significant proof burdens upon the artist. The New York statute,²³ which is based principally on a concern for the artist's reputation, outlaws not the act of mutilation or alteration itself, but the display or dissemination of the work to the public in such form, including reproductions thereof. Yet the federal bills rather clearly do not outlaw distorting reproductions of the protected work, and this narrower range of protection would clearly displace the more generous New York ban on distorting reproductions.

What is somewhat less certain is the extent to which any federal preemption provisions would also displace state-law protection currently afforded to broader categories of subject matter than embraced within the federal law. The federal bills exclude from their protection such works as posters, applied art, motion pictures and other audiovisual works, photographs produced for purposes other than exhibition, and art works initially produced in multiples greater than 200 (and even smaller sets of multiples if these are not signed and consecutively numbered by the author). These kinds of works are clearly covered under certain state artists' rights statutes, and arguably covered under others. Would such coverage be ousted by virtue of the narrower subject matter in the federal bills?

Because preemption under the federal bills applies only with respect to works of visual art to which the federal attribution and integrity rights apply, this language points toward permitting state laws to protect posters, commercial, photographs, motion pictures and the like. On the other hand, under the present Copyright Act, it is rather clear that states cannot outlaw copying of certain subject matter excluded from the federal statute, such as "any idea, procedure, process, system, method of operation, concept, principle, or discovery,"²⁴ and useful ar-

22. CAL. CIV. CODE § 987 (West Supp. 1988).

23. N.Y. ARTS & CULT. AFF. LAW § 11.01-14.03 (McKinney Supp. 1986).

24. 17 U.S.C. § 102b (1988); see Gorman, *Fact or Fancy? The Implications for Copyright*, 29 J. COPYR. SOC'Y. 560, 602-06 (1982).

ticles whose decorative features are inseparable from their utilitarian aspects.²⁵ Even though the former, narrower, reading of the federal preemption provisions seems more compelling—as a matter of language and perhaps of policy as well—the drafters of the artists' rights bills could usefully dispel the ambiguity.

In sum, the Visual Artists' Rights bills now pending in Congress have the laudable objective of protecting singular works of fine art against intentionally or carelessly inflicted damage—in the interest of preserving our cultural heritage. But care should be taken to delineate more clearly the adverse preemptive effect upon more generous state laws. Moreover, should Congress consider the extension of moral rights beyond the sphere of the fine arts, the potential adverse impact upon the entertainment, publishing and arts industries, and the problems of coordination with longstanding bodies of United States law, must be carefully weighed.

25. 17 U.S.C. § 101 (1988) (pictorial, graphic, and sculptural works).