

**A COMPARATIVE STUDY OF MORAL RIGHTS ACROSS
JURISDICTIONS: A STUDY OF MORAL RIGHTS ACROSS
JURISDICTIONS WITH AN EMPHASIS ON INDIA AND THE UNITED
STATES**

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I INTRODUCTION

Copyright is a form of protection given to those who create certain types of works. Such protection is reasoned to be a tribute as well as an acknowledgment of their labor. Copyright protection is built on the foundation of a multiplicity of philosophies. Irrespective of this, the objective of Copyright protection has always been protecting the intellectual labor and interest of a creator. Copyright protection also aims at the dissemination of intellectual processes and information.

Despite the fact that this protection began with the acknowledgment of the rights of writers in their books, we can see that cutting-edge innovation over the years has changed things to such a degree, that comparable protection can be claimed in different things. It must be noted at the top of the priority list that copyright protection has always been granted through statutory provisions, however originally it was through Charters given by the Crown. Accordingly, copyright has consistently been the acknowledgment of the creator's scholarly work by the State and the State's significant conceding of exclusive rights to the creator over that work. Hough this right allows the creator to have a monopoly over his work, such rights are not absolute; rather copyright protection has always been subject to public interest as well as the good of society as a whole. Simply put, the statute which confers copyright protection onto the creator of the work also has the power to impose limitations on this protection. Copyright protection confers two distinct rights onto the author of a work:

1. Economic Rights
2. Moral Rights

Economic rights are those rights that provide a monetary value to the author and allow him/her to reap the economic rewards of their creation.¹ These rights involve all economic, commercial and

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industrial use or exploitation of the creator's work.² This also includes other forms of the use of such work: reproduction, communication to the public as well as adaptation.³ Compared to the concept of moral rights, economic rights have been recognized for a much longer time and this may date back to as far as the fifteenth century.⁴ Economic rights are accepted and recognized as basic law in almost every single jurisdiction around the world. Its inclusion in the Berne Convention also makes it mandatory for every signatory that has ratified the Convention to provide for economic rights to creators of original works. This has also been cemented through its subsequent acceptance by the TRIPS Agreement. Moral rights on the other hand include the right of attribution, the right to have a work published anonymously or pseudonymously, and the right to the integrity of the work.⁵ Simply put, moral rights allow an author to control how his work is treated and presented, after its creation, by any licensed or unlicensed user.⁶ Hence, moral rights do not protect the economic interests of the creator, rather they protect the non-monetary aspect of the creation.

II HISTORY

Moral rights were first recognized in France and Germany,⁷ before they were included in the Berne Convention for the Protection of Literary and Artistic Works in 1928.⁸ Moral Rights have originated from common law jurisprudence.⁹ Such jurisprudence evolved from the Continental system.¹⁰ The term "moral rights" evolved from a French expression – "droit moral". "Droit moral" is a misnomer since the term is neither the converse of immoral rights nor of legal rights.¹¹ The theory of moral rights rises from the fact that the creator of a work should have a right that subsists even when he has licensed such work to other persons. This right becomes a sort of inalienable right that cannot be possessed by anyone else even if the ownership of the work changes hands. The basis of this right comes from the Hegelian Theory of Extension of Personality of the Author.¹² What this theory did

¹ J.A.L. Sterling, *World Copyright Law* 366 (2d ed. 2003).

² N.S. Gopalakrishnan and T.G. Agitha, *Principles of Intellectual Property* 263 (2009)

³ *Supra* Note 1

⁴ Lionel Bently and Brad Sherman, *Intellectual Property Law* 231 (2d ed. 2004).

⁵ "Moral, Adj." *Oed Online*. September 2011. Oxford University Press. 25 October 2011.

⁶ Elizabeth Adeney, *The Moral Rights of Authors and Performers: An International and Comparative Analysis* 1 (2006).

⁷ Rigamonti, Cyrill P. (Summer 2006). "Deconstructing Moral Rights". *Harvard International Law Journal*. **47** (2): 353–412.

⁸ Kwall, Roberta Rosenthal (2010) *The Soul of Creativity: Forging a Moral Rights Law for the United States*, Stanford University Press ISBN 978-0-80475-643-3

⁹ Lionel Bently and Brad Sherman, *Intellectual Property Law* 231 (2d ed. 2004).

¹⁰ *Ibid*

¹¹ *Ibid*

¹² Georg Wilhelm Friedrich Hegel, *Philosophy of Right* (T.M. Knox Tr., Clarendon Press 1952 (1967 Reprint) (1821).

was to apply a large amount of attention on to authors. Though Hegelian philosophy was published around 1814, French Courts had already recognized the rights of an author to prevent unsanctioned changes or amendments of his/her work by publishing houses to whom a manuscript was presented for evaluation.¹³ Soon after this, the concept of moral rights diversified and French Courts would propound and create diversified types of moral rights.¹⁴ Such diversification would also find its way into the French Code.¹⁵ Most common law jurisdictions accepted Hegelian philosophy and followed a system wherein creators of works would be granted moral rights in such works; such moral rights would become an integral part of the creator's rights. Things were slightly different in the American continents. Whereas common law jurisdictions would always have provisions within their copyright laws for the inclusion of moral rights, in the Americas moral rights were lacked any sort of statutory backing. This became an integral component of the American copyright system.

When we look slightly forward about 100 years in the future, we see that moral rights became common place and was first acknowledged by the Berne Convention for the Protection of Literary and Artistic Works (1886) via the amendment in 1928 that added Article 6bis.¹⁶ Article 279 of the Universal Declaration of Human Rights¹⁷ also recognized moral rights. The inclusion of moral rights in Article 15 of the International Covenant of Economic, Social and Cultural Rights¹⁸, once again cemented the growing recognition and importance of moral rights.

III THE INDIAN SCENARIO

India is a signatory to and has ratified the Berne Convention along with the TRIPS Agreement. Due to this, the Parliament has amended the laws with regard to copyright protection to be in line with the Berne Convention and the TRIPS Agreement. Economic rights of an author have been protected under S. 14 of the Copyright Act of 1957 whereas moral rights are conferred to the author under S. 57 of the Copyright Act. Economic rights allow the author of a work to allow others to do certain

¹³ Billecocq V. Glendaz, Tri. Civ. Seine (Aug. 17, 1814), Quoted In 1 Stig Stromholm " , Le Droit Moral De L'auteur En Droit Allemand, Fran , Cais Et ScandinaVe Avec Un Aper , Cu De L'evolution Internationale ' : E' Tude De Droit Compare' 10,124, 10,132 (1966).

¹⁴ Ibid

¹⁵ Ibid

¹⁶ World Intellectual Property Organization. (1982). Berne Convention for the Protection of Literary and Artistic Works: Texts. [Geneva], World Intellectual Property Organization.

¹⁷ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III)

¹⁸ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, P. 3

things specified under S. 14 of the Copyright Act.¹⁹ With the signing of the Berne Convention, India now recognizes “right to paternity” as well as the “right to integrity” in accordance with the Convention.

1994 marked a significant change in the Copyright Act of 1957 due to the introduction of the Copyright (Amendment) Act of 1994. This amendment imposed a differentiation on “right of paternity” and “right of integrity”. The amendments to the Copyright Act created provisions stating that an author of a specified work would possess moral rights over such work even if the economic rights of such work were transferred to a third-party.²⁰ The distinguishing factor between moral rights and economic rights is the respective time periods that these rights are available to the author.²¹ Indian legislation does not contain a provision which states the period for which right of paternity is applicable to an author but it does state that the right of integrity can be cited if a third-party’s act causes distortion, mutilation or modification that violates the reputation or honour of the author while copyright still subsists in the work.²² Simply put, the right of integrity can be invoked by an author as long as copyright still subsists in the work and the right of integrity ends when copyright protection in the work no longer subsists. With the absence of a provision that contains a time period for the right of paternity, this has created confusion as to whether the right of paternity is available to an author in perpetuity or whether such a right ends with the cessation of the term of copyright. S. 57(2) allows us to answer this confusion. S. 57(2) states

“The right conferred upon an author of a work by sub-section (1), other than the right to claim authorship of the work, may be exercised by the legal representatives of the author.”²³

This provision states that the right to claim authorship of a work can only be done by the author. Hence, this may be conversely read as the term of the right of paternity only subsists during the lifetime of the author. Hence, the time period of the right to paternity ceases to exist before the period of the right to integrity. This may be seen as a fact overlooked by the Parliament in terms of their intention.

¹⁹ Section 14 of the copyright act include activities such as the right to reproduce the work, to distribute the work, to communicate the work, to make adaptations, to make translations, etc.

²⁰ Arathi Ashok, Moral Rights – TRIPS and Beyond: The Indian Slant, SSRN Electronic Journal · January 2013

²¹ Ibid

²² Ibid

²³ Section 57(2), Copyright Act, 1957

Indian jurisprudence does not have many valid attempts at interpreting provisions that enable moral rights. To understand the jurisprudence of moral rights in India, it is integral to evaluate and analyze the small handful of cases decided by Supreme Court and the various High Courts of the country. Originally, the interpretation of S. 57 of the Copyright Act was argued in front of a single judge bench of the High Court of Delhi in the case of *Mannu Bhandari v. Kala Vikas Pictures (Pvt.), Ltd.*²⁴ In this case, the plaintiff was the author of a work. She had licensed this work to another party so as to allow them to make a cinema of the same. She allowed these persons to make certain modifications so as to allow for the cinema to be easily adapted to a movie. The plaintiff's claim in this case was that the modifications made to the original work were done to such an extent that it would amount to mutilation of the work to the prejudice of the author; thereby, being in violation of Section 57 of the Indian Copyright Act. The Plaintiff claimed that she had communicated her displeasure with various aspects of the modifications such as the name of the movie as well as the climax of the movie which was different to the literature she had produced. The plaintiff went on further to claim that when she authored the literary work, her attempt was to bring up a social problem and leave the debate tot his problem open. She claims that the defendants did not adhere to this main tenet of here literary work but rather they modified the story in such a way that the debate on the social problem was lost. The case is interesting since the parties came to a settlement prior to the delivery of the Court's judgement. Though there was a settlement, both parties requested the Court to still deliver the verdict since it was the first case with regard to moral rights in India. The Court, in its proxy judgement, states that certain relevant parts of the movie had to be removed since it mutilated the plaintiff's work in such a way that it was prejudicial to her honour and reputation.²⁵ This case was the first case that discussed and interpreted the scope of moral rights in India.

Another landmark judgement within the country is that of *Amarnath Sehgal v. Union of India*.²⁶ In this case, the Plaintiff was a famous sculptor/artist/architect who was commissioned to design a bronze mural in the Vigyan Bhawan Convention Center. A year after the commission was complete and the mural was displayed, the government took down the mural and placed it into a government warehouse. The plaintiff claims that the removal and subsequent storage of the mural was violative of his rights under S. 57 of the Copyright Act. The plaintiff claimed that the removal of the work was prejudicial

²⁴ AIR 1987 Del. 13

²⁵ Ibid

²⁶ (2005) 30 PTC 253 (Del.)

to the reputation of the plaintiff. In its judgement, the Delhi High Court discussed extensively with the concept of moral types and the different types of classification that moral rights would contain. The Court went further to maintain four types of rights that flowed from the overarching concept of moral rights. These were:

1. Paternity right, i.e., the right to have his name on the work,²⁷
2. Divulgence right, i.e., the right to disseminate his work to the public,²⁸
3. Integrity right, i.e., the right to prevent the treatment of the work in a manner that is derogatory to the reputation of the author,²⁹
4. Retraction right, i.e., the right to withdraw the work from the public.³⁰

The Delhi High Court found similar classifications to be applicable in the case of *Neha Bhasin v. Anand Raj Anand*³¹ as well. *Amarnath Sehgal v. Union of India*³² as well as the case of *Neha Bhasin v. Anand Raj Anand*³³ have both shown that Indian Courts have been willing to recognize rights that have not been explicitly mentioned in the Copyright Act of 1994 after the Copyright (Amendment) Act of 1994. Interestingly, the High Court of Delhi in the *Amarnath Sehgal* case³⁴ provided the creator of the work two additional rights that do not originate from either the TRIPS or the Berne Convention. The author in the case was provided a “right to divulgence” and a “right to retraction”.

To conclude, it can be rightly said that India has a strong presence of moral rights within the country. Moral rights are protected by both, domestic legislature as well as international mandate³⁵ and such rights have been protected to highest degree of magnitude. Though there is a healthy jurisprudence of protection of moral rights of authors, how this translates to a practical application of the rights can only be truly ascertained after more judicial verdicts are delivered.

²⁷ Ibid

²⁸ Ibid

²⁹ Ibid

³⁰ Ibid

³¹ 132(2006)DLT196

³² Supra Note 26

³³ Supra Note 31

³⁴ Supra Note 32

³⁵ International mandate is through the Berne Convention as well as the TRIPS Agreement.

IV THE UNITED STATES SCENARIO

Moral rights have not been a subject that has garnered attention in the United States nor have policies revolving around moral rights had significant updates in the past several years. Certain scholars suggest that this is due to the already strong protections afforded to creators in the United States but the actual state of moral rights in the country is fairly complex. The United States, much like India, formally recognizes the right of attribution as well as the right to integrity. This occurred after the ratification of the Berne Convention in 1988. To afford these protections to creators, the United States Congress passed multiple laws at both the state level as well as the federal level rather than just passing one federal statute that would be applicable to the entire nation.³⁶ While the interests behind the concept of moral rights have been protected by statute at the federal level for a large period of time, the shape and substance of the interest behind these protections have changed over time. These protections have often been widened by the addition of federal and state legislation such as that of the amendments to title 17 that the Congress passed in the 90s;³⁷ at the same time these protections have shrunk due to multiple lower Courts following the precedent set by the United States Supreme Court in the case of *Dastar Corp. V. Twentieth Century Fox Film Corp.* (*Dastar*).³⁸

However, it was only in the year 1989 that the US became subject to the requirement of guaranteeing moral rights to content creators after ratifying the Berne Convention.³⁹ During this time, Congress agreed, via an established hotchpotch of rules, that the United States would guarantee protection for the rights of attribution as well as the right of reputation.⁴⁰ These rules included the following:

1. State laws related to:
 - a. Fraud and misrepresentation⁴¹
 - b. Defamation⁴²

³⁶ United States Copyright Office, *Authors, Attribution, and Integrity: Examining Moral Rights in the United States*, April 2019

³⁷ Expansion of the protections for the rights of attribution and integrity include the passage of the Visual Artists Rights Act (“VARA”) Of 1990, the addition of section 1202 to Title 17, and the passage of additional state statutes in the areas of the right of publicity and moral rights for authors of visual art works.

³⁸ *Dastar Corp. V. Twentieth Century Fox Film Corp.*, 539 U.S. 23 (2003)

³⁹ Berne Convention Implementation Act (“BCIA”) Of 1988, Pub. L. No. 100-568, 102 Stat. 2853 (Codified in scattered sections of 17 U.S.C.).

⁴⁰ H.R. Rep. No. 100-609, at 37–38 (1988); S. Rep. No. 100-352, at 9–10 (1988)

⁴¹ *Ibid*

⁴² *Ibid*

- c. Publicity and Privacy⁴³
 - d. Unfair Competition⁴⁴
 - e. Contracts⁴⁵
- 2. Federal Laws:
 - a. The Lanham Act
 - b. Certain provisions within the Copyright Act.

This hotchpotch of rules has evolved over the past thirty years through the addition/amendments of statutes by the United States Congress. The US Congress has achieved this evolution in two main ways:

1. Congress passed the Visual Artists Rights Act (VARA) of 1990.⁴⁶ The VARA allows authors of a work to have paternity rights over their work.⁴⁷ Authors may exercise this right negatively or positively – they may either claim authorship of a work or they may even disclaim authorship over this work. Authors are also allowed to prevent the “distortion, mutilation or modification” of their works.⁴⁸
2. Congress amended Title 17 by adding a new section – namely Section 1202. Section 1202 achieves two objectives – firstly it prohibits providing false copyright management information⁴⁹ and second it prevents the removal or alteration of CMI.⁵⁰

With the changes in the moral rights landscape after the ratification of the Berne Convention, the introduction of the Lanham Act as well as the amendment of Title 17, multiple changes in business practices along with the evolution of technologies such as that of the internet have altered how the moral rights of attribution and integrity are experienced by content creators in the US.⁵¹ With the evolution of the internet in areas such as that of buying and selling (in some cases even licensing)

⁴³ Ibid

⁴⁴ Ibid

⁴⁵ Ibid

⁴⁶ Visual Artists Rights Act (“VARA”) Of 1990, Pub. L. No. 101-650, 104 Stat. 5128, 5128–29 (Codified at 17 U.S.C. § 106a).

⁴⁷ Ibid

⁴⁸ Ibid

⁴⁹ Digital Millennium Copyright Act (“DMCA”), Pub. L. No. 105-304, 122 Stat. 2860, 2872–74 (1998) (Codified as Amended at 17 U.S.C. § 1202).

⁵⁰ Ibid

⁵¹ Study on the Moral Rights of Attribution and Integrity: Notice of Inquiry, 82 Fed. Reg. 7870, 7874 (Jan. 23, 2017) (“Moral Rights NOI”).

works in digital form, digital accessibility of an author's work has become more prone to plagiarism. For example, with regard to sharing photos online, it is very easy for a person to remove or manipulate the "metadata"⁵² of a photo to make it seem as if they are the person who took the photo. Any work that is stripped of this metadata can then be disseminated which in turn becomes a violation of the rights of attribution and dissemination of the author. In many cases this also becomes a violation of the author's economic rights.

Unlike the Indian scenario, the US scenario has evolved outside the birth of these rights. In the US, judges no longer decide the scope of these rights. Rather these rights have evolved into further spheres. For example, the unauthorized use of music on platforms such as YouTube, use of image filtering to prevent copyright infringement.

V A COMPARATIVE STUDY OF MORAL RIGHTS ACROSS JURISDICTIONS SUCH AS AUSTRALIA, THE UNITED KINGDOM AND THE UNITED STATES

Moral rights laws in copyright jurisdictions tend to exhibit certain common features. Where rights are granted, they exist as individual, separate entitlements – as moral rights (plural) - rather than as particular reflections of a single overarching principle. In this respect, they differ, for example, of *le droit moral* in French law. Moral rights laws in copyright jurisdictions are generally drafted in a common legislative style, leaning more towards detailed delineation than broad principle.⁵³

They also have common features of substance:

1. They do not go much beyond the international baseline provided by Art 6bis of the Berne Convention.⁵⁴ As a consequence, rights which are not covered by this provision (such as the divulgation and withdrawal rights) are not generally protected.⁵⁵

⁵² The word "metadata" used here is in the context of the identifying information of the work.

⁵³ This is very clearly seen in Australia's Copyright Act of 1968

⁵⁴ Ginsburg, J. "Moral Rights in a Common Law System" *Entertainment Law Review*, 1990, p 121, 128

⁵⁵ L. Bently and B Sherman, *Intellectual Property Law*, 4th Ed, Oxford, OUP, 2014, 276, 283-4.

2. In order to establish a breach of the right of integrity, an author usually has to demonstrate harm to reputation – that is, that he or she has suffered damage, measured from the perspective of third parties.^{56 57 58 59}
3. The duration of moral rights is limited to the copyright term (at longest).⁶⁰
4. While the transfer of moral rights is not permitted (except on death), waiver is often possible.⁶¹
5. copyright jurisdictions tend to maintain a broad range of pragmatic exclusions from protection for particular forms of creation – most notably, for works created in the course of employment.⁶²

Nevertheless, having acknowledged these common features, it is also important to note the considerable diversity existing within the copyright world. Even if we compare only three leading common law jurisdictions – the United States, the United Kingdom and Australia – a range of positions on a number of significant issues becomes apparent. If we look first at the range of works covered by moral rights legislation in these countries, important differences can immediately be seen. Notoriously, the Copyright Act 1976, as amended by the Visual Artists Rights Act 1990 (“VARA”), grants moral rights in only a very limited range of “works of visual art”.⁶³ By contrast, under both the United Kingdom’s Copyright Designs & Patents Act 1988⁶⁴ and Australia’s Copyright Act 1968,⁶⁵ authors of the broad range of “works” protected by copyright law also benefit from moral rights. Even in these jurisdictions, however, there are distinctions of detail. In the United Kingdom, creators

⁵⁶ *Confetti Records v. Warner Music UK Ltd.* [2003] EMLR 790, [149]-[150]

⁵⁷ *Pasterfield v. Denham* [1999] FSR 168, 182

⁵⁸ *Delves-Broughton v. House of Harlot* [2012] PCC 29 [24]

⁵⁹ *Carter v. Helmsley-Spear, Inc* 861 F Supp 303 (SDNY, 1994)

⁶⁰ CDPA 1988, S. 86 (UK); Copyright Act 1976, S. 106A(D) (US); Copyright Act 1968, S. 195AM (Aus)

⁶¹ CDPA 1988, S. 87 (UK); Copyright Act 1976, S. 106A(E) (US); Copyright Act 1968 S. 195AW, 195AWA (Aus)

⁶² CDPA 1988, S. 79(3); 82; Copyright Act 1976, S. 101 (Definition of “Work of Visual Art”)

⁶³ Under Copyright Act 1976, S. 106A, only authors of “Works Of Visual Art” benefit from Moral Rights. A “Work of Visual Art” is defined 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.”

⁶⁴ CDPA 1988, S. 77(1); S. 81(1)

⁶⁵ Copyright Act 1968, ss 193, 195 AI

of software do not have moral rights,⁶⁶ whereas there is no equivalent exclusion under the Australian statute.

The attitude to works created by employees also varies. Thus, in the United States, no moral rights protection arises in “works made for hire”.⁶⁷ In the United Kingdom, moral rights exist in works created “in the course of employment”, but a series of statutory conditions imposed on those rights significantly diminishes their potency.⁶⁸ In Australia, by contrast, moral rights in employee works are not significantly diluted *ab initio*.⁶⁹

There are also significant differences between the forms of the integrity right in these three jurisdictions. Under VARA, a violation of the integrity right will generally only arise where alterations are made to an original work of art or to a limited edition print.⁷⁰ In Australia and the United Kingdom, reproductions that harm a creator’s honour and reputation may also be actionable.^{71 72 73 74} However, in one respect, the United States grants a more powerful integrity right than either of its fellow common law jurisdictions (and, indeed, than many civil law countries) as it explicitly prohibits the destruction of a work of visual art of recognized stature⁷⁵ (regardless of whether or not the destruction would be likely to cause harm to honour or reputation).^{76 77 78}

If we consider the duration of moral rights in common law jurisdictions, we note that the United Kingdom protects moral rights for the length of the copyright term.⁷⁹ So does Australia, except in the case of cinematographic works, in which moral rights are actionable for the lifetime of the author only.⁸⁰ Under VARA, rights do not extend beyond an author’s death.⁸¹

⁶⁶ CDPA 1988, S. 79(2)(A), 81(2).

⁶⁷ Copyright Act 1976, S. 101 (Definition of “Work of Visual Art”).

⁶⁸ CDPA 1988 S. 79(3); 82.

⁶⁹ Copyright Act 1968, S. 195 AVA(B)

⁷⁰ Copyright Act 1976, S. 106A(C).

⁷¹ *Confetti Records v. Warner Music UK Ltd.* [2003] EMLR 790

⁷² *Pasterfield v. Denham* [1999] FSR 168

⁷³ *Delves-Broughton v. House of Harlot* [2012] PCC 2

⁷⁴ Copyright Act 1968, S. 195 AQ (Aus).

⁷⁵ Copyright Act 1976, S. 106a(A)(3)(B).

⁷⁶ *Carter v. Helmsley-Spear, Inc* 861 F Supp 303 (SDNY, 1994)

⁷⁷ *Flack v. Friends of Queen Catherine, Inc* 139 F Supp 2d 526 (SDNY, 2001)

⁷⁸ *Pollara v. Seymour* 206 F Supp 2d 333 (NDNY, 2002)

⁷⁹ CDPA 1988, S. 86

⁸⁰ Copyright Act 1968, S. 195AM(1).

⁸¹ Copyright Act 1976, S. 106A(D).

As noted above, waiver of moral rights is often permitted in copyright jurisdictions. This feature of those systems has been subject to powerful criticism.⁸² However, if we look closely at the regimes, yet again we see important diversity in practice.⁸³ In the United Kingdom, waivers are permitted without significant restriction.⁸⁴ Under VARA, waiver is permitted but only so long as certain statutory conditions are satisfied. The Australian legislation does not permit the general waiver of moral rights. An author may consent to an action that would otherwise breach his or her moral rights. However, if the consent is to be binding, it must be in writing.

VI CONCLUSION

In this paper, my intention has been simply to sketch the outlines of a challenge to the typical ways in which we think about moral rights in copyright systems. The patterns we see seem to suggest that the approach to moral rights in the copyright jurisdictions may be shaped by the necessity of ensuring the overall coherence of the legal structure in those systems. In India specifically, Moral Rights jurisprudence is still in its nascent stages and requires a lot more groundwork. In the past few years, India has been diluting its stance on Moral Rights. This is very different to the United States where Moral Rights has not evolved in almost 30 years. Though in the 1990s there was a strong sense of the protection of the rights of attribution and divulgation with the introduction of the Visual Artists Rights Act, the United States has flatlined their outlook on moral rights in the recent past.

⁸² Cornish, W., "Moral Rights under the 1988 Act", *European Intellectual Property Review*, 1989, p. 449, 452

⁸³ Ginsburg, J., "Moral Rights in a Common Law System" *Entertainment Law Review*, 1990, p. 121, 129.

⁸⁴ CDPA 1988, S. 87