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A Critique of the Visual Artists Rights Act of 1989

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Abstract

The Visual Artists Rights Act of 1989 (hereinafter Kennedy Bill), in general, amends the Copyright Act of 1976 to recognize the moral rights of authors of certain works of visual art such as paintings, drawings, sculptures, prints, multiple cast sculptures of a limited edition of 200 or fewer, and photographs produced for exhibition purposes only.

Moral Rights

A Critique of the Visual Artists Rights Act of 1989*

Edward J. Damich**

I. Introduction

The Visual Artists Rights Act of 1989¹ (hereinafter Kennedy Bill), in general, amends the Copyright Act of 1976² to recognize the moral rights of authors of certain works of visual art such as paintings, drawings, sculptures, prints, multiple cast sculptures of a limited edition of 200 or fewer, and photographs produced for exhibition purposes only.³ The moral rights that are recognized include the right of attribution and the right of integrity. The right of attribution in the Kennedy Bill includes: (1) the right to claim authorship⁴ (2) the right to prevent the use of an author's name as author of a work he or she did not create⁵ and (3) the right to prevent the use of an author's name as author of a work when that work has been altered or destroyed so as to

* This article is based on my testimony of June 20, 1989, before the Subcommittee on Patents, Copyrights, and Trademarks of the Committee on the Judiciary of the United States Senate on the Visual Artists Rights Act of 1989 (S. 1198) sponsored by Senator Edward Kennedy.

** Copyright 1989, Edward J. Damich. Professor Damich is an associate professor of law at George Mason University School of law in Arlington Virginia. His recent publications include *State Moral Rights" Statutes: An Analysis and Critique*, 13 Colum.-VLA J. Law & Arts 291 (1989) and *The Right of Personality: A Common-Law Basis for the Protection of the Moral Rights of Authors*, 23 Ga. L. Rev. 1 (1988).

1. S. 1198, 101st Cong., 1st Sess. (1989). See appendix, *infra* at 451 for a full citation of the Kennedy Bill.

2. 17 U.S.C. §§ 101-914 (1988) [hereinafter Copyright Act].

3. It is unclear whether works other than multiple cast sculptures and prints are limited to a single copy or to a limited edition of 200 or fewer. Section 2 of the Kennedy Bill provides: "A work of visual art does not include —(1) any version that has been reproduced in other than such limited edition *prints or cast sculptures*" (emphasis added).

4. Kennedy Bill, *infra*, at 452, § 3(a)(1)(A).

5. Kennedy Bill, *infra*, at 452, § 3(a)(1)(B).

violate the right of integrity provided by the bill.⁶ The right of integrity in the Kennedy Bill includes: (1) the right to prevent any distortion, mutilation, or other modification of the work which would be prejudicial to the author's honor or reputation⁷ and (2) the right to prevent the destruction of a work of recognized stature.⁸ These rights endure for the life of the author plus fifty years, and they cannot be waived. The Kennedy Bill preempts state moral rights legislation which recognizes rights equivalent to the moral rights provided by the Bill.⁹ The Kennedy Bill further provides for a study of resale royalties.¹⁰

In addition to the introductory material, this article consists of three parts. In the first part, I identify the reasons for federal legislation to protect the moral rights of authors. In the second part, I relate the concept of moral rights to well-established concepts that already exist in American law. In the third part, I comment on the provisions of the Kennedy bill.

II. The Basis for Federal Protection of the Moral Rights of Visual Artists

Federal protection of the moral rights of visual artists is based on the recognition that works of visual art communicate an aspect of the artist's personality, namely his creative vision. Just as a United States Senator might be at great pains to make sure his remarks are accurately reported, so the visual artist feels he is entitled to preserve the authenticity of his visual message. This personal aspect helps to define a work of art. The shock and horror that seems so natural over the repainting and stabilizing of a Calder mobile or the destruction of a mural are entirely out of place over the changing of a light fixture or the repainting of a wall. The negative reaction is prompted by indifference to the object as a work of art. The recognition of moral rights compels the owner of a material object to recognize that what he owns is a work of art, the communication of a unique personality.

Society also benefits from the protection of the artist's moral rights. If the arts are promoted by giving authors economic rights in

6. Kennedy Bill, *infra* at 452, § 3(a) (rights of certain authors to attribution and integrity).

7. Kennedy Bill, *infra*, at 452, § 3(a)(3)(B).

8. *Id.*

9. Kennedy Bill, *infra*, at 454, § 5 (preemption).

10. Kennedy Bill, *infra*, at 456, § 9 (study on resale royalties).

their works, surely they are also promoted when authors are assured that their work will not be tampered with. As Judge Lumbard stated in *Gilliam v. ABC*,¹¹ "[T]he economic incentive for artistic and intellectual creation that serves as the foundation for American copyright law, cannot be reconciled with the inability of artists to obtain relief for mutilation or misrepresentation of their work to the public on which the artists are financially dependent." Furthermore, moral rights will help protect our cultural heritage.

In addition to protecting the personal aspect of artistic creation, federal protection of moral rights can be based on our obligations under the Berne Convention for the Protection of Literary and Artistic Works¹² which the United States adhered to March 1, 1989. Article 6bis of the Berne Convention provides for moral rights,¹³ and no amount of qualifying language¹⁴ can obscure the fact that by adherence this country has recognized moral rights in principle. Furthermore, the fact that the nascent moral rights protection that currently exists in the United States might have been sufficient to *join* the Berne Convention does not mean that we should not bring United States law more in line with the requirements of article 6bis. The United Kingdom, for example, recently enacted comprehensive moral rights legisla-

11. 538 F.2d 14, 24 (2d Cir. 1976).

12. See Berne Convention Implementation Act of 1988, Pub. L. No. 100-568, 102 Stat. 2853 (1988).

13. The Article states:

Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation.

WORLD INTELLECTUAL PROPERTY ORGANIZATION, GUIDE TO THE BERNE CONVENTION FOR THE PROTECTION OF LITERARY AND ARTISTIC WORKS (Paris Act, 1971) (1978) [hereinafter WIPO Guide].

14.

The provisions of the Berne Convention, the adherence of the United States thereto, and satisfaction of United States obligations thereunder, do not expand or reduce any right of an author of a work, whether claimed under Federal, State, or the common law—(1) to claim authorship of the work; or (2) to object to any distortion, mutilation, or other modification of, or other derogatory action in relation to, the work, that would prejudice the author's honor or reputation.

Berne Convention Implementation Act of 1988, Pub. L. No. 100-568, § 3, 102 Stat. 2853 § 3(b) (1988).

tion¹⁵ in order to comply with the requirements of article 6bis, despite the fact that it has been a member of the Berne Union for decades.

Ideally, the goal of federal protection of moral rights should be comprehensive protection of the creative personality. Minimally, the United States should comply with the language of article 6bis.

III. Moral Rights and the Right Of Personality

Protecting the moral rights of authors cannot be characterized accurately as transplanting a foreign organ into the body of American law. The personal aspect of artistic creativity has been expressly recognized in American law. In *Bleistein v. Donaldson Lithographing Co.*, Justice Holmes stated:

"The copy is the personal reaction of an individual upon nature. Personality always contains something unique. It expresses its singularity even in handwriting, and a very modest grade of art has in it something irreducible."¹⁶

More recently, the United States Supreme Court in *Harper & Row Publishers v. Nation Enters.* noted that the right of first publication in the Copyright Act, §§ 106(1) ((3)), had both a personal and an economic aspect.¹⁷ When *Nation* magazine published excerpts of President Ford's autobiography before the book itself was published, the author was deprived not only of the economic advantage of first publication but also of his personal interest in creative control, i.e., the form, the time, and the circumstances of his communication of his personality to the public. These interests, the Court held, give the right of first publication a particular resistance to the claims of fair use.¹⁸

The phrase "honor or reputation," found in both article 6bis of the Berne Convention and in the Kennedy Bill also suggests an American connection to moral rights. "Reputation" is familiar enough, but protection of "honor" in American law has not been fully appreciated. The right of privacy, for example, is primarily concerned with injury to honor. The right of privacy, like moral rights, did not exist as a recog-

15. Copyright, Designs and Patents Act, 1988, ch. 48 [hereinafter British Act].

16. 188 U.S. 239, 250 (1903).

17. "The author's control of first public distribution implicates not only his personal interest in creative control but also his property interest in exploitation of prepublication rights. . . ." 471 U.S. 539, 555 (1985).

18. *Id.*

nized cause of action until the beginning of this century, but it is now commonplace. The first step in the recognition of a cause of action for violation of the right of privacy was the identification of the interest to be protected. This was done in the famous article, *The Right of Privacy*, by Samuel Warren and Louis Brandeis.¹⁹ In order to convince the skeptical jurists of their day, Warren and Brandeis had to do more than merely argue that it would be "nice" to have certain aspects of one's life kept from public knowledge. What they had to do—and what they did—was to show how necessary it was for the flourishing of the human personality to have a zone in which experiments could be tried and in which mistakes could be made in fashioning one's individuality. Thus, Warren and Brandeis wrote that the right of privacy was based on the principle of "inviolable personality"²⁰ and that it was "part of the more general right to the immunity of the persona—the right to one's personality."²¹ The right of privacy is not concerned with whether people think worse or better of the person after facets of his personality are revealed to the public. The injury is to the dignity and the autonomy of the individual. Every private person should have the right to reveal his personality when he chooses, to the extent he chooses and under circumstances that he chooses.

The parallel with moral rights is obvious—so obvious that it is not surprising that Warren and Brandeis used a common law copyright case, *Prince Albert v. Strange*,²² as an example of a cause of action that protected the autonomy of the individual as well as the profit motive.²³ The artistically creative act is a communication to the public of the personality of the artist. Not only should she have the right to control the time, manner, and circumstances of this communication, but also, since it is a continuing communication, the artist has a right that it be authentic and that it be identified as *her* communication. Distorting this communication may cause people to think worse of the artist, but even if they think better of her, the artist has sustained an injury to her personality. No matter what the reaction of the public to the revelation, the artist suffers the indignity of saying what she did not intend to say. The feeling that prompts the rebuke, "Don't put words in

19. Warren & Brandeis, *The Right of Privacy*, 4 HARV. L. REV. 193 (1890).

20. *Id.* at 205.

21. *Id.* at 207.

22. 2 DeG. & Sm. 652, 64 Eng. Rep. 293 (High Ct. of Chan. 1849), *aff'd*, 1 Mac. & G. 25, 41 Eng. Rep. 1171 (1849).

23. Warren & Brandeis, *supra* note 19, at 208.

my mouth," comes close to capturing the essence of prejudice to honor.

In addition to the right of privacy, there are torts that reflect concern with respect for personality. The fact that substantial damages can be recovered in defamation per se, even though no economic, physical, or any other type of definite harm is shown, suggests that the interest that is being protected is the plaintiff's honor.²⁴ This is also true for assault, battery, false imprisonment, malicious prosecution, intentional infliction of mental distress, alienation of affections, intentional interference with voting, and invasion of analogous civil rights provided by statute.²⁵ These latter torts have been identified as protecting personality or interests in personal dignity.²⁶

Finally, the right of personality and its link with honor has been recognized in American legal philosophy. Roscoe Pound, for example, as early as 1915, identified three interests of personality: (1) the physical person; (2) honor (reputation); and (3) belief and opinion.²⁷ Pound was very careful to distinguish the protection of honor and dignity from the protection of substance or assets, but he recognized that they could overlap, as in defamation, where injury to reputation could take the form of economic loss as well as loss of self-esteem.

IV. The Structure of Federal Protection of the Moral Rights Of Visual Artists in the Kennedy Bill

Since the author's personality is present in all works of artistic creativity, federal protection of moral rights should not be limited to the visual arts. The Berne Convention extends moral rights to all "literary and artistic works,"²⁸ and the new British Act recognizes moral rights in dramatic, musical or artistic works and films.²⁹ However, there is nothing wrong in principle in proceeding incrementally, provided it is expressly acknowledged that giving some sort of moral rights protection to a segment of authors neither fulfills our Berne obligations nor provides comprehensive protection. It is also important not to preempt state and common law protection when it provides significantly

24. DOBBS, REMEDIES § 7.3 (1973).

25. *Id.*

26. *Id.*

27. Pound, *Interests of Personality*, 28 HARV. L. REV. 343, 355 (1915).

28. "The expression 'literary and artistic works' shall include every production in the literary and scientific and artistic domain, whatever may be the mode or form of its expression." WIPO Guide, *supra* note 13, at art. 2.

29. British Act, *supra* note 13, at § 2.

greater protection. The admission that the Kennedy Bill is only the first step can be accomplished easily enough by appropriate statements in the legislative history, but the preemption provision is worded in such a manner that there is a very real danger that more comprehensive, existing protection will be preempted.

Section 5(f)(1) of the Kennedy Bill preempts state and common law rights "that are equivalent to any of the rights conferred by section 106A [rights of attribution and integrity] with respect to works of visual art to which the rights conferred by section 106A apply."³⁰ The word "equivalent" is already used in the preemption provision of the Copyright Act of 1976,³¹ and it has not been strictly construed to require that the state right be exactly coextensive with the federal right.³² Thus, it is arguable that the right of pseudonymity, which is granted by the moral rights statute of Senator Kennedy's home state of Massachusetts,³³ would be preempted as "equivalent" to the federal right of attribution contained in the bill. Since the World Intellectual Property Organization (WIPO), which administers the Berne Convention, has taken the position that the right of attribution includes the right of pseudonymity,³⁴ the result would be to lessen the compliance of American law with article 6*bis*. Doubtless, there are other examples in the ten states that have enacted comprehensive moral rights legislation. More reassuring was the language of one of the earlier versions of the Kennedy Bill: "Nothing in section 106a [rights of attribution and integrity] . . . preempts the common law or statutes of any State except to the extent that such common law or statutes would diminish or prevent the exercise of the rights conferred by, or the implementation of, section 106a" ³⁵ This approach has been adopted in other federal legislation.³⁶

30. Kennedy Bill, *infra*, at 455 § 5(f)(1).

31. 17 U.S.C. § 301 (1988).

32. NIMMER, COPYRIGHT § 1.01[B] (1988).

33. Mass. Gen. Laws. Ann. ch. 231 § 85S(d) (West Supp. 1987).

34. WIPO Guide, *supra* note 13, at com. 6*bis*. 3.

35. S. 1619, 100th Cong., 2d Sess. § 10(e), version marked 10/17/88.

36. See, Federal Trade Commission Act, 15 U.S.C. § 57a-1(e) (1988). "Remedies provided in this section are in addition to, and not in lieu of, any other remedy or right of action provided by State or Federal law" *Id.* at § 57b(e) (1988); Fair Packaging and Labelling Act: "It is hereby declared that it is the express intent of Congress to supersede any and all laws of the States . . . which are less stringent than . . . the requirements of this title. . . ." *Id.* at § 1461 (1988).

A. Works Protected

If incrementalism is to be the way that comprehensive federal protection of moral rights is to be introduced, it is logical to begin with that class of works which would be lost by irreparable physical changes—paintings, drawings, and sculpture existing in a single copy—as does the Kennedy Bill. It is also logical to extend protection, as the Kennedy Bill does, to multiples, such as prints, multi-cast sculptures in limited editions and photographs, since each print or each casting can be said to be unique, despite the fact that it will resemble the other prints or castings. It is not advisable, however, to limit protection of photographs to those “produced for exhibition purposes only.”³⁷ Whether a photograph has been produced for exhibition purposes *only* seems to be an unworkable test.

The global exclusion of works made for hire in the Kennedy Bill is also unjustifiable, given the narrow scope of works protected. Since the moral rights in the Kennedy Bill apply to the owners of copyright and to the owners of the material object in which the work is embodied, the work for hire exclusion must be justified for reasons that do not equally apply in those instances. In the case of paintings, drawings, prints, and sculptures existing in single copies, the right of integrity would be violated by physical acts done to the works themselves. In the employer-employee relationship, it would seem that there would be little need to commit such acts. Ordinarily, the acts would consist of acts done to copies of originals in the process of making reproductions. In the case of a publication, for example, it is ordinarily not necessary to alter the original in order to reproduce it in a different form in a newspaper or magazine. Furthermore, the protection of prints in the Kennedy Bill applies only to limited editions of 200 copies or fewer; therefore, it would not apply to newspapers and magazines of mass circulation.³⁸ In the case of commissioned works, it is again difficult to see why there should be a need for a special freedom to make physical changes to a painting, drawing, print, or sculpture³⁹ that does not exist in the case of owners of copyright and the material object. The usual case would seem to be publications that use commissioned drawings, but, as in the

37. Kennedy Bill, *infra*, at 451, § 2.

38. The Kennedy Bill also excludes protection of “any reproduction, depiction, [or] portrayal” in a “book, magazine, periodical, or similar publication.” *Id.* at § 2(2) & (4).

39. It is not readily apparent how a sculpture could fit the definition of work made for hire as a commissioned work. See 17 U.S.C., at § 101 (work-made-for-hire).

case of the employer-employee relationship, the Kennedy Bill only applies to prints in limited editions of 200 or fewer. In any event, the above analysis suggests that the proponents of the work-made-for-hire exclusion should have the burden of showing how the limited moral rights recognized by the Kennedy Bill would pose insurmountable problems in their undertakings.

B. *Rights Recognized*

The Kennedy Bill essentially complies with article 6bis by recognizing the right of attribution and the right of integrity. In the case of the right of integrity, however, there is room for improvement in three areas. First, it would be advisable to indisputably indicate that the right to "prevent" certain acts includes the right to recover damages if they have already occurred.⁴⁰ Second, it should be made clear that any change caused by physical act to the work should be a per se violation of the right of integrity without a showing of prejudice to honor or reputation, since, by definition, the honor of the author is injured. An irreparable, physical change to the work effectively causes the work to be lost and to fail to communicate the author's artistic vision.⁴¹ Third, the right against destruction should not be limited to works of recognized stature. Limiting moral rights to works of recognized stature has no justification in moral rights theory or in the Berne Convention, and it is contrary to American copyright tradition to condition rights on artistic merit. Such a limitation does not exist in French law or in the recently enacted British Act.

Presumably, the "of recognized stature" criterion⁴² was motivated by concern over law suits stemming from the destruction of insignificant works, such as a child's drawing.⁴³ It is curious, however, that the "of recognized stature" criterion is not imposed on the right against distortion, mutilation, or other modification, yet it is quite easy to imagine a child's drawing being mutilated rather than destroyed. If the "prejudicial to honor or reputation" qualification⁴⁴ is sufficient to make

40. This point also applies to the right of attribution.

41. A per se rule is not indicated when the right of integrity protects ordinary reproductions, since the original is not lost no matter how distorted the reproduction may be.

42. Kennedy Bill, *infra*, at 452, § 3 (a)(3)(B).

43. Because of the narrow definition of works protected in the Kennedy bill, the right against destruction would not be extended to mass reproduced works.

44. Kennedy Bill, *infra*, at 452, § (a)(3)(A).

law suits unattractive in the case of the right against modification, it would seem to be equally serviceable in the case of destruction. It would seem that just as courts are capable of distinguishing between a pinch and an amputation in the case of pain and suffering, they would be equally capable of distinguishing between the indignity of the destruction of a child's drawing and a Larry Rivers painting.

The right of attribution recognized in the Kennedy Bill does not measure up to the requirements of article 6bis, nor does it provide comprehensive protection. WIPO indicates that the right of attribution envisioned by the Berne Convention has the following components: (1) the right to claim authorship, (2) the right to publish pseudonymously or anonymously, (3) the right to reject pseudonymity and anonymity, (4) the right of the author not to have his name associated with a work that is not his, and (5) the right of the author not to have his name associated with a work that he did not create.⁴⁵ The Kennedy Bill does not provide for anonymity or pseudonymity at all.

C. Assignment, Waiver, and Consent

The most courageous and realistic provision of the Kennedy Bill is the provision that makes the moral rights recognized by the bill non-transferable and nonwaivable.⁴⁶ This is consistent with WIPO's interpretation of article 6bis, and it is required to avoid making federal moral rights legislation an exercise in futility. Without such a provision, given the bargaining power of most authors, the waiver or transfer of moral rights would soon appear as boilerplate in all contracts.

Inalienability of certain rights is not foreign to American copyright law. The power of termination of transfers and licenses granted by the author states: "Termination of the grant may be effected notwithstanding any agreement to the contrary, including an agreement to make a will or to make any future grant."⁴⁷ The power of termination is the successor to the renewal provision of the 1909 Act, which, as former Register of Copyrights, Barbara Ringer, stated, was provided by Congress because it recognized that "author-publisher contracts must frequently be made at a time when the value of the work is unknown or conjectural and the author (regardless of his business ability)

45. WIPO Guide, *supra* note 13, at com. 6bis. 3.

46. Kennedy Bill, *infra*, at 453, § 3(e).

47. 17 U.S.C. § 203(a).

is necessarily in a poor bargaining position."⁴⁸

Nontransferability and nonwaivability do not surrender others to the whims and caprices of authors. The meaning of nontransferability is that someone other than the author may not exercise the author's moral rights when he is capable of doing so. The meaning of nonwaivability is that the author cannot contractually bind himself not to assert his moral rights. This does not mean that the author cannot consent to what would ordinarily be a violation of moral rights. It simply means that he cannot be held to his consent if he changes his mind before the other party has detrimentally relied on this consent. For example, if an author consents to an irreparable change to his work of visual art, he cannot sue once the change has occurred.

D. Remedies

Not enough thought has been given in the Kennedy Bill to whether it is appropriate to adopt wholesale the copyright infringement remedies in the Copyright Act as remedies for violation of moral rights. There is no problem with injunctions, but the language of the act regarding monetary damages is not apt regarding the kind of interests protected by moral rights. As has already been pointed out, violations of moral rights are more akin to violations of the right of privacy, defamation per se, and other right of personality torts. Thus, the Copyright Act's provisions for recovery of actual damages and profits would often be inappropriate.⁴⁹ In many cases, the author would be limited to statutory damages, but the amount of statutory damages in some cases would be too high (e.g., \$200 for the mutilation of a child's drawing?) and in other cases would be too low (e.g., only \$100,000 for the intentional destruction of a Jasper Johns painting?).⁵⁰ Moreover, statutory damages for American works could be precluded by nonregistration.⁵¹

It would be a better solution to leave the calculation of monetary damages to the courts, as long as they have been instructed about the nature of the interest protected. It should be noted that monetary damages have not been awarded in an entirely arbitrary and irrational

48. Ringer, *Renewal of Copyright*, in *STUDIES IN COPYRIGHT* (1960), excerpted in *LATMAN & GORMAN, COPYRIGHT FOR THE EIGHTIES: CASES AND MATERIALS* 207 (2d ed. 1985).

49. 17 U.S.C. § 504(b).

50. 17 U.S.C. § 504(c).

51. 17 U.S.C. § 412.

manner in the case of such right of personality torts such as the right of privacy. Rather, the courts have focused on factors such as: (1) whether the tort was committed publicly, (2) the nature, motive and extent of the defendant's conduct, and (3) the plaintiff's own motives and misbehavior.⁵² It also seems appropriate for the court to consider the value of the work.

E. *Duration*

The adoption of the copyright term for the duration of moral rights in the Kennedy Bill is consistent with the requirements of the Berne Convention. However, it may very well be argued that by doing so the secondary benefit of moral rights protection, such as the preservation of our cultural heritage, is weakened. Since there is no register of culturally significant paintings, drawings, prints, and sculptures, in most cases fifty years after the author's death no one will have standing to prevent the destruction or mutilation of such works. Furthermore, a work of visual art does not suddenly stop expressing the author's personality fifty-one years after his death. Therefore, the possibility of perpetual protection should be seriously considered. Moral rights in France are perpetual, and in the United States, even today, common law copyright is perpetual. The constitutional requirement that copyright protection be for "limited times"⁵³ is not an insurmountable obstacle, since the copyright clause was directed at what we would now call the economic rights as distinguished from the moral rights. Moral rights, as we have seen, are more akin to torts protective of the personality. If moral rights are to be made perpetual, however, it would be prudent not to make the legislation recognizing them part of the Copyright Act.

V. Conclusion

The Kennedy Bill is a commendable first draft for protecting the moral rights of authors of works of visual art. There is nothing wrong in principle with opting for incrementalism by beginning protection with works of visual art narrowly defined. The most serious concern, though, is that its preemption provision will actually reduce the scope of moral rights protection that already exists in some states, including

52. See generally, Dobbs, *supra* note 24.

53. U.S. CONST., art. 1, § 8, cl. 8.

New York and California,⁵⁴ both states well-known as centers for the arts. Lesser concerns are: (1) the limitation of protection of photographs to those "produced for exhibition purposes only," (2) the seemingly knee-jerk exclusion of works made for hire, (3) the limitation of the right against destruction to works "of recognized stature," (4) the exclusion of anonymity and pseudonymity from the right of attribution, and (5) the "bad fit" that results from applying the Copyright Act provisions for monetary damages to moral rights violations. None of these lesser concerns, however, are serious enough to reject the bill, since they are all susceptible to remedy by later amendment. When these concerns are united to the preemption provision, however, moral rights advocates will have to seriously consider whether they will be in a better provision after the bill becomes law.

54. See generally Note, *Moral Rights: The Long and Winding Road Toward Recognition*, 14 NOVA L. REV. 435 (1990).