Moral Rights: The Long and Winding Road
Toward Recognition

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Abstract

At the heart of this statement lies a legal doctrine commonly known as “droit moral” or the moral right.
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In our country, as in every other country and civilization, artists are the recorders, and preservers of the national spirit. The creative arts are an expression of the character of the Nation—they mirror its accomplishments, warn of its failings, and anticipate its future.¹

At the heart of this statement lies a legal doctrine commonly known as “droit moral” or the moral right. The moral right doctrine goes beyond protecting artists’ mere economic rights and enforces their personality rights.²

This note will deal with the doctrine of moral rights in three areas. The first is a brief, limited scope tracing of the components and attributes of the doctrine. The second explores the most recent federal legislation in the United States and surveys leading state legislation. The final area examines why Florida should avoid codifying moral rights protection.

The Moral Rights: Fundamental Components and Attributes

The concept of moral rights for authors and artists underwent major development in France³ but is part of the law of over sixty nations of the world.⁴ Not withstanding this broad acceptance, the United

⁴ Comment, Copyright: Moral Right—A Proposal, 43 FORDHAM L. REV. 793,
States does not recognize the moral rights doctrine in any form. Furthermore, while the 1971 revision of the Berne Convention for the Protection of Literary and Artistic Works contains a provision that recognizes selected moral rights, when Congress passed the Berne Convention Implementation Act of 1988 it specifically declined to adopt the moral rights provision. Traditionally the moral rights doctrine has encompassed four major rights: the rights of disclosure, paternity, integrity, and withdrawal. Other formulations of the doctrine also include the right to prevent excessive criticism and the right to prevent assaults upon one's personality. The nations that have codified the moral rights doctrine include at least some combination of these rights, although variations exist among different jurisdictions.

The Right of Disclosure

The right of disclosure is based upon the notion that only the artist can possess any rights in an uncompleted work. This right therefore gives the artist control over his work from the time of creation. Furthermore this right encompasses the artist's right to decide whether a work corresponds to the artist's original conception, at what moment the work is completed, and whether the work is worthy of the artist. The American analog of this right is found in copyright law, which protects the "right of first sale" and the "right of first publication" as soon as the work is fixed in any tangible medium of expression.

The Right of Paternity

The right of paternity safeguards a creator's right to have her name attached to her work. The derivation of this right is founded upon the injection of the artist's creative personality into her work, thus vesting her right to claim authorship. Generally this right is perpetual, unassignable, and is not barred by statutes of limitation. Moreover, the right of paternity protects against falsely attaching an artist's
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6. The right of paternity and a limited right of integrity are recognized. Kwall, Copyright and the Moral Rights: Is an American Marriage Possible?, 38 VAND. L. REV. 1, 10 (1985).
7. On October 20, 1988, both the United States Senate and House of Representatives passed the Berne Convention Implementation Act of 1988, which changed the United States Copyright Law (17 U.S.C. §§ 101-910 (1988)) to conform to the Berne Convention. President Reagan signed this Act into law on October 31, 1988, making the United States the 78th member of the Convention. The moral rights provision of the Berne Convention that the United States did not adopt states:

Article 6bis.
(1) 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.
(2) The rights granted to the author in accordance with the preceding paragraph shall, after his death, be maintained, at least until the expiration of the economic rights.
(3) The means of redress for safeguarding the rights granted by this Article shall be governed by the legislation of the country where protection is claimed.
10. Id. at 9-10.
11. Some writers refer to this as the right to create and publish. See, e.g., Roder, supra note 2, at 558. See also Merryman, supra note 3, at 1024, discussing Whi...
name to a work she did not create. American courts have not expressly recognized the right of paternity but have granted similar relief on other theories.\textsuperscript{21}

The Right of Integrity

The right of integrity is also known as the right to modify and to prevent deformation. This right prohibits the modification, alteration, or distortion of an artist's work without her permission.\textsuperscript{22} The right of integrity, just as the right of paternity, is generally perpetual, unassignable, and free from any statute of limitation.\textsuperscript{23} The laws of the United States do not expressly protect an artist's right to integrity. However, American legal protection has been found in the Lanham Act\textsuperscript{24} and specific state statutes.\textsuperscript{25}

The Right of Withdrawal

The right of withdrawal permits the author to retrieve her work even though it has been sold or published. When this right is granted, an artist can recall her creation if she experiences a change of heart from that which originally provided her inspiration for the work. However, the artist will usually be required to compensate the individual in

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  \item 20. Merryman, supra note 3, at 1027.
  \item 22. Kwall, supra note 9, at 8-9. This is the oldest and best known of the rights and is often deemed to constitute the whole doctrine. Roeder, supra note 2, at 365.
  \item 23. Kwall, supra note 9, at 12-13.
  \item 24. Gilliam v. American Broadcasting Cos., 538 F.2d 14 (2d Cir. 1976). The holding in Gilliam may be the closest an American court has come in recognizing protection for artists' moral rights. The primary issue in this case revolved around the editing of tapes of "Monty Python's Flying Circus" by ABC. Id. at 17. The defendant (ABC) edited the tapes to fit allocated time slots. Id. at 18. The plaintiff alleged mutilation and distortion. Id. The court held for plaintiff on the grounds that ABC had exceeded its license granted by the copyright owner and therefore infringed the copyright. Id. at 22-24.
  \item 25. See infra note 80 through 89 and accompanying text.
  \item 26. Sarraste, supra note 13, at 477. The decisions in Germany and France do not support the view that the right of withdrawal is recognized by the courts as a component of the moral right. Strauss, The Moral Right of the Author, 4 Am. J. Comp. L. 506, 513 (1955).
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possession for any losses that the renunciation might cause.\textsuperscript{26} The right of withdrawal is founded on the assumption that the public will forget works to which it has previously been exposed.\textsuperscript{27} This assumption has caused many commentators to doubt the viability of this right.\textsuperscript{28} Where the right of withdrawal is recognized, however, it is generally limited to literary works.\textsuperscript{29} The United States does not recognize the right of withdrawal in any form.\textsuperscript{30}

Additional Rights

Two additional aspects of the moral rights doctrine are the artist's right to prevent assaults upon her personal life and the right to prevent excessive criticism.\textsuperscript{31} Both of these rights clearly illustrate how the moral rights doctrine is aimed at personality rights and not pecuniary interests. Works of art reflect the creator's personality so the creators are entitled to be free from abusive and malicious criticism and from unwarranted attacks upon professional standing or honor.\textsuperscript{32} The right does not, however, prohibit reasonable criticism; instead it protects against criticism that is intended only to defame or abuse the artist.\textsuperscript{33} These two rights recognize the enormous power of the press and the destruction that uncontrolled criticism may have upon artists and their works.

The Droit De Suite

One final component of the droit moral is the droit de suite. The droit de suite, as conceived in France, gives the artist a percentage of the total sales price of her work each time it is sold.\textsuperscript{34} Generally, this right is inalienable and inures to the artist for her life plus a defined

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  \item 28. Id.
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  \item 34. Roeder, supra note 2, at 572-73.
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number of years after death.\textsuperscript{36} The droit de suite is similar to royalties provided under copyright law.\textsuperscript{37} One important difference is that royalty rights are governed by contract law and usually relate only to the first sale, while the droit de suite runs with the artwork and applies to each and every resale.\textsuperscript{38} Thus, the droit de suite recognizes that an artist is bound in some manner to her work regardless of who claims ownership.

The doctrine of moral rights has not been expressly accepted in the United States.\textsuperscript{39} However, judicial recognition has been accorded the moral right, albeit indirect and incomplete. American courts wishing to recognize an artist’s personality interests have been forced to rely upon substitute causes of action of unfair competition,\textsuperscript{40} contract law,\textsuperscript{41} defamation,\textsuperscript{42} invasion of privacy,\textsuperscript{43} and copyright law\textsuperscript{44} to remedy grievances implicating moral rights. This indirect recognition of artists’ rights has prompted the enactment of state legislation and a recent federal proposal.

The United States and the Droit Moral

The Federal Perspective

Senator Edward Kennedy (D-Mass.) and Representative Edward J. Markey (D-Mass.) have become leading American proponents for expanding artists’ rights. On June 16, 1989, Senator Kennedy introduced S. 1198 (the “Kennedy Bill”), which would amend American copyright law by the addition of selected moral rights.\textsuperscript{45} However, similar legislation had been introduced by Massachusetts Democrats, but not passed, in 1977,\textsuperscript{46} 1979,\textsuperscript{47} 1981,\textsuperscript{48} 1983,\textsuperscript{49} 1986,\textsuperscript{50} and 1987.\textsuperscript{51}

The Kennedy Bill would provide artists limited, narrow scope protection in contrast to earlier bills that attempted to grant broad moral rights protection.\textsuperscript{52} Kennedy’s proposal reflects the limited perspective of moral rights as adopted by California, New York, and Massachusetts.\textsuperscript{53} This bill, as stated by Senator Kennedy, “recognizes the implicit originality of encouraging a creative environment for artists to work [and] the national responsibility to enrich and enliven our cultural heritage.”\textsuperscript{54} Kennedy’s goals would be specifically achieved with the addition of the rights of paternity and integrity, as well as, a study on resale royalties to section 106 of the copyright law.\textsuperscript{55}

The protection accorded by the rights of paternity and integrity in the Kennedy Bill is limited. These two rights only protect a “painting, drawing, print, sculpture, or still photographic image.”\textsuperscript{56} Furthermore, protected works must be produced for “exhibition purposes only, existing in a single copy, [or] in a limited edition of 200 copies of


51. S. 1619, 100th Cong., 1st Sess., 133 CONG. REC. H7352 (daily ed. Aug. 6, 1987); H.R. 3221, 100th Cong., 1st Sess., 133 CONG. REC. H7352 (daily ed. Aug. 7, 1987); see also id. at H3425 (Representative Markey’s extended comments).
52. The “public display” requirement in the 1987 bill was absent from the earlier bill. S. 2796, supra note 50. Further, the original Kennedy bill would have applied a quality test to all claims not just for acts of destruction. Id.
53. See infra notes 90 through 125 and accompanying text.
54. S. 2796, supra note 50, appendix to bill submitted by Senator Kennedy.
55. S. 1198, supra note 45, at §§ 3-9.
56. Id. at § 2.
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fewer." The proposed rights of paternity and integrity share other limited attributes. Both rights are descendent to the artist's estate, limited to fifty years post mortem. Neither of the rights may be waived or transferred. Furthermore, the rights of paternity and integrity extend protection even if the artist no longer owns the copyright to her work. However, the copyright owner may assert these two rights only if she is the creator of the work. This limitation prevents a purchaser from separating the copyright from the artist by purchase thereby gaining control over the respective right.

The Kennedy Bill also addresses the economic exploitation of art via a study on resale royalties. This is in sharp contrast to the earlier Kennedy Bill which would have permitted artists to share the increased commercial value of their work through resale royalties. These royalties would have amounted to seven percent of the difference between the seller's purchase price and the resale price. Furthermore, this royalty right would have been descendent and payable to the artist's estate upon death. These royalty rights may have been deleted because they would only benefit a small number of artists.

The passage of the Kennedy bill would mark the beginning of an era of federal protection of artists' moral rights in the United States. The bill represents a significant advance from the current protection of moral rights offered by other legal theories. However, the bill fails to make as large and dramatic a step as needed. The most profound shortcoming is the limited class of protected works. The two-fold requirement of "visual art . . . produced for exhibition purposes only" seriously hampers the scope and effectiveness of the bill. This two-step requirement inevitably will generate litigation that is a battle of experts. Moreover, the Kennedy Bill may be needlessly rigid by making its rights absolutely unsigned and unavailable.

Two theories have been advanced in defense of the bill's narrow scope. The first theory involves the political strength of affected parties whose opposition would likely defeat a broad moral rights enactment. Groups that oppose moral rights include publishers, broadcasters, and motion picture producers. The interest displayed by these groups derives from the fact that their livelihood depends upon exploitation of a created work. Currently, these groups' interest are protected and recognized by existing copyright law. Therefore, any attempt to infringe upon copyright law directly affects the livelihood of these groups, triggering their opposition.

Another attempt to explain the limited scope deficiency of the federal bill relates to enforcement problems. Differing opinions between artists and art dealers or writers and producers, as to a work's interpretation, may implicate first amendment concerns. Also, it may be difficult to determine who can assert a moral rights claim because it is often a quagmire to establish who created the work. The Kennedy bill avoids both of these problems through its limited breadth.

Congress has attempted for over ten years to pass moral rights legislation. The Kennedy bill represents the evolution of the United States towards recognition of artists' rights. However, Congress' in-

57. Id.
58. Id.
59. Id.
60. Id.
61. Id.
62. Id.
63. Horowitz, supra note 18, at 204.
64. S. 1198, supra note 45, at § 9.
65. S. 1619, supra note 51, at § 3.
66. Id.
67. Id. The earlier Kennedy bill provided for payment of posthumous royalties to the National Endowment for the Arts. S. 2796, supra note 50, at § 3.
68. See, e.g., S. WEIL, BEAUTY AND THE BEAST (1983). Stating that between 90 and 99 of every 100 artists never see an increase in the value of their work.
69. See supra notes 40 through 44 and accompanying text.
70. Horowitz, supra note 18, at 207.
71. Id.
72. Roeder, supra note 2, at 577. The opposition of these groups has been instrumental in preventing the United States from joining the Berne Convention. Nimmer, Implications of the Prospective Revision of the Berne Convention and the United States Copyright Law, 19 Stan. L. Rev. 499, 518 (1967).
73. Roeder, supra note 2, at 577.
74. Id.
75. Horowitz, supra note 18, at 207.
76. Id. (citing Tribe, First Amendment Endgame, Boston Globe, Dec. 15, 1984, at 19, col. 4). First amendment protection has been extended to alterations of works as symbolic speech. See, e.g., United States v. O'Brien, 391 U.S. 367, 376 (1968).
77. Horowitz, supra note 18, at 207.
78. See supra notes 45 through 51 and accompanying text. During this period legislation has been introduced to offer limited recognition of artists' moral rights; however, no federal legislation has been passed.
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ability to approve any legislation has led many states to take the initiative and adopt statutes of their own.

The State Perspective

In 1976, prior to any federal action, California led the nation in the first state to enact legislation specifically aimed at protecting artists' moral rights. New York and Massachusetts followed in 1981 and 1985, respectively. Other states that have since enacted moral rights legislation include Connecticut, Louisiana, Maine, New Jersey, Pennsylvania, Rhode Island and Utah. California, New York, and Massachusetts, as the nation's leaders and innovators in moral rights legislation, have provided the foundations for other moral rights statutes as well as the most recent federal legislation—the Kennedy Bill. These three state laws, while similar, exhibit differences in their purpose and breadth of protection.

The California Art Preservation Act

The California legislature is selective in the moral rights it protects. The statute is modeled on two aspects of the moral rights doctrine—the rights of paternity and integrity. These rights are protected through remedies that include actual damages, injunctive relief, and, in certain instances, punitive damages. The legislature expressly codified

(1978) "[A]ll 50 states and over 500 municipalities have enacted laws to encourage or require the preservation of buildings and areas with historic or aesthetic importance.

95. ME. REV. STAT. ANN. tit. 27, § 303 (Supp. 1987-88).

"that physical alteration or destruction of fine art, which is an expression of the artist's personality, is detrimental to the artist's reputation, and artists therefore have an interest in protecting their works of fine art against such alteration or destruction."99 Furthermore, the statute declares "a public interest in preserving the integrity of cultural and artistic creations."100 These codified statements demonstrate a state objective that extends not only to the artist's personality rights but also to the public's right to preservation. Artists are further protected by two additional sections of the act aimed at enforcement. The first specifies that rights provided in the act vest in the artist for life plus fifty years post mortem to the estate or any heirs. The second declares that the statute of limitations runs for three years or one year from the date of discovery of a violation, whichever is longer. Consequently, artists' rights are preserved even if damage is not discovered for a substantial period of time.100

The California Act is limited in that protection is extended only to "fine art." The act defines fine art as "an original painting, sculpture, or drawing, or original work of art in glass, of recognized quality, but not work prepared under contract for commercial use by its purchaser." Thus, left unprotected are scripts, movies, reproductions, works that are not of "recognized quality" and commercial use art.101

The most serious defect in the California Act is the artist's ability to waive her rights, provided the waiver is expressed in writing and of the court's choosing. CAL. CIV. CODE § 987 (West Supp. 1988).

92. Id.
93. Id.
95. Id. at § 987(f).
96. Horowitz, supra note 18, at 187.
98. Id.
99. Id.
100. Recognized quality is determined by the trier of fact based upon expert opinion. CAL. CIV. CODE § 987(f) (West Supp. 1988). The use of expert opinion was prompted by California legislators' concerns that without experts protection may be extended to children's finger painting, products of art clubs and "Sunday painters."

101. Commercial use is defined as a work used "in advertising, magazines, newspapers, or other print and electronic media."
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81. N.Y. ARTS & CULT. AFF. LAW §§ 11.01, 14.03 (McKinney
82. MASS. GEN. LAWS ANN. ch. 231, § 855 (West Supp. 1988).
83. 1988 CONN. ACTS 284 (Reg. Session).
85. ME. REV. STAT. ANN. tit. 27, § 303 (Supp. 1987-88).
89. UTAH CODE ANN. § 64-2a-9 (1985).
90. Visual Artists Rights Amendment of 1986: Hearing on S. 2796 Before the
Subcomm. on Patents, Copyrights, and Trademarks of the Senate Comm. on the Judi-
ciciary, 99th Cong., 2d Sess. (1986) (statement of Senator Kennedy that the Califorma
and Massachusetts moral rights statutes formed the basis for the federal legislation).
91. The punitive damages are awarded to educational or charitable organizations

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extended to children's finger painting, products of art clubs and "Sunday painters."
101. Commercial use is defined as a work used "in advertising, magazines, newspa-
papers, or other print and electronic media."
signed. The waiver provision is juxtaposed to the historical fact that most artists lack sufficient bargaining power. This defect in the act clearly demonstrates that primary interest is placed on preserving works for the public interest, not in protecting the artist.

Noticeably absent from the California Act is the droit de suite. However, resale rights were independently established three years prior as the Resale Royalties Act. Under this earlier Act, an artist's resale right is unwaivable in contrast to the complete waivability of rights under the California Act. This irreconcilable disparity in waiver provisions demonstrates California's confused attempt to preserve art whether it is founded in an artist's right or in a public interest right.

Massachusetts

Massachusetts entered the moral rights arena in January 1985. The Massachusetts legislation, in most respects, mirrors the California Act. The rights of integrity and paternity are similarly defined and protected works must be of recognized quality. Further similarities are found in the treatment of waiver, descendency, and duration. The distinctive difference in the Massachusetts legislation is the broader definition accorded "fine art." Massachusetts defines "fine art" as "any original work of visual or graphic art of any media which shall include, but is not limited to, any painting, print, drawing, sculpture, craft, object, photograph, audio or video tape, film, hologram, or any combination thereof . . ." Therefore, Massachusetts, unlike California, extends protection to movies, scripts, and reproductions. The Massachusetts statute has several other subtle differences.

103. Merryman, The Refrigerator of Bernard Buffet, 27 HASTINGS L.J. 1023, 1043 (1976). "An artist can largely only protect himself if he can insist upon contractual provisions; and few artists are in a bargaining position to do that." Hearing, supra note 45, at 27 (statement of Gustave Harrow).
104. CAL. CIV. CODE § 986 (West Supp. 1988). This is significant since no other state moral rights legislation includes resale rights.
105. Id. at § 986(a).
106. See supra note 102 and accompanying text.
108. Id. at § 855(a)(b)(i).
109. Id. at § 855(a).
110. Id.
111. Id.
112. Id. at § 855(b).
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105. Id. at § 986(a).
106. See supra note 102 and accompanying text.
108. Id. at § 855(a)(b)(f).
109. Id. at § 855(g).
110. Id.
111. Id.
112. Id. at § 855(b).
The New York Act further decreases its scope of protection via another limitation. The law's protection against mutilation or alteration is applicable only when "damages to the artist's reputation is reasonably likely to result ...." Further, an unidentified artist of an altered or mutilated work has no cause of action unless the work is reasonably regarded as her work and damage to her reputation is a reasonable consequence. This pair of limitations may put an insurmountable burden of proof on the artist and therefore block any recovery.

The New York Act has other attributes in common with the Massachusetts and California statutes. New York provides a limited right to disclaim paternity for a "just and valid reason." Similarly, the Act is governed by a three year statute of limitation or a one year discovery rule. Finally, the Act is silent on whether artists can waive their statutory moral rights.

The existing states' moral rights legislation is severely limited both in the rights recognized and the scope of protected works. More sweeping moral rights legislation on the state level may have been deterred by uncertainty over copyright preemption, the constitutionality of the state enactments, or conflict of law questions. Whatever the reason, the states are simply applying first aid to a wound that needs a Congressional transplant.

**Florida: The Need to Do Nothing**

Florida is a member of the majority in the United States that do not recognize the moral rights doctrine. Consistent with the majority, Florida does indirectly offer moral rights protection through substitute causes of action such as unfair competition, contract law, defamation, and the right of privacy. Although most commentators praise states that have codified direct moral rights protection, fundamental questions involving Constitutional attacks, copyright preemption, and the need for uniformity demonstrate the predictable failure of state legislation as the source of artist protection.

A threshold question in the enactment of any state moral rights protection is whether the statute violates the federal Constitution. A challenge might arise under the contract, takings, or due process clauses. Furthermore, the effectiveness of the state law will be diminished by the associated delay and cost of constitutional litigation. The fact that constitutional issues are unlikely to be resolved in the near future from states passing comprehensive moral rights protection. The result is ad hoc state legislation that is confusing, inconsistent, and inadequate.

Another constitutional challenge is whether state statutes are preempted by federal copyright law. A state law is preempted if it addresses works within the subject matter of copyright law and grants rights "that are equivalent to any of the exclusive rights within the general scope of copyright ....." The key issue is whether state law creates rights "equivalent" to copyright since covered works appear to be identical. Consequently, those arguing against preemption will argue that moral rights laws cover personality rights and not economic rights as guaranteed by copyright law. Whether preemption will be upheld is unanswered, however, this uncertainty should prove sufficient to chill Florida legislation.

Another deterrent to state-level protection is the concomitant

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128. Horowitz, supra note 18, at 193.
129. See, e.g., Morseburg v. Balyon, 621 F.2d 972 (9th Cir. 1980). The court held that freedom to contract was not seriously impaired and that the state had a valid purpose in enactment.
130. No court has addressed this issue.
131. See, e.g., Morseburg v. Balyon, 621 F.2d 972 (9th Cir. 1980).
132. Horowitz, supra note 18, at 199.
134. U.S. Const. art. VI, cl. 2 (Supremacy Clause).
137. See, e.g., Morseburg v. Balyon, 621 F.2d 972 (9th Cir. 1980) (upholding the California Act against a preemption challenge); 2 M. Nimmer, NIMMER ON COPY-
RIGHT § 8.22[B] (1987). Nimmer's view is that any law inhibiting works protected by copyright law should be preempted.
The New York Act further decreases its scope of protection via another limitation. The law's protection against mutilation or alteration is applicable only when "detriment to the artist's reputation is reasonably likely to result . . . ."122 Further, an unidentified artist of an altered or mutilated work has no cause of action unless the work is reasonably regarded as her work and damage to her reputation is a reasonable consequence.123 This pair of limitations may put an insurmountable burden of proof on the artist and therefore block any recovery.

The New York Act has other attributes in common with the Massachusetts and California statutes. New York provides a limited right to disclaim paternity for a "just and valid reason."124 Similarly, the Act is governed by a three year statute of limitation or a one year discovery rule.125 Finally, the Act is silent on whether artists can waive their statutory moral rights.

The existing states' moral rights legislation is severely limited both in the rights recognized and the scope of protected works. More sweeping moral rights legislation on the state level may have been deterred by uncertainty over copyright preemption, the constitutionality of the state enactments, or conflict of law questions.126 Whatever the reason, the states are simply applying first aid to a wound that needs a Congressional transplant.

FLORIDA: THE NEED TO DO NOTHING

Florida is a member of the majority in the United States that does not recognize the moral rights doctrine. Consistent with the majority, Florida does indirectly offer moral rights protection through substitute causes of action such as unfair competition, contract law, defamation, and the right of privacy.127 Although most commentators praise states

122. Id. at § 14.03(1).
123. Id.
124. Id. at § 14.03(2)(a).
125. Id. at § 14.03(4)(b).
127. In addition Florida does offer laws affecting the creation and administration of statewide art organizations such as the Florida Arts Council and the Florida Cultural Affairs Symposium. Fla. Stat. § 265.281 (West 1988). Furthermore, Florida specifically makes it a crime to destroy art works in public buildings. Fla. Stat § 806.14 (West 1988).
terstate conflict of laws. Purchasers and sellers of art seeking to avoid moral rights control may cross state lines to finalize deals in unprotected states.\textsuperscript{138} In order to continually avoid moral rights statutes, buyers and sellers may relocate to an unprotected state, thereby reducing available art and artists in states that codify the droit moral.\textsuperscript{139} The uniformity provided by federal legislation would prevent this unwanted exodus.

The examination of these fundamental problems, as well as the specific limitations of state level moral rights protection, should lead Florida to the only acceptable conclusion: Florida should not adopt its own moral rights statute but should channel its efforts towards federal protection for artists' personality rights.

\textbf{Conclusion}

The United States has long ignored direct legal recognition of artists' rights. Moreover, indirect recognition provided by substitute legal theories and state statutes is limited and incomplete. This may be due to domination of economic expansion which overshadowed artists as individuals and the value of their work for other than commercial reasons.\textsuperscript{140} However, America is no longer consumed by economic expansion.\textsuperscript{141} Therefore, the time is ripe for the United States to join in direct and affirmative recognition of artists' rights by adopting federal moral rights protection.

\textit{Jack A. Cline}

\textsuperscript{138} \textit{Hearing, supra} note 45, at 106 (statement of Ron Feldman, co-director of Feldman Art gallery in New York City).

\textsuperscript{139} The ten year period from 1970 through 1980 saw Florida experience a 140 percent increase in its number of resident artists, the largest percentage growth in the United States. See \textit{Miami Herald}, Jan. 13, 1985, at 64.

\textsuperscript{140} \textit{Rosen, supra} note 12, at 187.

\textsuperscript{141} \textit{Id.}

Appendix

\textbf{Senate Bill S. 1198 - The Kennedy Bill}

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Sec. 1. \textit{Short Title}

This Act may be cited as the "Visual Artists Rights Act of 1989".

Sec. 2. \textit{Work of Visual Art Defined}

Section 101 of title 17, United States Code, is amended by inserting after the paragraph defining "widow" the following:

"A 'work of visual art' is a painting, drawing, print, sculpture, or still photographic image produced for exhibition purposes only, existing in a single copy, in a limited edition of 200 copies or fewer, or, in the case of a sculpture, in multiple cast sculptures of 200 or fewer. 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;

"(2)(A) any poster, map, globe, chart, technical drawing, diagram, model, applied art, motion picture or other audio visual work, book, magazine, periodical, or similar publication;

"(B) any merchandising item or advertising, promotional, descriptive, covering, or packaging material or container;

"(C) any portion or part of any item described in subparagraph (A) or (B);

"(3) any work made for hire;

"(4) any reproduction, depiction, portrayal, or other use of a work in, upon, or in any connection with any item described in paragraph (1), (2), or (3); or

"(5) any work not subject to copyright protection under section 102 of this title"."

Sec. 3. \textit{Rights of Attribution and Integrity}

"(a) Rights of Attribution and Integrity—Chapter 1 of title 17, United States Code, is amended by inserting after section 106 the following new section:

"§ 106 A. Rights of certain authors to attribution and integrity.

"(a) Rights of Attribution and Integrity—Subject to section 107 and independent of the exclusive rights provided in section 106, the

\textit{Id.}