

CASE FILE #11: THE MUTILATED WORK

LEARNING AIMS

- Know what moral rights are and that they mean different things in different countries
- Understand the concepts of attribution and integrity
- Be able to discuss whether certain acts amount to derogatory treatment

KEY QUESTIONS

The following key questions should be discussed to address the learning aims:

- What are moral rights?
- What does the right of attribution mean?
- What does the right of integrity mean?
- When is something derogatory?

Students will be expected to use Case File information to analyse ideas, to give opinions, and to justify opinions. Other questions posed within the Case File can be used to generate further discussion.

WHAT ARE MORAL RIGHTS?

- See **TEXT BOX 2**
- Copyright is known as a bundle of economic rights. But, in addition to the economic rights provided by copyright, creators are also granted moral rights for their work. Moral rights protect the creator's non-economic rights.
- Just like economic rights, moral rights are territorial in nature. This means that they can be different in different countries. So, the level of protection for moral rights in one country might be stronger, or weaker, than in another.

WHAT DOES ATTRIBUTION MEAN?

- See **TEXT BOX 3**
- The right to attribution means that a creator has the right to be identified as the author of their work. In the law it is also referred to as the right to paternity. This right applies to the author of literary, dramatic, musical and artistic works, and to the director of a film.
- However, this right does not apply in certain circumstances, such as work created for reporting current events, newspapers, magazines, computer programs, computer generated works or typefaces.
- The right to attribution can be waived or given up, but it cannot be licensed or assigned like the economic rights of copyright.

- In the UK, the right to attribution and other moral rights last for as long as copyright subsists in the work – 70 years after the death of the creator.
- It is important to know that the right to attribution does not arise automatically, like copyright. It must first be asserted or claimed. This means making a statement that asserts the rights of the author. This is why, if you turn to the front page of a book, you will usually see a statement such as 'all rights reserved' or 'the author asserts her moral rights' or 'the moral rights of the author have been asserted'.

WHAT DOES THE RIGHT OF INTEGRITY MEAN?

- See **TEXT BOX 4**
- The right to integrity is the right to object to derogatory treatment of your work. It lasts for the same amount of time as the copyright in the work.

The reason we have this right for creators is that it is understood that creators embody and express themselves or their personality in their work, which should be protected against mutilation. In addition, it can protect the reputation of the author.

- As with the right of attribution, this right applies to the author of literary, dramatic, musical and artistic works, and to the director of a film.

But this right does not apply in certain circumstances, such as work created for reporting current events, newspapers, magazines, computer programs, computer generated works or typefaces.

- It is important to know that there are some exceptions to the right to integrity, for example in relation to work created in the course of employment, or where there is a duty imposed by another law, such as the BBC cutting offensive scenes.

WHEN IS SOMETHING DEROGATORY?

- See **TEXT BOX 4, 5 and 6**
- If someone was to bring a claim for breach of integrity to a court of law, they would have to prove that there has been derogatory treatment of their work. This involves two things: there must be a relevant treatment of the work, and the treatment must be derogatory.
- Treatment of a work means any addition, deletion, alteration, or adaptation of the work. For example, re-sizing and re-colouring an image, adding words to a written piece, or colourising a black-and-white film.
- A treatment is derogatory when it is a distortion or mutilation of the work, or if it is prejudicial to the reputation of the author.

For example, the cropping of a photograph has been considered a distortion of the photograph, and tying Christmas ribbons and decorations around a public sculpture has been considered to prejudice the artist's reputation.

- In the UK, the courts use an objective approach to decide if there has been derogatory treatment. They do not consider the individual author's opinion of whether the treatment was derogatory. Instead, they ask whether a reasonable and

objective person would regard the treatment as derogatory and damaging to the author's reputation.

- In some other countries, however, the courts pay much more attention to the views of the author of the work (that is, they take a more subjective view).

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SUGGESTED ACTIVITY

In some countries, such as France, moral rights lasts in perpetuity (rather than for the life of the author plus 70 years). So, for example, Victor Hugo's descendants have often tried to prevent adaptations and sequels to his works from being made on the basis of Hugo's moral rights (Hugo died in 1885). Indeed, in 2004, a Paris Court of Appeal ruled that the publication of two unauthorised sequels to his *Les Misérables* violated Hugo's moral right of integrity (Victor Hugo died in 1885). However, this decision was later overturned.

Invite the students to think about why we have moral rights and how long they should last? Or indeed, why should they last beyond the life of the author at all?

Show them a picture of Da Vinci's Mona Lisa (available [here](#)) – perhaps the most famous, most copied, and most parodied artwork in the world. Next show them a picture of L.H.O.O.Q. by Marcel Duchamp (available [here](#)).



THE GAME IS ON! – CASE FILE #11: THE MUTILATED WORK

Is Duchamp's famous work derogatory to the original? Da Vinci died in 1519 (500 years ago). What if he still enjoyed moral rights in his work? Should his descendants be able to prevent works like L.H.O.O.Q. being made?

CASE FILE #11: THE MUTILATED WORK

1. INTRODUCTION

In trying to persuade Holmes to take the case, Watson argues that: 'If you were a professional musician, you wouldn't want people copying or mutilating your work'.

UK copyright law gives creators both economic rights and moral rights. While 'copying' someone else's work without permission may constitute an infringement of their economic rights (such as the reproduction right or the right of communication to the public), 'mutilating' it might infringe the creator's moral rights. In the UK, moral rights include the right to be identified as the author of the work (the right of attribution) and the right not to have your work subjected to 'derogatory treatment' (the right of integrity).

This Case File #11 considers the two principal moral rights held by creators in the UK, and investigates why it can be difficult to determine what amounts to 'derogatory treatment'.

2. MORAL RIGHTS

Moral rights are concerned with the non-economic rights of a creator. They protect the creator's connection with a work as well as the integrity of the work. The two principal moral rights in the UK are the right of attribution (sometimes referred to as the right of paternity) and the right of integrity (or the right to object to derogatory treatment).

Unlike economic rights, which can be licensed or assigned to another person, moral rights remain with the creator of the work and cannot be exercised by anyone else. However, creators can waive their moral rights if they so wish.

In some EU countries, such as France, moral rights last indefinitely. In the UK, however, moral rights are finite. That is, the right of attribution and the right of integrity last only as long as the work is in copyright. When the copyright term comes to an end, so too do the moral rights in that work. This is just one reason why the moral rights regime within the UK is often regarded as weaker or inferior to the protection of moral rights in continental Europe and elsewhere in the world.

3. RIGHT OF ATTRIBUTION

The right of attribution provides the creator of certain types of work with the right to be identified as the author of their work, so long as the creator has asserted his or her right.

The right of attribution covers works of literature, drama, music, art and films, and generally applies whenever the work is published commercially, performed in public or communicated to the public. However, there are a number of exceptions to this basic rule. For example, the right of attribution does not apply to works created for the purpose of reporting current events, contributions to newspapers, magazines and periodicals, works owned by the Crown or Parliament, or computer programs and computer-generated work.

Also, the right of attribution does not arise unless it has been asserted by the creator of the work. In practice, a statement such as the example given below is often

included in published work in order to make clear that the creator has asserted their moral rights:

'The right of Joseph the Toymaker to be identified as author of this work has been asserted by him in accordance with the Copyright, Designs and Patents Act 1988.'

4. RIGHT OF INTEGRITY

The right of integrity allows the creator to object to derogatory treatment of his or her work, or any part of it.

Like the right of attribution, the integrity right covers works of literature, drama, music, art and film. Similarly, the right of integrity does not apply to works created for the purpose of reporting current events, contributions to newspapers, magazines and periodicals, or computer programs and computer generated work. However, unlike the right of attribution, the integrity right does not need to be asserted.

Subjecting something to a derogatory treatment means adding to, deleting from, altering or adapting the work in such a way that it amounts to a distortion or mutilation of the work, or is otherwise prejudicial to the honour or reputation of the creator. Put another way, the right to integrity stops other people from modifying an author's work in a way that may have a negative effect on the author's reputation.

This does not mean that all forms of addition, deletion, alteration or adaptation will amount to a derogatory treatment.

For one thing, the law specifically provides that certain types of treatment fall outside the scope of the right. For example, translations of literary and dramatic works do not infringe the right of integrity, nor does simply arranging or transcribing a musical work into another register or key.

Also, your treatment of the work must be derogatory in that it is prejudicial to the honour or reputation of the person who created the work. But as we shall see, establishing prejudice to honour or reputation is not always straightforward.

5. THE CASE: *Confetti Records v Warner Music UK Ltd* [2003]

This case involved a piece of garage music composed by Mr Andrew Alcee, titled *Burnin'*, which he sold to Confetti Records. Confetti Records arranged to license the song to the defendant, Warner Music UK Ltd. Warner Music produced an album including a rap version of Mr Alcee's song by The Heartless Crew in which the band overlaid lyrics containing various references to violence and drug culture. In turn, Mr Alcee complained that his right of integrity in the music had been infringed.

Mr Alcee complained that the words overlaying his music glorified violence and drug culture. However, one problem he faced in establishing his case was that, when played at normal speed, the words of the rap were very hard to decipher. And even when played at half speed, it was not always clear what the phrases were, or what they meant. In short, if the lyrics could not be understood, it was difficult for Mr Alcee to claim that they were damaging to his reputation.

Another problem concerned evidence of harm to reputation. The court made clear that merely distorting or mutilating a work did not infringe the right of integrity unless the author could show prejudice to his honour or reputation. 'However,' the judge commented, 'it seems to me that the fundamental weakness in this part of the case is that I have no evidence about Mr Alcee's honour or reputation. I have no evidence of

any prejudice to either of them.’ In the absence of any evidence that Mr Alcee’s honour or reputation had been harmed, the judge was not prepared to find that his right of integrity had been infringed.

6. FOR DISCUSSION: DEROGATORY OR NOT, WHO DECIDES?

In some countries, determining whether the right of integrity has been infringed depends on the subjective view of the author. That is, the courts will generally be guided by the author’s assessment in deciding whether the work in question has been subjected to a derogatory treatment.

In the UK, however, the courts have preferred a more objective approach. So, it is not sufficient that the author is annoyed or aggrieved by what has occurred. Instead the court must be convinced that a reasonable and objective person would regard the treatment as derogatory and damaging to the author’s reputation.

Did the court come to the right decision on Mr Alcee’s claim regarding his right of integrity? Should the courts take a subjective or a more objective approach regarding infringement of the integrity right?

Having watched the video, do you think that by portraying Joseph’s toy hanging from a tree, the street artist has infringed Joseph’s moral rights? Do the graffiti amount to a derogatory treatment of Joseph’s copyright work? Is some of the graffiti more derogatory than the other?

7. USEFUL REFERENCES

Confetti Records v Warner Music UK Ltd [2003] EMLR 35 is available here:
<http://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/Ch/2003/1274.html>

The Copyright, Designs and Patents Act 1988 is available here: <http://www.legislation.gov.uk/ukpga/1988/48/contents>.

Sections 77-83 set out the scope of the right of attribution and the right of integrity.