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UNDERSTANDING ARTISTS' MORAL RIGHTS: A PRIMER

SUSAN P. LIEMER*

I. INTRODUCTION

How a society treats its artists reveals many of the values of that culture. Some cultures integrate creative efforts into the fabric of daily life.¹ Others encourage talented individuals to pursue their creativity by holding these citizens in high regard.² Yet, even other cultures relegate those who predominately create to the social fringe, while valuing other types of activities more.³

Just as creative work, i.e. art, mirrors life, so does the law pertaining to art. The law in a given society reveals the value of creativity in that society. As these values fluctuate over time, changes in the law reveal the nature of those fluctuations.

In the nineteenth and early twentieth centuries in Europe, a set of rights, different from copyrights, evolved to protect the creative efforts of artists.⁴ The French, the acknowledged leaders in this area of the law,⁵ generally call these

* Director of Legal Writing, University of Mississippi School of Law. B.A. 1979, Princeton University; J.D. 1986, University of Virginia School of Law. Thank you to Anne Klingen and Chris Noe, at the University of Mississippi School of Law library, for their speedy and able reference assistance; to Professor Michael Kelly, at Detroit College of Law, and to Professor Steve Jamar, at Howard University School of Law, for reading and critiquing a draft; to Word-processing Supervisor Niler Franklin, for her ready answers; and to the Lamar Order at the University of Mississippi for providing a summer research grant, enabling me to complete this article. Special thanks to my husband, Jeff Monk, for all his support.

¹ See, e.g., John Russell, *Art and the Life of India*, N.Y. TIMES, June 2, 1985, (Magazine) at 26.

² See, e.g., Bunkazai Hogo Ho [Law for the Protection of Cultural Assets], Law No. 214 of 1950, amended 1954 and 1970, under which Japan's agency for Cultural Affairs designates artists preserving traditional art forms as Living National Treasures.

³ See, e.g., Marci A. Hamilton, *Art Speech*, 49 VAND. L. REV. 73, 74-75, nn.2 & 3 (1996) (explaining the historic marginalization of art in the United States).

⁴ See Russell J. DaSilva, *Droit Moral and the Amoral Copyright: A Comparison of Artists' Rights in France and the United States*, 28 BULL. COPYRIGHT SOC'Y U.S.A. 1, 7-11 (1980), for a summary of the early evolution of moral rights. Interestingly, the moral rights laws in some civil code countries arose through series of judicial decisions, rather than statutes. See *id.* at 9; Raymond Sarrauté, *Current Theory on the Moral Right of Authors and Artists Under French Law*, 16 AM. J. COMP. L., 465, 468-73 (1968). Sarrauté also discusses the early cases listed in notes 54 and 56, *infra*.

⁵ See DaSilva, *supra* note 4, at 2 n.7 (citing Dominique Giocanti, *Moral Rights: Authors' Protection and Business Needs*, 10 J. INT'L L. & ECON. 627, 627 n.1 (1975)); Robert J. Sherman, Note, *The Visual Artists Rights Act of 1990: American Artists Burned*

"droits morales," which loosely translates as "moral rights." In this context, "moral" is not the opposite of immoral or even amoral. The term simply conveys an element of ethics or societal interest.⁶ Today these rights are well-established in some European legal systems, reflecting the high value those cultures place on art.⁷ In the United States, moral rights are in a much earlier state of development and are currently undergoing an important transition.⁸ This transition may, in part, reveal changing cultural values,⁹ including greater appreciation for the non-economic aspects of art. Part II of this article begins generally with the concept and status of moral rights. Next, Part III explains, from an artist's perspective, each of the specific rights generally referred to as artists' moral rights. Then, Part IV offers some suggestions as to why these rights are important.

II. MORAL RIGHTS GENERALLY

Those schooled in the United States may find moral rights to be quite a foreign concept. Moral rights are akin to rights of personality¹⁰ or personal civil rights.¹¹ Our society generally understands it is wrong to intentionally harm someone's reputation or to prevent people from speaking their minds. Yet, many do not see the similarity between committing such wrongs and interfering with an artist's creative work.¹²

Again, 17 CARDOZO L. REV. 373, 389 n.92 (1995).

⁶ See, e.g., RANDOM HOUSE UNABRIDGED DICTIONARY 1249 (2d ed. 1993) (giving the most common definition of "moral" as "of, pertaining to, or concerned with the principle or rules of right conduct . . . ethical" "Traditional moral rights theory . . . presupposes a broad societal interest in the creation of fine art"). Rebecca J. Morton, Note, *Carter v. Helmsley-Spear, Inc. A Fair Test of the Visual Artists Rights Act?*, 28 CONN. L. REV. 877, 912 (1996). See also Roberta Rosenthal Kwall, *Copyright and the Moral Rights: Is an American Marriage Possible?*, 38 VAND. L. REV. 1, 3 n.6 (1985).

⁷ See, e.g., Law No. 57-298 of Mar. 22, 1957, J.O., Mar. 14, 1957, 2723, B.L.D. 197 [hereinafter France's 1957 Law].

⁸ See DaSilva, *supra* note 4, at 4-5; RALPH E. LERNER & JUDITH BRESLER, ART LAW, THE GUIDE FOR COLLECTORS, INVESTORS, DEALERS AND ARTISTS 295-301 (PLI 1992 Update).

⁹ See Schuyler Chapin & Alberta Arthurs, *A Bill of Rights for Arts*, N.Y. TIMES, Oct. 29, 1987, at A31 (referring to proposed American federal moral rights legislation in 1987 and suggesting that "its passage could be a milestone in the cultural maturation of America").

¹⁰ For an illustration of the personality aspect of art in the work of Hegel and Kant, see Linda J. Lacey, *Of Bread and Roses and Copyrights*, 6 DUKE L.J. 1532, 1541-42 (1989).

¹¹ "Everyone has the right to the protection of the moral and material interests resulting from any . . . literary or artistic production of which he is the author." *Universal Declaration of Human Rights*, G.A. Res. 217A, U.N. GAOR, 3d Sess., Supp. No. 2, at 76, U.N. Doc. A/810 (1948).

¹² One commentator refers to "the gulf in the American mind between moral rights and legally cognizable ones, not recognizing that in many countries they are identical." Jeffrey M. Dine, Note, *Author's Moral Rights in the Non-European Nations: International*

The unique relationship between an artist, the creative process, and the resultant art makes an artist unusually vulnerable to certain personal harms. The art an artist produces is, in a sense, an extension of herself. The artists' connection to her art is much more personal¹³ and simply qualitatively different from the relationship of most other people to other objects and activities.¹⁴

When an artist creates, she produces something that allows others a glimpse into her individual human consciousness. The medium may be clay or choreography, the message may be silly or serious, but the mental process is surprisingly similar. The artist allows herself to take a very personal risk, opening up something of her view of the world to others and showing others what is going on in her head, whether emotional, intellectual, or spiritual. That view is available for others to experience, over and over again, potentially forever.

Everyday life does not require such openness. The artist stands uniquely open to attack upon her psyche because she is so closely connected to the creative process and the creative product. A blow to either the process or product may be a blow to her personally. Because the artist infuses her work with her own personality, a harm to the work or her relationship to the work may well harm the artist herself. The artists' reaction may even resemble her reaction to a physical injury to herself or someone very close to her.¹⁵

To feel the potential vulnerability of the artist, try to remember a time when you undertook the creative process. You may have painted a landscape when you were in fifth grade or in your fifth decade. You may have performed in a high school play or community theater production. How did you feel when someone first asked to see your painting or when you first stepped on the stage? Ah, that moment of discomfort when revealing the self via artistic efforts. Although the feeling passes more quickly for some than for others, even seasoned professional artists report that very personal sense of vulnerability.¹⁶

Agreements, Economics, Mannu Bhandari, and the Dead Sea Scrolls, 16 MICH. J. INT'L. L. 545, 577 (1995).

¹³ "All great art is the work of the whole living creature, body and soul, and chiefly of the soul." JOHN RUSKIN, *THE STONES OF VENICE*, ch. 4, § xxi (Thomas Y. Crowell & Co., Pub. 1851).

¹⁴ Early this century, an American jurist acknowledged:

Even the matter of fact attitude of the law does not require us to consider the sale of the rights to a literary production in the same way that we would consider the sale of a barrel of pork . . . The man who sells a barrel of pork to another may pocket the purchase price and retain no further interest in what becomes of the pork. While an author may . . . sell his literary productions, yet the purchaser . . . cannot make as free a use of it as he could for the pork which he purchased.

Clemens v. Press Publ'g Co., 122 N.Y.S. 206, 207-08 (N.Y. App. Term 1910) (Seabury, J., concurring).

¹⁵ In *Lubner v. City of Los Angeles*, 53 Cal. Rptr. 2d 24 (Cal. Ct. App. 1996), the plaintiff artist, whose life works were destroyed by a trash truck with bad brakes, used arguments often employed by parties claiming emotional distress caused by witnessing the injury of a loved one.

¹⁶ "When an artist creates . . . he does more than bring into the world a unique object

Now, what if you trusted no matter what your painting looked like the viewer would not disparage you, or no matter what your performance, the audience would appreciate your efforts? More people are likely to take a risk if they feel no inordinate harm will result. While moral rights cannot guarantee no one will throw tomatoes, they do offer the artist some reassurance as she makes herself vulnerable through her creative efforts.

Moral rights seek to protect the artist's creative process by protecting the artist's control over that process and the finished work of art. If artists feel more secure about the treatment they as creators and their creations will receive, they are more likely to create. Recognizing moral rights is one way a society can encourage artists to create. While moral rights often may aid the financial interests of the artist,¹⁷ their focus and intent lies elsewhere, in the personal interest of the artist in her work. Indeed, most countries that recognize moral rights also provide a separate set of rights, such as copyrights,¹⁸ to protect economic interests in the work. Moral rights also exist independent from any property ownership rights associated with a given piece. Copyrights and property ownership rights to art may be held by many different parties.¹⁹

Moral rights, which protect a unique extension of the self, remain personal to the individual artist.²⁰ The artist cannot sell them, give them away, or bequeath them.²¹ Even in those countries where heirs may assert moral rights on behalf of a deceased artist, the protection covers the creative choices of the artist, not any independent interests the heirs might have.²²

In some countries, an artist cannot waive moral rights.²³ This aspect of the

having only exploitive possibilities; he projects into the world part of his personality and subjects it to the ravages of public use." Martin A. Roeder, *The Doctrine of Moral Right: A Study in the Law of Artists, Authors and Creators*, 53 HARV. L. REV. 554, 557 (1940).

¹⁷ In *Gilliam v. American Broad. Co.*, 538 F.2d 14 (2d Cir. 1976), fifteen years before federal statutory protection for moral rights existed in the United States, the court recognized the interplay between economic incentives and moral rights, stating: "... [T]he economic incentive for artistic and intellectual creation that serves as the foundation for American copyright law (citations omitted) ... 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." *Id.* at 24. See also Dine, *supra* note 12, at 576-80 (explaining the potential economic impact of moral rights).

¹⁸ See, e.g., 17 U.S.C. § 106 (1995), granting copyright protection to the same works covered by 17 U.S.C. § 106A, which grants limited moral rights.

¹⁹ See, e.g., 17 U.S.C. § 106A(e)(2): "Ownership of the rights conferred by subsection (a) with respect to a work of visual art is distinct from ownership of any copy of that work, or of a copyright or any exclusive right under a copyright in that work."

²⁰ See, e.g., 17 U.S.C. § 106A(b); France's 1957 Law, *supra* note 7, art. 6.

²¹ See, e.g., 17 U.S.C. § 106A(e)(1): "The rights conferred by subsection (a) may not be transferred"; France's 1957 Law, *supra* note 7, art. 6.

²² See DaSilva, *supra* note 4, at 14, suggesting that in France the heirs inherit the right to exercise the artist's right, not the right itself.

²³ See, e.g., France's 1957 Law, *supra* note 7, art. 6; Germany's Law of Sept. 9, 1965, v. 4.7.1965 (BGBl. I S.2098); but see 17 U.S.C. § 106A(e)(1).

law recognizes the potential tension between creative efforts and practical realities in an artist's life.²⁴ By eliminating certain choices, such as waiving a particular right in exchange for monetary gain, the society values the creative contribution. Thus, the law relieves the artist of certain pressure to make compromises that may affect her art.²⁵ She is freer to create, knowing certain protections will always be there for her.

In some countries moral rights are perpetual,²⁶ lasting at least theoretically forever. In practical terms, they probably last as long as the art does. Other countries limit the duration of moral rights, either to the lifetime of the artist or to the lifetime of the artist plus some defined number of years.²⁷ Depending on the country, these rights may apply equally to the visual and performing arts.²⁸ Some of these concepts may seem quite strange in the United States. The key concept to remember is that moral rights are not traditional property rights and do not purport to protect property interests. Rather, they are a separate set of rights, more like rights of personality or civil rights, which protect the artist's unique extension of herself.

III. SPECIFIC MORAL RIGHTS

Those who seek to apply moral rights within the law generally speak of five

²⁴ "In France, the *droit moral* are [sic] not waivable, as it is thought that allowing such a waiver would vitiate the effectiveness of the legal protection." Sherman, *supra* note 5, at 377-378.

²⁵ American artists report such pressures. See *id.* at 424-425. U.S. Copyright Office, Waiver of Moral Rights in Visual Artworks, Executive Summary (Oct. 24, 1996) <<http://lcweb.loc.gov/copyright/cpy/pub/exsom.txt>>.

²⁶ See, e.g., France's 1957 Law, *supra* note 7, art. 6.

²⁷ See, e.g., 17 U.S.C. § 106A(d) (lifetime of artist); Berne Convention, Sept. 9, 1956, for the Protection of Literary and Artistic Works, Sept. 9, 1886, TREATY DOC. NO. 27, 99th Cong., 2d Sess. (1986) [hereinafter "Berne Convention"] and see *infra* notes 31-34 and accompanying text, at art. 7, 1 (generally, lifetime of artist plus fifty years). See also Robert Gorman, *Visual Artists Rights Act of 1990*, 38 J. COPYRIGHT SOC'Y 233, 240-41 (1991) (suggesting Congress may have thought it could give a shorter protection period in the federal law (lifetime of the artist) than that required by treaty (life of artist plus fifty years) by allowing the states to extend the period of protection).

²⁸ In the American federal statute, moral rights apply only to certain works of visual art. 17 U.S.C. § 106A. For example, American federal courts have rejected moral rights claims, for a law review comment, *Choe v. Fordham*, 920 F. Supp. 44 (S.D.N.Y. 1995), for a photograph, *Kaplan v. Lily of France*, 1996 U.S. Dist. LEXIS 7640 (S.D.N.Y. June 4, 1996), and for notecards, *Lee v. A.R.T. Co.*, No. 96-2522, 1997 U.S. App. LEXIS 25238 (7th Cir. Sept. 18, 1997). An example of moral rights applying to performing arts in one country and not in another are the cases of *Soc. Le Chant du Monde v. Soc. Fox Europe*, CA Paris, 1953 1 Gaz. Pal. 191, 1954 D.A. Jur. 16, at 80, and *Shostakovich v. Twentieth Century-Fox Film Corp.*, 196 Misc. 67, 80 N.Y.S.2d 575 (Sup. Ct. 1948), *aff'd*, 275 App. Div. 692, 87 N.Y.S.2d 430 (1950). The same facts heard in two different countries yielded opposite results. The plaintiffs won in France, where moral rights cover performing arts, and they lost in the United States, where the law does not.

distinct rights.²⁹ They are the rights of attribution, integrity, disclosure, withdrawal, and resale royalties.³⁰ The Berne Convention for the Protection of Literary and Artistic Works,³¹ an international treaty protecting art, requires its signatories to recognize the rights of attribution and integrity.³² One-hundred and eighteen countries,³³ including the United States,³⁴ have signed the treaty. Most of these nations give their artists some sort of right of attribution and right of integrity. Fewer countries grant the rights of disclosure and withdrawal. Less generally available is the right to resale royalties, which in many ways is more an economic than a purely "moral" right.³⁵ Descriptions of each moral right follow. While reading these broad descriptions, remember that different countries place different limits on each of these rights.³⁶ For a specific case, the law of the rele-

²⁹ See, e.g., DaSilva, *supra* note 4, at 3-4; Roy S. Kaufman, *The Berne Convention and American Protection of Artists' Moral Rights: Requirements, Limits and Misconceptions*, 15 COLUM.-VLA J.L. & ARTS 417, 420 n.21 (1991); Sarrauté, *supra* note 4, at 467.

³⁰ In French these rights are known as, respectively, *droit à la paternité*, *droit au respect de l'oeuvre*, *droit de divulgation*, *droit de retrait ou de repentir*, and *droit de suite*. See generally LEONARD D. DU BOFF, *THE DESKBOOK OF ART LAW* (1977).

³¹ See generally Berne Convention, *supra* note 27.

³² See *id.* at art. 6 bis, 1. Independently of the author's economic rights, and even after the transfer of 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.

³³ Treaties in Force, 335-36 (Jan. 1, 1996).

³⁴ The United States became a party to the Berne Convention more than one hundred years after the first signatories. Berne Convention Implementation Act of 1988, Pub. L. No. 100-568, 102 Stat. 2853 (1988). Some explain the delay as caused by the United States' historical emphasis on economic and property rights. See Edward J. Damich, *Moral Rights Protection and Resale Royalties for Visual Art in the United States: Development and Current Status*, 12 CARDOZO ARTS & ENT. L.J. 387, 388 (1994) [hereinafter "Resale Royalties"]. The impetus recently to join the Berne Convention has been explained in terms of ensuring protection of American artists, particularly writers, in the global marketplace, see Sherman, *supra* note 5, at 375 n.11, and 398-401, as well as sustained efforts by interested members of the arts community. See Damich, *Resale Royalties*, *supra*, at 407. United States' compliance with the Berne Convention, particularly in the area of moral rights, is questionable. See William Belanger, *U.S. Compliance with the Berne Convention*, 3 GEO. MASON IND. L. REV. 373, 398-401 (1995).

³⁵ See, e.g., Artist's Resale Royalty Act, CAL. CIV. CODE § 986(a) (West Supp. 1998):

Whenever a work of fine art is sold and the seller resides in California or the sale takes place in California, the seller or the seller's agent shall pay to the artist of such work of fine art or to such artist's agent 5 percent of the amount of such sale.

³⁶ Within the United States, eleven states also have general laws protecting artists' moral rights. California Art Preservation Act, CAL. CIV. CODE § 987 (West Supp. 1998); CONN. GEN. STAT. ANN. §§ 42-116s to -116t (West 1992 & Supp. 1996); Artists' Authorship Rights Act, LA. REV. STAT. ANN. §§ 51:2151-2156 (West 1987); ME. REV. STAT. ANN. tit. 27, § 303 (West Supp. 1989); MASS. GEN. LAWS ANN. ch. 231, § 85S (West Supp. 1996); NEV. REV. STAT. ANN. §§ 597.720-760 (Michie 1994); Artists' Rights Act, N.J. STAT. ANN. §§ 2A:24A-1 to -8 (West 1987); N.M. STAT. ANN. §§ 13-4B-1 to -3

vant jurisdiction must be researched and applied.

A. *The Right of Attribution*

The right of attribution, also known as the right of paternity,³⁷ gives the artist the right to have her name accurately associated with her work.³⁸ Where the law recognizes the right of attribution, an artist may insist that her name appear on her art.³⁹ If it does not, she has a valid cause of action in court and, depending on the factual details, a solid chance of winning. Conversely, another person cannot put his name on the first artist's work.⁴⁰ Again, the artist can sue and is likely to win. The right of attribution helps protect the unique relationship between the artist and her work. When an artist takes the risk of being personally vulnerable, expressing herself via art, having someone else's name attributed to it could be devastating. A uniquely personal effort, indeed often a personal struggle, bears someone else's name. The lack of recognition may harm the artist

(Michie 1978); N.Y. Artists Authorship Rights Act, N.Y. ARTS & CULT. AFF. LAW § 14.03 (McKinney 1984 & Supp. 1992); Fine Arts Preservation Act, PA. STAT. ANN. tit. 73, §§ 2101-2110 (West 1993); R.I. GEN. LAWS §§ 5-62-2 to -6 (1995). *See also* 815 ILL. COMP. STAT. ANN. §§ 320/1-320/8 (West 1993). Four states grant limited moral rights only to artists receiving state commissions. GA. CODE ANN. § 8-5-7 (1989); MONT. CODE ANN. § 22-2-407 (1991); S.D. CODIFIED LAWS § 1-22-16 (Michie 1992); UTAH CODE ANN. § 9-6-409 (1996).

The federal law preempts state provisions that cover the same art and grant the same rights. 17 U.S.C. §§ 301(f)(1)-(2) (1995). The states are free to give artists rights not included in the federal law, to cover works of art not covered by the federal law, or to extend the time periods of rights the federal law grants. *See, e.g.,* Pavia v. 1120 Ave. of the Americas Assoc., 1995 U.S. Dist. LEXIS 13963 (S.D.N.Y. 1995) (noting that § 14.03 N.Y. Arts and Cult. Aff. Law prohibits display of mutilated work, whereas federal law prohibits only mutilation, not its display); Brett Stotra, *The Visual Artists Rights Act: Federal Versus State Moral Rights*, 21 HOFSTRA L. REV. 461 (1992); Gorman, *supra* note 28, at 240. *See also* Joshua H. Brown, Note, *Creators Caught in the Middle: Visual Artists Rights Act Preemption of State Moral Rights Laws*, 15 HASTINGS COMM. & ENT. L.J. 1003 (1993). *But see* Morseburg v. Balyon, 201 U.S.P.Q. (BNA) 518 (C.D. Cal 1978), *aff'd* 207 U.S.P.Q. (BNA) 183 (9th Cir. 1980) (finding California's Artist's Resale Royalty Act, CAL. CIV. CODE § 986(a), preempted by federal copyright statute, 17 U.S.C. § 301).

³⁷ The gender-neutral term "attribution" allows the very language of the law to include female artists, helping to prevent their marginalization. *See* Whitney Chadwick, *Women Artists and the Politics of Representation*, in *Feminist Art Criticism* 170-85 (Arlene Ravin et al. eds., 1988).

³⁸ *See* Shostakovich v. Twentieth Century-Fox Film Corp., 196 Misc. 67, 80 N.Y.S.2d 575 (Sup. Ct. 1948), *aff'd*, 275 App.Div. 692, 87 N.Y.S.2d 430 (1950). The composer objected to the use of his music in an anti-Soviet film. While he lost his case in the United States before its law recognized the right of attribution he won in France, where the law included full moral rights protection. The current United States law does not apply to music. *See* 17 U.S.C. § 106A(a)(1)(A).

³⁹ *See, e.g.,* 17 U.S.C. § 106A(a)(1)(A); France's 1957 Law, *supra* note 7, art. 6.

⁴⁰ *See, e.g.,* 17 U.S.C. § 106A(a)(1)(B); France's 1957 Law, *supra* note 7, art. 6.

emotionally or mentally. Incorrect attribution also skews her reputation in the community. The regard placed on the artistic expression of her being now goes to another. Personal, artistic, and professional development, which are closely intertwined for many artists, may all be hampered. Of course, there may also be an effect on economic interests.

Misattribution might seem fortuitous if the art is not well-received. Nevertheless, many artists create for reasons other than the reception they may receive, often very personal reasons. A work that others do not like may be extremely important to the artist. The creative process that achieved it may be a stepping-stone in the artist's development. The final product itself may amply satisfy the artist's need to have created it. Also, a piece that initially is overlooked or even negatively critiqued may later gain a favorable reputation. Other reasons individual to the artist may cause an artist to seek credit for even an unsuccessful work. No matter what others think of the work, many an artist is likely to think: "I created it, I want my name on it."

The right of attribution protects an intensely personal relationship. Suppose, for example, you did not have a leading role in the high school play, but gave maximum effort to a more minor, albeit important, character part. The school newspaper's review likely would have mentioned your performance in only a sentence or two. How would you feel if the reporter attributed your role to someone else? Many in the school community would mistakenly assume it was that other person they saw on stage. You would probably be frustrated in your intensely personal efforts to project something of yourself to the audience via this artistic medium. You may have worked very hard on this role and grown a great deal personally and artistically in the process. Expecting to be named accurately as the actor may seem a "natural right."⁴¹

Misattribution may cause more than mere disappointment. The harm may rise to a level recognizable by common law tort concepts such as mental distress, emotional suffering, and defamation⁴² or even statutory provisions.⁴³ Even if the artist persuades a judge and jury to find for her, she receives no protection from this harm, which is unique to creative endeavors. Insisting the artist's name be on her work shows the "moral" light in which that particular society views creative work. The right of attribution demonstrates an understanding of the creative process and the unusual nature and level of vulnerability that is common for all artists, not just those experiencing harms that fit under other legal labels. Indeed, past experience in the United States has shown common law tort, property,

⁴¹ See DaSilva, *supra* note 4, at 7-11 (discussing how moral rights stem from notions of a "natural right" pre-dating and then spurred on by the French Revolution). See also Lacey, *supra* note 10, at 1539-41.

⁴² See Kaufman, *supra* note 29, at 426-27.

⁴³ See, e.g., *id.* at 423-26 (discussing the use of the Lanham Act, 15 U.S.C. §§ 1051-1072 (1994), to aid artists). See also *Gilliam v. American Broad. Co.*, 538 F.2d 14 (2d Cir. 1976) (Monty Python's troupe successfully used Lanham Act to protect equivalent of moral rights).

and contract concepts do not adequately protect artists from misattribution⁴⁴ (or the other harms guarded against by moral rights).⁴⁵

The right of attribution also prevents an artist's name from being associated with work she did not create. Again the goal is to protect the personal association between the artist and her art. Another's work, even if it looks similar to the first artist's work, has not arisen out of the same individual's creative effort. The mind that conceived it and the body that executed it are different; the process of achieving even seemingly similar results was therefore different than it would have been if undertaken by the first artist. While it may be a communication via an artistic medium of someone's human consciousness, it is not that of the first artist. Misattribution frustrates the artist in her efforts to project herself artistically, as the whole community may think a work she did not create is representative of her creativity.

Again, by way of example, suppose the school reporter attributed your name to a classmate's performance. Whether the performance was good or bad, your reaction might be, "Wait a minute. I can't believe he thinks I would act that way. I would have interpreted that character entirely differently. I don't move like that. I don't speak like that. And now the whole school thinks that was me up there in that role. Now the whole school thinks that's what my best artistic efforts result in." Here again the right of attribution would protect you from a harm peculiar to creative endeavors.

Thus, from opposite angles, the right of attribution helps ensure the artist's name is attributed to all her work and her work only. She may feel encouraged to take more risks and explore further who she is as an artist and what she wants to say artistically, because she knows the recognition or reputation she gains will reflect her own endeavors. In a sense, an accurate "chain of title" to the creative process that produced a particular work of art is maintained.

⁴⁴ See, e.g., *Clemens v. Press Publ'g Co.*, 122 N.Y.S. 206, 207 (N.Y. App. Term 1910) (Seabury, J., concurring) (Clemens could not insist publisher give him byline when contract did not so specify.); *Vargas v. Esquire*, 164 F.2d 522 (7th Cir. 1947); Geri Yonover, *Artistic Parody: The Precarious Balance: Moral Rights, Parody, and Fair Use*, 14 CARDOZO ARTS & ENT. L.J. 79, 94 (1996). But see *Clemens*, 122 N.Y.S. at 206, 207-08 (Seabury, J. concurring) (stating "[t]he fact that [the author] is permitted to have his work published under his name . . . necessarily affects his reputation and standing . . .").

⁴⁵ For example, in *Lubner v. City of Los Angeles*, 53 Cal. Rptr. 2d 24, 29 (Cal. Ct. App. 1996), the court relied on common law concepts when it stated:

We recognize that the artwork may have been extremely important to appellants from financial, personal, and professional standpoints. Nevertheless, the artwork is property and, for that reason, appellants are subject to the rule that recovery for emotional distress caused by injury to property is permitted only where there is a preexisting relationship between the parties or an intentional tort.

See generally Edward J. Damich, *The Right of Personality: A Common-Law Basis for the Protection of the Moral Rights of Authors*, 23 GA. L. REV. 1 (1988); see also Damich, *Resale Royalties*, *supra* note 34, at 391-98.

B. *The Right of Integrity*

The right of integrity protects the integrity of the art work itself and, indirectly, the creative process and artist's reputation. This right prevents anyone from modifying the art without the artist's permission.⁴⁶ As with other moral rights, the artist maintains this right even after the artist has transferred ownership in the work and/or copyright to someone else.⁴⁷ Thus, the new owner must ask the artist before making any changes. The artist retains artistic control over her own creative expression. She also retains control over the creative process, since that process, once completed, cannot be restarted without her permission. Any modifications that do occur will have to meet with her approval. The integrity of her piece remains intact, as does the way it projects something personal about her to the world.

To better understand the potential harm when the integrity of a work of art is compromised, suppose, for example, you made a small abstract sculpture out of fired clay and scrap metal, leaving the materials in their natural colors. The colors may greatly influence the mood of the piece and your statement about the nature of the materials. Then suppose you decided to give your sculpture to a friend, hoping it would be understood as a meaningful gift, one that comprises your personal artistic efforts. But your friend finds the colors too drab for his living room coffee table and paints the whole thing bright purple.

The first time you see the repainted sculpture you may feel as if you had been slapped in the face. Your individual artistic decisions were not respected. Indeed, they seem to have been misunderstood and even trivialized. In a sense, you too have not been respected and have been misunderstood and trivialized. The results of your creative efforts were changed to cheer up someone's coffee table. Never mind that you intended the piece to have a more somber mood; to display subtle color variations, surface textures, and the different effects of light; or even to say something about the inherent beauty in objects some people consider scraps.⁴⁸

The right of integrity protects the artist from such affronts. Prohibiting changes without permission shows respect for the art work, its creator, and the

⁴⁶ See 17 U.S.C. §§ 106A (a)(2) & (3) (1995); France's 1957 Law, *supra* note 7, art. 6. The classic case is *Buffet c. Fersing*, CA Paris, 1e ch., May 30, 1962, D. Jur. 1962, 570, 571, note Desbois, *aff'd*, Cass. 1e civ., July 6, 1965, Gaz. Pal 1965, 2, pan. jurispr., 126. The artist painted a refrigerator and sold it at a charitable auction. The buyer dismantled several panels and put them up for sale. Upholding the right of integrity, the French court had no trouble finding for the artist and enjoining the sale of any part that had been separated from the original piece.

⁴⁷ See *id.*

⁴⁸ To prevent traffic problems at Pittsburgh airport, officials relocated and repainted an Alexander Calder mobile. They also had it locked into a permanent position. At the time American law afforded Calder no relief. Diana Rose, *Calder's "Pittsburgh:" A Violated and Immobile Mobile*, ARTNEWS, Jan. 1978, at 39. See also RALPH E. LERNER & JUDITH BRESLER, ART LAW, THE GUIDE FOR COLLECTORS, INVESTORS, DEALERS AND ARTISTS 428-29 (PLI 1989) (summarizing similar fates for other artists works).

process by which she created. This right avoids value judgments as to the quality of the art and the seriousness of the artist's undertaking. The society that recognizes this right recognizes the value of all creative efforts and uses it to encourage more.⁴⁹

Traditionally, the right of integrity does not protect the art work from total destruction by another.⁵⁰ While losing the work entirely may seem the ultimate blow to the artist, the underlying idea is the artist's creative efforts and personal expressions cannot be misrepresented by something that does not exist. The artist's personality cannot be projected inaccurately by a non-entity. And it cannot affect her artistic reputation, either positively or negatively, if no one can experience it.⁵¹ The right of integrity thus sets up a wry irony: If you receive a sculpture as a gift, you cannot paint it a new color without the artist's permission. You can, however, smash it into unidentifiable pieces.

Many artists would find the latter result at least as harmful to them as the former.⁵² A work that no longer exists certainly cannot communicate anything. It cannot portray the artist's concerns or other aspects of the artist's self to the community. It cannot enhance the artist's reputation. Its destruction erases the results of an artist's efforts and inspirations,⁵³ which can never be exactly dupli-

⁴⁹ See John Henry Merryman, *The Refrigerator of Bernard Buffet*, 27 HASTINGS L.J. 1023, 1041 (1976):

There is also the interest of others in seeing, or preserving the opportunity to see, the work as the artist intended it, undistorted and 'unimproved' by the unilateral actions of others, even those with the best intentions and the most impressive credentials. We yearn for the authentic, for contact with the work in its true version, and we resent and distrust anything that misrepresents it . . . To revise, censor, or improve the work of art is to falsify a piece of the culture.

In the United States, three state legislatures have acknowledged the "public interest in preserving the integrity of cultural and artistic creations." CAL. CIV. CODE § 987 (West Supp. 1998); MASS. GEN. LAWS ANN. ch. 231, § 85S(a) (West 1997); N.M. STAT. ANN. § 13-14B-1 (Michie 1978). See also Preamble, PA. STAT. ANN. tit. 73, § 2101(2) (West 1993).

⁵⁰ See *LaCasse et Welcome c. Abbe Quenard*, CA Paris, 1934 D.P.II 385; *Crimi v. Rutgers Presbyterian Church*, 89 N.Y.S.2d 813 (Sup. Ct. 1949).

⁵¹ See *Carter v. Helmsley-Spear, Inc.*, 71 F.3d 77, 81-82 (2d Cir. 1995) cert. denied, 116 S.Ct. 1824 (1996) (citations omitted). "[I]f the right is meant to emphasize the author's personality, destruction is seen as less harmful than the continued display of deformed or mutilated work that misrepresents the artist and destruction may proceed." *Id.*

⁵² Although it did not find for the plaintiff artists, whose work was destroyed, the court in *Lubner v. City of Los Angeles*, 53 Cal. Rptr. 2d. 24, 30 (Cal. Ct. App. 1996), admitted: "[W]e have to agree that generally speaking, an artist would experience emotional distress at having his or her body of work destroyed." (Note the use of a corporal term here.) For the artist's view, see Richard Serra, "Tilted Arc" Destroyed, 14 NOVA L. REV. 385 (1990), reacting, in part, to *Serra v. United States Gen. Services Admin.*, 667 F. Supp. 1042 (S.D.N.Y. 1987), *aff'd* 847 F.2d 1045 (2d Cir. 1988).

⁵³ See Grace Glueck, *Bank Cuts Up a Noguchi Sculpture and Stores It*, N.Y. TIMES, Apr. 19, 1980, at A1.

cated.⁵⁴ Indeed, if she were to mount a retrospective exhibition, a destroyed work would leave a gap in her life's work.⁵⁵ The intensely personal relationship of the artist to the creative process and the art may make an artist feel that total loss of the art work is like losing a part of herself. The public's interest in the work also goes unprotected.⁵⁶ Current United States law addresses this problem to a limited extent, protecting works of visual art "of recognized stature" from destruction.⁵⁷

C. The Right of Disclosure

The right of disclosure gives the artist further control over the creative process and its final product.⁵⁸ Only the artist may determine when she has finished a

⁵⁴ A work of fine art is not a replaceable commodity that can be duplicated. It is a one of a kind creation expressing the spirit and mood of the time of its conception and the psychological characteristics of the mind that conceives it. It is an inner expression of the soul that transcends physical appearance. Once destroyed, its spirit cannot be recaptured, not even by the artist who conceived it. Because of its very nature, a work of fine art is a precious expression of the heart and mind of the artists and should be protected. *Visual Artists Rights Amendment of 1986: Hearings on S. 2796 Before the Subcomm. on Patents, Copyrights and Trademarks of the Senate Comm. on the Judiciary*, 99th Cong., 2d Sess. 12-13 (1986), reprinted in FRANK FELDMAN, ET AL., LAW, RIGHTS AND LIABILITIES OF CREATORS AND COLLECTORS 194 (Supp. 1993) (Statement of Alfred Crimi, artist, plaintiff forty years earlier in *Crimi*, 89 N.Y.S.2d 813).

⁵⁵ See Peter H. Karlen, *Moral Rights in California*, 19 SAN DIEGO L. REV. 675, 682 (1982).

⁵⁶ "If integrity is meant to stress the public interest in preserving a nation's culture, destruction is prohibited . . ." *Carter*, 71 F.3d at 81.

⁵⁷ "[T]he author of a work of visual art . . . shall have the right . . . to prevent any destruction of a work of recognized stature, and any intentional or grossly negligent destruction of that work is a violation of that right." 17 U.S.C. § 106A (a)(3)(B) (1995).

⁵⁸ In the leading early case of *Eden c. Whistler*, CA Paris, 1898 D.P. II 465, *aff'd* 1900 D.P. I 497 (Cour de Cassation), Lord Eden commissioned Whistler to paint Lady Eden's portrait. After exhibiting the work, Whistler said he was not satisfied with it and refused to deliver it. He then painted another person's face over Lady Eden's. The court found that "ownership of the painting is not definitely acquired by the party which commissioned it until the artist has put the painting at the party's disposal and the party has accepted it; . . ." In the French law, the possibility of an artist's lack of inspiration is considered a normal risk understood by the parties when contracting for art work. See Sarrauté, *supra* note 4, at 468. See LEONARD D. DU BOFF, *supra* note 30, at 798-99. For other leading cases see *Rouault c. Constorts Vollard*, [1947] S. Jur. II.3 (note Desbois), [1947] La Semaine Juridique [J.C.P.] II, No. 3405 (Trib. Civ. de la Seine) (note Plaisant) (An artist contracted to give a dealer all the paintings he produced. Some 806 unfinished canvases were stored at the dealer's gallery, where the artist occasionally worked on them. When the dealer died, his heirs unsuccessfully tried to claim paintings); *Bowers c. Bonnard*, [1952] D. Jur. 390 (note Desbois), [1951] Gaz. Pal. II 290 (Trib. Civ. de la Seine 1957) (When the artist's wife died, her heirs claimed some of his unfinished paintings under French marital community property law. Then the artist died. The court considered all unfinished works to be the artist's, but used its own expert to determine what

work and when she will disclose it to others. No one else can declare an unfinished work complete; no one else can decide when a piece is ready for public display or performance. The only person who can know when the process of creating art has been completed is the person undertaking that endeavor. She may decide to put a particular piece aside for a day or a decade, then work on it further. She may decide to never finish a given work-in-progress. As the creator, these decisions about her creations are hers and hers alone. This right prevents the artist from being forced to prematurely expose art with which she is not yet satisfied or for which she simply does not feel the time is right.

This moral right, too, protects the unique relationship in the arts between person, process, and product. As with the rights of attribution and integrity, it ensures that the association of the artist to the art accurately reflects what happened during the creative process. The artist's name appears on her work and her work only, and only when she says the work is finished. She controls the creative process, pronouncing its completion, then retaining control over later modifications. Thus, this artistic extension of herself is one with which she is satisfied and accurately portrays her and her work to the community.

If someone else were able to disclose a piece before the artist decided to do so, harms similar to those against which the other moral rights protect might occur. The disclosure would sever part of the connection between the artist and the art. The display or performance that took place would misrepresent the artist's individual creative decisions and the creative process she undertook.

Imagine, for example, you wrote a song, but found one part of it dissatisfying every time you played it. When a musician friend stopped by, you played the song and discussed the section you disliked, using your friend as a sounding board in order to help you articulate your problems with the piece and possible solutions. Now imagine you attended a local coffeehouse the next evening to hear your friend sing. How would you feel if she performed your song, then asked you to stand to be recognized as its author?

You might feel affronted in much the same way as the student actor whose name was misattributed or the sculptor whose piece was repainted. You created an extension of yourself, but you had not yet completed it to your satisfaction. Nonetheless, the coffeehouse audience experienced and reacted to your song. These listeners now believe the song represents your complete creative process, your best artistic decisions. Whether they like the piece or not, you are left in the awkward position of accepting their reactions when you yourself are dissatisfied. Should the unfinished song gain popularity and you admit you want to change it, your artistic judgment may seem questionable. Should the song flop

was finished, not evidence of artist's intentions. After codification of the right of disclosure in 1957, the case was remanded and revised).

For cases in the United States, see *Carter v. Helmsley-Spear, Inc.*, 852 F. Supp. 228 (S.D.N.Y. 1994); *Monocada v. Rubin Spangle Gallery, Inc.*, 835 F. Supp. 747 (S.D.N.Y. 1993). Early common law copyright in the United States may have protected the right of disclosure. LERNER & BRESLER, *supra* note 48, at 441 n.49; Belanger, *supra* note 34, at 377.

and you protest it was never a finished work, you appear unable to face criticism and to base artistic decisions on public reception alone.

The art others experienced is not what you wanted to express and is not that with which you want to be associated. Your reputation has been skewed. Your friend has not respected your creative decisions or you. Indeed, she has misrepresented you and your decisions. And again, because art is such a close extension of the self, through her treatment of your art your friend has harmed you. If you alone can exercise the right of disclosure, no such harm need ever arise.

D. *The Right of Withdrawal*

Arguably, the moral right most difficult for many Americans to fathom is the right of withdrawal.⁵⁹ Essentially, it functions as the flip side to the right of disclosure. The artist has the right to withdraw her work if she decides to do so.⁶⁰ She may require the possessor to return the work to her so she can change it or even destroy it.⁶¹ She might decide to do so because she no longer feels it expresses what she would like to express or in a way she would like to express herself. Perhaps after the passage of some time, the work no longer reflects her more developed artistic sense or reputation. Maybe the artist has grown to dislike the piece and regrets ever disclosing it.

Again, the underlying purpose of the right of withdrawal is to give the artist full control over the creative process. Even after deciding she has completed that process, she may change her mind. She does not simply have to live with this extension of herself, with which she is not satisfied, being out there for others to experience and use to judge her. She may reclaim her artistic expression, as she sees fit.

Consider, by way of example, an analogy with your physical presentation of yourself. If you decide a particular shirt makes you look too pale or your hair style makes you seem old-fashioned, you are free to change the way you present yourself to the world. You could choose a brighter-colored shirt or update your hair style.

In much the same way, an artist may want to change the way she presents herself to the world. She may want to add brighter tones to her work or update its style. Even if her creative production enters a new phase, some older pieces she really regrets may still be out there representing her. It is as if you had to walk around forever with unflattering old snapshots of yourself prominently displayed in the social or professional community in which you function. Seeing or

⁵⁹ See, e.g., France's 1957 law, *supra* note 7, art. 32.

⁶⁰ Some argue that "works of art . . . embody more of [the artist's] individual essence of being than works created through routine physical labor. Since artistic works are part of an artist's very identity, she never should be completely separated from the work." Lacey, *supra* note 10, at 1542.

⁶¹ In *Carco c. Camoin*, CA Paris, 1931, D.P. II 88, the artist slashed up and threw away several canvases, which Carco retrieved, pieced back together, and tried to sell. The court followed the artist's wishes and ordered destruction of the canvases.

even thinking about those old photos may make you cringe. The constant reminder to you and others of the person you no longer are may prove exasperating. Why will no one see beyond the person you used to be? Why do they refuse to recognize your growth and the person you have become?

The artist who cannot withdraw an earlier work which now displeases her may feel similar frustrations and stymied in her attempts to grow as a person and creator. The artist seeks to be recognized as the creator she has become. An older piece that grossly misrepresents who she now is and how she now creates may harm her quite profoundly. The resulting pain may be felt in the mind, emotions, intellect, spirit, creative inspiration, or even manifest itself physically. As with the other moral rights, applying legal labels may allow for some compensation. But only the moral right fully acknowledges the source and unique nature of the harm. Thus only the moral right, if well-established, is likely to prevent the harm from occurring.

E. *Resale Royalty Rights*

The right to resale royalties allows the artist to earn a percentage of the profits when others exploit her work commercially or otherwise benefit from it financially.⁶² Many Americans are familiar with the royalties concept for music and literature. A writer, for example, may receive a certain monetary amount for each book sold; as a particular book gains popularity, its author earns more.⁶³ If the book outsells expectations, more copies may be published and the artist may earn greater monetary rewards.

The concept of resale royalties may also apply to individual works of visual art. Each time a painting is sold, for instance, some of the profits may go to the artist who created it. As the painting gains in popularity and market value, its creator earns more with each sale. Visual artists receive resale royalties in few jurisdictions.⁶⁴

Without the right to a resale royalty, the artist may miss much of the financial reward of her efforts. Tales abound of the artist who sold a work or its copyright for very little early in her career, only to regret the transaction as her artistic reputation grew and the value of the work skyrocketed. To the extent the right to collect royalties only protects economic interests, it lies beyond the scope of this article.⁶⁵

Protecting the economic interests of artists, however, does have a moral rights component. In societies in which economic activities are highly valued, allowing artists to be full players in the economic life of the community shows their con-

⁶² See Berne Convention, *supra* note 27, art. 14 (1); Damich, *Resale Royalties*, *supra* note 34, at 405-06 (discussing § 986 (a) of the California Civil Code).

⁶³ See France's 1957 Law, *supra* note 7, art. 42.

⁶⁴ See, e.g., *id.*; CAL. CIV. CODE § 986(a) (West, Supp. 1998); LERNER & BRESLER, *supra* note 48, at 478-479; LERNER & BRESLER, 1992 Update, *supra* note 8, at 337-44.

⁶⁵ See DaSilva, *supra* note 4, at 4.

tribution is equally valued. Royalties prevent both their economic and social marginalization.

Of course, allowing artists to reap the financial rewards of their efforts also may encourage them to create more, to the general benefit of the society. While few enter the arts to get rich, artists may reach new levels of expression if they do not have to worry inordinately about life's basic necessities. A starving artist in reality is hardly romantic; she is just a poor, hungry person.

IV. CONCLUSION

Those schooled in United States law may question all this concern about legal protection for the sensitivities of artists. There are already ample means for solving questions of property control,⁶⁶ personal harm, misrepresentation,⁶⁷ and freedom of expression.⁶⁸ And there are more pressing social issues.

But there may lie the misconception. Art can tell us "who we are and where we came from,"⁶⁹ both as individuals and a society.⁷⁰ People and societies who have a strong sense of themselves are not likely to fall apart.

There are many stories of a child from a seemingly hopeless background who had an opportunity via the arts to better her lot in life. While a rags-to-riches tale may make a big impression when the catalyst was artistic expression, financial rewards may obfuscate the real medium of success. Building an artistic career or an avocation in the arts requires and aids the growth of personal commitment, tenacity, self-discipline, self-awareness, and creative problem solving. Reaching an understanding of the arts, even as an appreciative audience member, allows a person to enter a world in which others communicate on many different levels.⁷¹ Experiencing others' art gives a greater sense of the other and

⁶⁶ See, e.g., Morton, *supra* note 6, at 907-10; Eric E. Bensen, Note, *The Visual Artists' Rights Act of 1990: Why Moral Rights Cannot be Protected Under the United States Constitution*, 24 HOFSTRA L. REV. 1127, 1133-34 (1996).

⁶⁷ See, e.g., Morton, *supra* note 6, at 879 n.11.

⁶⁸ See, e.g., Bensen, *supra* note 66, at 1138-44. *But cf.* Belanger, *supra* note 34, at 391 (suggesting perhaps United States' jurisprudence has not yet found the balance between constitutional and moral rights).

⁶⁹ Merryman, *supra* note 49, at 1041.

⁷⁰ Indeed, "[i]n 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." 133 CONG. REC. S.11,502 (daily ed. Aug. 6, 1987) (statement of Sen. Kennedy). See also 20 U.S.C. § 951(3) (1995) ("An advanced civilization . . . must give full value and support to . . . cultural activity in order to achieve a better understanding of the past, a better analysis of the present, and a better view of the future").

⁷¹ As a society, "[w]e are interested in protecting the work of art for public reasons, and the moral right of the artist is in part a method of providing for private enforcement of this public interest." Merryman, *supra* note 49, at 1041. See CAL. CIV. CODE § 987 (West Supp. 1998); MASS. GEN. LAWS ANN. ch. 231 § 85S(a) (West 1997); N.M. STAT. ANN. § 13-14B-1 (Michie 1978); 20 U.S.C. § 951(10). *But cf.*, Morton, *supra* note 6, at 218.

often facilitates an understanding of and sensitivity to those who view the world differently.⁷²

If more people in a given society felt free to take the risk to express themselves freely via artistic media and more people in the society could experience those expressions, there would be more genuine communication and understanding among individuals with different views.⁷³ Increasing this common understanding could alleviate many social problems.⁷⁴

The person who comes to appreciate and understand art opens herself up to a wide range of communications from others, gaining knowledge of herself and others as she does so, lessening the likelihood of intolerance and prejudice. When we experience the creative process we become aware of that which is uniquely humanizing in all of us, our common human needs and aspirations, our common human bond. Artists' moral rights recognized in the law is one way a society can encourage its members to understand and cherish that bond.

⁷² In the words of Marcel Proust:

Only through art can we get outside of ourselves and know another's view of the universe which is not the same as ours Thanks to art, instead of seeing a single world, our own, we see it multiply until we have before us as many worlds as there are original artists

MARCEL PROUST, *THE MAXIMS OF MARCEL PROUST* 177 (Justin O'Brien ed. & trans. Colum Univ. Press 1948). See also Hamilton, *supra* note 3, at 103-22 (explaining how art's ability to help us experience other worlds makes it a fundamental liberty in a representative democracy. Thus art deserves full First Amendment protection in the United States, even for its aesthetic and emotional aspects, not just for the political ideas it may convey).

⁷³ See Chapin & Arthurs, *supra* note 9, at A31 ("Throughout time, our species has used the arts — this richer set of symbols that only humans have devised — to transmit the heritage of people and to express most profoundly their deepest human joys, sorrows and intuitions"); Albert Elsen, *Introduction: Why Do We Care About Art?*, 27 *HASTINGS L.J.* 951, 952 (1976) ("Often it is art that is a powerful force for uniting a society."). The United States Congress has declared "[t]he arts . . . reflect the high place accorded by the American people to the . . . fostering of mutual respect for the diverse beliefs and values of all persons and groups. 20 U.S.C. § 951(6).

⁷⁴ The Pennsylvania legislature recognized, "[t]he ongoing creation and preservation of fine art contributes to the cultural enrichment and, therefore, general welfare of the public." Preamble to the Fine Arts Preservation Act, PA. STAT. ANN. tit. 73 § 2101(2) (West 1993).

