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Bryan Schwartz is moved by the muse to write on artists' rights and copyrights

THE ying-and-yangest moment in Canadian culture may have been Patsy Gallant's version of Gilles Vigneault's *Mon Pays*. The original uses folk-style melody and lyrics to evoke the wistful feeling of a French-Canadian nationalist. Its unaffected charm has touched many listeners, regardless of their politics. About 15 years ago, Ms. Gallant, a Canadian vocalizer, sang a hit record that set the melody to the most crass and unimaginative lyrics imaginable ("I'm a star in New York, I'm a star in L.A.")

When something like that happens, is any legal recourse open to the original artist?

A creator starts off owning the copyright in his work. No one can reproduce it without his permission. Usually, though, a creator cannot profit from a work unless he sells some or all of his copyright interests in it to a producer or publisher. Having done so, does the artist retain some residual ability to protect the integrity of the work?

Over the years, French and other continental courts have developed the concept of "moral rights": that an artist should be able to control the release of a work of art, ensure that it is attributed to the true creator, and prevent it from being presented in a distorted form.

In Europe, moral rights can be retained even if the creator sells his other copyright interests in a work. Indeed, some moral rights cannot be surrendered at all. There are limits on the extent to which a starting artist can sell his soul. American courts, by contrast, tend to emphasize the sanctity of contracts; if artists sign away their rights, they cannot come back later to a judge and complain.

The "Colorization" of film has illustrated the contrast between U.S. and European attitudes toward moral rights. The computer-assisted process enables adaptors to Colorize films. You may have seen the products; the actors all have the same uniform and unnatural complexions - as though their heads were made out of some sort of citrus fruit.

Many directors of black-and-white movies regard Colorization of their work as an abomination. But they usually work under contracts that give all the copyright interests to the studios, so the U.S. courts will not intervene. The only breakthrough has been a new federal law that requires Colorizers of certain black-and-white "classics" to include an acknowledgment that the original creators might not have approved.

In France, by contrast, the highest court affirmed in 1991 that moral rights can be applied to block the showing of Colorized films. The ruling arose from an attempt by the heirs of John Huston to stop Ted Turner from showing a Colorized version of *The Blackboard Jungle*.

In Canada, there are very few test cases on moral rights. In 1988, Parliament passed a major overhaul of the Copyright Act. A guiding theme was to give more initial control to artists over the use of their work. The moral-rights section of copyright was expanded in some ways. For example, the act now makes it clear that it violates the moral rights of an artist to use a work in a way that implies the artist's endorsement of a product or cause. Unlike European statutes, however, ours expressly authorizes artists to waive their moral rights.

THERE is a big difference between high-sounding legal proclamations and the real world. In practice, artists tend to have little bargaining power. They must sell the economic rights in a work to a publisher or distributor, and the standard contract they sign will often include a disclaimer of their moral rights as well.

My own view is that the law should ensure that work is properly credited to its creators, but allow considerable leeway for others to adapt the work for their own purposes. Those who exploit works should not be able to falsely claim authorship. If they present a work in a way that is not faithful to the original, they should have to clearly acknowledge the departure.

But much of art has always been drawn from previous work. The new product might actually be a better work of art. And if it is worse? To some, it will bring even more pleasure - no doubt many people prefer the disco version of Beethoven's Fifth. Others will find in a poor derivation enough traces of a powerful original to go and seek it out. As long as the original text is intact, somewhere, it can be born again in a living mind and a feeling heart.

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