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# A Tale of Two Composers: An Argument for a Limited Expansion of Moral Rights for Composers

Cassidy Grunninger

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# A TALE OF TWO COMPOSERS: AN ARGUMENT FOR A LIMITED EXPANSION OF MORAL RIGHTS FOR COMPOSERS

*Cassidy Grunninger\**

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\* Cassidy Grunninger is a 2017 J.D. Candidate at the University of Georgia School of Law. She received her undergraduate degree from Mercer University in cello performance and her Masters degree in musicology from the University of Colorado Boulder. Special thanks to Carter Pann and Kevin Beavers for their time and insight.

I. INTRODUCTION: PART 1 – A TALE OF TWO COMPOSERS

Carter Pann<sup>1</sup> and Kevin Beavers<sup>2</sup> are in many respects very similar composers. They met at the University of Michigan while they were each pursuing doctorates in classical composition, and have not only stayed close friends but also have had successful careers as composers. Pann is a tenured professor of composition at the University of Colorado Boulder and was a finalist in the Pulitzer Prize for Music this year,<sup>3</sup> while Beavers is a freelance composer in Düsseldorf, Germany.<sup>4</sup> The Düsseldorf Symphony Orchestra is premiering one of his symphonies in March 2016.<sup>5</sup> However, they each offer a unique perspective on their experience with the legal aspect of their careers, and live in two distinctly different legal arenas—Pann working mainly in the States, while Beavers now lives in Germany.

Even though Beavers has moved to Germany, he still mainly publishes through an American Publishing house. During a conversation about his music, Beavers expressed frustration over a lack of control over how his music is used.<sup>6</sup> He noted a piece of his used in a video or short film that was edited beyond recognition.<sup>7</sup> When he heard the final product, it did not sound similar to the original work at all.<sup>8</sup> However, there was nothing he could do about his music because the user had legally purchased it.<sup>9</sup> Perhaps Beavers feels the frustration over this lack of control more acutely because he lives in a country that has more protections and moral rights built into the legal system and has been exposed to how a system *could* work. Unlike some, he has direct experience and perspective with both systems and how they impact him and his work.<sup>10</sup> When asked if there was anything to be done, Beavers mentioned that he could possibly cease publishing through American houses and move his catalogue to German publishers, through which he would have more control over his music.<sup>11</sup>

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<sup>1</sup> CARTER PANN, <http://www.presser.com/composer/pann-carter> (last visited Nov. 8, 2016).

<sup>2</sup> KEVIN BEAVERS, <http://kevinbeavers.com> (last visited Nov. 8, 2016).

<sup>3</sup> See CARTER PANN, *supra* note 1.

<sup>4</sup> See KEVIN BEAVERS, *supra* note 2.

<sup>5</sup> *Id.*

<sup>6</sup> Interview with Kevin Beavers, freelance composer, in Düsseldorf, Ger. (July 4, 2015).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

On the other hand, Pann has never lived outside of the States, and publishes his catalogue through Theodore Presser.<sup>12</sup> However, when asked if he has experienced similar frustrations as Beavers, he stressed the importance of the contract between him and Presser, protecting him as a composer. He noted, “Each of the works I have through Theodore Presser is under copyright. Presser protects the copyright, but I retain the right to the music.”<sup>13</sup> He further stressed that he has the control to rescind the contract whenever he wants—to pull one or all of his pieces without penalty.<sup>14</sup> Moreover, the licensing department of Presser must contact him for approval before it grants permission for use of his music in film or similar.<sup>15</sup> During this process, Pann can contract exactly how he will allow his music to be used and just hope that the performers follow his wishes. Pann believes that the contract system in the United States does a fair job of protecting his music.<sup>16</sup> Nevertheless, he did say that if he wanted to renegotiate his contract that he potentially does not have much power, admitting, “Power dynamic before contract time is proportional to the demand of the product.”<sup>17</sup>

So where is the balance? What is the correct equilibrium between relying on the power of the contract while still recognizing unalienable legal rights? Though the United States relies and depends heavily on contracts and one’s autonomy to enter into contracts, there still needs to be a safeguard against an inherent power imbalance.

## II. INTRODUCTION: PART 2 – THE PROBLEM

In the United States, composers of commissioned musical pieces have no property rights after selling their compositions. The new property owner can manipulate, splice, fraction, and change the piece at will, yet still attach the composer’s name to it. The composer has no right to say how the piece can or should be used, and further, cannot disassociate his name from a piece that no longer sounds like the original work after the rights to the piece have been bought.<sup>18</sup> A limited expansion of composers’ moral rights in their commissioned or for-hire pieces will help composers maintain a stronger hold

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<sup>12</sup> Telephone Interview with Carter Pann, Professor, University of Colorado Boulder (Jan. 17, 2016).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> 17 U.S.C. § 201(b) (2016).

on their artistic integrity and avoid potential harm to their public image by having more autonomy in the use of their product.

A composer's musical sound is his trademark. People identify composers by this sound. The artist's image, as well as his ability to bring in other commissions, suffers if his pieces do not have his trademark "sound."

The United States should adopt a limited expansion of moral rights of composers in regards to commissioned and for-hire works, incorporating and adapting the European approach to moral rights as a viable format for change. As American composers gain recognition nationally and internationally, they should have more control over the use of their respective art after its sale. Moreover, because European Union (EU) and European law favor composers and artists, many composers increasingly choose to publish their works in European, rather than American, houses.<sup>19</sup> Composers maintain more rights in their works abroad, and this can potentially result in a loss to the American industry.

There are multiple examples of both American and European composers who are extremely unhappy with how their music is handled. For instance, Italian composer Ennio Morricone disputed with Quentin Tarantino over the use of his music in the movie *Django Unchained*. Morricone said that he would not collaborate with Tarantino again because Tarantino "places [Morricone's] music in his films without coherence."<sup>20</sup> While Morricone ultimately reconciled and collaborated with Tarantino again on his movie *The Hateful Eight* (winning a Golden Globe for his score),<sup>21</sup> this is a good example of ways in which the American market can be impacted because of lackluster protection for the artists.<sup>22</sup>

The United States, through its subpar artistic protections, is potentially incentivizing artists to look elsewhere for work, in places where there is more control over the ultimate use of the music. The United States leans heavily on protection through contract writing, as Carter Pann indicated in his experience. However, additional legal rights will help to act as a safeguard against the

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<sup>19</sup> See KEVIN BEAVERS, *supra* note 2 (Kevin Beavers's conundrum).

<sup>20</sup> Daniel Kreps, *Ennio Morricone Hated How Quentin Tarantino Used His Music in 'Django Unchained'*, <http://www.spin.com/2013/03/ennio-morricone-quentin-tarantino-django-unchained/> (last visited Sept. 13, 2016).

<sup>21</sup> Arguably, Morricone might have felt pressured into reconciling with Tarantino because Tarantino is such a famous and powerful person in the film industry.

<sup>22</sup> Daniel Kreps, *Ennio Morricone to Score Quentin Tarantino's Hateful Eight*, ROLLING STONE (July 12, 2015), <http://www.rollingstone.com/movies/news/ennio-morricone-to-score-quentin-tarantinos-hateful-eight-20150712>.

potential power imbalances that contractual writing cannot protect against, especially for composers who are new to the field.

Looking to the European model, this Note will explore various ways the United States could integrate expanded property rights into the current intellectual property laws and why American law needs these additions. First, Part III of this Note will discuss what moral rights are and how they fit into the current American legal landscape. Part IV will discuss the history of the Berne Convention, and the United States' participation in the treaty. Part V will discuss the Visual Artists Rights Acts (VARA) and how it comes up woefully short in protecting the full range of the arts. Finally, Part VI will discuss how specific musical arts could be incorporated into the already existing framework of VARA to begin the process of broadening the protections for artists and allowing for more control of an artists in regards to his work.

### III. WHAT ARE MORAL RIGHTS?

This Section will discuss the commonly recognized moral rights and what they allow for the artist, in terms of legal action. Moral rights are the inherent and mostly inalienable rights an artist has in their creation.<sup>23</sup> These rights do not simply exist as long as the artist possesses his creation. Rather, moral rights follow the art from its inception and creation throughout its existence, from artist to owner to any future owner.<sup>24</sup> Moral rights acknowledge that the artist or creator possesses and will continue to possess a vested interest in his art, even after selling it.<sup>25</sup> Most importantly, these rights give an artist an actionable grievance under law.<sup>26</sup> While the concept of moral rights is generally considered to have originated in France, now over 160 countries recognize these rights in their laws.<sup>27</sup>

Commonly recognized moral rights include the right of integrity, the right of attribution, the right of disclosure, the right of withdrawal,<sup>28</sup> and *droit de suite*, or the right to follow.<sup>29</sup>

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<sup>23</sup> Patrick G. Zabatta, *Moral Rights and Musical Works: Are Composers Getting Berned?*, 43 SYRACUSE L. REV. 1095, 1096 (1992).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 1104.

<sup>28</sup> Henry Hansmann & Marina Santilli, *Authors' and Artists' Moral Rights: A Comparative Legal and Economic Analysis*, 26 J. LEGAL STUD. 95, 95–96 (1997).

<sup>29</sup> Benjamin S. Hayes, *Integrating Moral Rights into U.S. Law and the Problem of the Works for Hire Doctrine*, 61 OHIO ST. L.J. 1013, 1019 (2000).

The right of integrity refers to an artist's legal right to prevent any destruction or alteration of the work without the artist's prior permission.<sup>30</sup> This right allows artists to maintain some control of their work even after they have sold it to a third party.<sup>31</sup> This right operates under the assumption that the artist will always have an invested interest in his work, even after he has sold the art and it is no longer in his possession.<sup>32</sup> As an example, if an artist sold a painting to a buyer and then learned that the buyer planned on setting said painting on fire, the artist would have a legal right to get an injunction against the buyer. The artist would be able to prevent the buyer from destroying or permanently altering the work, despite the fact that the artist no longer "owns" the work.

The right of attribution denotes an artist's right to have his name attached to his work and receive credit as the creator.<sup>33</sup> Traditionally, this right ensures that the correct author receives credit for his work. However, this right extends to "negative attribution" as well, preventing a false author from receiving credit for work he did not do.<sup>34</sup> Problematically, this right directly conflicts with the U.S. Copyright Act, which actually attributes authorship of for-hire works to the employer who hired the artist, not to the creator of the work.<sup>35</sup>

The right of disclosure allows the artist to withhold his art from the public until such a time when he feels the work is complete.<sup>36</sup> This right is similar to the right of integrity in that it allows the artist to have a voice in how the art is ultimately conveyed and when it is truly finished.<sup>37</sup>

The right of withdrawal only applies to published works, and permits the artist to retract his art after publication if he decides the work no longer reflects his vision or ideals.<sup>38</sup> This right also stems out of the central right of integrity, allowing the artist to have a continuing and unbroken connection to his creation, one that does not terminate through sale or transfer.<sup>39</sup>

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<sup>30</sup> *Id.*

<sup>31</sup> For instance, in France, an artist can completely enjoin and prevent the destruction of one of their works. *See* Hayes, *supra* note 29, at 1019.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* Also "in the case of a work made for hire, the employer or other person for whom the work was prepared is considered the author for purposes of this title, and . . . owns all of the rights comprised in the copyright." 17 U.S.C. § 201(b) (2012).

<sup>36</sup> Hayes, *supra* note 29, at 1020.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at 1021.

<sup>39</sup> *Id.*

*Droit de suite* recognizes the artist's continuing financial interests even after a third party owner resells the work.<sup>40</sup> For instance, if a previously unknown artist comes into notoriety and fame, his works will attain a much higher value than the price at which he originally sold them.<sup>41</sup> *Droit de suite* allows the artist to benefit financially from the increased price value of his work, giving the artist a percentage of the boon.<sup>42</sup> Of all the moral rights, *droit de suite* conflicts the most with American law and cultural perception of property rights.<sup>43</sup>

#### A. AMERICA'S TRADITIONAL APPROACH TO MORAL RIGHTS

Moral rights in the United States have not traditionally been recognized. The United States have been more in favor of a contract regime and favor ultimate property rights. This differing approach can be seen in the case of the famous Russian composer Dmitry Shostakovich and his suit against Twentieth Century Fox.

*Shostakovich v. Twentieth Century-Fox Film Corporation*<sup>44</sup> exemplifies how American courts treated the right of integrity prior to the U.S.'s joining the Berne Convention—and how courts generally continue to approach the issue today. Shostakovich, a renowned early twentieth century Russian composer, disputed Twentieth Century's and Fox's use of his music in their film, *The Iron Curtain*.<sup>45</sup> *The Iron Curtain* cast a negative light on communism, and Shostakovich was a well-known national composer under the Communist Soviet Union.<sup>46</sup>

He claimed that by using his music in the film, the studios were using his music to endorse and convey an anti-communist message—one with which he disagreed.<sup>47</sup> He alleged that the companies had committed libel by using his music in a way that ran counter to his intention and the meaning of his music, thereby distorting his image as a composer.<sup>48</sup> Thus, “*Shostakovich* raise[d] the question of whether a composer's integrity can be impaired by a faithful rendition of his song in an objectionable context.”<sup>49</sup>

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<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 1022.

<sup>42</sup> *Id.*

<sup>43</sup> Article 14*ter* of the Berne Convention outlines *droit de suite*; however, the Convention clarifies that this right is subject to whether the country permits it.

<sup>44</sup> 80 N.Y.S.2d 575 (1948).

<sup>45</sup> *Id.* at 577.

<sup>46</sup> *Id.* at 576.

<sup>47</sup> *Id.* at 578.

<sup>48</sup> *Id.*

<sup>49</sup> Zabatta, *supra* note 23, at 1125.

However, the Court held that the music was in the public domain and could be “freely published, copied or compiled by others.”<sup>50</sup> Further, the Court described the use of the music as “incidental, background matter.”<sup>51</sup> Although the companies used Shostakovich’s music in a manner that offended him, and that he felt misrepresented his artistic intention, the United States did not recognize his harm as legally actionable.<sup>52</sup> By contrast, if Shostakovich had brought his case in Europe instead, he likely would have won.<sup>53</sup>

While the outcome that Shostakovich wanted represents a moral rights regime that might be too extreme for the United States, it highlights flaws and the lack of minimum safeguards present in the American legal system of that time. Although there were no moral rights recognized in America in the early nineteenth century, the United States ultimately joined as the Berne Convention, which is the primary protector of moral rights internationally.

#### IV. THE BERNE CONVENTION

The Berne Convention for the Protection of Literary and Artistic Works codifies moral rights, and all signatory countries should have included these rights in their intellectual property regimes.<sup>54</sup> The World Intellectual Property Organization (WIPO) maintains and upholds the Berne Convention.<sup>55</sup> According to WIPO, the Berne Convention “provid[es] creators such as authors, musicians, poets, painters etc. with the means to control how their works are used, by whom, and on what terms.”<sup>56</sup> Article 6*bis*(1) of the Convention codifies moral rights, stating, “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.”<sup>57</sup> Article

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<sup>50</sup> *Shostakovich*, 80 N.Y.S.2d at 578.

<sup>51</sup> *Id.* at 576.

<sup>52</sup> *Id.* at 577.

<sup>53</sup> *Zabatta*, *supra* note 23, at 1125.

<sup>54</sup> BERNE CONVENTION FOR THE PROTECTION OF LITERARY AND ARTISTIC WORKS (as amended on Sept. 28, 1979), [http://www.wipo.int/wipolex/en/treaties/text.jsp?file\\_id=283698](http://www.wipo.int/wipolex/en/treaties/text.jsp?file_id=283698) (last visited Oct. 12, 2016) [hereinafter BERNE CONVENTION].

<sup>55</sup> WIPO – ADMINISTERED TREATIES, WORLD INTELLECTUAL PROPERTY ORGANIZATION, <http://www.wipo.int/treaties/en/> (last visited Oct. 12, 2016).

<sup>56</sup> BERNE CONVENTION FOR THE PROTECTION OF LITERARY AND ARTISTIC WORKS, WORLD INTELLECTUAL PROPERTY ORGANIZATION, <http://www.wipo.int/treaties/en/ip/berne/> (last visited Oct. 12, 2016).

<sup>57</sup> Berne Convention Article 6*bis*, section (1).

*6bis* also address what will happen to the moral rights after the artist's death and the different forms of redress for violations of these rights.<sup>58</sup>

First adopted in 1886, the Berne Convention outlines what protections authors have in relation to their works.<sup>59</sup> The Berne Convention has subsequently been revised and amended several times throughout the century, with the last revision in 1979.<sup>60</sup> As of 2016, 172 countries are members of the Berne Convention Assembly, including the United States.<sup>61</sup> Interestingly, civil law countries have the strongest moral rights regimes, with France, Germany, and Italy boasting some of the most thorough rights.<sup>62</sup>

The Berne Convention sets forth minimum standards and principles to which the member states must align their own country's copyright law.<sup>63</sup> The United States did not join the Berne Convention until 1989, under the Reagan Administration.<sup>64</sup> Yet despite its accession, the United States have implemented minimal legal defenses for the moral rights the Convention requires protecting.<sup>65</sup>

The United States signed the Berne Convention following the passage of the Berne Convention Implementation Act of 1988.<sup>66</sup> During the signing ceremony of the Berne Convention Implementation Act (BCIA), President Reagan stated, "Today we celebrate a victory in the name of a right as old as the union itself and as central to our union as any—the right of all Americans to protect their property."<sup>67</sup> However, Congress explicitly stated that the BCIA, and not the Convention itself, was the controlling law.<sup>68</sup> Rendering the Berne Convention a non-self-executing treaty effectively allowed Congress to sidestep the majority of the moral rights included in the Convention.<sup>69</sup> Moreover, legislators admitted that the bill would not have passed into law if it included more extensive moral rights.<sup>70</sup> One representative claimed, "The political reality

<sup>58</sup> See *id.* art. *6bis* (2)–(3).

<sup>59</sup> Summary of the Berne Convention for the Protection of Literary and Artistic Works, WORLD INTELLECTUAL PROPERTY ORGANIZATION, [http://www.wipo.int/treaties/en/ip/berne/summary\\_berne.html](http://www.wipo.int/treaties/en/ip/berne/summary_berne.html) (last visited Oct. 12, 2016) [hereinafter Summary of the Berne Convention].

<sup>60</sup> See BERNE CONVENTION, *supra* note 54.

<sup>61</sup> BERNE CONVENTION (TOTAL CONTRACTING PARTIES: 172), WIPO-ADMINISTERED TREATIES, CONTRACTING PARTIES, WORLD INTELLECTUAL PROPERTY ORGANIZATION, [http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty\\_id=15](http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=15) (last visited Sept. 12, 2016).

<sup>62</sup> See Hansmann & Santilli, *supra* note 28, at 95–96.

<sup>63</sup> Summary of the Berne Convention, *supra* note 59.

<sup>64</sup> Hansmann & Santilli, *supra* note 28, at 97.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.* at 97 n.5.

<sup>67</sup> Zabatta, *supra* note 23, at 1098, n.22.

<sup>68</sup> *Id.* at 1098–99.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.* at 1098, n.24.

was that legislation with a moral rights provision simply would not pass.”<sup>71</sup> This exclusion is attributed to heavy opposition from the media industry to include an expansion of moral rights.<sup>72</sup>

More broadly, this tension between the treaty and American law, coupled with the United States’ reluctance to embrace a more comprehensive moral rights regime, highlights America’s traditionally held view that economic rights are more important than moral rights.<sup>73</sup> Further, the general consensus is that these rights are more than adequately protected under contracts.

## V. VISUAL ARTISTS RIGHTS ACT (VARA)

After the enactment of the BCIA, other Berne Convention signatories criticized the United States for failing to fully adhere to the Convention and for the lack of moral rights protection American law offered. Thus, to bring the United States into better compliance with the Berne Convention, Congress passed the Visual Artists Rights Act (VARA)<sup>74</sup> in 1990.<sup>75</sup> While VARA expands moral rights, the statute affords protections to a very limited subset of the arts, only touching upon a very narrow aspect of “visual arts.”<sup>76</sup> VARA specifically and intentionally does not cover any other areas of the arts, such as music and dance, among others.<sup>77</sup> As a result, VARA is little more than a symbolic gesture of good faith.

VARA defines “works of visual art” as “[a] painting, drawing, print, or sculpture, existing in a single copy, in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author. . . .”<sup>78</sup> VARA further goes into great, specific detail over what exactly constitutes a work of visual art that falls under its purview.

Moreover, VARA expressly limits the extent and scope of visual arts covered, specifically excluding “[a]ny poster, map, globe, chart, technical drawing, diagram, model, applied art, motion picture or other audiovisual work, book, magazine, newspaper, periodical, data base, electronic information

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<sup>71</sup> *Id.* (quoting 134 CONG. REC. 3083 (1988) (statement of Rep. Kastenmeier, Chair of the H. Subcomm. on Patent, Copyright and Trademark)).

<sup>72</sup> *Id.*

<sup>73</sup> *Id.* at 1108.

<sup>74</sup> Visual Artists Rights Act of 1990 (VARA), 17 U.S.C. § 106A (2015).

<sup>75</sup> David E. Shipley, *The Empty Promise of VARA: The Restrictive Application of a Narrow Statute*, 83 Miss. L.J. 985, 987 (2014).

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> 17 U.S.C. § 101 (see definition of “work of visual art.” (1)–(2)).

service, electronic publication, or similar publication.”<sup>79</sup> VARA also distinguishes any merchandising, advertising, or promotional work, as well as any work made for hire as being not under the scope of protection.<sup>80</sup>

Thus, as one member of Congress attested, “I would like to stress that *we have gone to extreme lengths to very narrowly define the works of art* that will be covered . . . [T]his legislation covers only a very select group of artists.”<sup>81</sup> This echoes legislators’ sentiments favoring a narrow interpretation of moral rights during the discussions about signing the Berne Convention.<sup>82</sup> Overall, American lawmakers seem reticent to embrace even the most bare of moral rights protections. There are many asserted reasons behind legislation’s obviously tentative stance on expanding moral rights, which can be applied to both the Berne Convention, as well as VARA, which is essentially an arm of the Berne Convention Implementation Act.

While VARA is not as inclusive as it could or should be, the arts covered by VARA are afforded the same moral rights that were discussed in Part II above. VARA allows for the right of attrition and integrity, but not the right of disclosure, withdrawal, or *droite de suite*.<sup>83</sup> Therefore, VARA allows for two of the five recognized moral rights of the Berne Convention.

In only narrowly expanding the coverage of moral rights to visual arts, the United States has made a lackluster attempt to comply with the requirements of the Berne Convention. It is curious as to why Congress wanted to only narrowly expand the rights and why they went to “extreme limits” to do so. Moreover, why did they choose visual arts over musical arts? Congress could easily expand VARA to include musical arts, even if they imposed very strict limits on what musical pieces would be covered. This expanded protection would not only put the United States in better compliance with the Berne Convention, but would also create a better environment for composers in the United States.

## VI. INCORPORATING MUSIC INTO VARA

Incorporating a level of moral rights protections for composers into VARA could be easily done. While there are many different types and genres of music, Congress could choose to narrowly define the musical arts which will be included into the Act. While this is not an ideal situation, it would allow an

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<sup>79</sup> *Id.* (see definition of “work of visual art.” (2)(A)(i)).

<sup>80</sup> *Id.* (see definition of “work of visual art.” (2)(A)(ii)).

<sup>81</sup> Shipley, *supra* note 75, at n.46.

<sup>82</sup> See 134 CONG. REC. 3083 (1988) (statement of Rep. Kastenmeier, Chair of the H. Subcomm. on Patent, Copyright and Trademark).

<sup>83</sup> See VARA, *supra* note 74.

opening to further integrate the other musical arts at a later date. For instance, Congress could narrowly limit the types of musical arts included to classically composed works of art, such as symphonies, operas, movie scores, and similar pieces such as chamber music or solo pieces.<sup>84</sup> These are types of musical works which are commissioned and bought for specific purposes. As an example, when a director or producer commissions a composer to write a score for their movie, the studio owns that score. In traditional American copyright law, the composer has no more control over their work. The studio can alter the music beyond recognition if they wanted without any recourse by the composer. With a limited expansion of moral rights to encompass musical works, the composer can make sure in cases such as this that his music retains its integrity and original concept.

Through specifically defining what types of music would fall under the protection of moral rights, this potential statute would better inform composers and buyers of their rights associated with the piece of music. Further, this would also allow composers to know the limits of their rights associated with their music, what is and is not actionable. This would give more autonomy and control to the composers, thus helping to even the power imbalance that is present in some composer/buyer relationships, while also maintaining a limit on actionable suits.

This narrow scope of coverage would give Congress more control over the amount and types of suits being brought. This would mitigate the potential “floodgates” argument. There would not be a sudden flood of suits being brought because there is a limited scope. Not only would this create a more positive and healthy environment for American composers, it would also be a step closer toward conforming with the Berne Convention.

Using the existing framework of VARA, Congress could include these specific and stated musical works into the current statute. This would bring specific musical works under the protection of the right of integrity and the right of attribution—the two moral rights that are codified in VARA. While this is not a perfect solution, it is an easy and attainable step in the right direction. Because the framework and the language is already there, Congress would only have to expand the arts that are included.

## VII. CONCLUSION

American law needs to widen its protection of moral rights of artists to come into compliance with the signed treaty. Moreover, as the United States

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<sup>84</sup> This would exclude some for-hire works like jingles for commercials or companies.

continues to be a hostile and unfriendly environment for artists, especially composers, these artists will look to other options, such as publishing through European houses. This would be detrimental in the long run to American publishing houses because of a potential loss of revenue.

As the world and communities grow more accessible, composers will have options available that were not viable thirty years ago when the Berne Convention and VARA were signed and passed. It is now easier for an American composer to contact and publish through European houses without having to leave the States. Because Europe has better and more fully formed protections for artists, this is becoming a more feasible and desirable alternative.

In addition, the United States will increasingly have a hard time drawing foreign composers into the States because of the sub-par protections. While famous composers such as John Williams have the name pull and recognition to contract for better sales agreements, up-and-coming composers or less well known composers are stuck in a serious power imbalance. They need to sell their work to live and have a successful career, but they do not have the ability to dictate any terms of the sale. A limited expansion of moral rights extended to composers of commissioned works would not be counter to traditional views on American property law, and could be incorporated to the already existing framework of VARA.

