The Moral Right of Integrity: A Freedom of Expression

Leslie Kim Treiger-Bar-Am

St John's College, University of Oxford

The moral right of integrity has been enacted as Section 80 of the UK Copyright, Designs and Patents Act 1988. This paper will examine the theoretical underpinnings of the integrity right in the Anglo-American tradition, rather than in Continental jurisprudence, as is often the case. I will argue that the integrity right is best understood in UK law as a freedom of expression. The integrity right can be seen as a protection of expression from within the copyright doctrine, but may further be located within the freedom of expression doctrine itself. The rationales and principles of the integrity right parallel the rationales and principles of the freedom of expression doctrine: Both protect speaker autonomy against the distortion of a speaker's message. The method for case determinations pursuant to S80 ought to engage the freedom of expression doctrine as well.

This analysis of Section 80 of the Act will be distinguished from other common interpretations of the integrity right. The right is often described as a personality right, and analogised to a right of privacy, which characterisations are inapposite. Nor ought the Act's protection against prejudice to 'honour or reputation' be seen as a stand-in for reputational rights in the law of defamation. Alternately, the integrity right is sometimes described as a protection of the author's feelings, and hence is rightly critiqued as overly subjective. In contrast to these characterisations, this paper will show the integrity right as a right of expression protecting authorial autonomy.

Where S80 is understood in this way, it can be understood not to require further proof of harm for a finding of infringement. Where an author states a claim pursuant to S80, she ought not be required to produce evidence of injury, whether to the author's personality, reputation, or feelings. Rather, prejudice may be presumed from a distortion of the author's expression.