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Justifications for copyright: the evolution of *le droit moral*

The Contracting Parties,

Desiring to develop and maintain the protection of the rights of authors in their literary and artistic works in a manner as effective and uniform as possible,

....

Emphasizing the outstanding significance of copyright protection as an incentive for literary and artistic creation,

Recognizing the need to maintain a balance between the rights of authors and the larger public interest, particularly education, research and access to information, as reflected in the Berne Convention....¹

The preamble to the World Intellectual Property Treaty suggests a patchwork of justifications for copyright. Close scrutiny makes it clear that this set of justifications is the product of centuries of negotiation over the rights of authors. This realization is the point of departure for the present essay. The aim here is to study the past of copyright in order to shed light on the evolution of explicit rationales now invoked in contemporary law. Our focus will not be on evaluative or normative discussions; we shall be examining an exemplary set of justifications for copyright as proposed over the last two hundred and fifty years. Our data will be a selection of representative French *droit d'auteur* cases from 1847 till the present. We will concentrate on personality rights as a rationale for copyright, while noting that this type of justification also involves moral rights.

The choice of cases from French law requires a few remarks. The Anglo-American copyright tradition differs from the Continental tradition of authorial rights. Each has its own history of rationales for copyright. In the Anglo-American tradition some of the most prominent justifications of copyright are found in the preamble to the Statute of Anne: ‘An Act for the Encouragement of Learning,’ and in the philosophy of John Locke: ‘Whatsoever, then, he removes out of the state that nature has provided and left it in, he hath mixed his labour with, and joined to it something that is his own, and thereby makes it his property.’² The continental tradition, in particular the French *droit*

d'auteur, has been reliant on natural law theory and has treated authors' rights as rights of personality. Denis Diderot asked rhetorically in 1763: 'What form of wealth *could* belong to a man, if not a work of the mind [...] if not his own thoughts [...] the most precious part of himself, that will never perish, that will immortalize him?'³

The distinction between these two traditions may have been too sharply delineated. It has been pointed out that the French Revolutionary Acts of 1791 and 1793 were as much devices of the market economy as they were idealistic celebrations of the author-genius.⁴ The Revolutionary Act did not confirm the rights of genius as has often been claimed in French legal commentary.⁵ Rather, the ideology of the genius appeared in case law around the turn of the twentieth century, long after its heyday in French literature and art.⁶

Our chosen cases deal with literary and artistic works, including a sermon, journalistic writing, cartoons, a novel, paintings, a sculpture and an art installation. Cases have been selected to represent the shifting rhetorical devices employed by Courts in order to substantiate decisions to recognise authorial rights. All of them involve disputes over the *droit moral* of the author. It is this quality which makes them privileged sites for studying the justifications for authorial rights in France. The moral rights of authors received no statutory protection until 1957. But moral rights became increasingly invoked as a concept in juridical practice; the earliest instance seems to date from 1813.⁷ The term '*droit moral*' appeared in the mid-nineteenth century. It was for the courts to establish a moral right, alongside the pecuniary right of the author, by elaborating the justification for authorial rights. And the rationales that were put forward came to serve both to protect a particular work and to promote authorial rights in general.

Moral rights under the French Intellectual Property Code, which derives from the Law of 11 March 1957, are more wide-ranging than in Britain. They include the author's '*droit au respect de son nom de sa qualité et de son œuvre*': these are also known as the rights of paternity and integrity. The author moreover has a right of disclosure, '*droit de divulgation*', and a '*droit de repentir ou de retrait*': a right to withdraw from publication or to make modifications even after the transfer of economic rights in a work.⁸ In some of the cases to be looked at in this essay, moral rights had not yet been defined. And this is part of the fascination of the early cases: moral rights had

not been separated or isolated from pecuniary rights. Our argument is that long before they were clearly defined, *le droit moral* played an integral part in the shaping of authorial rights in France.

Eight cases will be examined, each of them confirming moral rights. The cases are presented in chronological order. Three date from before 1900, two are from the mid-twentieth century and three from the late twentieth century. It should be observed that in French legal terminology, the term ‘work of authorship’ refers to both literary and artistic creations.

Marle c. Lacordaire,⁹ is a Lyon appeal case from 1845 concerning an abbé’s right in his own sermons. In the month of May 1845 the writer, Charles-Louis Marle, edited and published a work called *Les Conférences de l’abbé Lacordaire*, consisting of sermons by the abbé Lacordaire.¹⁰ The sermons had been taken down in shorthand without the abbé’s consent. The Court of Appeals decided that this was a violation excusable neither by the religious character of the reproduced work—the sermon—nor by the ecclesiastical position held by Lacordaire. Accordingly, it was ruled that an oral discourse is a work subject to protection by copyright, with a double interest.¹¹ From a pecuniary point of view, the author has the right to profit from his own work. And from the point of view of what was designated the author’s ‘*personnalité morale*’, the court pronounced that ‘the author should always preserve the rights to revise and correct his own work, to survey the fidelity of the reproduction and to choose the time and mode of publication.’¹² The oral nature of the work was judged to be without importance: ‘What does it matter whether an intellectual performance appears in one form or the other, whether it manifests itself in speech or in writing?’ the court asked rhetorically, and went on to declare that ‘what matters even less is whether a speech—before it is delivered—is written down or not.’¹³ Bestowing such extensive rights upon the author required an explanation from the Court: ‘Because in effect the orator delivers his speech only, without giving up the power of disposal of his thought through printing; on the contrary it is essential for him to preserve the fruits of his labour, to remain the sole judge of the opportune moment for its publication and to keep guard against damaging [*dangereuse*] alterations of his work.’¹⁴ Charles-Louis Marle was found guilty of *contrefaçon* and was ordered to pay 100 fr. in damages. The infringing copies were to

be recalled and the judgement to be published in two Paris journals nominated by Abbé Lacordaire.

*Delprat c. Charpentier*¹⁵ is a Supreme Court decision from 1867. The defendant in the case, M. Charpentier, was the director and owner of a journal entitled *Revue nationale*. Delprat, the plaintiff, was the journal's political editor. In July 1864 the latter, Delprat, delivered a manuscript for the upcoming issue. As it was too long for the assigned space the director, Charpentier, made a number of suppressions and modifications in the article. Delprat complained that the excisions had changed the form and idea (*'la forme et sa pensée'*) of the piece, and took legal action. The *Cour de Paris* (10 March 1865) found that the corrections were small in number and without significance and, furthermore, that none of the modifications had distorted the meaning or the spirit of the article (*'le sens et l'esprit de l'article'*). Accordingly, the writer's responsibility would remain unaffected and his reputation unharmed. The *Cour de Cassation*, however, annulled this judgement. The Court ruled in favour of Delprat and confirmed that a writer is absolute owner and master of his work. Because Delprat's name was subjoined to the article it was to be considered his individual and exclusive work.¹⁶ While the editor of a journal was allowed to make necessary modifications to contributed material, corrections must be approved by the writer who had signed the piece; he would after all be the person legally responsible.

As the Court of Paris had failed to appreciate the rules concerning the rights of authors, by denying Delprat his right to protest against cuts and corrections made without his knowledge, the case was returned to the *Cour d'Orléans*. The Court of Orléans ruled that the editor of a journal does not have the right to modify a contributed article without the consent of its author.¹⁷

A case from 1899, *Agnès dit A.Sorel c. Fayard frères*, concerns cartoons.¹⁸ Agnès was a cartoonist who worked under the pseudonym 'A. Sorel'. He published silhouettes with coloured backgrounds accompanied by stories and dialogue in a magazine named *Caricature*. The defendants, the Fayard brothers, had bought the *Caricature* – and had thus become the undisputed holders of the copyright in the silhouettes.

A number of Agnès' silhouettes appeared in another magazine—published also by the Fayard brothers—called *Jeunesse amusante*, with altered dialogue, legends and backgrounds. This provoked the cartoonist to take legal action. While observing that the publisher had committed no grave offence, the Court acknowledged that, in general, it would be a violation of the rights of artists if a work was in any way altered without the consent of the artist. Changing the dialogue and background while publishing the cartoons over the signature of A. Sorel was to lay the responsibility at his door, notwithstanding his wishes (*'malgré lui'*).¹⁹ As the violation was not of a serious nature damages were settled at the modest sum of 500F.

In these three cases we have found early instances of what, nowadays, would be identified as the protection of the right of integrity. The authenticity of a sermon was secured by granting the preacher the right of control over its publication. As a protection against involuntary responsibility a journalist and a cartoonist were assured that their consent must be obtained before any changes could be made to their works. It is thus significant that early copyright law (apart from protecting pecuniary rights) offers a threefold guarantee: 1) the author is protected against false attribution; 2) the work is protected against alterations; and 3) the public is assured that 'works of authorship' are intact, and true to their makers' intentions.

A case from 1927, *Camoin et Syndicat de la Propriété artistique c. Francis Carco, Aubry, Belattre et Zborowski*,²⁰ was heard first by the *Tribunal civil de la Seine* and then by the Court of Appeals in Paris. The decision of the Court of Paris, which confirmed the first ruling, became important for the recognition of the right of disclosure in France.

Charles Camoin, the plaintiff, was a pictorial artist.²¹ One evening in 1914, when clearing up his studio, he found himself dissatisfied with a number of paintings. He tore the canvasses out of their frames and ripped each of them into six or eight pieces. He then threw the pieces in the rubbish bin. But this was not their final destination. The next morning the pieces were found by a rag picker who sold them to an art collector. The canvasses then passed through the hands of several owners; they were pieced together into their original form. Eleven years later, in 1925, the artist,

Camoin, discovered that four works by him had been put up for sale, and, moreover, that the works were identical with the ones that had long ago been torn to pieces and consigned to the dustbin. The restored paintings now belonged to the art collection of Francis Carco, the key defendant. A seizure was ordered at the request of Camoin.

Camoin's main objection was to the works being '*divulgués*'—disclosed—as in the sales catalogue, without his consent. The legal battle then revolved around the conflict between physical ownership and the artist's rights in the intangible image. According to Roman law the right of ownership in the canvasses had been forfeited when they were abandoned. Thus, when Camoin's case was upheld, the *droit de divulgation* was established in France. The justification for conferring this right—overruling even the right of property—was the special relationship between an artist and his work: only the artist knows when (if ever) a work is ready to be exposed to the public. By disclosing the restored work, the defendants had violated the author's personality, that which, in the words of the court, was the '*plus sacré et d'intangible*'. As stated by the Supreme Court, an artist is entitled to unconstrained control over his work because it is 'the expression of his thought, his personality, his talent, his art, and, in philosophical terms, of his individual self.'²²

The Court of Paris confirmed that seizure of the four restored canvasses had been legitimate and awarded damages of 5000F against each of the four defendants.

Our other case from the period, *Martin-Caille c. Bergerot* (1968),²³ went to the Supreme Court. Martin-Caille, the plaintiff, was an art dealer in Provence. The defendant, Bergerot, was an artist from the same region. In 1961, the latter had been engaged by Martin-Caille to deliver eight oil paintings and ten watercolours per month, and to be paid in return a retainer fee. Martin-Caille as a business practice calculated a market rate ('*côte*') for art works, awarding points on the basis of motif, size, talent and distinction. The retail prices of paintings were then settled accordingly.

After a few years Bergerot failed to deliver the required number of works. Martin-Caille then started to lower the prices on Bergerot's works. He offered works by Bergerot, which had formerly been valued at 9000F, at a reduced price of 900F. In the first court the painter maintained that such drastic reductions in price would inevitably ruin his reputation and harm the overall value of his works. Bergerot, moreover,

claimed that it was an infringement of his moral rights. The court in Nîmes was sympathetic and ordered Martin-Caille to pay damages; in addition, in the future, Martin-Caille was to sell Bergerot's paintings only after an art expert had estimated a fair price. Martin-Caille then took his case to the Court of Appeal where the judgement was overturned. No infringement of the artist's *droit moral* was acknowledged by the Court of Appeal. On the contrary it was declared that:

the distinction and reputation of an author or artist is not one of the aspects of his moral right and, accordingly, cannot be abusively compromised under the author's right to respect for his name, quality and work, the law protecting the rights of authors offering no specific defence of the distinction and reputation of an author and his work, inasmuch as these are constituted only by a social sanction of the value of the work and the merit of the artist, independently of any right to respect for the integrity of the work or for the paternity of the artist; only these are to be protected by the law.²⁴

To put it briefly, according to the Court of Appeal, the law cannot recognise harm to the prestige or reputation of an artist, if the damage is not directly related to an actual work. But this decision was, in its turn, overruled by the *Cour de Cassation* which stated that the Court of Appeal had made a false or inappropriate application; and that the law does indeed protect the author's intellectual property rights as they relate to both the reputation of the artist and the pecuniary value of his work.²⁵

Because of the special relationship between the author and his creation, literary and artistic works are treated unlike other things. *Camoin c. Carco* expresses the nature of this relationship: a work is '*la pensée*': the thought, the personality, the talent, and the art of its maker. And this constitutes the very reason why it deserves such careful protection. This emphasis on 'personality' in justifying authors' rights was prevalent throughout the twentieth century. It is remarkable, however, that the decision of the Court of Appeal in the case of *Bergerôt c. Martin-Caille* attempted to limit the tendency on the grounds that authors' rights are protected only in relation to a specific work: violation of the author's rights cannot occur unless rights in a particular work have been violated. We may speculate that the higher court, the *Cour de Cassation*, had, in overturning the decision, been paying attention to recent developments in authorial

rights, and determined that authorial rights should be protected by law precisely because the author's works are the expression of his personality.

Meanwhile, however, the law must sustain a firm distinction between the work and the copy. In its eagerness to discount the value of any actual (material) manifestation of the work, the law leaves us with very little apart from the personality of the creator. Owing to the radical intangibility of the law's concept of 'work', protection by copyright is restricted to the author's personality, including perhaps the market value of his name; protection is not extended to any specific object that non-lawyers might call a work of art.

In *Christopher Frank c. Société Sofracima*²⁶ (1979) it was ruled that a scriptwriter had violated the right of integrity of the author of the adapted work. Sofracima, a film company, held the adaptation and exploitation rights in a literary work *La plus longue course d'Abraham Coles, chauffeur de taxi* by Claude Brami. In February 1978 Christopher Frank was commissioned by the Society to write a screenplay on the basis of the book. In October 1978 Sofracima informed Frank that in their opinion his adaptation constituted a corruption of Brami's work. While the original work was a psychological description of the character Abraham Coles, the adapted work consisted mainly of scenes of physical violence and 'action.' Frank maintained that he had merely exercised his liberty to transform a work of literature into a viable work in a different media. Changes were thus technically dictated. This liberty of transformation had been confirmed in a number of recent decisions.²⁷

Sofracima, on their part, presented as evidence a letter from the author—Brami—stating that the author had been shocked to read the adapted work. Brami found that the adaptation did not conform to his novel. Ideas, characters and events of the adaptation seriously betrayed those of the original work. Hence if a film were to be made on the basis of the script, Brami would consider it an infringement of his moral rights as an author.²⁸ This letter impressed the Court sufficiently to resist the recent trend which had allowed quite an extensive liberty of transformation. Accordingly, the Tribunal annulled the contract between the parties, finding Frank at fault for having produced a defective work for the claimant. The Court of Appeal confirmed the decision, in addition ordering Frank to pay damages of 30,000F.

Our penultimate case involves a celebrated French sculptor, Jean-Philippe Dubuffet (1901-85). *Dubuffet c. Régie Nationales des Usines Renault* was heard by the Supreme Court in 1980.²⁹ In 1973 the Renault factory had commissioned Dubuffet to create a monument for their site in Boulogne. Dubuffet made a model of the sculpture, called *Salon d'été*, and its construction was begun. Before its completion, however, Régie Renault halted the project and—without consulting or even informing Dubuffet—started to demolish the structure, allegedly because of a problem with its infrastructure. Dubuffet claimed that this was an infringement of his integrity right. No fewer than five cases were heard in various courts in the years 1977 to 1983. Crucial for the outcome of Dubuffet's case were two stipulations in the contract. First, it had been agreed that, if Renault failed to construct the monument, Dubuffet would receive compensation. The Tribunal and the Court of Appeal in Paris deduced from this that Renault had retained an option not to construct the monument. These courts agreed that a half-built structure could not be classified as an original work; Dubuffet discovered that he had no claim to any rights in this thing. It might have appeared mysteriously overnight, but for all the courts' interest in the matters of origin, authorship, paternity or integrity, no questions need or should be asked.

The second stipulation in the contract specified that Dubuffet would be consulted as to choice of materials, colours, etc. during the construction of the sculpture. This led the same courts to declare that Dubuffet could not therefore be regarded as the author of the monument. His rights were in the model only. The *Cour de Cassation*, however, annulled these judgements, on both counts, ruling that Dubuffet was the holder of rights not only in the model but also in the sculpture—albeit unfinished—realised on the basis of the model. The case was returned to the Court of Appeal in Versailles where the judge confirmed the decision of the *Cour de Cassation*, and stated that 'one cannot dissociate the realisation of a model from the realisation of the monument.'³⁰ The court decided that Dubuffet's work consists of the '*conception*' of the work. The model and the actual sculpture are worthy of protection on equal terms: both are manifestations of the work. And destroying a monument—whether complete or incomplete—is likewise a violation committed against the will ('*la volonté*') of the author. Renault was told that, by entering into contract with an artist—no matter the

terms of the specific contract—they had ‘accepted responsibility for upholding Dubuffet’s interests in the construction of his work,’³¹ and had committed themselves to ‘the effective and complete realisation of the work’³² including its material realisation (*‘réalisation matérielle’*). The conclusion was that Renault had infringed Dubuffet’s rights, and Renault was ordered to resume construction of the monument. (It seems however that the monument was already demolished: it is nowhere to be seen today.)

Our last case, *Mlle Hong Yon Park et Spadem c. Association des Amis de la Chapelle de la Salpêtrière*, is from 1995.³³ Mlle Hong Yon Park was a visual artist who had made an agreement with the Society of Friends of the Chapel of Saint-Louis of the Saltpetre; the Chapel—which was a regular venue for shows of contemporary art—would house an exhibition of her work between 28 November and 20 December 1991. The dispute arose when the Society of Friends closed her exhibition after the *vernissage*. It was claimed by the Friends of the Chapel that they had been misled as to the type of work to be shown. Mlle Park had provided them with photos from an earlier exhibition. These works had been delicate little pictures and figures, which had appealed to the Friends of the Chapel. The installations put on display in the chapel, however, consisted of several rows of lavatory bowls put together with sanitary towels arranged in boxes bearing a resemblance to coffins. According to the Friends of the Chapel the installations were disrespectful of the surroundings. Mlle Park, on her part, complained that her right of integrity had been infringed. This was confirmed by the court, who found that the Society of Friends had contractually obliged themselves to show Mlle Park’s work. By taking it down they had ‘prevented the artist from showing her works in public.’³⁴ If the chapel had proved an inappropriate location, an alternative venue should have been provided. In the end the Friends of the Chapel were ordered to pay damages of 1F (a normal sum for damages in France), and costs of 10 000 FF were awarded against them.

It should be noted that in the recent cases—especially in *Dubuffet*—the concept of ‘the work’ receives a rather inconsistent analytical treatment. We are told in *Dubuffet* that the ‘conception’ of the work is the object of protection,³⁵ whereas the model and the monument are mere physical realisations. An original work is immaterial by definition in copyright law. Presumably, then, the model was the first copy (a copy is always

material) while the concrete construction was yet another copy. In the decision of the *Cour de Cassation* it was made clear that Dubuffet had rights in the monument as well as in the model, because both the model and the monument were equally representations of Dubuffet's (intangible) work. At this point one might suspect that in *Dubuffet* one 'random' reproduction—the monument—had been given particular value because it was more precious than other 'reproductions'. It is unclear if a similar protection would apply to an incomplete model. What if Renault had interfered with the building of the model because they had identified a structural problem in it? Is it possible that such an interference could amount to a breach of the right of integrity? Was the model, before its completion, a work-in-progress (adjusted along the way), or was it, at every stage of its making, a materialisation of Dubuffet's original work? Another question that remains unanswered is whether it would have been an infringement of Dubuffet's right of integrity if Renault had never attempted to erect the monument in the first place (and had paid the stipulated compensation instead).

Apparently, the *Cour de Cassation* wants it both ways: on the one hand, there is no requirement of a manifest tangible work that would be vulnerable to damage. On the other hand, demolishing the concrete structure—which, due to its unfinished status, is not even a true representation of Dubuffet's intangible 'work'—is deemed to violate the (intangible) work. In the judgement of the *Cour de Cassation* there are insoluble contradictions between tangible and intangible notions of the work.

Another analytical problem in *Frank*, *Dubuffet* and *Park* is that the author's reputation is not tested against the eyes or the judgment of the public. Frank's work was never realised as a film. And neither Dubuffet's nor Park's work was treated derogatorily in front of an audience. The works were prevented from being shown to the public, and, as a consequence, the public was prevented from seeing the works. However, the public had no means of knowing of what it had been deprived, nor even, in relation to the creations of Frank and Dubuffet, that it had been deprived. The author is at the centre in the *Dubuffet* and *Park* decisions. In *Frank c. Sofracima* the author even comes forward, self-consciously claiming his rights in a letter directed to the Court. And because the adaptation did not meet the author's expectations the contract between the parties was invalidated and damages were awarded against Frank.

Significantly a work of art is perceived as an extension of its author's personality. As the author's conception it is to be regulated according to his or her intention and wishes. It is uncontested that a bond between the author and his creation exists to justify a far-reaching control of the work. Consequently, the protection of authorial intention is the crux of the matter in *Frank*, *Dubuffet* and *Park*. It is less the right of integrity than the right to freedom of expression which is at stake.³⁶

It is striking that the earlier justifications for exclusive rights protection seem to be more diversely founded. A greater variety of interests were taken into consideration in the early cases. There was the author's interest. Secondly, the work was taken into account on its own terms. Had it been altered? Was it of adequate quality? Was it suitable to be published or put on display? Thirdly, the audience was considered as well. What was being, or should be communicated to them? How would the public – including the authorities, whether cultural, political or religious – judge the author on the basis of the work?

However, we have seen in the later cases that the interests of the work (as distinct from its status as expression of the artist's personality) and those of the public appear diminished. Both are referred to regularly, but not for their own sake. Recent cases treat the work as merely an aspect of the author's personality. *Dubuffet* and *Park* are symptomatic of this tendency. Yet copyright infringement needs to be judged in relation to the interests of the work in itself.³⁷ If it is a truism that there is no work without an author, it should be equally acknowledged that there can be no author without a work: without something, as we say, to show for it. The two complement each other. To repeat what the Court of Appeal in Paris said in the *Bergerot* case: only insofar as violation is done to the work—for example, through pirating (infringing pecuniary rights) or through mutilation (infringing the right of integrity)—can we begin to speak of violation done to the author.

The public has also been marginalized in recent cases. This is regrettable, because the assessment of copyright infringement deserves objective as well as subjective analysis. Works of authorship are ultimately made for an audience. The interests of many people are involved. In French law, moral rights have the power to

overrule standard contract law precisely because there are more interests involved than merely those of the two contracting parties.

The exclusion of the categories of the work and the public at an analytical level is indicative of a marginalization of the interests they represent. Both used to be elements of a three-legged rationale for copyright, but the third foundation, the ‘personality of the author’, has become the exclusive rationale. The problem is that if two such vital elements disappear from discussion it becomes difficult to obtain a balanced understanding of copyright law, whether in its workings or in its purpose. My suggestion is that the author, the work, and the public should all continue to figure in legal analysis: we might then see a more even-handed protection of the rights of all concerned.

It appears that we have sketched a history of the decline of copyright into mere protectionism. The number of interests represented and protected has certainly been reduced. Of course, one cannot deny that copyright law must develop and adapt in response to social, technological and other changes. Yet it can be illuminating to look backwards, to be reminded of the earliest notions of copyright, and the original rationales. While we should not aim to preserve or recuperate the *letter* of the law as we find it in the earliest cases, we ought to recognize, and let it be known, that copyright law today pays scant regard to the *spirit* of its early history, or to the interests of those whom, even today, it was intended to benefit.

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Notes

¹ Cited from the preamble to the WIPO Copyright Treaty (Adopted in Geneva on 20 December 1996).

² Locke (1690) 1948, p.15

³ Diderot (1763) 1970, p. 331. Cited from Hesse (1990), p. 114.

⁴ See Kerever (1989) and Davies (1994).

⁵ See for instance Colombet (1990), p. 7.

⁶ Victor Hugo (1802-1885) was both a representative of ‘genius’ and a leading figure in the campaign to make a commodity of genius. As president of the *Association Littéraire et Artistique Internationale* Victor Hugo took the initiative to propose an international convention for the protection of literary and artistic property; his efforts were rewarded, posthumously, by the creation of the Berne Convention on 9 September 1886. See <http://www.alai.org>. An English counterpart to Hugo can be found in William Wordsworth. Wordsworth was celebrated as a creative genius in the same fashion as Hugo; he also took

an active part in the copyright debates of his time, lobbying in the 1830s to extend the term of copyright protection in Britain. See Seville (1999).

⁷ See Strömholm (1966).

⁸ The French *Code de la Propriété Intellectuelle*, which derives from the Law of 11 March 1957, defines *les droits moraux* as follows: *Art. L. 121-1 L'auteur jouit du droit au respect de son nom, de sa qualité et de son oeuvre*. The author enjoys a right of integrity and a right of paternity. His rights are personal, perpetual, inalienable and unwaivable. Rights are, however, transmissible to heirs. *Art. L. 121-2. L'auteur a seul le droit de divulguer son oeuvre*. The author determines the time and manner of the disclosure of his work. *Art. L. 121-4. Nonobstant la cession de son droit d'exploitation, l'auteur, même postérieurement à la publication de son oeuvre, jouit d'un droit de repentir ou de retrait*.

Notwithstanding the transfer of rights in a work, the author retains a right to withdraw a work from publication or to make modifications, even after the publication of the work (under certain conditions).

⁹ Cour de Lyon, 17 July 1845, D.1845.2.128

¹⁰ L'Abbé Jean-Baptiste-Henri Dominique Lacordaire (1802-1861) was a celebrated preacher.

¹¹ '[L]'auteur a un double et légitime intérêt à conserver le droit exclusif d'éditer son ouvrage ou d'en céder la propriété,' p. 128.

¹² '[A]u point de vue de sa personnalité morale et dans l'intérêt même de ses doctrines, l'auteur doit toujours conserver le droit de revoir et de corriger son oeuvre, d'en surveiller la fidèle reproduction, et de choisir le moment et le mode de la publication' p.128.

¹³ 'Qu'il importe donc peu que le travail intellectuel ait revêtu telle forme plutôt que telle autre, qu'il se soit manifesté par la parole ou par l'écriture; qu'il importe encore moins qu'un discours ait été écrit ou non avant d'être prononcé' p.129.

¹⁴ 'Qu'en effet, l'orateur livre seulement sa parole, sans donner le pouvoir de disposer de sa pensée à l'aide de l'impression; qu'il lui importe, au contraire, de conserver le fruit de son travail, de rester juge de l'opportunité de sa publication, et de se mettre en garde contre une altération dangereuse' p. 129

¹⁵ Cour de Cassation, 21 August 1867, D.1867.1.369

¹⁶ '[C]omme l'oeuvre individuelle et exclusive de Delprat, dont la signature figurait au bas de l'article' p. 372.

¹⁷ *Delprat C. Charpentier*. Cour d'Orléans, 15 May 1868. D.1868.2.128

¹⁸ Trib. Civ. de la Seine, 16 December 1899, D.1900.2.152

¹⁹ 'Fayard frères, en changeant les légendes et les dialogues des dessins de Sorel et en les publiant ainsi modifiés, avec la signature de celui-ci, dans la *Jeunesse amusante*, ont placé sous les yeux du public des matières étrangères à Sorel et dénaturé le composition de son oeuvre; que c'est donc à bon droit qu'il se plaint des publication dont les défendeurs lui font encourir, malgré lui, la responsabilité' p.152

²⁰ Trib.Civ.de la Seine, 15 November 1927, DP.1928.2.89. Judgment confirmed in *Carco et autres C.*

Camoin et Syndicat de la propriété artistique, Cour D'Appel de Paris, 6 March 1931, DP.1931.2.88

²¹ Charles Camoin (1879-1965) was associated with *Fauvism* (1905-1906).

²² '[L]'expression de sa pensée, de sa personnalité, de son talent, de son art, et l'on pourrait dire en termes de philosophie, son moi individuel' p.92.

²³ Cour de Cassation, 3 December 1968, D.1969.2.73

²⁴ '[L]a notoriété et la réputation d'un auteur ne sont pas l'en des attributs de son droit moral et ne peuvent être abusivement comprises dans le droit du respect du nom, de la qualité et de l'oeuvre de l'auteur, la loi n'accordant, sous l'angle du droit d'auteur, aucune protection spécifique à la notoriété et à la réputation de l'auteur et de son oeuvre, lesquelles ne constituent qu'une sanction sociale de la valeur de l'oeuvre et du mérite de l'artiste indépendante du respect de l'intégralité de l'oeuvre, et de la paternité de l'artiste, seules protégées par la loi' p.76.

²⁵ '[L]a cour d'appel a violé, par fausse application, le texte susvisé, qui ne protège que les droits de propriété incorporelle de l'auteur, quelle que soit sa notoriété ou la valeur de son oeuvre' p.76.

²⁶ *Christopher Frank c. Société Sofracima*, TGI Paris, 18 April 1979, RIDA October 1979, p.175. Appeal case *Christopher Frank C. Sofracima*, Cour d'Appel de Paris, 29 April 1982, 114 RIDA October 1982, p.172

²⁷ See *Héritiers Bernanos c. Soc. »Champs-Élysées Productions»*, Tribunal de grande instance de la Seine, 15 June and 30 November 1961, D.1962.173. *Charteris et autre c. Soc. Intermondia-Films*, Tribunal de grande instance de la Seine, 8 March 1968, D.1968.742

²⁸ 'A la lecture de ce début d'adaptation, j'ai été stupéfait de voir qu'elle était sans rapport avec mon roman dont elle trahissait gravement l'esprit, les personnages et les événements. J'atteste formellement

que si un film devait voir le jour sur la base de ce que j'ai pu lire, je considérerais ledit film comme une atteinte à mon droit moral d'auteur' p, 180.

²⁹ TGI Paris, 23 March 1977, Cour d'Appel de Paris, 2 June 1978; Cour de Cassation, 8 January 1980, 104 RIDA April 1980; Cour d'appel de Versailles, 8 July 1981, 110 RIDA October 1981. *Régie Renault c/ J.-Philippe Dubuffet*, Cour de Cassation, 16 March 1983, 117 RIDA July 1983, p.80. At the 1983 case the *Cour de Cassation* was heard as to whether Renault's property right had been violated in the former decision. The Court rejected this claim and refused to invalidate the decision of the Court of Versailles

³⁰ '[O]n ne saurait dissocier la réalisation de la maquette et celle de l'œuvre monumentale' p. 204

³¹ 'Régie Renault a accepté de se charger des intérêts de Dubuffet dans l'édification de l'œuvre monumentale' *Ibid*

³² '[L]a réalisation effective et complète de l'œuvre' *Ibid*

³³ Cour d'appel de Paris, 10 April 1995, 166 RIDA October 1995

³⁴ 'Qu'en agissant ainsi l'Association a définitivement empêché l'auteur de présenter son œuvre au public, sinon à l'intérieur de la Chapelle dans laquelle l'exposition avait contractuellement pris fin, du moins dans un autre ensemble architectural similaire ou équivalent' p. 323

³⁵ See the *Code de la Propriété Intellectuelle*, L.111-2 'L'œuvre est réputée créée, indépendamment de toute divulgation publique, du seul fait de la réalisation, même inachevée, de la conception de l'auteur.'

³⁶ The issue of the freedom of speech in the *Park* case should be distinguished from conflicts between one person's right of freedom of speech (e.g. commentary, quotation, parody) and another person's intellectual property rights.

³⁷ The existence of conceptual and computer generated works of art—without a material manifestation—is acknowledged. Still, that does not conflict with the argument that 'the work' should continue to be an analytical concept in its own right.

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