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Artists' Rights

By Karen Gantz

At long last, statutory recognition has been extended in America to the classical European doctrine of *droit moral*, or moral right, whereby a creator retains a legally protected interest in the treatment of his or her work of art after parting with ownership.

In so doing, we have joined more than 50 countries that already have codified the principle. The states with the largest art markets in our country, New York and California, should be applauded for their enactment of statutes granting artists both a retained interest in their work and protection of their reputations: The New York Artists' Authorship Rights Act of 1983 and the California Art Preservation Act of 1979.

New York's law protects a broader category of art work than does California's. New York extends protection to paintings, prints, photographic prints and sculpture. California protects original paintings, sculpture and drawings. Both laws exclude from coverage the works of writers, composers, dramatists and other artists.

In 1958, the Pittsburgh Airport Commission altered an Alexander Calder mobile by positioning it differently than Mr. Calder had intended, and repainting it from the original

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black and white to Allegheny County's colors, green and gold. Although Mr. Calder objected vehemently, he had no recognized legal right to control the display of his art work.

Now, under the New York and California laws, an artist retains the right to have his name appear on or in connection with the art work or to disclaim credit if the work has been modified other than by the artist or with the artist's consent. This is known as the right of paternity. Thus, if Mr. Calder were alive today, and Pennsylvania had enacted the right of

paternity, he could prohibit the public display of his mobile and would have a cause of action for relief based on injury to his reputation.

California further protects the "right of integrity" — that is, the author's right, even after relinquishing title to a work, to prevent the alteration, mutilation or destruction of an art work of "recognized quality." The right of integrity acknowledges the public's interest in preserving its cultural and artistic heritage. If the mobile had been disfigured in California, Mr. Calder or his heirs could have stopped the owner from altering it

and could have required restoration if the restoration could have been accomplished without injury to the mobile.

The heretofore inhospitable reception of American courts and legislatures to the civil law doctrine of moral right has stemmed principally from the belief that reserved rights are incompatible with two principles enshrined in the American legal tradition: the free alienability of property and the free transferability of resources. The two principles are designed to maximize the possible economic applications of property by

giving the new owner the right to exclusive use and enjoyment of the property sold or otherwise transferred to him.

The New York and California statutes challenge the conviction that American property law cannot accommodate an artist's interest in his creation that survives the relinquishing of title.

The Anglo-American legal system has long recognized that society may impose some restraint on an individual's freedom to use and dispose of his property. This concept is reflected in a variety of laws such as those governing the environment, zoning and landmark preservation.

Accordingly, art should not be treated differently from other forms of property that warrant preservation. Society has a superior interest in promoting historic tradition, culture and art. To transcend an owner's right to his artistic possession is to extend longstanding principles of property law.

The American legal system should accommodate a vigorous assertion of moral right in an artist's creation notwithstanding its sale or other disposition.

Although further clarification and refinement are needed, the New York and California statutes represent a commendable attempt to reconcile the conflict between the property owner's right and the artist's retained interest in his creation.

The transplantation of moral right to the United States statutory landscape begins to fill a gap in our law. Only by such farsighted, innovative lawmaking will artistic integrity be safeguarded and our artistic culture and heritage be adequately preserved.