Entertainment Law

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Lawyers For The Talent

by Richard Dooling

Other Rights

Moral Rights *Droit Morale* and other rights

The talent may bargain for credits, for compensation, and for control. But what happens when the purchaser modifies or mutilates the work, and then, over the objection of the talent, presents the work as the work of the aggrieved artist?

Moral Rights

- Wikipedia: Moral Rights and Creator Control.
- Who is Alan Smithee?.

Granz v. Harris,

United States Court of Appeals Second Circuit (1952).

- case on Google Scholar
- case on Westlaw

Facts

Norman Granz, well-known promoter and producer of jazz concerts, had one of his concerts recorded featuring two popular pieces titled "How High The Moon" and "Lady Be Good."

Granz LICENSED Herbert Harris a record producer to manufacture and sell recordings WITH THE CREDIT LINE "Presented by Norman Granz."

Harris produced records, but he omitted 8 minutes of the original songs because the performances would not fit onto the 10-inch records Harris was using at the time.

Granz sued Harris for breach of contract. Not a copyright violation necessarily because Harris has a LICENSE.

Question becomes: Do we need "moral rights" to protect Granz?

Court says no. A contract will suffice. The contract conveying the license said that Harris could sell the recordings but only if he used the legend: "Presented by Norman Granz."

The court said that the contract IMPLIED a duty not to sell records which would make the legend "Presented by Norman Granz" a false designation by cutting 8 minutes out of the session Granz presented.

> Sale of the ten-inch abbreviated records was a breach of the contract . . . and [because] the harm to the plaintiff's reputation as an expert in the presentation of jazz concerts is irreparable, injunctive relief is appropriate.

Excerpts from *Granz v. Harris*

SWAN, Chief Judge.

We are therefore faced with the question whether the manufacture and sale by the defendant of the abbreviated ten-inch records violated any right of the plaintiff. Disregarding for the moment the terms of the contract, we think that the purchaser of the master discs could lawfully use them to produce the abbreviated record and could lawfully sell the same provided he did not describe it as a recording of music presented by the plaintiff. If he did so describe it, he would commit the tort of unfair competition. But the contract required the defendant to use the legend "Presented by Norman Granz," that is, to attribute to him the musical content of the records offered for sale. This contractual duty carries by implication, without the necessity of an express prohibition, the duty not to sell records which make the required legend a false representation. In our opinion, therefore, sale of the ten-inch abbreviated records was a breach of the contract. No specific damages were shown to have resulted. As such damages are difficult to prove and the harm to the plaintiff's reputation as an expert

in the presentation of jazz concerts is irreparable, injunctive relief is appropriate. Hence we think the plaintiff was entitled to an injunction against having the abbreviated ten-inch records attributed to him unless he waived his right. As already noted the district court found that the album cover of the shortened record was corrected "at the plaintiff's insistence," and consequently the defendant was not "attributing to the plaintiff the work of some one else." The only evidence we can discover to support the theory of waiver is the following bit of testimony by the defendant who was called as a witness by the plaintiff:

> "As soon as I have received the letter from his [Granz's] attorney, probably about a couple of weeks later or month later, I called in my attorney and he said, What is Norman Granz's complaint, and he said he wanted to see his attorney, and he said he did not like the arrangement, and that was the question discussed, change the cover."

What this testimony means is far from clear. Even if Granz's attorney requested that the cover be corrected immediately and without waiting for the case to come to trial, we are not satisfied that this would necessarily operate as a waiver of Granz's right to an injunction, if sale of the abbreviated records under the legend "Presented by Norman Granz" constituted a breach of contract or the tort of unfair competition, as we have found it did. Whether he intended to waive all claims or whether that result would follow regardless of his intention depends upon what was said and done in the negotiations regarding correction of the cover. We think the case must be remanded for additional evidence on this point and a finding as to what, if anything, Granz did consent.. . .

FRANK, Circuit Judge, (concurring).

I agree, of course, that, whether by way of contract or tort, plaintiff (absent his consent to the contrary) is entitled to prevention of the publication, as his, of a garbled version of his uncopyrighted product. This is not novel doctrine: Byron obtained an injunction from an English court restraining the publication of a book purporting to contain his poems only, but which included some not of his authorship. American courts, too, have enforced such a right. Those courts have also enjoined the use by another of the characteristics of an author of repute in such manner as to deceive buyers into erroneously believing that they were buying a work of that author. Those courts, moreover, have granted injunctive relief in these circumstances: An artist sells one of his works to the defendant who substantially changes it and then represents the altered matter to the public as that artist's product. Whether the work is copyrighted or not, the established rule is that, even if the contract with the artist expressly authorizes reasonable modifications (e. g., where a novel or stage play is sold for adaptation as a movie), it is an actionable wrong to hold out the artist as author

of a version which substantially departs from the original. Under the authorities, the defendant's conduct here, as my colleagues say, may also be considered a kind of "unfair competition" or "passing off." The irreparable harm, justifying an injunction, becomes apparent when one thinks what would be the result if the collected speeches of Stalin were published under the name of Senator Robert Taft, or the poems of Ella Wheeler Wilcox as those of T. S. Eliot.

If, on the remand, the evidence should favor the plaintiff, I think we should grant him further relief, i. e., an injunction against publication by the defendant of any truncated version of his work, even if it does not bear plaintiff's name. I would rest the grant of that relief on an interpretation of the contract.

Plaintiff, in asking for such relief, relied in part not on the contract but on the doctrine of artists' "moral right," a compendious label of a "bundle of rights" enforced in many "civil law" countries. Able legal thinkers, pointing out that American courts have already recognized a considerable number of the rights in that "bundle," have urged that our courts use the "moral right" symbol. Those thinkers note that the label "right of privacy" served to bring to the attention of our courts a common center of perspectives previously separated in the decisions, and that the use of that label induced further novel and valuable judicial perspectives.

To this suggestion there are these objections: (a) "Moral right" seems to indicate to some persons something not legal, something meta-legal. (b) The "moral right" doctrine, as applied in some countries, includes very extensive rights which courts in some American jurisdictions are not yet prepared to acknowledge; as a result, the phrase "moral right" seems to have frightened some of those courts to such an extent that they have unduly narrowed artists' rights. (c) Finally, it is not always an unmitigated boon to devise and employ such a common name. As we have said elsewhere: "A new name, a novel label expressive of a new generalization, can have immense consequences.…

Without rejecting the doctrine of "moral right," I think that, in the light of the foregoing, we should not rest decision on that doctrine where, as here, it is not necessary to do so.

Scope of Rights

Gilliam v. ABC

United States Court of Appeals Second Circuit (1976)

- Case on Westlaw, 538 F.2d 14 (2d Cir. 1976).
- Case on Google Scholar
- *Gilliam* / Monty Python case at Wikipedia.

The British comedy group Monty Python sued ABC for violating copyright and damaging their artistic reputations by broadcasting drastically edited versions of their shows.

The Second Circuit Court of Appeals ruled that ABC had arguably engaged in "actionable mutilation" and banned further broadcasts by ABC. The Court said that the Lanham Act (Trademark) could provide protection in the United States similar to that provided by moral rights in Europe and that ABC had also probably infringed Monty Python's copyright. Monty Python's original license to the BBC did not include BBC's right to drastically edit the episodes, and BBC could convey no more rights to ABC than BBC owned.

Visual Artists Rights Act of 1990 (VARA)

- Wikipedia summary of VARA.

Copyright aside, what are other property rights may be associated with works of art? What if I decide that almost nobody can afford a Picasso, so I buy one Picasso and cut it up into a thousand pieces so I can sell the pieces to interested parties. Can anybody stop me?

Exclusive rights under VARA: VARA grants the authors of certain works the following exclusive rights:

- right to claim authorship
- right to prevent the use of one's name on any work the author did not create
- right to prevent use of one's name on any work that has been distorted, mutilated, or modified in a way that would be prejudicial to the author's honor or reputation
- right to prevent distortion, mutilation, or modification that would prejudice the author's honor or reputation

Additionally, authors of works of "recognized stature" may prohibit intentional or grossly negligent destruction of a work. Exceptions to VARA require a waiver from the author in writing. To date, "recognized stature" has managed to elude a precise definition. VARA allows authors to waive their rights, something generally not permitted in France and many European countries whose laws were the originators of the moral rights of artists concept.

In most instances, the rights granted under VARA persist for the life of the author (or the last surviving author, for creators of joint works).

Covered works.

VARA provides its protection only to paintings, drawings, prints, sculptures, still photographic images produced for exhibition only, and existing in single copies or in limited editions of 200 or fewer copies, signed and numbered by the artist. The requirements for protection do not implicate aesthetic taste or value.

Totally Optional Reading & Viewing

- International Film Distribution: Striking a Deal in the Global Market
- Moral Rights and Creator Control
- Who is Alan Smithee?
- Hollywood Accounting
- 'Gump,' a Huge Hit, Still Isn't Raking In Huge Profits? Hmm.
- Jonah Hill paid $60k for *Wolf of Wall Street* role. Instead of earning his usual high-seven-figures, Hill opted to agree to SAG's "minimum wage" for the seven-month shoot, which is around $60,000 before commissions and taxes.