

Author-architects and the moral right of integrity in copyright law¹

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The agenda for current discussion in copyright law has largely been set by digital technology. But whereas issues like illegal file-sharing and fair dealing rightly occupy centre-stage, the issue of moral or author's rights has become increasingly important, particularly amongst architects of commissioned works. Buildings, plans and sketches regularly attract copyright protection if they comply with the minimum requirements of originality or individual creative contribution. Often, author-architects find themselves required to take legal action against owners of their creations: authors object to modifications of their works, arguing that these breach their integrity right, while owners point to their property rights and the change of purpose or function which necessitates lawful changes to buildings. This paper considers recent decisions in civilian jurisdictions in an analysis of the breadth of the integrity right and available remedies.

Key Words: Copyright; authorship; work of architecture; moral rights; right to integrity

Architekten als Urheber: Werkentstellung und -bearbeitung

Digitale Technik bestimmt zur Zeit größtenteils die Diskussion in und um das Urheberrecht. Während Themen wie illegales File-sharing und faires Handeln im Mittelpunkt stehen, werden jedoch auch Fragen, die das Urheberpersönlichkeitsrecht betreffen, immer häufiger gestellt, vor allem in bezug auf Architekten und deren kommissionierte Werke. Sowohl Gebäude als auch deren Pläne und Skizzen erhalten regelmäßig urheberrechtlichen Schutz, wenn sie die rechtlichen Voraussetzungen, z. B. die des individuellen schöpferischen Beitrags erfüllen. Oft sehen sich Architekten als Urheber dazu gezwungen, rechtliche Schritte gegen die Eigentümer ihrer kommissionierten Werke zu unternehmen: Urheber wehren sich gegen Veränderungen an ihren Werken durch die Besitzer, weil sie angeblich ihr Recht auf Werksintegrität verletzt, während die Besitzer sich auf ihr Besitzrecht berufen und argumentieren, daß neue Nutzungswege und Verwendungszwecke des Werkes legale Veränderungen nach sich zögen. Dieser Artikel kommentiert die neuere Rechtsprechung in ausgewählten Zivilrechtssystemen im Zuge einer Analyse des Umfangs des Rechts auf Werksintegrität und Rechtsmittel.

Key Words: Urheberrecht; Urheberpersönlichkeitsrecht; Bauwerke; Entstellung, Bearbeitung und Umgestaltung

Copyright law distinguishes between ownership and authorship, and different rights attach to the respective labels. While owners of copyright works control the economic exploitation of the work (copying, adapting, lending etc), authors hold on to what some jurisdictions call moral rights, or *droit d'auteur*, most prominently the right to be identified as author and the right to object to derogatory treatment. There are many examples of iconic buildings; indeed, specific events may herald the design of specific buildings: for some striking examples one does not have to look much further than the recent football World Cup tournament staged in South Africa. Works of architecture, i.e. buildings themselves, but also plans, sketches and models, have long enjoyed protection under copyright law. As will be seen, the term has been interpreted widely by some courts to include specifically designed gardens, while a recent decision by a US court demonstrated the narrow application of the Visual Artists Rights Act 1990 by concluding that a garden does not fall within the definition of a 'work of visual art'.

In any event, this field acts as a classic example of the ownership-authorship dichotomy: architects rarely are both, as they are usually contracted by a party to plan, design and build a particular work. That work is owned by the contracting/commissioning party, while the architect is recognised as its author. Problems occur when the owner wants to modify the work in a way the author opines mutilates their work which, in turn, harms their reputation as architects. It is

easily comprehensible that owners of buildings may want to modify aspects of them in order to modernise them, or to comply with anti-discrimination and equality legislation for example. Buildings are usually commissioned to fulfil a – sometimes public – purpose, not merely for the sake of artistic expression and admiration by the architect. The purpose of buildings may change over the years, making changes necessary. Recent decisions in civilian countries, most notably Germany, assist in the assessment of what courts take into account when attempting to balance the competing interest of owners of works of architecture and author-architects. This paper seeks to analyse the most notable German court decisions focusing on the right of integrity, drawing also from other jurisdictions by way of comparison and illustration.

International context²

Copyright laws are invariably territorial. Therefore, while most jurisdictions cater for the protection of works by copyright, there are various differences between those jurisdictions when it comes to the detail the laws afford. Moral rights are but one example: most countries may recognise the necessity to protect these, but the level of protection differs starkly. Germany and France, for example, are representatives of the civilian tradition in upholding strong, inalienable moral rights, labelling these *Urheberpersönlichkeitsrecht* and *droit d'auteur* and having protected these *authors'* rights as a matter of principle. The United Kingdom explicitly wrote moral rights into the Copyright Designs and Patents Act as recently as 1988, requiring the paternity right to be asserted by the author as well as providing that moral rights can be waived. The United States may offer some protection in common law, but the only statutory protection is given to rather self-contained subject matter in the Visual Artists Rights Act 1990.

That there should be such a wide and varying spectrum of protection for moral rights is surprising, since there are at least two major international treaties which set out to address the problems created by the territoriality principle. The Berne Convention³ 1886 introduced the first international layer of copyright regulation. Signatories would provide the same rights to both their citizens as well as citizens from other member states and agree to implement the minimum standards set by the Convention in order to generate a low-level playing field. Since its revision in 1928 the Convention provides for the protection of moral rights in Article *6bis*, namely the paternity and the integrity right. Many argue that those rights are non-transferable or inalienable, since the provision distinguishes moral rights from transferable economic rights. As alluded to above, and as illustrated by the following discussion, it is clear, however, that member states of the Convention have interpreted and implemented it (if at all) differently to the detriment of authors. The Universal Declaration of Human Rights 1948 recognises moral rights in Article 27(2) stating that “everyone has the right to protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author,” thereby furthering their international standing. However, since there is such a width of interpretation of those provisions and often delayed or watered down implementation, some of these proclamations have got a hollow ring to them. The General Agreement on Tariffs and Trade (GATT) negotiations produced the Agreement on Trade-related Aspects of Intellectual Property Rights 1994 (TRIPs) which focused almost solely on the economic interests relating to copyright. While this is to some extent understandable, as the measure was composed under the auspices of trade, it is noteworthy that TRIPs states in Article 9 that members must comply with the Berne Convention. That, in addition to the fact that TRIPs comes with a more stringent enforcement mechanism under World Trade Organisation rules, however indicates that there may have occurred an indirect strengthening of moral rights on the international plane – but one which has yet to be tested.

Moral rights protection in German law

Works of architecture are protected under German Copyright Act § 2(1) Nr. 4 if they go beyond what the Federal Supreme Court termed “general building work”.⁴ The test employed to gauge whether the work should attract copyright protection is the aesthetic impression given by the work according to the judgment of an individual who is both interested in and reasonably acquainted with artistic subject matter. Authors of copyright works enjoy what German law labels “authorial personality rights”, or moral rights. The authorial right of integrity is anchored both in §14 (objection to derogatory treatment/mutilation of a work) and §39 (objection to modifications of a work). §97 covers the availability of remedies which includes removal of the impairment, (interim) injunctions and damages; criminal penalties cannot be incurred by infringing the right of integrity (Adeney, 2006: 274-275).

The German Federal Supreme Court held on a number of occasions that the right of integrity cannot be regarded as absolute. There may be occasions, particularly in respect of works of architecture, where the owner of said building has a legitimate desire to undertake modifications. Such conflicts of interests in the law of copyright and the law of property can only be resolved by a careful balancing act according to the particular facts of each case. While the courts have developed certain criteria to be taken into consideration, their respective weighting will necessarily vary on a case by case basis. This has led to a number of intriguing disputes, some of which resulted in “knife-edge” decisions.

Obstruction or interference with the work

It is clear that an author may argue that the quality of his work and thereby his reputation are diminished by actions undertaken “peripherally” to the work. For example, a high wall, hedge or tree may obstruct or interfere with the view on a building. The question whether the right of integrity could be enacted in such circumstances was addressed by the court in the *Innenhofgestaltung* decision, an interesting dispute concerning a garden.⁵ The German translation of landscape artist is *Gartenarchitekt* which explains why this case was raised on the basis of the garden being an artistic work of copyright. The garden at issue was located in the interior courtyard of the Friedrich-Rohwedder-House in Berlin. The building itself has had a chequered history; while it hosts the Ministry of Finance these days, it used to be the centre of the Imperial Aviation Ministry in Nazi-Germany. The architect composed the garden using white travertine tiles, evergreen box tree, white tulips and rhododendron, red-flowering chestnuts and Japanese pagoda trees. The ministry planned to erect a huge, 35-tonnes steel sculpture, much to the dismay of the architect. She argued that this monstrosity infringed her right of integrity, looking for an interim injunction.

While the remedy was denied by the court, since the claimant had lodged her argument too late, it held that her legal argument based on copyright was a sound one in principle. Organic materials may be used to create an artistic work of copyright, and there were many examples of gardens which doubtless were the personally created works of the respective architects. In the case before the court the architect had put in a lot of creative effort into the expression of her idea to counter the geometric strictness of the building cast in stone with the creative force of nature, achieving a correlation between totalitarian construction and horizontal botanical architecture. The effect of the garden would be completely lost and trumped by the overbearing sculpture. Therefore, the balancing exercise of the competing interests led to the claimant’s objection to mutilation of her work having the upper hand, especially since the respondents could not point

to a particular purpose of the courtyard requiring the planned erection of the sculpture.

Naturally, such extreme factual circumstances are rare, but the judgment by a Dutch court in *An artist v The Municipality of Groningen*⁶ suggests that judges in civilian jurisdictions may generally be sympathetic to a claimant in such circumstances, especially when there is no sound public policy reason or specific purpose for the alleged interference. This dispute revolved around the painting of a ceiling in the hall of a local government building in the style of a fresco. During a renovation of the building it was decided to also repaint the walls and lay a new carpet. However, both the paint and the carpet were of a significantly darker colour, something to which the artist in question took exception. Relying on the right of integrity, the claimant argued that the surroundings of her painting being cast in a darker colour had an adverse effect on the work which itself had been left unchanged. The court agreed with the claimant, and the carpet had to be replaced and the dark painting to be undone. While not elaborating on the point directly, in all likelihood the respondent was unable to offer a plausible argument founded in public policy as to why the renovation had to be carried out in that particular way. Nevertheless it is evident that the right of integrity may be of assistance even in cases where the work itself remained untouched, but where changes made in close proximity to the work affected its presentation and effect. This considerably strengthens and widens the scope of this right.

Destruction per se does not equate to derogatory treatment

Considering the right to object to derogatory treatment the most extreme form of such modification appears to be the complete destruction of the work. While there has been debate on this point, most jurisdictions now postulate the view that the concept of destruction is located outside the right of integrity. Indeed, curiously, the only jurisdiction which recognises such a right are the United States, where moral rights generally are, at best, protected at common law, and not explicitly by statute. This point regularly leads to an argument that the United States do not fully comply with the Berne Convention. While this is not the place to expand on this discussion, it is important to point out that the only statutory provision which protects moral rights of US authors in a self-contained area of copyright works is the Visual Artists Rights Act 1990 which includes the right to prevent the destruction of a work of visual art if it is of “recognised stature”.⁷ This, however, seems to be the exception to the rule.⁸

The German Federal Constitutional Court clarified this in a decision about the construction of a memorial building, a documentation centre “Topography of Terror” based on a staged contract.⁹ The architect had started to build the memorial, but the employer then decides to terminate the agreement prohibiting the architect to move on to the next stage of the work and planning to knock down what had been built to date. The claimant relied on the right to integrity to stop the destruction of his work and to demand the completion of it. The court sided with the respondent, the only party with a right to completion according to the contract. In addition, the court reiterated that a total destruction of a copyright work could not invoke the authorial right of integrity. The owner’s property right include the right to destroy it. A further interesting argument based on the constitutional right to protection of one’s personality was also unsuccessful. The court held that damage to an author’s reputation may well lead to the infringement of that right when an author’s work had been destroyed, but that the burden of proof in such cases must be high. The mere statement that a complete destruction of a work invoked the personality right was insufficient, particularly when couple with an admission by the claimant to have signalled agreement to terminate the contract. Therefore, when author’s rights are pitched against constitutional – or human – rights, the former may emerge victorious

in truly exceptional scenarios. Another case relevant to the current discussion concerns the partial destruction of a goblet-shaped building.¹⁰ In this instance, all parts which concerned the particular shape and which formed the basis of the originality and individual creativity by the architect were to be removed. The remains of the building would not be reminiscent of the architect's input. His action based on the integrity right therefore had to fail.

Courts in other jurisdictions which follow the author's rights tradition have come to the same conclusion, albeit with a slight *caveat*. For example, the Netherlands "recognize a moral right of integrity in rather generous terms" in Article 25(1)(d) of the Copyright Act (Hugenholtz 2010: 292). In *Jelles v The Borough of Zwolle*¹¹ the architect of an office complex by the name of the Wavin Building, a typical example of 1960s architecture opposed the destruction of his work. Municipal reorganisation of the area some 40 years later aimed at replacing the building with flats for elderly people. It was mooted to use the Wavin Building for this purpose, but cost of the reconstruction for the new purpose turned out to be out of all economic proportion. The Dutch Supreme Court embarked on a detailed legal analysis of the right of integrity. It was held that deliberations that led to Article 6*bis* of the Berne Convention expressly declined to include destruction as an impairment of the right (Verzijden 2004: 10). In addition, a study of the debates in the Dutch Parliament showed that the government intended to implement the moral rights provision of the Berne Convention as it stood, without going beyond the minimum standard set. Drawing from other civilian and common law jurisdictions, the court reached the conclusion that this interpretation of the right of integrity was fully in tune with that of her judicial and legislative counterparts. But while the architect lost that argument, the court also held that the owner of the building could not just do as he pleased and destroy it at his leisure. Destruction of a unique, original work must be based on sound reasons, the author must be given notice of the intended destruction and opportunities to document the work must be provided.

Modification of the work

By far the most litigious area of the integrity right in respect of works of architecture concerns modifications made to the work either by altering plans during construction or the building itself when the building allegedly has fulfilled its original purpose. Not only does the balancing exercise between the competing interests of author and owner of the work become multi-faceted, the issue of remedies also become more varied and pronounced.

A prominent example is the *Lehrter Bahnhof* decision,¹² which had at its heart the new main railway station in Berlin. The architect Meinhard von Gerkan was contracted to plan this new station which was supposed to be modelled on the concept of "cathedral of mobility". That concept did have an effect on the status of the building externally, but also internally, with arched ceilings reminiscent of a dome. Deutsche Bahn AG, the German railway corporation who contracted von Gerkan insists on changes to the plans during the construction of the station in order to cut project costs. Amongst others, these changes affected particularly the ceiling of the main subterranean hall. The planned arched ceiling structure was replaced by a comparatively mundane and less expensive hanging flat horizontal ceiling. The author-architect, of course is not impressed. He took exception to these actions which not only deeply offended him as a professional, but also harmed his reputation. He certainly did not want to be associated with such a bland alternative which would serve to spoil the work as a whole. He demanded that the current construction was replaced with what he had originally planned – in agreement with Deutsche Bahn. The respondents pointed to the significant extra costs – around 45 million Deutschmark at the time - such a replacement would amount to, now that the station had been completed and trains were running through and stopping there.

The court held for the claimant, stating that, first of all, the work was undoubtedly a work of authorship, since it went well beyond the average creative effort of an architect. The underground arrival and departure hall with its ceiling construction was a significant part of that work, thereby enjoying copyright protection. The author is afforded the right to present his work – the expression of his individual architectural creativity - to his contemporaries and posterity without having to agree to changes which unlawfully interfere with the integrity right. Not every modification equated to interference relevant to moral rights. In this case, however, the respondent had every opportunity to negotiate what the work should eventually look like during a lengthy planning stage. Once the final plan had been agreed, the integrity right would trump any interests of the respondent, especially if they were solely of an economic nature. Unsurprisingly, this decision was widely reported and discussed.¹³ The peculiarity of the case is that the changes were made during the construction of the work by Deutsche Bahn AG; generally, one would have expected that while a completed work should preclude interference by its owner, a work under construction may sometimes require modifications. The court held that once the blueprint had been agreed, significant modifications were not permissible – a point open for discussion and, possibly, criticism: practice in construction seems to suggest that changes to plans are regularly made particularly during the construction, rather than the planning process. Previous examples revolving around the destruction or part-destruction of a work reinforce this argument. Still, moral rights enthusiasts – rightly or wrongly – regard this decision as something akin to the Holy Grail.

While von Gerkan “merely” sought compliance with his original plans, other architects sometimes seek monetary compensation in form of damages. Amounts sought and granted vary. In certain jurisdictions, e.g. France, damages amounts can run beyond the one million Euro threshold¹⁴ - although none of those cases involved architects. A decision by the Higher Regional Court Munich I shed some light on the calculation of damages.¹⁵ An architect had argued successfully that the renovation work undertaken on a secondary school he designed was contrary to his integrity right. He sought damages of 48.000 Euro which he calculated by means of licence analogy. The rationale of this type of assessment is that the wrongdoer must not be in a better position he would have been if he had entered into a licence agreement with the right holder. Therefore, reasonable royalties could be sought by the claimant. However, the court denied permission to use the licence analogy, as it was only relevant in cases of pecuniary, financial loss. In the present case, however, the loss was in the nature of solatium, i.e. hurt or injury to feelings and reputation. The court granted damages amounting to 15.000 Euro, still a comparatively high amount for the breach of the humble moral right of integrity.

As hinted at previously, French courts are often even more generous when it comes to damages claims. This may cause problems vis-à-vis the boundary to the economic rights of owners of the work, infringement of which regularly leads to considerable damages claims and accounts of profit. However, we need to remind ourselves that the author occupies centre-stage in the civilian approach to copyright. This position may well be the basis of an argument that the breach of moral rights damages the individual’s personality, getting close to their human rights, which in turn is serious and merits an appropriate reflection in compensation claims. The recent *Le Fouquet* decision is a good example, where both respondents were held to pay each compensation of 50.000 Euro.¹⁶ *Le Fouquet* is a famous restaurant/hotel in the French capital. Modifications were planned to a part of the building known as “le Carré d’or” (Ulman and Rodari 2010: 3). The purpose of the changes was to make it easier to move between different parts of the building as well as to enable the erection of a hotel around the original restaurant. To some extent, the changes were proposed based on convenience, but also further development

of the site. The court dismissed this argumentation, since the changes were not based solely on technical or administrative/regulatory necessity.

A final example on modification of a public work which led to an inflated damages claim concerned the well-known Calatrava's *Zubi Zuri* bridge in Bilbao.¹⁷ Development on one side of the footbridge required its extension over a four-lane motorway, so that safe access to the new flats and business units was provided. The city cut off some of the landing and simply added another part-bridge to it, to the annoyance of the architect. Here, the balancing act was tipped in favour of the city, due to the overriding public interest, but still a higher court awarded 30.000 Euro in damages – a far cry from the 2.5 million originally claimed!

The right of integrity – becoming infirm as it grows old

The right to integrity does not come to an end with the death of the author. Right to the contrary, like their more prominent counterparts – owners' rights of economic control and exploitation – they live on. Quite how long for they are allowed to do so differs between jurisdictions. In German law they have been given the same duration of protection, namely 70 years after the author's demise. This also means that they may come as part of the inheritance to those who are left behind. There have not been many disputes pitching the owner of a work against an heir of moral rights, but this is exactly what very recently occurred in Germany. At the heart of it all was a work of architecture.

The dispute which led to the *Stuttgarter Hauptbahnhof*¹⁸ decision features Peter Dübbers, the grandson and heir of architect Paul Bonatz in his attempt to assert his grandfather's authorial right of integrity associated with the Stuttgart railway station building. The outcome suggests that if the period of copyright protection is close to its conclusion, it may be even more difficult than usual for that right to be enforced vis-à-vis interests of the owner of the building at issue, especially when coupled with the presence of public interest for the latter to prevail.

The dispute revolves around the Stuttgart terminus railway station which was completed in the 1920s. The building is held in very high esteem amongst the architectural fraternity and regarded as one of the most important creations of its type in Europe. The owners of the construction Deutsche Bahn AG (again), however, have long been pursuing plans to turn the terminus into a through station, thereby allowing a more effective link to the European high-speed railway network. A competition led to plans for a modern underground through station which renders large parts of the terminus building, platforms and rail network, as well as the grand staircase to the booking hall obsolete. The project, known as Stuttgart 21, is has become highly political, as it comes with a considerably steep price tag in times of economic austerity. As owners of the buildings and land, Deutsche Bahn AG point to their property rights, while Peter Dübbers relies on the authorial right of integrity he inherited from the architect of the terminus, his grandfather. In short, it is a classic dispute between what some may regard as esoteric right of integrity originally awarded to an author-architect of copyright work and traditional property right of the owner of the building which was created – with the added twist that it is a member of the architect's family who inherited the right leading the fight for the preservation of his grandfather's work.

In this dispute the court had no problem to establish that the Stuttgart railway station easily surpassed the threshold of copyright protection, rendering it a work of architecture of high stature, something that incidentally was not disputed at all by the respondents. The court then restated that a general prohibition to modify a work was applicable also to owners of copyright

works: the author may forward an argument that the work he created remains in its original form. The court moved on to embark on a careful balancing act of the various interests raised by the parties.

The first key criterion which the court considered was the ranking of the work according to its individual degree of creativity. The higher the authorial creativity expressed by the work, the stronger the weighting of the author's desire in retaining the work in its original form. That desire depends on the type and the level of alleged changes to the work; in addition, the right of integrity may steadily weaken after the death of the author. Further aspects of the balancing act revolve around changes to the purpose and use of the building, as authors must expect needs owners have for buildings to change. He knows that the owner of the building required it to be created for a particular purpose – such purposes may well change for a variety of sound reasons, and this in turn may require modifications to the building itself. Therefore, the interest of maintaining a *modern* building enters the balancing act, with economic arguments permissible in support of modifications to ensure such modernity. Merely aesthetic reasons which the owner may raise, however, cannot trump the right of integrity.

It is clear that the court did not regard the matter as straightforward, as it offered a detailed analysis before reaching a knife-edge decision in favour of Deutsche Bahn AG. Although the claimant had a very strong case both in terms of the outstanding nature of the building and the comparatively drastic modifications suggested by the respondent, the owner's property rights had to prevail. The railway station in its current form had been built 90 years ago and had been subject to – agreed - changes before. However, the plan to turn the terminus into a through station leads to the underground railway to cut through the foundations which support the side wings of the original building, which the ceiling of the new station would be unable to support. Also, the grand staircase would no longer serve as entrance to the new platforms and be obsolete. Unless the side wings are demolished, it is impossible to build the new through station. In addition, the wings will no longer fulfil their original purpose to act as framework for the platforms and physical borders to the surroundings of the station: there will no longer be a terminus, and the underground platforms do not require to be architecturally boxed in with wings.

The court then emphasised that the authorial right of integrity must be regarded as substantially diminished in this particular case, as it is due to reach the end of term of protection in 2026, seventy years after Paul Bonatz' passing. It is this express notion of author's personality rights becoming infirm with age which poses a problem. It goes against the grain that authors', or moral rights which are meant to be inalienable should weaken with time. This is a new suggestion, and one which probably can only occur in respect of those type of rights. It is difficult to fathom that a court would make similar statements in respect of the rights of the owner of a copyright work; these are frantically defended up to the last day of their validity. Therefore, it is at least doubtful whether other courts will follow this particular line of argument. In addition, in the view of the court there was a strong public interest in securing a modern public transport infrastructure by means of a through station, and the respondents were under an obligation to provide such. Finally, the fact that Mr Dübbers waited to raise this action almost until the diggers and wrecking balls had been put in place to commence their destructive assignment was further tilting the balance to the right holders. The planning of Stuttgart 21 project had been going on for over a decade, and Mr Dübbers should have raised his concerns *ab initio*. Since both instances kept on returning to this point seems to suggest that it was indeed this lateness effectively prevented Mr Dübbers from succeeding. A vital lesson may be learnt not only by author-architects themselves, but also in particular their heirs to commence legal action timeously and not wait to the metaphorical final minute.

Having been refused leave to appeal, the claimant has lodged a complaint against this refusal before the Federal Supreme Court which is to be considered later in the year. It appears unlikely, however, that a court would grant the rebuilding of the already demolished north wing and rule against a project which secured planning permission many years ago – all in the name of the ever-diminishing right of integrity of an author who passed away over fifty years ago.¹⁹

Architects should be aware of authorial rights

The discussion has shown that the integrity right is multi-faceted and well protected in many civilian jurisdiction. This is particularly so in respect of works of architecture where we have seen increased judicial activity since the beginning of this century. This key moral right of authors cannot enjoy absolute status in the face of legitimate claims of modification by owners of the work in question, but authors are given an opportunity to tip their arguments in a balancing exercise against those of the proprietor. Some commentators may rightly suggest that architect-authors should accept that their authorial personality rights should be limited (Adrian 2008: 529), but this should not be equated with an acceptance that owner's rights are apparently stronger by definition. Courts have built up a wealth of experience in balancing the various interest at stake, reaching decisions that stand up to critical analysis. What authors and their heirs should keep in mind, however, that time does matter: moral rights can be compromised by delaying their defence. Finally, the Berne Convention has set the scene for a level playing field of protection, in an era of convergence, globalisation, free movement and the internet it may be timely to review Article *6bis* in the wake of differences in its implementation as well as provision of remedies amongst its noble signatories. Large payouts in damages for breach of moral rights appear inappropriate, blurring the boundaries to rights of commercial exploitation.

Notes

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| 1 | The author wishes to thank Gregory Dyke, LL.B. (Honours) student at RGU, for his contribution on the class discussion of moral rights, and Virginie Ulman and Sophie Rodari (Baker McKenzie LLP) for providing a scanned copy of the <i>Le Fouquet</i> decision. | 8 | Arguably, this provision does not comply with the parameters set by the Berne Convention. |
| 2 | See, Adeney, Elizabeth. 2006. <i>The Moral Rights of Authors and Performers. An International and Comparative Analysis</i> , chapters 5-7. | 9 | Federal Constitutional Court, 24 November 2004, 1BVR 2516/04. |
| 3 | Berne Convention for the Protection of Literary and Artistic Works 1886. | 10 | Higher Regional Court Hamburg, 3 December 2004, 308 O 690/04. |
| 4 | I ZR 166/05 – St. Gottfried decision, 19 March 2008. | 11 | Dutch Supreme Court, AN7830, 6 February 2004. |
| 5 | Regional Court Berlin, <i>Innenhofgestaltung</i> (Case No. 5 U 9667/00), 9 February 2001. | 12 | Regional Higher Court Berlin, GRUR 2007, 964 – <i>Lehrter Bahnhof</i> . |
| 6 | Regional Court Groningen, AR1050, 10 September 2004. | 13 | For a detailed discussion of the decision, see Zentner, Laura Maria. 2011. <i>Das Urheberrecht des Architekten bei der Werkverwirklichung</i> , ch. 2A. |
| 7 | Visual Artists Rights Act 1990, section 603, amending the US Copyright Act 1976, section 106A(a)(3)(B). | 14 | See Ulman, Virginie and Rodari, Sophie. 2010. 'Architectural Copyright: A Key Issue'. |
| | | 15 | Higher Regional Court Munich I, 20 January 2005, 7 O 6364/04 - <i>Gymnasium</i> (secondary school). |
| | | 16 | Tribunale de grande instance de Paris, 1 March 2010, No. 09/00827. |

- 17 Bilbao Commercial Court No. 1, 23 November 2007, No. 543/2007. For a more detailed discussion of the case and background, see Peris, José IJ. 2008. 'A bridge too far: Calatrava's bridge is copyright-protected, but not enough', *Journal of Intellectual Property Law & Practice* 3(4): 218
- 18 Higher Regional Court Stuttgart, 6 October 2010 (Case No. 4 U 106/10). The author has written two separate case notes on this decision: Lauterbach, Thorsten. 2010. 'Copyright Law: Architect's right of integrity railroad?' *TICCIH Bulletin*, 50: 6-7 and Lauterbach, Thorsten. 2011. 'A narrow defeat is still a defeat: integrity clipped before its best-before date', *Journal of Intellectual Property Law & Practice* 6(6): 371-373.
- 19 Elections held in spring 2011 swept aside the Stuttgart 21-friendly conservative-liberal leadership of the region and replaced it with a green-social-democrat coalition. The new government held a referendum on the construction of Stuttgart 21 and called a halt to all building work on the project. A decision taken in a political, rather than judicial arena could have come to Mr Dübbers' aid and the building's rescue, but the outcome of the referendum of 27 November 2011 resulted in a resounding "Yes" for the project to go ahead.

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