

PART IV
ENDNOTES AND APPENDICES

ENDNOTES MAJORITY VIEWS

1. Within the framework of the Copyright Act authors and artists are the creators of works. The Act specifically protects literary, dramatic, musical and artistic works. However, the Act also affords protection to subject-matter other than works these other subject matters are broadcasts, sound recordings, cinematography films and published editions. (Unlike works, which are generally created by the efforts of one or small number of individuals, the creation of subject-matter other than works usually involves the efforts of a large number of people for example, the making of a cinematography film may involve tens or even hundreds of people working together.)
 2. It is noted that three Bills have been introduced this year before the United States Congress to enable United States adherence to the Berne Convention. The first, H.R.1623 makes express provision for limited moral rights protection, the other two S.1301 and H.R.2962 contain no provisions relating to moral rights. This is explained on the basis that the general United States law, including section 43(a) of the Lanham Act is considered to provide sufficient protection to comply with the requirements of Article 6 bis of the Convention.
 3. See pages 97 to 108 Conclusions Part 111 Minority Views.
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4. See clause 72 and 73 of the United Kingdom Copyright, Designs and Patent Bill of October 1987.
 5. See clause 76 of the United Kingdom Bill.
 6. See clause 84 of the United Kingdom Bill and clause 12.1(2) of the Canadian Copyright Bill of May 1987.
 7. See clause 72(6) of the United Kingdom Bill and clause 3 **of** the Canadian Bill.
 8. See page 101 paragraph 180 Conclusions Part III Minority Views.
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ENDNOTES MINORITY VIEWS

1. Skone James, E.P. et al, Copinger and Skone James on Copyright, 12th Ed., London, Sweet & Maxwell, 1980, 6,
 2. Kwall, R.R., 'Copyright and the Moral Right: Is an American Marriage Possible?' (1985) 38 Vanderbilt Law Review 1, 2.
 3. This figure is taken from a listed summary of provisions protecting moral rights in other countries prepared by Helen Daniels, International Trade Law and Intellectual Property Branch, Attorney-General's Department.
 4. Sarraute, R., 'Current Theory on the Moral Right of Authors and Artists Under French. Law' (1968) 16 American Journal of comparative Law 465, 465.
 5. The Berne Convention for the Protection of Literary and Artistic Works, entered into force on 5 December 1887. In January 1983 there were 74 signatories to the Convention. This text is taken from the latest revision of Article 6 bis, agreed upon in Paris in 1971.
 6. Article 27 Universal Declaration of Human Rights, 6 United Nations Bulletin 6 (No. 11 January 1949).
 7. Report of the Copyright Law Review Committee, 1959, Commonwealth Government Printer, Canberra, 1959.
 8. Id. 90.
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9. United Kingdom Copyright Committee (Gregory Chairman), Report, Cmd 8662 (1952), 81.
 10. United Kingdom Department of Trade and Industry, White Paper on Intellectual Property and Innovation, (1986).
 11. Id. 73.
 12. For a discussion of the 'monist' and 'dualist' views see Das Silva, R.J., 'Droit Moral and the Amoral Copyright: A Comparison of Artists' Rights in France and the United States' (1980) 28 Bulletin of the Copyright Society of the USA 1.
 13. Dietz, A., Copyright in the European Community, Sijthoff & Noordhoff, Alphen aan den Rijn, 1978, 69.
 14. Sarraute, op.. cit. 466-467.
 15. Ibid.
 16. I d . 4 7 9 .
 17. Martin, S. and Bick, P., Moral Rights for Artist. A Report Prepared for the Australia Council, October 1983.
 18. Id. 6
 - 1.9. Sarraute, op. cit. 479.
 20. Ubertazzi, L.C., 'Copyright and the Free Movement of Goods' (1985) 16 International Review of Industrial Property and Copyright Law 46, 75.
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21. Cass. civ. May 14, 1900, D.P. 1900.1.500, quoted in Sarraute, op. cit. 467.
 22. D.P. 1931.2.88, quoted in Sarraute, op. cit. 468.
 23. Sarraute, op. cit. 469-470.
 24. See The Roualt Case and The Bonnard Case both quoted in Sarraute, op. cit. 477.
 - 25 . Sarraute, op. cit. 477.
 26. Ibid.
 - 27 . Strauss, W., 'The Moral Right of the Author' (1955) 4 American Journal of comparative Law 506, 508.
 28. Ibid. `
 29. Sarraute, op.cit. 478.
 30. Strauss, op. cit. 509.
 31. Id; 508. `.
 32. Id. 509.
 33. Gaz. Pal. 1965.2.126, quoted in Sarraute, op. cit. 480.
 34. Judgement of 29 April, 1970, quoted in Marcus 'Moral Right of the Artist in Germany' (1980) 25 Copyright Law Symposium (ASCAP) 93, 105.
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35. Marcus, op. cit. 107.
 36. National Times, 23.5.86.
 37. (1955) Foro. Ital. 1.717, quoted in Feary, G., The Moral Right of Authors, Dissertation dated 1 October 1983, 16.
 38. 1953 D.A. 1954, 16, 80, quoted in Strauss, op. cit. 534.
 39. Feary, Grant, 'The Moral Rights of Authors' (1983) 18.
 40. see The Melo Case Gaz. Pal. 1933.2.606, quoted in Sarraute, op. cit. 481.
 41. Sarraute, op. cit. 481.
 42. Feary, op. "cit. 23-24.
 43. Ibid.
 44. Sarraute, op. cit. 478.
 45. Desbois, Le droit D'Auteur En France, 2nd Ed., Dalloz, Paris, '1966, quoted in Feary, op. cit. 31.
 46. Feary, op. cit. 31.
 47. D.H. 1933.533. Also known as The Melo Case see note 40 above, quoted in Strauss, op. cit. 516.
 48. Cour D'Appel, Paris, 15 November 1966, quoted in Sarraute, op. cit. 478.
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49. Amarnick, 'American Recognition of the Moral Right: Issues and Options' (1983) 29 Copyright Law Symposium (ASCAP) 31, 47-48.
 50. Martin and Bick, op. cit. 46.
 51. Kwall, op. cit. 15.
 52. Ricketson, S., The Law of Intellectual Property, Sydney, The Law Book Company Limited, 1984, 370-1, 1136.
 53. Kwall, op. cit. note 54 pg 14.
 54. Skone James, op. cit. 582.
 55. Ricketson, S., op. cit. 431.
 56. Cornish, W.R., Intellectual Property: Patents, Copyright, Trade Marks and Allied Right, London, Sweet & Maxwell, 1981, 396.
 57. Lahore, J., Intellectual Property Law in Australia, Copyright, Sydney, Butterworths, 1977, 379.
 58. Laddie, H., Prescott, P., Vitoria, M., The Modern Law of Copyright, London, Butterworths, 1980, 483.
 59. United Kingdom Department of Trade and Industry, op. cit. 73.
 60. International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, entered into force on 18 May 1964. Australia is not a member of this Convention.
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61. Report of the Copyright Law Review Committee, 1959, op. cit. 10.
 62. Vaver, D., 'Authors' Moral Rights in Canada' (1983) 14 International Review of Industrial Property and Copyright Law 329, 369-370.
 63. Government of Canada, From Gutenberg to Telidon, A White Paper on Copyright, 1984, 26.
 64. Id. 58.
 65. Note 3 supra.
 66. Lahore, J.C., with Griffith, P.B.C., Copyright and the Arts" in Australia, Melbourne, Melbourne University Press, 1974, 168.
 67. Martin and Bick, op. cit. see chapter 5.
 68. Id. 64.
 69. Id. 67-71.
 70. The Arts Law Centre of Australia, Submission to the Copyright Law Review Committee, 11 December 1984, 4.
 71. The Australian Writers' Guild Ltd., Submission to the Copyright Law Review Committee, 19 December 1984, 1.
 72. Heathcote, C., Submission to the Copyright Law Review Committee, 26 December 1984, 7.
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73. Stromholm, S., 'Droit Moral - The International and Comparative Scene from a Scandinavian Viewpoint' (1983) 14 International Review of Industrial Property and Copyright Law 1, 14..
 74. Id. 15.
 75. Clark, J.F., Submission to the Copyright Law Review Committee, 26 September 1985, 1.
 76. Patterson, 'Copyright and Authors' Rights: a look at history' (1968) 16 Harvard Lib. Bull. 370, 382-383.
 77. Ladd, D., 'Securing the Future of Copyright: A Humanist Endeavour' (1985) 16 International Review of Industrial Property and Copyright Law 76, 77.
 78. Id. 78.
 79. Stewart, Stephen Q.C., 'International Copyrights in the 1980s' (1981) 28 Bull. Copyright Society (351, 369).
 80. Id. 369 - 370.
 81. Ladd, op. cit. 79 - 80.
 82. Davies, G., 'New Technology and Copyright Reform' (1984) 12 European Intellectual Property Review 335, 337.
 83. Stromholm, op. cit. 2.
 84. Ladd, op. cit. 80.
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85. Davies, op. cit. 87.
 86. See pg. 23.
 87. Australian Book Publishers' Association, Submission, January 1985; Newspaper Publishers' Association of Melbourne, Submission, 3 December 1985; Short, T., Submission, December 1984.
 88. Martin and Bick, op. cit. 79.
 89. The Australian Writers' Guild Ltd., op. cit. 4.
 90. Stromholm, op. cit. 5.
 91. Preston v. Raphael Tuck & sons Limited [1926] 1 Ch. 667.
 92. Carlton" Illustrators v. Coleman & Co. [1911] 1 K.B. 771, 780.
 93. Id.
 94. See, for example, Joseph v. National Magazine Co. Ltd. [1975] 1 Ch. 14.
 95. (1975) 7 ALR 233.
 96. Goldstein, P., 'Adaptation Rights and Moral Rights in the United Kingdom, the United States and the Federal Republic of Germany' (1983) 14 International Review of Industrial Property and Copyright Law 43, 49.
-

97. Id. 50.
 98. App. Paris, March 19, 1947, D.P. 1949.20, quoted in Sarraute, op. cit. 469.
 99. Ibid.
 100. Art Direction Ltd. v. Needham (NZ) Ltd., 7 Anon [1977] 2 NZLR 12, quoted in Ricketson, op. cit. 318.
 101. See, for example, Rigby v. Connol (1880) 14 Ch. D. 482, 487 per Jessel Mr..
 102. Sarraute, op. cit. 447.
 103. Id. 485.
 104. Martin and Bick, op. cit. 31.
 105. Australian Writers' Guild Ltd., op. cit. 2.
 106. The Arts Law Centre of Australia, op. cit. 1.
 107. The Australian Copyright Council Ltd., Submission to the Copyright Law Review Committee, 7 January 1985, 1.
 108. California and New York both have limited moral rights protection for the fine arts.
 109. 15 USC s 1125(a) (1982).
 110. See Kwall, op. cit. note 68, pg 18.
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111. Goldstein, op. cit. 59.
 112. Short submission, op. cit. 1.
 113. Goldstein, op. cit. 46.
 114. Lahore with Griffith, op. cit. 169.
 115. Clark Submission, op. cit. 5.
 116. Ibid.
 117. Stromholm, op. cit. 7 - 8.
 118. Short submission, op. cit. 3.
 119. Walker, Frank, Minister for the Arts (N.S.W.) letter to Chairman dated" 1/10/87.
 - 120 . The Royal Australian Institute of Architects, Submission to the Copyright Law Review Committee, 29 November 1984, 1; The Arts Law Centre of Australia, op. cit. 4.
 121. The Museums and Art Galleries of the Northern Territory, Submission to the Copyright Law Review Committee, 22 October 1985.
 122. The Arts Law Centre of Australia, op. cit. 4.
 123. The Victorian Ministry for the Arts, Submission to the Copyright Law Review Committee, January 1986, 2.
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124. The Crafts Council of Australia, Submission to the Copyright Law Review Committee, 28 December 1984.
125. The Australian Vice-Chancellors' Committee, Submission to the Copyright Law Review Committee, 23 December 1985.
126. Note 36 supra.
127. See Martin and Bick, op. cit. 67.
128. Id. 64 - 72.
129. Short, op. cit.; Newspaper Publishers' Association of Melbourne, op. cit.
130. The Australian Newspaper Council, Submission to the Copyright Law Review Committee, 10 April 1986; Regional Dailies of Australia Limited, Submission to the Copyright Law Review Committee, 18 October 1985.
131. Clark submission, op. cit.
132. Federation of Australian Radio Broadcasters, Submission to the Copyright Law Review Committee, 19 December 1984.
133. The Australian Advisory Council on Bibliographical Services, Submission to the Copyright Law Review Committee, 17 November 1985.
134. Brisbane City Council, Submission to the Copyright Law Review Committee, 20 December 1985; Corporation of the City of Adelaide, Submission to the Copyright Law Review Committee, undated.

135. The Australian Copyright Council of Australia, *op. cit.* 4.
 136. McDonald, M., Submission to the Copyright Law Review Committee, February 1985, 2.
 137. The Australian Film and Television School, Submission to the Copyright Law Review Committee, February 1985, 2.
 138. Sarraute, *op. cit.* 474.
 139. The Australia Council, Submission to the Copyright Law Review Committee, 25 January 1985; Actors Equity Submission to the Copyright Law Review Committee, 20 May 1985.
 140. Note 59 *supra*.
 141. The Australian Newspapers Council, Submission to the Copyright Law Review Committee, 10 April 1986.
 142. Newspaper Publishers' Association of Melbourne, *op. cit.* 12.
 143. Article 20(2)(iii) of the Law No. 48 of 1970, Japan.
 144. Australian Copyright Council Ltd., *op. tit.*, 5.
 145. *Id.* 4 - 5.
 146. Sarraute, *op. cit.* 478.
 147. Brisbane City Council, *op. cit.*; Corporation of the City of Adelaide, *op. cit.*
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148. Sarraute, op. cit. 474.
 149. Kwall, op. cit. note 48, pg 13.
 150. Sarraute; op." cit. 475.
 151. Id. 485.
 152. Goldstein, op. cit. 56.
 153. Gaz. Pal. 23 May 1953, quoted in Feary, op. cit. 23.
 154. Civ. Trib. Seine (1955) 6 R.I.D.A. 133, quoted in Feary, op. cit. 23.
 155. The Australian Copyright Council Ltd., op. tit, 4 - 5.
 156. Ibid.
 157. Stromholm, op. Cit. 35.
 158. Roeder, M.A., 'The Doctrine of the Moral Right: A Study in the Law of Artists, Authors and Creators*' (1970) 53 Harvard Law Review 544, 571.
 159. Sarraute, op. cit. 481.
 160. Note 136 supra.
 161. Note 136 supra.
 162. Martin and Bick, op. cit.
 163. The Arts Law Centre of Australia, op. cit. 10.
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APPENDIX 1

ORGANISATIONS AND INDIVIDUALS FROM WHOM SUBMISSIONS WERE RECEIVED

Australian Advisory Council on Bibliographical Services (AACOBS)	17 Nov 1985
The Art Gallery of Western Australia	27 Aug 1985
The National Association for the Visual Arts	12 Jun 1985
Art Gallery of Western Australia	24 Jun 1985
Penrith City Council - The Lewers Bequest and Penrith Regional Art Gallery	Jun 1985
Actors Equity of Australia	20 May 1985
Department of Local Government	29 Apr 1985
Australian Film.. and Television School	28 Feb 1985
Australian Book Publishers Association	31 Jan 1985
Australia Council	25 Jan 1985
State Library of New South Wales	24 Jan 1985
Australian Copyright Council	7 Jan 1985
Crafts Council of Australia	28 Dec 1984
Christopher R Heathcote	26 Dec 1984
The Community Theatre Groups of N.S.W.	20 Dec 1984
The Biennale of Sydney	20 Dec 1984
Federation of Australian Radio Broadcasters	19 Dec 1984
Australian Writers Guild Ltd	19 Dec 1984
Victorian Fellowship of Australian Writers	15 Dec 1984
Phillips, Fox and Masel	14 Dec 1984
The Arts Law Centre of Australia	11 Dec 1984
Geo W. Bell	9 Dec 1984
Fellowship of Australian Writers	8 Dec 1984

The Australian Press Council	4 Dec 1984
The South Australian Institute of Technology (Mr Tony Short)	Dec 1984
The Royal Australian Institute of Architects	29 Nov 1984
Local Government Association of" NSW - Shires Association of NSW	23 NOV 1984
National Library of Australia	13 Nov 1984
The Society of Women Writers Australia	31 Ott 1984
The Arts Law Centre on behalf of Annett Bezor	21 Aug 1984
Mr A.G. Wells (Wildlife Photos W.A.)	28 Jan 1984
Mr Grant Feary	16 Jan 1984
Mr Lawrence Beck	2 Sep 1983

APPENDIX 2

SUBMISSIONS RECEIVED FROM GOVERNMENT AUTHORITIES, EDUCATION
AUTHORITIES, PUBLISHERS AND POSTCARD MANUFACTURERS

Mr Frank Walker, NSW Minister for the Arts	1 Oct 1987
Victorian Ministry for the Arts	20 Mar 1986
Office of the Minister for the Arts (NSW)	16 Jan 1986
Australian Vice Chancellors' Committee	23 Dec 1985
Brisbane City Council	20 Dec 1985
Newspaper Publishers Association of Melbourne	18 Dec 1985
Corporation of the City of Adelaide	3 Dec 1985
Northern Territory Museum of Arts and Sciences	22 Oct 1985
Regional Dailies of Australia Limited	18 Oct 1985
Kuring-gai College, of Advanced Education (J.F. Clark)	2 Oct 1985
City of Hobart	9 Sep 1985

COPYRIGHT ACT 1968
PART IX - FALSE ATTRIBUTION OF AUTHORSHIP

Interpretation

189. In this Part, 'name' includes initials or a monogram.

Duty not to attribute falsely the authorship of a work

190. (1) A person (in this sub-section referred to as *the offender') is, by virtue of this section, under a duty to the author of a work not to -
- (a) insert or affix another person's name *in* or on the work, or in or on a reproduction of the work, in such a way as to imply that the other person is the author of the work;
 - (b) publish, sell or let for hire, by way of trade offer or expose for sale. or hire, or by way of trade exhibit in public, the work with another person's name so inserted or affixed, if the offender knows that the other person is not the author of the work;
 - (c) do any of the acts mentioned in the last preceding paragraph in relation to, or distribute, reproductions of the work, being reproductions in or on which another person's name has been so inserted or affixed, if the offender knows that the other person is not the author of the work; or
 - (d) perform in public or broadcast the work as being a work of which another person is the author, if the offender knows that the other person is not the author of the work.
- (2) The last preceding sub-section applies where, contrary to the fact, a work is represented as being an adaptation of the work of another person in like manner as it applies where a work is represented as being the work of another person.
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(3) After the death of the author of a work, a person is, by virtue of this section, under a duty to the legal personal representative of the author not to do in relation to, or to a reproduction of, the work or an adaptation of the work any act that, but for the death of the author, the person would, by reason of either of the last two preceding sub-sections, have been under a duty to the' author not to do.

(4) In this section, 'work' means a work in which copyright subsists.

Duty not to attribute falsely the authorship of altered work

191. Where a work in which copyright subsists has been altered by a person other than the author of the work, a person, is by virtue of this section, under a duty to the author of the work not to -

(a) publish, sell or let for hire, or by way of trade offer or "expose for sale or hire, the work as so altered, as being the unaltered work of the author; or

(b). publish, sell or let for hire, or by way of trade offer or expose for sale or hire, a reproduction of the work as so altered, as being a reproduction of the unaltered work of the author,

if, to his knowledge, it is not the unaltered work or a reproduction of the unaltered work, as the case may be, of the author.

Duty not to attribute falsely the authorship of reproduction of artistic work

192. A person is", by virtue of this section, under a duty to the author of an artistic work in which copyright subsists not to -

(a) publish, sell or let for hire, by way of trade offer or expose for sale or hire, or by way of trade exhibit in public, a reproduction of the work, as being a reproduction made by the author of the work; or

(b) distribute reproductions of the work as being reproductions made by the author of the work,

where the reproduction was, or the reproductions were, to his knowledge, not made by the author.

Breach of duty not committed if act done outside Australia or done with permission

193. The doing of an act by a person is not a breach of a duty owed by that person to another person by virtue of this Part if the act was done outside Australia or was done with the permission; whether express or implied, of that other person.

Action for breach of duty

194. (1) Where a person commits a breach of a duty owed by him to another person by virtue of this Part, the breach is not an offence against this Part but the other person may bring an action in respect of the breach.

(2) Subject to section 203, the relief that a court may grant in an action under the last preceding sub-section includes an injunction (subject to such terms, if any, as the court thinks fit) and damages.

(3) Where, in respect of an act done in relation to, or to a reproduction of, a work or an adaptation of a work after the death of the author of the work, damages are recovered under this section by the legal personal representative of the author, those damages devolve as if they formed part of the estate of the author and as if the right of action in respect of the doing of that act had subsisted, and had been vested in the author, immediately before his death.

Saving of other rights and remedies

195. (1) Subject to this section, this Part does not affect any right of action or other remedy, whether civil or criminal, in proceedings instituted otherwise than by virtue of this Part.

(2) Any damages recovered in proceedings instituted by virtue of this Part shall be taken into account in assessing damages in proceedings instituted otherwise than by virtue of this Part and arising out of the same operation or transaction.

(3) Any damages recovered in proceedings instituted otherwise than by virtue of this Part shall be taken into account in assessing damages in proceedings instituted by virtue of this Part and arising out of the same operation or transaction.

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