

Copyright Law

Prof. Madison

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Topics:

- “Moral Rights” (adapted from *droit moral*)
- US “economic” rights in © v. “author’s right(s)”

The VARA and Section 106A

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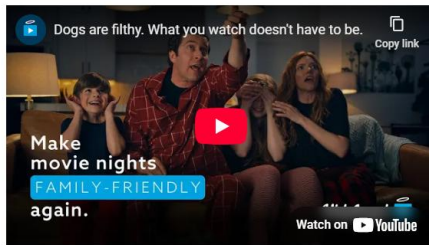
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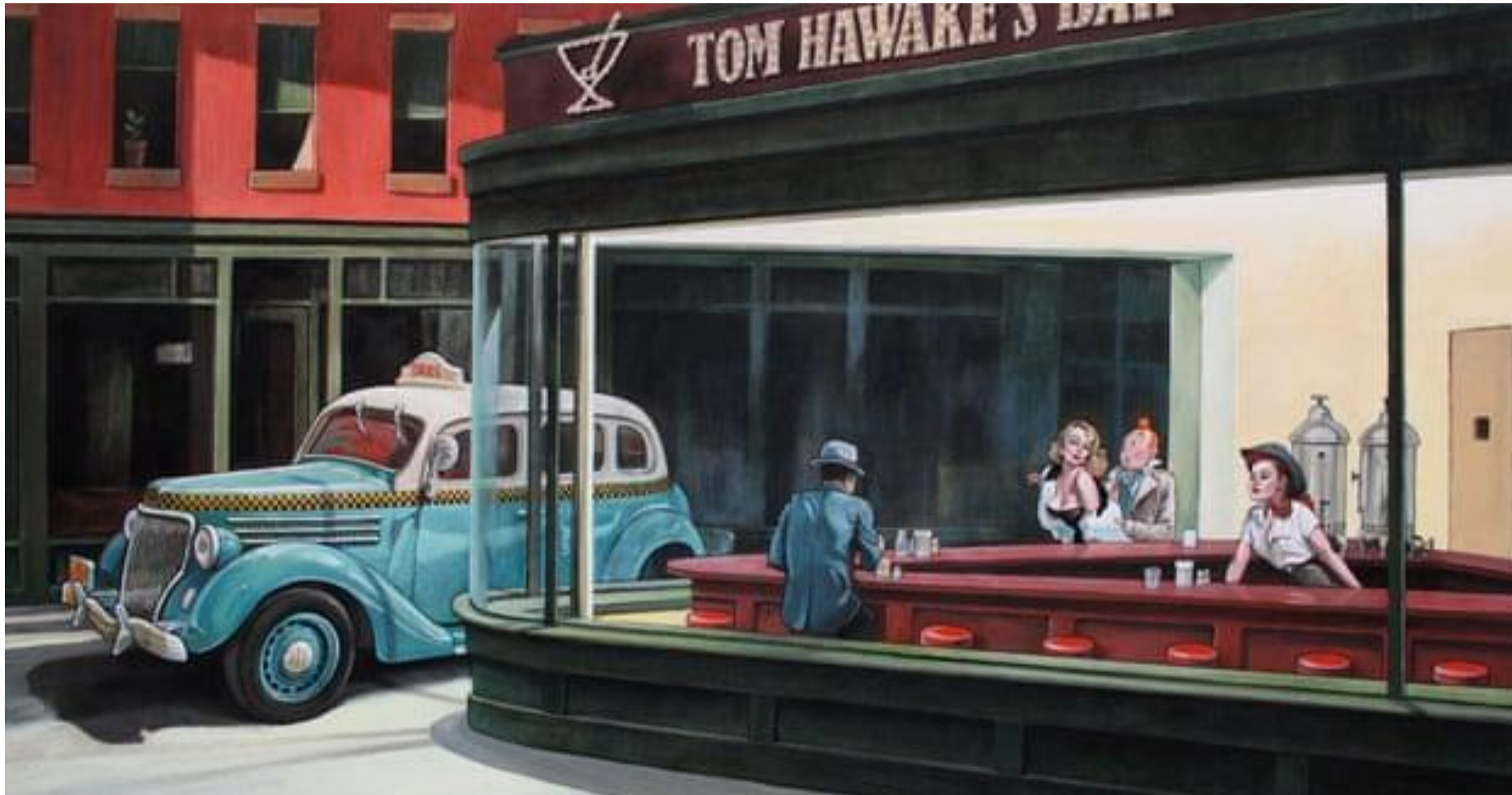
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“Moral” rights: The author’s interests in controlling [their] [the work’s] identity and reputation [conceptually similar to adaptation rights, but doctrinally separate]



From France: Heirs of Hergé (Belgian creator of comic character **Tintin**) sue Marabout, French creator of “mashups.” Here, Hergé and Hopper; Tintin and pin-up girls. Hergé objects to the sexualization of Tintin, and argues (really) that the work cannot be parody, because women are not comic.

For the result: see <https://www.theguardian.com/books/2021/may/12/tintin-heirs-lose-legal-battle-over-artists-edward-hopper-mashups>

“Moral” rights: based on the French “droit moral,” rather than based on “morality”

In many European copyright systems, *droit moral* – author’s right – includes several possible legal doctrines, each of which has its origins in *reputational* and *identity/autonomy* interests of creators, rather than in any *economic (incentive-related)* interests:

1. Right to claim accurate authorship of the work (as creator or performer) (*droit de paternité*)
2. Right to *disclaim* authorship of the work (right to avoid false attribution) (*droit au respect de son nom*)
3. Right to publish the work (*droit de divulgation*)
4. Right to withdraw the work from public circulation (*droit de retrait et de repentir*)
5. Right to object to any distortion of the work and to not have the work subjected to derogatory treatment (right of integrity) (*droit au respect de l'œuvre*)
6. Resale rights (often known as *droit de suite*)

Exactly why?

- Works of the mind as the “children” of the creator? (“This painting is my offspring”; I have the (metaphorical) rights of parentage, i.e., to control and look out for the best interests of my (minor) children) [?]
- Works of the mind as evidences and instances of the (personality) (spirit) (soul) (identity) of the creator himself/herself/themselves? (“This painting is me”) [?]

A note from Gary Larson

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A Note from Gary Larson

RE: Online Use of Far Side Cartoons

TO WHOM IT MAY CONCERN:

I'm walking a fine line here.

On the one hand, I confess to finding it quite flattering that some of my fans have created web sites displaying and / or distributing my work on the Internet. And, on the other, I'm struggling to find the words that convincingly but sensitively persuade these Far Side enthusiasts to "cease and desist" before they have to read these words from some lawyer.

What impact this unauthorized use has had (and is having) in tangible terms is, naturally, of great concern to my publishers and therefore to me -- but it's not the focus of this letter. My effort here is to try and speak to the intangible impact, the emotional cost to me, personally, of seeing my work collected, digitized, and offered up in cyberspace beyond my control.

Years ago I was having lunch one day with the cartoonist Richard Guindon, and the subject came up how neither one of us ever solicited or accepted ideas from others. But, until Richard summed it up quite neatly, I never really understood my own aversions to doing this: "It's like having someone else write in your diary," he said. And how true that statement rang with me. In effect, we drew cartoons that we hoped would be entertaining or, at the very least, not boring; but regardless, they would always come from an intensely personal, and therefore original perspective.

To attempt to be "funny" is a very scary, risk-laden proposition. (Ask any stand-up comic who has ever "bombed "on stage.) But if there was ever an axiom to follow in this business, it would be this: be honest to yourself and -- most important -- respect your audience.

So, in a nutshell (probably an unfortunate choice of words for me), I only ask that this respect be returned, and the way for anyone to do that is to please, please refrain from putting The Far Side out on the Internet. These cartoons are my "children," of sorts, and like a parent, I'm concerned about where they go at night without telling me. And, seeing them at someone's web site is like getting the call at 2:00 a.m. that goes, "Uh, Dad, you're not going to like this much, but guess where I am.

I hope my explanation helps you to understand the importance this has for me, personally, and why I'm making this request.

Please send my "kids" home. I'll be eternally grateful.

Most respectfully,

Gary Larson

Published in 2007.
He changed his mind.
Sort of. In 2019.

1983

What we say to dogs

Okay, Ginger! I've had it!
You stay out of the garbage!
Understand, Ginger? Stay out
of the garbage, or else!



What they hear

blah blah GINGER blah
blah blah blah blah
blah blah GINGER blah
blah blah blah blah...



The cartoon that started it all.

“Moral” rights in the US: The VARA and Section 106A

US copyright law includes no general “moral” rights (*droit moral*) for authors (rights to be credited as the author, rights to prevent modification or destruction of the work). US © consists of “economic” rights rather than the “author’s” right. BUT Berne Art. 6bis!, so:

[Added 1990] Sec. 106A: (a) RIGHTS OF ATTRIBUTION AND INTEGRITY.—Subject to section 107 and independent of the exclusive rights provided in section 106, **the author of a work of visual art—**

(1) shall have the right—

(A) to claim authorship of that work, and

(B) to prevent the use of his or her name as the author of any work of visual art which he or she did not create;

(2) shall have the right to prevent the use of his or her name as the author of the work of visual art in the event of a distortion, mutilation, or other modification of the work which would be prejudicial to his or her honor or reputation; and

(3) subject to the limitations set forth in section 113(d), shall have the right—

(A) to prevent any intentional distortion, mutilation, or other modification of that work which would be prejudicial to his or her honor or reputation, and any intentional distortion, mutilation, or modification of that work is a violation of that right, and

(B) to prevent any destruction of a work of recognized stature, and any intentional or grossly negligent destruction of that work is a violation of that right.

“Moral” rights in the US: The VARA and Section 106A

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17 U.S.C. § 106A (2022)

A **“work of visual art”** is—

(1) a painting, drawing, print, or sculpture, existing in a single copy, in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author, or, in the case of a sculpture, in multiple cast, carved, or fabricated sculptures of 200 or fewer that are consecutively numbered by the author and bear the signature or other identifying mark of the author; or

(2) a still photographic image produced for exhibition purposes only, existing in a single copy that is signed by the author, or in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author.

A work of visual art does not include—

(A)(i) any poster, map, globe, chart, technical drawing, diagram, model, **applied art**, motion picture or other audiovisual work, book, magazine, newspaper, periodical, data base, electronic information service, electronic publication, or similar publication;

(ii) any merchandising item or advertising, promotional, descriptive, covering, or packaging material or container;

(iii) any portion or part of any item described in clause (i) or (ii);

(B) any work made for hire; or

(C) any work not subject to copyright protection under this title.

17 U.S.C. § 101 (2022)

The VARA and Section 106A



MassMOCA v. Buchel (1st Cir. 2010)

“Training Ground for Democracy”

Is an incomplete work a “work of visual art”?



The VARA and Section 106A



Cheffins v. Stewart (9th Cir. 2016)

Is the defendant liable for a VARA violation when it destroyed a *Burning Man* “sculpture” – a wooden ship frame mounted on a school bus?

Is the “sculpture” (the object) a work of applied art (“underneath the ship, it’s a bus”)?
Or a work of visual art?

The VARA and Section 106A



“Aerosol art”? Are these works of “recognized stature”?

Castillo v. G&M Realty L.P. (2d Cir. 2020)

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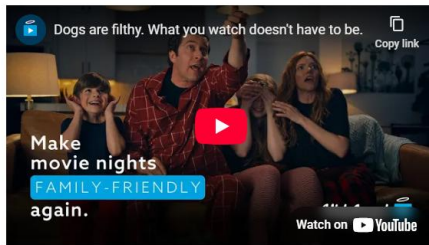
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THE END

A woman with blonde hair, wearing a black dress, stands in a control room. She is looking at a large screen that displays the words "THE END" in a grid of lights. The room is filled with vintage electronic equipment, including control panels with dials and switches, and a desk with a typewriter and a printer. The overall atmosphere is that of a classic television studio or a control room from the mid-20th century.