Colourisation and the Right to Preserve the Integrity of a Film: a Comparative Study between Civil and Common Law

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Authors' moral rights and the dichotomy regulation between civil and common law

Essentially the world of copyright is divided into two fundamentally different ideal types, one that includes moral rights, and another that excludes moral rights.

Common law countries set their rights' principles in the idea of property. Civil law countries are more concerned about authors as individuals and less interested in economic rights. Anglo-Americans understand the meaning of authors' moral rights, but they give them a secondary importance in respect to the civil law countries. Common law courts were fully cognisant of these two ways of protection: while they recognised the existence of the concept of moral rights in civil law countries, they completely and uniformly rejected their applicability in their own jurisdictions.

It has been a rule of comparative copyright scholarship that the most significant difference between Anglo-American and Continental European copyright law was their respective attitudes toward moral rights.[1] Moral rights protect the personality and the reputation of the creator, rather than the purely monetary value of a work.

In film, they give creators the right to be identified as authors; to object to the derogatory treatment of the film, which amounts to a distortion or mutilation or is otherwise prejudicial to the honour or reputation of the authors.

The extremely different recognition of moral rights to filmmakers in civil law and in common law countries provokes disorganisation and causes problems in the recognition of rights granted to them. Also, it seems unreasonable that a filmmaker, to see their rights recognised, has to settle a lawsuit in Europe and cannot advocate his requests in the country where the infringement occurred. Then it is inexplicable that when a filmmaker wins a lawsuit for moral right's infringement in Europe, the decision still does not have any worldwide value and so on the other side of the Atlantic the audience can still watch a film in the way that was judged against the artist or that was repudiated by the creator.

An example is the colourisation of a film that can be judged against the artist's will in Europe, where the broadcasting of such a film had been banned because it was considered a mutilation or a distortion of the original version of the motion picture, but in the United States it is considered perfectly legal. This means that in the United States, the audience can watch a colourised version of a film, but not in France or in Italy. The result is that in common law countries the rights granted to a filmmaker, when he has sold his film, are really restricted and that is problematic, especially after the recognition of the Berne Convention by the United States.

Film as an example of disputes about moral rights?

Legal problems related to moral rights in films and new technologies have mainly centred on digital colourisation of black and white feature films and litigation about digital re-colouring of black and white masterpieces; damage to the integrity right of a work through the addition of breaks on TV and through the insertion of commercial advertisements and other extraneous content during broadcasts of films and other works; editing by broadcasters, distributors and other entities that damages the integrity of a feature film or other work: does slicing, dicing and bowdlerising film and video programming destroy its integrity?[2]

Sometimes in countries where moral rights are not taken into consideration, authors prefer to distance themselves from what they created rather than be recognised for them. Thus some filmmakers have sought to disassociate themselves from works that they consider mutilated by studios. This way is better known as the anecdote of "Alan Smithee and friends".[3]

The work is then evidence of the skill of the artist,[4] so to judge a legal case related to moral rights in films it is has to be considered if the author is still living or not because if the artist is still living, he can clarify his intentions and preferences for the presentations of their work. If the artist is no longer living, modifications are objectionable: an additional piece of information about

[1] See Cyrill P. Rigamonti, *Deconstructing Moral Rights* also available at *http://www.harvardilj.org/online/58* [Accessed October 17, 2010].
[2] See *http://www.caslon.com.au/mrcasesnote2.htm* [Accessed October 17, 2010].
[3] "*Who Is Alan Smithee?*" (2002), is a documentary on the elusive director Alan Smithee which was first shown on the American Movie Classics (AMC) cable channel. We learn where the name came from and why the Directors Guild of America (DGA) first allowed his name to be used on Richard Widmark's western *Death of a Gunfighter* (1969). The film follows the numerous problems that director Tony Kaye had during the production and post-production of the film American History X (1998) and why the DGA refused to allow Alan Smithee to be credited for that film. See David Glagovsky also available at *http://www.imdb.com/title/tt0279641/plotsummary* [Accessed October 17, 2010].
[4] If the artist is still living to clarify his or her intentions and preferences for the presentation of the work, we are more likely to feel an obligation to defer to the artist's wishes, available at *http://www.contempaesthetics.org/newvolume/pages/article.php?articleID=254* [Accessed October 17, 2010].

the artist's skill, if he made a conscious, sensible decision not to use an available technology (for example to intentionally shoot a film in black and white).[5]

Another big difference might be with regard to modifications[6]: modifications that are not clearly identified as such, when the modified work is "passed off" as the "original" work to a new audience, are more likely objectionable. Changes made by someone else without the permission of the artist[7] are more likely objectionable to the modifications made by the artist[8]; if the derivative/altered work is clearly identified as such, it does not fully reflect the intentions of the artist and her or his skill in artistic decision-making.[9]

Rapidly developing technologies threaten to undermine the efficacy of copyright protection for motion pictures

In our present "age of information" the new technology of digitalisation has upset the delicate balance created and maintained by copyright law between the audience and the studios, that owned the film and collect the money after having screened it. When the balance is tipped, other questions are raised and they receive different answers depending on the approach of the person questioned: what should be done about it? How much current copyright law needs altering?[10]

Depending on the answers and on the attitude that people have towards works of art and motion pictures there are currently two different streams of thought. Some are afraid that authors will no longer be compensated for their creative efforts and will consequently refuse to create.[11] Others worry that users and viewers in general will lose interest in art and in particular in watching and sponsoring films.[12] Regardless, what remains the concern of the majority is how to effectively protect the moral rights of authors in an environment where works can be transformed, and some might say mutilated, with a few clapping of hands.[13]

The only thing that everyone seems to agree on is that our world is changing due to technology and that current copyright law as it stands cannot keep up with the new order and evolution of technology.[14] The film industry's increasing confidence in digital technology presents a dilemma for filmmakers, directors and screenwriters. On one hand, they use this technology to create spectacular special effects, enhance music, sound, and picture quality, and to streamline the overall production process; on the other hand they also seek protection from digital technology's abuses because everyone becomes able to transform easily and readily, reshape and give the original work another image or meaning, without authorisation from the rights' owners. For these reasons, it has become necessary to enforce the authors' protection and to give them the instruments to protect themselves, their interests and the integrity of their works.

The use of new technology in films has caused many more recent controversies. One particularly strong example of that can be seen about the inflamed *debate regarding the colourisation of old films*.[15]

Directors and screenwriters have the only power to support and advocate a stronger protection of moral rights for motion pictures to safeguard against unauthorised digital alteration of motion pictures by film studios and keen intellectual property pirate filmmakers. Moral rights, a civil law concept, provide a means for authors, such as directors and screenwriters, to protect the intellectual and creative aspects of their work, as contrasted with copyright law, which protects the economic aspects of a work.[16] Authors do not have any other authority or power to invoke, but these moral rights.

[5] See Julie C. Van Camp, available at *http://www.contempaesthetics.org/newvolume/pages/article.php?articleID=254* [Accessed October 17, 2010].
[6] See Walter Benjamin, "The Work of Art in the Age of Mechanical Reproduction", UCLA School of Theater, Film and Television, Transcribed by Andy Blunden 1998; proofed and corrected February 2005, also available at *http://www.marxists.org/reference/subject/philosophy/works/ge/benjamin.htm* [Accessed October 17, 2010].
[7] e.g. the addition of toe shoes to Bournonville's choreography.
[8] e.g. the revision of the ending by Balanchine to his Four Temperaments or the colorising by Wallace Nutting of his own black and white nature photographs. If the artist made the changes to his or her own work, we presume that the changes were intentionally made; we thus have additional information about the artist's skill in artistic decision-making. e.g. Balanchine changed the choreography for the ending of his Four Temperaments when he staged the work for television and liked it so much that he retained the changes for theatre performances, some 30 years after he originally choreographed the work. The credits for the television performance say the work was "choreographed and reconceived for television" by Balanchine. In contrast, if someone else made the changes, we do not know (based on that information alone) whether the artist would have made that decision. Even so, we do not take the artist's decision to modify as beyond debate. Legitimate aesthetic debates have occurred over the changes by authors to their own works. (e.g. the Pacific Northwest Ballet prefers Balanchine's original ending to Four Temperaments and still performs that version.)
[9] It places less weight on the value of the work as a means of assessing the artist's skill. Films on television show the results of the colorisation battles of a decade ago, as they now routinely include disclaimers that the film has been altered to fit the television screen, or that it has been shortened to make it suitable for a general audience.
[10] See Anne K. Fujita, "The Great Internet Panic: How Digitization is Deforming Copyright Law" available at *http://grove.ufl.edu/~techlaw/vol2/fujita.html* [Accessed October 17, 2010].
[11] Information Infrastructure Task Force, Intellectual Property and the National Information Infrastructure: The Report of the Working Group on Intellectual Property Rights (1995), also available at *http://grove.ufl.edu/~techlaw/vol2/fujita.html#en2* [Accessed October 17, 2010].
[12] See Jessica Litman, "The Exclusive Right to Read" (1994) 13 Cardozo Arts & Ent. L.J. 29.
[13] See Joshua M. Daniels "Lost In Translation": *Anime, Moral Rights, And Market Failur*e, also available at *http://www.bu.edu/law/central/jd/organizations/journals/bulr/volume88n3/documents/DANIELS.pdf* [Accessed October 17, 2010].
[14] See also Coyle Karen, review of Lessig, Lawrence Code and Other Laws of Cyberspace, available at *http://www.kcoyle.net/lessig.html* [Accessed October 17, 2010].
[15] One example is the film Casablanca. Much of the original colorisation controversy flourished about it so that today it cannot be bought in its colorised version. "In the early 1990s the main forms of distribution for colorized films were television and videotapes. DVD technology did not emerge into the mainstream until the last few years of that decade. Some of the DVD distribution is similar to that of videotapes, and the accommodations are also similar. For example, DVDs provide with a choice of a widescreen version as in a theatre or an altered version to fill out the TV screen. The DVDs likely include a caption explaining whether the film has been restored or the score digitally remastered. In other words, film distributors now provide full disclosure about the alterations, if any, that have been made. Viewers know that the artist did not intend those changes and thus do not alter their judgment of the skill of the artist based on those changes", see Julie C. Van Camp, "Colorization Revisited" available at *http://www.contempaesthetics.org/newvolume/pages/article.php?articleID=254* [Accessed October 17, 2010].
[16] See Matthew J. McDonough, "Moral Rights and the Movies: The Threat and Challenge of the Digital Domain" (1997) 31 Suffolk U. L. Rev. 455.

What remains is the difficulty in harmonising these two different approaches and finding a compromise between civil and common law's concept of moral rights, especially if we are to grant a uniform worldwide protection for authors' moral rights in film.

Disagreement about the moral rights of the filmmakers is thus not very surprising. It has resulted in filmmakers resorting to litigation under contract law, moral rights law and even "passing off" provisions (of the Lanham trademark Act in the United States which also illustrates different attitudes to the principles and practice of rights in Europe and in the United Kingdom and the United States).[17]

Differences in legal regimes mean that *auteurs* have secured greater protection in France and Italy (generally in Europe or countries regulated by civil law), than films made in the United States that are available in the United States themselves because of that nation's very weak moral rights regime.[18]

The common idea and purpose would be to find some principles to harmonise the concept of an author's moral rights and make them exactly alike all over the world. Some common ideas might help to find the best way forward for the appropriateness of modifications to any art form, including the idea of colourisation.[19]

Colourisation and the right to preserve the integrity of the work and authorship in an audiovisual work

It is undeniable that some modifications unfairly hurt the reputation of an artist, as filmmakers sometimes claimed in the colourisation controversy.[20] Thus colourisation became an issue when digital technologies gave studios the ability to alter old black and white films, changing them from monochrome to colour.[21] In particular, even though it may have economic attractiveness, the idea of introducing colour where colour was not a principle is morally wrong to support. Moreover, to scholars or the philosophical underpinnings of ownership of artistic works,[22] the invention of taking an artist's product and altering it so as to "modernize", is not only outrageous, but also offensive[23] and even more punishable when a black and white film was made during a time when the choice of colour film was available to the director.

Why are films' amateurs generally against colourisation? It has to be said that nowadays to shoot a film in black and white gives the film a particular emotion or characteristic that colours do not give and it is as to express an opinion. It is undoubted that after all, any persons would protest if their "opinions" or style of living were to be changed, under the pretension of modernisation in order to make the opinion or the style of life more appealing. The colourisation of older movies is just that: the changing of one's opinion or one's style so as to make it appealing to a larger audience, regardless of what and how the author of the opinion chose to so represent himself.[24] Conversion to colour necessarily converted and subverted that judgement, with results that they are sometimes distorted and grotesque.

Filmmakers are obviously against any kind of transformation of their own works because from an artistic point of view colourisation damages a film's integrity. They are artists, they create works of art, so they obviously want to protect them, to maintain them unchanged.[25]

Yet to others, colourisation is *simply another new technological process* that can be used for innovative purposes (which includes colourising films[26]): this is just another point of view. In fact, if a person views the colourisation practice as a mindless activity, as simply a "painting by numbers" such as in colouring a colouring book, will subsequently see colourisation as an activity void of any artistic effort. The way in which one views colourisation, approves or disapproves of its legitimacy, is affected by the way he considers the process itself. Thus, if one is to view colourisation as a process of choosing, assigning and applying colour to a film that is an artistic work, then of course this activity implies a talented decision. Indeed, even with the use of

[17] Scholars and legislators have debated considerably the notion of fully incorporating moral rights into American or Anglo Saxon copyright law. It has been considered moral rights aspects of films and television programs, addressed in Europe under moral rights law and in the US under "passing off" provisions or as the unauthorised creation of a derivative work, see Matthew J. McDonough, "Moral Rights and the Movies: The Threat and Challenge of the Digital Domain" (1997) 31 Suffolk U. L. Rev. 455.

[18] See Natalie C. Suhl, "Moral Rights Protection in the United States Under the Berne Convention: A Fictional Work?", available at *http://iplj.net/blog/wp-content/uploads/2009/09/Note-MORAL-RIGHTS-PROTECTION-IN-THE-UNITED-STATES-UNDER-THE-BERNE-CONVENTION-A-FICTIONAL-WORK.pdf* [Accessed October 17, 2010].

[19] See Julie Van Camp, "The colorization controversy" Journal of Value Inquiry, Springer Netherlands vol.29 No.4, Humanities, Social Sciences and Law (December 1995) pp.447–468, available at *http://www.springerlink.com/content/w7644j2pw9740x3r/* [Accessed October 17, 2010].

[20] But some actually seem to help—as with the now—standard use of point shoes in reconstructions of the dances of Danish choreographer Auguste Bournonville, see Julie C. Van Camp, "Colorization Revisited", available at *http://www.contempaesthetics.org/newvolume/pages/article.php?articleID=254* [Accessed October 17, 2010].

[21] See *http://www.caslon.com.au/mrcasesnote2.htm* [Accessed October 17, 2010].

[22] See *http://www.taradji.com/color.html* [Accessed October 17, 2010].

[23] In 1959, Charles Chaplin had successfully invoked his moral rights to prevent distribution in France of a version of his silent masterpiece *The Kid* that had been "enhanced" through addition of a musical accompaniment (Judgment of April 29, 1959, Cour d'appel, Paris, 1959 D. Jur. 402)

[24] See fn.100.

[25] To Woody Aller rous, disgusting, horrible, sinful, absurd, humiliating, preposterous, and insulting mutilation and defacing of genuine works of art, in w d tamper with the great originals, thereby creating degraded, cheesy, artificial symbols of one society's greed." See *http://www.tar* 17, 2010].

fn 24 - refer to fn100?

[26] In technical terms, there are two processes to bring into colour that which has been shot in black and white. They are the Chromoloid process, which produced 3 prints of the film in red, blue and green and then combines these prints into a single colour film; and the colorisation process which generally involves the use of a computer to distribute hand picked colours through out each frame of a film.

sophisticated computers, colourisation is a meticulously slow process and it is a work that alters the film's images.[27]

Actually the problem with colourisation procedure is doubly complicated. First, not only does adding colour change the characteristic of a film, but secondly, to colour a film is like an attack to every single appearance of black and white production: the lighting, sets, costumes, make-ups and photography. In fact, it is against all the artistic choices that a filmmaker has made.[28]

This is why colourisation has caused a lot of legal problems related to authors' moral rights and the integrity of films, especially where artists do not have any tools in terms of rights to protect their works. In fact, under common law regulation, filmmakers do not have explicit moral rights and the copyright owners of their works are free to alter, or in this case to colour, any film libraries belonging to them or in public domain.[29] When the authors sell the film, then they do not have any rights left.

Essentially, to alter a work of art, for instance colouring a film, is a process that is offensive to the moral rights (right of integrity) of an artist whether it is recognised in the laws of a country or not. In France, such a right has been recognised, and has been interpreted to protect the artist and to impede his artistic humiliation. In fact, the European view, being true to the value of art and artistic rights, has been one of a strong protection to artists' integrity rights.[30]

Since such a right is a personal, permanent and inalienable right, then, it does not matter if a work has entered the public domain. Civil law, and French law in particular, acknowledges the fact that even though a person received some benefits in exchange for transferring the economic rights to the intellectual property, this does not in and of itself eliminate all the rights that the person has against the transferee.[31]

As far as the right of integrity of the artist is concerned, he still has a control upon what changes can be done to his work.[32] Indeed, the right of seeing his work remaining intact is one that will stay with the artist, at least, throughout his life and this happens because according to the civil law, personal rights in general and moral rights in particular, are perpetual, un-assignable and come with no time limitation (even if, in practice, the French courts have often honoured contractual transfer or relinquishing of such a right by the artist.) Just as part of the artist's "moral rights" and personal right belonged to the author, *the right of integrity remains with the artist at all times*.[33]

It thus remains an obligation to any subsequent owners of the work to ensure a proper presentation of the work and protect an artist against any distortion, alteration or mutilation of his work.

Thus controversies have been born between those who advocate strong moral rights, called the right of integrity, and those who advocate their rights to derivative work of what has entered into the public domain.

John Huston case: the Asphalt Jungle—French Cour de Cassation on May 28, 1991

The contested legal issue in the captioned case concerns about the colourisation of the long feature film *Asphalt Jungle*, directed by John Huston,[34] and co-written by Huston and Ben Maddows and was related to the attribution of authorship to the creators of the film and consequently the protection of their moral rights against distortion of the motion picture under the French law.

This legal case demonstrates that, what is perfectly acceptable in the United States, may not be so acceptable in an environment where an artist has been given the opportunity to preserve the integrity of the work he has created regardless of who or which entity financed or currently possesses the economic rights to the work.

With regard to the regulation of the right of the author to safeguard the integrity of audiovisual work, the different approaches of civil law, in this case the French legislation,[35] on one hand and the common law,

[27] A computer artist has to initially colour a single frame of a film, assigning one of some 50,000 available hues to each of the 525,000 pixels, or dots. Once this frame has been coloured, then the computer keeps track of each object as it moves from frame to frame, but only until the scene changes. At that point the whole process must be repeated. It is not unusual to spend several hours to complete just one minute of film. David J. Kohs, "Paint Your Wagon—Please!: Colorization, Copyright, and the Search for Moral Rights" (1988) 40 Fed. Comm. L.J. 1, 4) and very expensive process. 48As such, if one is to view it, then the artistic judgment in the assignment of colours and hues reflects an artistic judgment worthy of credit.

[28] See *http://www.taradji.com/color.html* [Accessed October 17, 2010].

[29] See *http://www.caslon.com.au/mrcasesnote2.htm* [Accessed October 17, 2010].

[30] See M.Carl and Carol G. Colonna, "An economic and legal assessment of recent visual artists' reversion rights agreements in the United States", available at *http://www.springerlink.com/content/4u00424v83n8q760/* [Accessed October 17, 2010].

[31] See Gebhard Marc Rehm, "The New Chinese Property Rights Law: An Evaluation from a Continental European Perspective", available at *http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1132343* [Accessed October 17, 2010].

[32] Jimmy Stewart on the process of colorisation said "If it ain't broke, don't fix it".

[33] See sociologyindex, Sociology Books 2009, Books On Moral Rights In IPR, IPR Intellectual Property Rights, Copyright law, available at *http://sociologyindex.com/moral_rights_and_copyrights.htm* [Accessed October 17, 2010].

[34] John Huston (1906–1987) for example, in decrying colourisation of his *The Maltese Falcon*, commented that "I shot it in black and white the same way a sculptor chooses between clay, bronze or marble."

[35] For an overview of the EU regime see in particular Pascal Kamina's *Film Copyright in the European Union* (Cambridge: Cambridge University Press 2002), Jane Ginsburg's cogent "Colours in Conflicts: Moral Rights and the Foreign Exploitation of Colorized U.S. Motion Pictures" (1988) 36 *Journal of the Copyright Society*, Raphael Winick's 1997 article on Intellectual Property, Defamation & the Digital Alteration of Visual Images and the forthcoming *Moral Rights* (London: Sweet & Maxwell, 2006) by Kevin Garnett and Gillian Davies.

in this case the United States Copyright Act,[36] are well highlighted in this case. Although the director had renounced his rights in the United States, in France in 1991 the heirs of John Huston (1906–1987)[37] gained substantial damages in *Huston v la Cinq*[38] over broadcast of a colourised version of the film *Asphalt Jungle*. The broadcast was objected to by John Huston's heirs, Angelica, Daniel and Walter Huston.[39]

This is what happened. The Turner Entertainment Co (TEC),[40] which colourised the film, acquired the rights to Asphalt Jungle when it merged with Metro Goldwyn Meyer (MGM). It had claimed that the colourisation of a motion picture was not a mutilation, but an adaptation of the work, leaving the original black and white version of the motion picture intact.

The French court disagreed with that view and held that, in France, Huston was the film's author and through his estate he was entitled to assert his moral rights and his heirs were awarded 600,000 Francs damages for injuring the film's integrity.

The decision was based on a substantial difference between the United States concept of moral rights and the notion of authors' rights in France.

According to the French law the director and the screenwriter are considered co-authors of the film and are consequently granted inalienable and indefeasible moral rights in the motion picture.

According to the United States Copyright Act Cinematographic, works are considered as "works made for hire" if their authors have been employed by the producer or the work may otherwise be regarded as commissioned by the producer, which usually is the case. Consequently, according to US law, film authors do not enjoy any rights in the work unless they have acquired the rights contractually. Producers are vested with all rights to the film directly by the law.

The final decision of the Huston case given by the court of first instance of Versailles drew an important distinction between *the right of adaptation* and *the right of integrity* with regard to altering audiovisual works.[41]

To colour a film is to neither make it better nor worse than it was in black and white, rather it is an aesthetic choice a director makes to present his art form. Indeed, black and white films present more than just the fact that there is no colour, but they represent a very distinct rule of lighting, contrast, framing and camera use. These differences and the fact that a film may have been shot in black and white, in an era where there had been available the choice of colour, can strongly attest to a sentient decision made by a director to make use of the unique mood and aesthetic character possible only with the use of black and white film.[42]

According to the French court colourisation consists of a modification of the work by adding to it an element having nothing to do with the aesthetic concept of its creator. Moreover, the court ruled that colourisation is not an adaptation, or an original work itself, *rather it is a modification of the original work*, an element that was not part of the original artistic notion that adds a new element of colour to the work.[43]

Additionally, the fact that the black and white film was made at the time when colour was available to the artist, and therefore, the author had made a deliberate and intentional aesthetic choice that black and white, rather than colour, photography was more suitable for the work made the film's subsequent colourisation, without authorisation and control by the authors or their heirs, a violation of the creative activity of its authors, even if for commercially obvious reasons it might better satisfy the expectations of a certain public.[44]

Fred Zinnemann case: the Seventh Cross—Court of Rome on November 2005

Another case similar to the above mentioned lawsuit is the one that the director John Huston's heirs brought in 1988 after a French TV station broadcast a colourised version of *Asphalt Jungle*, is the Zinnemann's lawsuit.[45] Similarly, in fact, Fred Zinnemann (1907–1997) protested

[36] Debate in the US features in Michael Landau's "Colourization, Copyright & Moral Rights: A US Perspective" (1990) 5 *Intellectual Property Journal*, Gary Edgerton's "The Germans Wore Gray, You Wore Blue: Frank Capra, Casablanca, and the Colorization Controversy of the 1980s" (2000) 27 *Journal of Popular Film & Television*, "The Germans Wore Gray, You Wore Blue": Frank Capra, Casablanca, and Gary R. Edgerton, "Colorisation Controversy of the 1980s" (Winter 2000) Journal of Popular Film and Television vol.27 No.4 pp.24–32.

[37] He had assailed colourisation by saying "It's not colour, it's like pouring 40 tablespoons of sugar water over a roast".

[38] *Huston v la Cinq* (May 28, 1991) Cass. civ. 1re.

[39] They were subsequently joined by Mr Ben Maddow, the Societe des Auteurs et Compositeurs Dramatiques (SACD), the Societe des Realisateurs de Films (SRF), the Syndicat Frangais des Artistes Interpretes (SFA), the Federation Europeenne des Relisateurs de l'Audiovisuel (FERA), the Syndicat Frangais des Realisateurs de Television CGT and the Syndicat National des Techniciens de la Production Cinematographique et de Television.

[40] The Turner company had the movie colorised, an operation which on June 20, 1988 resulted in registration of a copyright application, and it enabled the Fifth French Television Channel (La Cinq) to announce that it would broadcast this colorised version at 8:30pm on June 26, 1988 see *http://www.unclaw.com/chin/teaching/iip/turner.pdf* [Accessed October 17, 2010].

[41] See Di Marjut Salokannel, "Ownership of rights in audiovisual productions: a comparative study".

[42] See "*Colorization and "Moral Rights" of the Artist*", available at *http://www.taradji.com/color.html* [Accessed October 17, 2010].

[43] "Colorization" is a technique based on the use of computers and laser and it makes it possible, after transferring the original black and white tape onto a videographic media, to give colour to a film which did not originally have colour, the application of this process is no vent to be considered an adaptation, defined as "an original work both in its expression and its composition," even it if borrows formal elements from the pre-existing work; […] Id.

[44] The use of this process without the agreement of Mrs and Mrs Huston and Ben Maddow infringed the moral right of the authors as mandatorily protected under French law. Messrs and Mrs Huston and Ben Maddow have therefore good grounds to petition the court for reparation of their prejudice at the hands of the Turner company, and they will therefore be allotted FRF 400,000 by way of damages and costs for the damage done; moreover, the judges in first instance correctly recognised their right to demand that La Cinq Sa be forbidden to broadcast the modified version of the film entitled Asphalt Jungle, see *Turner Entertainment Co v Huston*, CA Versailles, civ. ch., December 19, 1994, translated in (March 1995) Ent. L. Rep. at 3, available at *http://www.unclaw.com/chin/teaching/iip/turner.pdf* [Accessed October 17, 2010].

[45] Huston's heirs won the suit in 1994 when the court of appeal in Versailles ruled that no colorized black-and-white film may be broadcast in against the wishes of the film's "author". Turner Entertainment, which colorised the *Asphalt Jungle*, was fined $74,000, and the French TV station that broadcast it was ordered to pay $37,000. Turner also colorised *The Seventh Cross*, but is not named as a defendant in the Zinnemann suit. MGM's *The Seventh Cross* was acquired by the Turner Entertainment Group in 1985 and was one of the many black-and-white films that Turner had colorised.

the 1996 broadcast by Italian network TV Internazionale (TeleMontecarlo) of a colourised version of his 1944 film entitled *The Seventh Cross*.[46]

This is the story of the lawsuit. Fred Zinnemann, who died in 1997, was a strong enemy and opponent of colourising. In October 2005, an Italian court ruled that Italian network TV Internazionale (TeleMontecarlo) breached the moral rights of director Fred Zinnemann (United States, 1907–1997) by recurrently broadcasting a colourised version of his 1944 film, The Seventh Cross.

It wasn't the first time that the TV station broadcasted Zinnemann's film. On May 26, 1996 the station broadcasted a colourised version of *The Seventh Cross*.

That time, Fred Zinnemann fired off many letters demanding that the station "recognize that they violated my "moral rights" and publicly apologize in the press." He also wanted the TV station to pledge that they "will respect the moral rights of audiovisual authors, writers and directors, in the future."[47]

However, Zinnemann got no pledge and no apology. Instead, only four months after Zinneman's death, the TV station re-broadcasted the colourised movie.

His son decided to take up his father's fight for "moral rights" of filmmakers. In 1999, his son sued the network for breach of Zinnemann's moral rights and in November 2005 he won the lawsuit. Eventually the Italian court ruling in his favour prohibited further broadcasts.

Because Technicolor was available at that time, during the lawsuit debate it was demonstrated that the director chose to film *The Seventh Cross* in black and white and that colourisation clearly harmed his artistic integrity. For that reason the TV station was ordered to pay damages and destroy its colourised copies.

The decision in favour of Zinnemann's son was possible because in Italy moral rights are recognised to authors. The order was not, of course, binding on bodies outside the court's jurisdiction and a colourised version of the film could be legally broadcast in the United States. No legislation was passed to allow him to sue Turner under law. But under Italian law, his son can sue the Italian TV stations that aired the colourised movie.

Conclusions

In Europe, a film's director, writer and cinematographer are considered the film's "authors," but in common law countries only the copyright holder, and not the director, writer or cinematographer, is considered the film's "author."[48]

> "…It is 'ironic' that American directors have to sue in Europe to protect rights they do not enjoy in their own country…. the sad irony of this is that the integrity and authenticity of an American director's film is more likely to be protected in a foreign country than in the director's home country."[49]

It is necessary to harmonise the area of moral rights and to grant the same moral rights worldwide, to find a common regulation and common rules to decide a lawsuit. Also what is desirable is to grant a filmmaker more rights to protect his works and to prevent any significant alteration of them. After all conceding authors the moral rights in relation to their films means to recognise the value of a film as a work of art and not only as a piece of entertainment.

[46] He had appeared before Congress in 1988 to urge adoption of moral rights legislation, commenting that exist laws which protect all sorts of work by all sorts of artists: writers, painters, composers, sculptors, photographers. Why are filmmakers not protected in the same way?
[47] See *http://filmfoundation.org/common/11004/aboutNewsStory.cfm?QID=637&ClientID=11004&TopicID=0&sid=1&ssid=3* [Accessed October 17, 2010].
[48] For the above mentioned reason Zinnemann was supported by the Artists Rights Education & Legal Defense Fund Council, legal advocacy arm of The Film Foundation (founded by Martin Scorsese in 1990 to preserve classic films). Artists Rights Foundation president Elliot Silverstein said that the lawsuit "is another step in the campaign to protect the work of artists and to ultimately achieve the recognition of moral rights for film".
[49] Artists Rights Foundation Attorney Arnold Lutzker.