

Submitted by Emily Feltren, Director of Government Relations

March 29, 2017

Ms. Karyn Temple Claggett
Acting Register of Copyrights
United States Copyright Office
101 Independence Ave S.E.
Washington, D. C. 20559

RE: Study on the Moral Rights of Attribution and Integrity (82 FR 7870, Docket No. 2017-2)

Dear Ms. Temple Claggett:

The American Association of Law Libraries (AALL) is pleased to submit these comments in response to the Copyright Office's January 23, 2017 Notice of Inquiry, Study on the Moral Rights of Attribution and Integrity. AALL's comments specifically address question 5 ("If a more explicit provision on moral rights were to be added to the Copyright Act, what exceptions or limitations should be considered? What limitations on remedies should be considered?").

Copyright is an important economic incentive for new creative work. At the same time, the public domain and fair use doctrine enable even more innovative contributions to the economy. If a more explicit provision on moral rights were to be added to the Copyright Act, AALL supports a provision stating that moral rights protections do not apply to works in the public domain as well as a savings clause to ensure that moral rights protections do not interfere with uses permitted by the fair use doctrine.

I. Moral Rights Protections Should Not Apply to Works in the Public Domain

AALL supports a provision stating moral rights protections do not apply to works in the public domain. A robust public domain enables authors to create new works. New moral rights protections would add additional requirements for authors wishing to republish or make derivative works based on works in the public domain. Different regimes of rights that expire at different times (or not at all, if moral rights are perpetual) are likely to confuse later potential authors. Moral rights protections on works in the public domain may discourage innovative compilations or derivative works drawing from multiple public domain works because the requirement to attribute will become burdensome.

The U.S. Supreme Court noted in *Dastar Corp. v. Twentieth Century Fox* that interpreting the Lanham Act to require attribution for a television program would create an unconstitutional perpetual copyright.¹ Register of Copyrights Ralph Oman noted earlier that "a federal statute enacted under the Copyright clause that purports to grant a moral right of integrity for certain works in perpetuity would be clearly unconstitutional."² Thus, moral rights should expire, and making moral rights coterminous with economic rights will minimize confusion for rights holders and users.

¹ 539 U.S. 23, 37 (2003).

² Film Integrity Act of 1987: Hearing on H.R. 2400, Subcomm. On Courts, Civil Liberties, and the Admin. of Justice, H. Comm on the Judiciary, 90th Cong. 42-44 (1988).



II. Moral Rights Protections Should Not Undermine the Fair Use Doctrine

AALL supports a savings clause stating that any moral rights protections do not diminish the uses allowed by 17 USC 107.

Many uses favored by the fair use doctrine, such as satire and parody, would be undermined if moral rights protections required attribution or prevented uses the author regards as derogatory. Other uses favored by fair use, including scholarship, teaching, news reporting, and criticism, already have strong expectations for appropriate attribution, and legal requirements are unnecessary. Courts have developed a thorough jurisprudence for fair use cases that could be applied to moral rights claims.

III. Conclusion

AALL appreciates the opportunity to submit comments in response to the Copyright Office's important study of moral rights.