

Moral rights in the digital environment: “Authors” absence from authors’ rights debate

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Abstract

This paper examines the arguments put forward in the debate on protecting moral rights in the digital environment. In identifying the themes occupying the debate, it seeks to highlight and illustrate the issues overlooked therein. Specifically it points out how the ‘authors’ perspective’ has remained significantly absent, underrepresented or ignored in the debate. The paper then goes on to address the desirability of including authors’ perspective to the debate in giving credibility to the arguments already put forward and generating newer themes to take the debate a step further and the importance and applicability of socio-legal approach in achieving the same.

Digital technology brought ‘authors’ opportunities for creativity like never before in newer ways of authoring earlier creative expressions and constructing new forms of creative expressions but also came with threats to their personality interests. Apart from practical challenges making moral rights vulnerable to abuse, the digital environment has posed important conceptual hurdles for the doctrine itself like concerns over definition and scope of moral rights, definition and categorisation of ‘work’ and definition of ‘author’. Such concerns raise a wider question going to the heart of moral rights doctrine being the bond between author and work in the digital environment and if moral rights should be accorded to creative expressions therein?

While the importance of these issues has been acknowledged, there’s been no legislative development in this regard on any front, international or otherwise. The related debates and reviews have focussed mostly around technical issues of digitisation and concerns of business and users. Not so surprisingly, the subject of protection, ‘the authors’ have gone under-represented despite the ‘protection of authors’ flag being hoisted every now and then. The legislative development on copyright only reinforces the strength of lobbying by powerful pressure groups in getting their interests protected and shows an unusual example of how business, law and politics work together (unlike their usual competition against each other akin to ‘papers, scissors and stone’)

The academic literature on the issue has on the other hand generated very diverse opinions. On the one end are calls for survival of a more flexible, relativised notion of moral rights in the digital environment as they offer new benefits in this environment apart from protecting authors alone. The other end suggests that moral right are incompatible with this environment and as such deserve no place in it. This alleged incompatibility stems from the apparent realities of this new environment, where ‘authorship’ is collaborative in nature, creativity results from economic motivation making romantic notion of ‘authorship’ non-existent, affording such protection to authors is a danger to the very development of this environment and public interest in information is superior to authors’ interests. Yet these arguments are based on what are at best assumptions about authorship without sufficient studies to back them.

The debate on protecting moral rights in the digital environment requires an analysis based not only on legal arguments but adequate interdisciplinary research because moral rights, unlike other intellectual property rights arguably more economic in nature, have a strong cultural emphasis, where the creativity of individual artist is valued over all else. And a cultural dimension will remain missing from the debate till “authors” are adequately represented.