

## Prohibition to look! - Blog posted on 17 March 2014 by Sari Depreeuw (De Wolf & Partners and VUB/LSTS) and Amélie de Francquen (De Wolf & Partners and UNamur/CRIDS)

### Supreme Court of Belgium, decision nr. C.06.0598.N 8 May 2008

#### Moral rights – Integrity – Material modifications – Modification of the work's spirit – Authorship – Bronze sculpture – Conceptual art

The Belgian Supreme Court (Hof van Cassatie / Cour de Cassation) has not had many occasions to decide copyright cases on the basis of the author's moral rights, but in 2008 an interesting case was submitted to its judges.

In 2002, the Belgian city of Bruges was the European Capital of Europe (Bruges 2002). For this festive year, the artist Jan Verhaeghe developed an artistic project dubbed "[Operatie Terra Radicalis](#)". Mr Verhaeghe had outlined a trail through the city passing by selected works of art displayed in the streets. He encircled 21 sculptures with red and white barricade tape with the word "Kijkverbod" ("prohibition to look"), among which one statue named "De Jonggehuwden" or "De Geliefden" ("The Newlyweds" or "The Lovers") by the spouses Depuydt-Canestraro. The idea was to criticise the outdated and kitschy cultural heritage of the city and the abundance of bronze sculptures that, in the artist's opinion, polluted the cityscape.

The spouses Depuydt-Canestraro were not amused and brought legal action against Mr Verhaeghe, the city of Bruges and the organisers of "Bruges 2002". They claimed that Mr Verhaeghe's artistic intervention harmed the integrity of their sculpture and that he usurped their creation. Mr Verhaeghe relied on his artistic freedom and his right to criticise.

The Court of First Instance of Bruges and the Court of Appeal of Gent sided with Mr Verhaeghe, but the Supreme Court held a different opinion.

The Belgian Copyright Act of 30 June 1994 (in [Dutch](#) or in [French](#)) grants authors moral rights of three kinds (art. 1, §2): the right of first divulgation, the right of integrity and the right of authorship. The integrity right, at stake in this case, allows the author to claim respect for her/his work and to oppose any modification. Under any circumstances the author keeps the right to oppose any disfiguration or other degradation that can harm her/his honour or reputation (even when contractual arrangements exist on this point).

According to the Supreme Court this right of integrity protects the author not only against **material changes**, such as adding elements to the art work or removing parts from it, but also against **non-material interventions that affect its spirit**. In this case, the sculpture "The Newlyweds" had not been physically altered: the barricade tape, the written mention of the "prohibition to look" and the name tag indicating Mr Verhaeghe as the author of the installation did not entail a material modification of the art work. There was no mistake that the spouses Depuydt-Canestraro were the authors of the sculpture (right to authorship) but, unlike the appellate court, the Supreme Court held that this did not exclude an infringement of the integrity right. In other words, the circumstance that the authorship right is respected should not automatically lead to the conclusion that the right to integrity is unaffected as well. The Supreme Court referred the matter to the Court of Appeal of Antwerp, which decided in 2010 that the moral rights had indeed been infringed and awarded damages of 12.500 euro to the sculptors and the publication of the decision in two newspapers.