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Moral Right in Nordic Law

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As an answer to the questionnaire worked out for the ALAI congress in Brussels, the Swedish group of ALAI has chosen to submit the following essay, already published in the 1990ies. However, the Norwegian ALAI group has submitted a detailed and very well worked out answer to the questionnaire that by and large is valid also for Swedish law. The same may be said also as other Nordic countries are concerned. However, it should be noted that the Swedish Supreme Court has decided on moral rights in a comparatively great number of judgements, since 1970 about a dozen are more or less dedicated to moral rights matters. To what is said below should in particular be added the Supreme Court decisions in NJA 2005 p. 905, Alfons Åberg, and NJA 2008 p. 305, Broadcast films interrupted by ad breaks. Still, the Norwegian answers to the questionnaire very well reflects the legal positions also in Sweden, hence the following text merely adds to those answers.

1. Introduction

Among the Nordic countries, Finland, Denmark, Norway and Sweden have long made common cause in harmonizing their intellectual property rules as well as many other parts of national legislation. To a slightly lesser extent this is also true of Iceland. The Nordic Copyright Acts, from 1960 - 61, are good examples of such harmonization, and this is particularly true of the statutory rules on moral rights in those Acts. This article will focus on characteristics of Nordic Moral Right as a copyright phenomenon and on experience arising from recent court practice. For practical reasons reference is made only to the Swedish Copyright Act (CA)[1] , while the relevant court practice is mainly of Danish and Swedish origin. In these

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[1] All quotations from the Copyright Act in English translation are from Copyright, September 1991 (Insert). This text does not, however, cover a few later amendments and the renumbering of the sections in Chapter 2 of the Copyright Act, in effect as of January 1 1994. See also Swedish Intellectual Property and Market Legislation. Collection of Statutory Text, ed. *Ulf Bernitz*, Publication by the Institute for Intellectual Property and Market Law at the Stockholm University, No 26, Stockholm 1984.

countries quite a number of cases on Moral Right have been brought before the courts, including the Supreme Court level.

Some statutory provisions on paternity right found a place in the Swedish Copyright Act of 1919, but a more elaborate Moral Right was introduced in the 1960 Copyright Act (the current legislation), all in the wake of the 1948 revision of the Berne Convention. The Swedish Copyright Act, as well as the other Nordic Copyright Acts, have been amended several times since then, due to the work of the Nordic Law Reform Committees on Copyright.[2] The somewhat terse provisions on Moral Rights have, however, been left unchanged in all the Nordic countries since their introduction in 1960-61. Court decisions therefore have cast considerable light on their meaning.[3]

2. The components of moral right

Moral Rights in a narrow sense appear primarily in Section 3 CA, and adhere closely to the minimum rights in Art. 6 bis of the Berne Convention, i. e. a few provisions on *paternity* right and *integrity* right. There are no provisions in the Act on other types of moral rights, such as a right of disclosure, a droit d'accés or a droit de repentir.[4] However, the author's exclusive economic rights and the support for them arising out of general contract law set him in a position not much worse than his formally more favoured colleagues elsewhere in Europe. However, a second dimension, Moral Right in a broad sense, create certain presumptions in the interpretation of copyright contracts and transfers of rights.[5] These presumptions operate to the extent that they are not overridden by express or implied provisions to the contrary.

The duration of the basic moral rights relates to that of the economic rights; in all of the Nordic countries they end 70 years post mortem auctoris. Legal proceedings in respect of violations of Moral Right may be instituted at the instance of the successor to the right of the author or at the instance of the author's spouse, relatives in direct line of ascent or descent, or any sister or brother or adopted child, Section 59 (2) CA. However, a

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[2] See *Koktvedgaard*, Letter from Denmark, Copyright, March 1991, p 63 et seq.

[3] The Nordic doctrine on Moral Right is not abundant, but of course it is dominated by the solid and comprehensive work by *Strömholm*, Le Droit Moral de l'Auteur en Droit Allemand, Français et Scandinave, avec un aperçu de l'évolution internationale. Étude de droit comparé, I, II:1, II:2, Stockholm 1966, 1971.

[4] The Nordic coherence is not fully complete on this point, as the Norwegian Copyright Act, Section 49 (3), encloses a droit d'accés.

[5] See *Rosén*, Moral Right in Swedish Copyright Law - Focus on Waiver of Rights and Contract Practice, Especially as Concerns Computer Programs, NIR 3/1993.

sort of "public" Moral Right, executed by the courts on complaint from various authorities specially appointed by the Government,[6] is valid perpetually after the death of the author, but only if "cultural interests" are violated, Section 51 CA.

The paternity and integrity rights are of course of great importance in cases where a work may be used without prior consent of the author, i.e. when the use is covered by special statutory limitations on copyright, found in chapter 2 of the Act., e.g. quotations (Section 14), reproductions in newspapers in connection with the reporting of current events (Section 15), reproductions in composite works for the use in education (Section 16) and when a work is further distributed or publicly exhibited (Section 23 and 25). In all these cases must be respected the basic rights in Section 3 CA. Furthermore, Section 26 CA expands both the paternity and integrity rights in relation to such uses of a work; it demands not only an indication of the author's name but also of the "source", i.e. the book, magazine etc. from which a work is borrowed, and it prohibits every alteration of a work which is not "necessary for the permitted use".

According to the statutory provisions the rightholder is the *author*, i.e. the original creator of the work. The right cannot be transferred by contract, see Section 27(1) CA: "Subject to the limitation of Section 3, copyright may be transferred entirely or partially." The hard core of Moral Right in the Act, namely the provisions in Section 3, cannot even be waived except in respect of uses of the work which are limited in nature and extent and sufficiently specified, Section 3(3) CA. This principle is generally valid in the case of valuable literary and artistic works as well as for works of a more technical or mundane character. See below, however, about computer programs.

The Moral rights can also be enforced by foreign authors in accordance with the ordinary principles laid down in the Berne Convention and the Universal Copyright Convention.[7] The perpetual protection given in respect of "cultural interests" can also be claimed for foreign works, even when the time of protection for the work has expired according to the legislation in force in the country of origin.[8]

3. The Right of Paternity

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[6] The appointed authorities are the three Royal Academies on Literature, Art and Music respectively.
[7] See Ordinance (1973:529) on the Application of the Copyright Act with respect to other countries.
[8] See Section 2(1) and 8(1) of the Ordinance mentioned in note 7.

The application of the paternity right seems to have caused few problems and case law is very scarce.[9] The message of Section 3(1) CA is simple: when copies of a work are produced or when the work is made available to the public, the name of the author must be stated to the extent and in the manner required by proper usage. Therefore, the scope of the right of attribution may be uncertain. "Proper usage" may vary from total lack of attribution to a very dominant exposure of the author's name. The courts are left to determine the qualities of a specific usage in a certain branch of industry. In consequence a long-established standard might be deemed improper.

Guidance is found in rulings of the Supreme Court of Sweden. It has stated that when posters of a painting were used as a decoration in show-cases, placed in the entrance hall of a cinema, it was a violation of the painter's attribution right that the logotype of the painter had been cut away from several copies of the posters.[10] The fact that the painter's integrity right (see below) was also violated, due to the fact that the posters formed the background to pinned up pictures from the pornographic repertoire of the cinema, was according to the court's ruling not a reason for the removal of the author's name.

In another and quite recent case[11] the Supreme Court has stated, as an architects drawings of a building were copied by another architect in order to form the basis for the latter one's suggestions for alterations to the building, commissioned by the owner of the building, that the former architect's name should not be removed from any of the copies of the drawings, irrespective of the fact that his name was indicated on the front page attached to the series of drawings in question.

It is therefore probably accepted as a rule of thumb, that attribution shall be made in all cases unless there are obvious practical or ethical considerations which are counterminely; such limitations may occur by the performance of hymns at funerals or when the artistic impression of a piece of art could be disturbed by application of the name, e.g. on glassware. But an author may never *ex ante* be fully denied the right to claim his authorship. In cases of anonymous publications the author therefore always has the possibility to require attribution, e.g. in further

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[9] From Danish court practice we may note UFR (the Danish Weekly Law Report) 1947 p. 187 Ø; by the showing of a film, the name of the composer of one of the musical works in the film was not mentioned. This was found wrongful and the composer was entitled to damages. See also UFR 1932 p. 1141 Ø; 1936 p. 707 H; 1956 p. 136 Ø and 1980 p. 689 Ø, all about non-attribution.

[10] See Nytt Juridiskt Arkiv (NJA) 1974 p. 94, (NIR 1975 p. 322), Rudling.

[11] See NJA 1993 p 263, Ahlsén.

editions, even if he has signed a written document according to which he surrenders his right of attribution.

The importance of the paternity right to authors is often shown, e.g. in contract practice, and is often claimed also for the broadcasting and cable distribution of works even when attribution is technically complicated. Five well-known Swedish composers and authors of song lyrics have recently pursued an interesting claim, informally backed up by the Performing Right Society of Sweden, against the Swedish Broadcasting Organization, based on the Organization's failure to give the authors some credit when their works were performed on live TV shows.[12] In this not yet decided case the actual reach of the rule of thumb just mentioned will be tested. But it must be admitted, that the connection of the paternity right to such a phenomenon as "proper usage", which in its turn is based very much on the circumstances of the individual case, always limits the importance of a court's decision as a precedent for other cases, even when the claim has been pusued as far as the Supreme Court.

4. The Right of Integrity

The basic right of integrity, the other half of the hard core of Moral Right, is expressed in Section 3(2) CA and relates to three different acts, namely the alteration of a work when it is copied, the alteration of an original copy and the use of an unaltered work in an unworthy context. An author is protected against such acts only if they are "prejudicial to the author's literary or artistic reputation, or to his individuality". In short, this basic provision aims at protecting the author's "artistic" personality - not his reputation as a citizen - as it is shown in his literary or artistic work, its structure and sentiment.

However, these integrity rights, which are in principle inalienable, are protected by special sanctions of the Copyright Act, designed to be applied on the basis of an *objective standard*, not at the discretion of the author.[13] This also means that a work's *artistic value* should be taken into account, which, generally speaking, merely creates different standards for different *genres* of works or different *fields of use*. [14] If a work is created for a practical purpose a user might be allowed to make alterations conditioned by that purpose, however much they are opposed by the author.

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[12] The Swedish Television Broadcasting Organization (SVT) has long stated attribution rules of a very generous character in their own internal policy and in a contract with the Performing Right Society (STIM); see *Rosén*, op.cit. in note 5.

[13] See the Supreme Court of Sweden, NJA 1979 p. 352 (NIR 1979 p. 385), Max Walter Svanberg.

[14] This is specially underlined in the preparatory works of the Copyright Act; see SOU 1956:25 p. 123.

It is in this field of Moral Right that case decisions occur with some frequency. A clear distinction of the criteria just mentioned was made by the Supreme Court of Sweden in the case mentioned above in note 13. The painter Max Walter Svanberg had published numerous posters and prints of one of his original and colourful litographs. Another artist (E) bought 25 copies of it (at about £3 per copy) and serigraphically added black prints on the surface of them in the form of words and signs aimed at an ironical questioning e.g. of the "originality" of different editions of Svanberg's picture and the commercial methods of their marketing. This merely "intellectual" attack on Svanberg's art, perceived as "concept art" or "meta art" by two renowned art-experts heard in the case, were not considered to violate Svanbergs right of integrity when the serigraphically remade copies were publicly exhibited or sold by E (and signed by him). The Supreme Court based this on the opinion, thereby accepting the findings of the Appeal Court, that E's added prints could be *clearly distinguished* from Svanberg's underlying picture, that no alteration had been made to the *fundamental artistic elements* of Svanberg's work and that the mere existence of the *meta-conceptual art form* should influence the standard for judging a violation of integrity rights.

The use of the objective standard was stressed in this case, which must not be underestimated since it probably indicates some change of attitude by the members of the Supreme Court. Only a few years earlier another case was brought before the court, in which a more subjective standard on behalf of the authors was applied.[15] A nationalistic anthem, "Sveriges Flagga" (the Flag of Sweden), composed by Hugo Alfvén and with lyrics by K.-G. Ossiannilsson, was recorded and distributed on a phonogram in 1972 with partly new lyrics directed towards the activities of the U.S.A in the Vietnam War. Only the first five words of Ossiannilsson's original text, well-known to all Swedes, were used on the recording, the rest was new and contrasted to the original text in style and in bearings. However, the Supreme Court considered the recording to be a violation of Ossiannilsson's right of integrity because his "introductory words" had been borrowed for a political propaganda-song, with objectives very different from those which had "inspired" Ossiannilsson. Furthermore, Alfvén as well had suffered a violation of his integrity right, according to the Supreme Court, even though the performance on the record of his music as such was not prejudicial to him, but because his music had been performed with another *text* than the one for which the original *musical* work had been written; Alfvén's music was meant to be a celebration of his native country and should not be connected to other causes. Both Alfvén

[15] See NJA 1975 p. 679 (NIR 1976 p.325), Sveriges Flagga.

and Ossiannilsson were dead before the case was brought (by their widows).The Supreme Court plainly tried to interpret the subjective sentiments of the authors as expressed in their works.

Three other rulings of the Supreme Court of Sweden focus on the importance of the circumstances in the individual case under which potential violations of integrity right are caused. First, let us return to the case of posters of a painting displayed in the entrance hall of a cinema, where the Supreme Court found both their connection to pornographic pictures and the detachment of some of them (to fit in the show-cases) to be violations of the painter's integrity right.[16]

This judgement should be compared to another case, in which a TV-director, employed by the Swedish Broadcasting Corporation, was not found protected by his right of integrity when his employer, on the direct order of the company's managing director, executed a few cuts in a TV-film of his.[17] The Supreme Court stated, again stressing the objective standard, that the cuts were in fact a violation of the author's integrity right, though of a minimal kind, but that it was proper to bring into account those conditions under which this public service channel worked, guided as it was (and is) by laws and agreements with the state, e.g. demanding *impartiality* and *objectivity* from the broadcasting company.[18]

Thirdly, a journalist, who wrote an analytic article on qualities of certain mattresses for use in hospitals, claimed damages from one mattress-producer who used it as a *marketing* instrument by their sending out copies of it to its potential customers.[19] Damages for the copies made and distributed were confirmed by the Supreme Court. But the journalist's claim to further damages for a violation of her integrity right, alleged to consist in the marketing without permission, was rejected.

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[16] See note 10 above. Comp. the Danish Court of Appeal-decision UFR 1979 p. 388, "The Little Mermaid"

[17] See NJA 1971 p. 226 (NIR 1971 p. 463), Carlsson.

[18] Comp. the decision of the Danish Supreme Court, UFR 1981 p.24 H, where the soundtrack from a telecast, in which a prominent Danish politician took part in a TV discussion about public matters, was later played as an introduction to a public meeting on the same subject. The TV directors claimed that this separation of sound and picture to be a violation of their rights. The Supreme Court held, however, that the separation was no violation as it wa not possible at the meeting to show the telecast, and that the important points were stressed in the sound track. This case should in its turn be compared to a ruling of a Danish Appeal Court, UFR 1979 p. 685 Ø; the sound track from a telecast was later played as an introduction to a public meeting. The playing of the sound track had no connection to the purpose of the meeting. The playing was found to be an infringement of the copyright as well as a violation of the author's moral rights. Damages were awarded for both infringements.

[19] See NJA 1985 p. 807 (NIR 1986 p. 263), Nowolin.

5. Perpetual protection of Moral Right

The perpetual protection of a work, effective after the death of the author, if "cultural interests" are violated, Section 51 CA, seems ever to have played an important role, and certainly not in recent years. It has never been raised before Swedish courts. It is true, that the Royal Musical Academy of Sweden[20] has considered upon the application of Section 51 CA in connection with e.g. a boogie-woogie version of Grieg's Anitra's Dance, a recording of an arrangement by Duke Ellington of Grieg's Peer Gynt-suite, and, quite recently, a disco version of a medieval Gregorian song. But the Academy has never used the possibility of bringing such cases before the courts. It may be observed, that the record company stopped the distribution of Ellington's recording when it was examined by the Academy - probably without much reason, since the Academy shortly afterwards made Ellington an honorary member.

In the other Nordic countries we see the same tendency. In Norway the Ministry of Culture and Science may restrict a work's availability to the public if it violates the author's literary or artistic reputaion or his individuality or hurts public cultural interests. A specially appointed committee assists the Ministry and may give opinons on such matters, as has happened in a few cases.[21] However, the sale of phonograms of the Norwegian national anthem in a jazz-version was actually restricted.[22] In Denmark the Ministry of Culture formerly watched the area quite closely and had drawn up a set of rules to be observed. But it seems not to intervene nowadays. However, we may observe two Danish court decisions.

The first concerned a musical work, "Venetian Serenade", composed in 1880 by a well-known Danish composer, Johan Svendsen, who died in 1911.[23] In 1962 it was distributed on a phonogram record under a new title - "Caterina" - and with considerable changes in melody, rhythm etc. Notwithstanding the fact that the original composition had for many years been a popular work, often played in restaurants, the Supreme Court of Denmark found the record to be prejudicial to the late composer's reputation and individuality and, since the ordinary protection period had elapsed, that the recording violated "cultural interests". A fine was imposed and the remaining copies were destroyed. The judgement was not unanimous and two judges (out of seven) of the Supreme Court found that

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[20] See note 6 above.

[21] See *Sijthoff Stray*, Opphavsretten, Lov om opphavsrett til åndsverk, kommentert og supplert, Kristiansand 1989, p. 280 et seq. See also NIR 1965 p. 355 et seq.; NIR 1971 p. 200; NIR 1983 p. 150

[22] See *Sijthoff Stray* op.cit., p. 282, note 6.

[23] See UFR 1965 p. 137 H.

the composer, whom they described as an *important* and *original* artist, without doubt had suffered a violation of his integrity rights according to Section 3 of the Danish Copyright Act, but that the general criterion of "cultural interest" was not offended.

The second case concerned the production of a film on the life of Jesus ("Many faces of Jesus Christ"). A film producer obtained in 1975 a grant from the Danish Film Institute in support of the film. When the Ministry realized that if the script was followed, the film presumably would be pornographic, with Jesus, Maria, Martha and others indulging in sexual exesses of all kinds, the grant was cancelled on the ground that the film would be an infringement of the Moral Rights of the Bible. The producer sued the Ministry. The Court of Appeal found it doubtful whether the film, if made, would infringe the Moral Rights in the Bible and that the cancellation was not justified, at the same time it acknowledged that the Bible was protected by the provisions on Moral Rights in the Danish Copyright Act.[24]

6. Waiver of Moral Right; the special problems of cinematographic works and computer programs

As was indicated above paternity right and intergity right cannot be transferred by contract, but both rights may be *waived*, even though such a waiver must be limited in nature and extent and in respect of specified uses of the work, Section 3(3) CA. Upon a closer look this means that the author may waive his right totally *ex post*, when he is fully aware of the extent and nature of the things done to his work. The situation is quite different when it comes to promises of the author *ex ante*, indicating that he will not make use of his moral rights. The restrictions on contractual stipulations in Section 3(3) CA are clearly directed to such cases. Such admissions of the author ex ante are *invalid* if they are of a general nature and unspecified.

Furthermore, we must note, as no formal requirements are presciribed for contracts by Nordic law, that a limited and specified contractual waiver of moral rights is valid whether it is oral, under seal or implied. However, at least the integrity right gives protection against acts which totally abnegate the originality of the work, its ideas or basic stylistic features. This means that the *hard core* of the author's personal and intellectual interests, of whatever actual content, should always be protected irrespective of what has been agreed. In this hard core appears an *objective*, *abstract* and

[24] See UFR 1990 p. 856 Ø.

contract-neutral kernel of Moral Right, which is fundamental, decisive and inevitable in handling works on the market, again taking account of the standards already mentioned for different works, genres, artistic values and fields of use.

Naturally, this is particulary important in relation to *filming* of works and by performances of films in cinemas, in broadcasting and by cable-distribution, simply because a variety of "alterations" often follow the transformation of a work into a cinematographic work or by the films distribution or performance, particularly on TV. Symptomatically, an author's acceptance of "ordinary" alterations of works willingly delivered for filmatization is recommended in the preparatory works of the Swedish Copyright Act.

The International doctrine on the intricate issues on *colorization*, *dubbing*, *format- and time-compression or -extension*, *interruptions by advertisements* etc from a moral right perspective, has reached very considerable dimensions. On the national level, however, there are few pronouncements by the courts on such issues.[25] We may note, though, that as for cinematographic works performed on TV, the Swedish law on radio and TV Communication (1966:755, as amended in 1992) states that such works may not be interrupted by any advertisements. This goes beyond the demands of the EC TV Directive, which now relates equally to Sweden as a result of the EEA agreement.[26] The same "non-interruption" rule applies in Denmark, Norway and Finland.

The reach of Nordic Moral Right and its relative independence from contractual stipulations is soon to be examined directly by a Danish appeal court in a very interesting case. It concerns the alleged violation of the integrity right of the American directors Woody Allen and Sydney Pollack, occasioned by the broadcast of their films "Manhattan" and "Three Days for the Condor" in an altered *format* on the TV screen which resulted from the scanning-technique used before the broadcast. The foreign directors are the plaintiffs, but their representative is The Danish Filmdirectors' Guild. Due to the Berne Convention's principle of national treatment it is the moral rights of the two directors which are in issue. Neither of the directors is apparently able to object to the format changes as a consequence of their contracts, which are governed by American law.

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[25] So far probably the *Huston*-case of the French Cour de Cassation is the most famous, See RIDA juillet 149/1991 p. 161.

[26] See Article 11(3) of the Council Directive (89/552/EEC) on the coordination of certain provisions laid down by law, regulation or administrative action in member States concerning the pursuit of television broadcasting activities.

The decision of the appeal court can not be expected until early spring 1994.

The need for general and internationally valid contracts in the field of the cinematographic works is clear and has been understood for many decades. However, Nordic Moral Right offers no explicit exceptions for the benefit of a film producer in relation to the directors or to any other author who normally contributes to a film. Moreover, the basic moral rights, as well as the limitations on waivers of such rights, as indicated above, are valid also for film production and the different uses of films. This probably means that film authors, at least where the films are of high artistic value, may deploy their moral rights as a tool to prevent what "objectively" may be regarded as a violation of the hard core of the Moral Right, even if they are tied hand and foot by contractual obligations. What this actually means in individual cases remains for the courts to decide.

As for *computer programs*, the difficulties in handling such phenomena as the non-transferability of moral rights and limitations upon waivers, on the one hand, and the need to offer the computer program-industry clean-cut rules particularly in employer-employee-relations, on the other hand, has caused the Swedish legislature (just as the Danish) to insert certain novelties into the Copyright Act. A new paragraph, Section 40a CA, in force as of 1 January 1993, was primarily designed to correspond to Article 2(3) of the EC Council Directive on the legal protection of computer programs, whereby an employer, unless otherwise provided by contract, shall be exclusively entitled to exercise all *economic* rights in a program created by an employee in the execution of his duties or following the instructions given by the employer.

The Swedish lawmaker, however, takes a further step, and lets the presumptive transfer include not only the "economic right", as indicated in the EC-Directive, but "copyright" as a whole, thereby obviously comprising also moral rights. From a principled standpoint this seems to be an anomaly, since Moral Right as such cannot be transferred by contract according to Nordic standards. The lawmaker, naturally being aware of this dilemma, has sought to side step it. Starting from the notion that the employed author is the original holder of copyright in a computer program, the rights are not stated to be assigned or exclusively licensed to the employer, nor is there any kind of waiver of the author's rights; instead copyright is "*conveyed* " with all its content. This verb is a novelty in Swedish legal language concerning transfers of copyright.

The meaning of the new expression gives rise to severe doubt. Apart from the fact that this change of terminology causes confusion, it solves nothing

in handling the particular elements of droit moral. Without going into detail,[27] there are problems particularly in relation to subsequent transfers of rights in computer programs, licensing and relations with third parties, and again there is the intellectual problem of ascribeing integrity rights - which in essence protect a natural person's personality - to a legal entity. Equally it is unclear how such an entity could dispose of a moral right.

The lawmaker's actual intention probably was more or less to pulverize Moral Right in computer programs created by employees, without facing conflicts with the minimum standards of the Berne Convention. He may have succeeded, but in my view there is ample reason to support the natural and close bond between the author and basic moral rights. At the same time it is necessary to accept the possibility of waiving of such rights, which sometimes must be allowed to a considerable extent, particularly in relation to computer programs and films.

7. Conclusions

Nordic Moral Right, consisting in the main of rights of paternity and integrity, has proved its importance to authors. However, the perpetual protection of works, if "cultural interests" are violated, seems more or less outdated and pointless. A general conclusion must be that Moral Right should exist only as long as the protection of a work does in other respects.

The right of paternity has not caused any severe practical problems, when it is utilized by the authors as well as, indirectly, their assignees and licencees in the marketing of works. As for integrity rights, although based on the interpretation of a few rather vague provisions, the courts' emphasis on an objective standard and their regard for artistic value, genres, established practice and fields of use of a work, seems to have resulted in a reasonable *balancing of interests*, which is probably fundamental in the exercise of Moral Right.

It should also be stressed, that the fact that these rights cannot be waived, exept in cases of limited use of a work, has not caused great difficulties in the exploitation of works of art and literature. Normally authors and their legal successors may rely on their contractual provisions on the use of a work. What principally cuts through a lawful contract is violations of the hard core of Moral Right, e.g. in cases of harsh violations of the integrity of works of particular artistic value and seriousness. The exception in

[27] For a more detailed study on this particular matter, see *Rosén*, op.cit. in note 5.

Nordic law for computer programs created by employees therefore appears to be unnecessary.

From a wider international perspective we may note, that the basic principles of the integrity right are so vague and so closely connected to national traditions and techniques on interpretation, that harmonization is very difficult. Within the EC a harmonization of the term of protection of these rights, a transformation of the principles of art. 6 bis of the Berne Convention to EC law and a subsequent development of standards by the EC Court of Justice seem possible and appropriate. The Nordic courts have proved that also a delicate matter such as the protection of integrity rights might be shored up by standards and the balancing of interests, accordingly with reasonably anticipated results.