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"The Moral Right of Revision"

Authors often do not own the copyrights to the works they have created. They may have created “works-made-for-hire,” in which case U.S. copyright law does not consider them authors at all. Or they may have transferred away to others the copyrights that the law initially allocated to them based on their authorship status. Either way, the copyrights to works of individual human authors are often owned by other people or corporations. This copyright alienation often serves authors’ interests in making a living or seeing their works in print. But it can also cause conflict when authors later wish (perhaps to their own surprise) to revise their own prior work and cannot lawfully do so without the copyright holders’ permission. This project will explore that conflict and imagine how a “moral right of revision” might address it.

The idea that authors should and do have personal rights in their works separate from the transferable economic rights associated with copyright is a familiar one in European copyright traditions, which have developed a notion of moral rights to attribution, for example. But a moral right of revision has received much less recognition. Furthermore, moral rights are not recognized much at all in U.S. copyright law—in part, I will argue, because of concerns about the downstream complications that can be caused when multiple people own non-possessory rights to control the use of tangible objects possessed by others. (I have explored this type of anxiety in earlier work at the intersection of tangible and intangible property theory, e.g. *The New Servitudes*, 96 *Geo. L. J.* 885 (2008)). We can imagine, however, a moral right to revision structured so as to limit such complications—one, for example, that does not give an author a right to alter any particular copy of her work, but that does give her a non-exclusive right to make new versions notwithstanding the copyright holder’s exclusive right to prepare derivative works. This of course introduces competition into the derivative work marketplace, which may devalue copyrights (potentially to the detriment of authors who profit by selling them). But that problem might also be avoided with a creatively-structured moral right of revision—perhaps one that permits the author to distribute her new derivative work only if the copyright owner refuses to do so. Seldom-used provisions in the copyright laws of France and Israel (among others) offer possible models, as does the “moral shop right” proposed by Justin Hughes in *The Personality Interest of Artists and Inventors in Intellectual Property*, 16 *Cardozo Arts & Ent. L. J.* 81 (1998).