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DESTRUCTION OF COPYRIGHTED MATERIALS: IN THE LIGHT OF VARA ACT

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Abstract

Visual Artists Rights Act, 1990 deals with the idea of protecting moral rights of artists who have created works that are covered under the definition of “Work of visual art” under 17 U.S.C. 101. But, the question arises that the definition above mentioned is very limited in scope and fails to cover all kinds of copyrightable materials giving space to other creators of copyright materials to question the mechanism on the basis that why their right falls outside the ambit of protection. The paper tries to analyse the statutory working of the act. The paper also emphasizes upon the inception of the act, its validity, and the loophole it has which leads to dispute and at last, it tries to lay suggestions to fulfil the lacunas of the Act to make it stand better.

Keywords: Copyright violation, Destruction, VARA Act, Copyrighted materials, Visual Art, Moral rights.

Introduction

Is it possible for an artist to exercise certain kind of rights over his creation even after legally giving it away to somebody else? Can an artist have a say over mutilation, alteration or destruction of his visual work even after it has been legally sold away to somebody else? Answering these questions in affirmation was difficult before the year of 1990. Year of 1990 marked an era of considerable change in the rights of artists that was a myth before the year of 1990 in United States. Now, before delving into the features of change that made artists better in their own rights, it is desirable to understand what the subject matter of such change is. The

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protection extended after the year of 1990 was for visual art works of artists and hence, that makes copyright the subject matter of the same. What is copyright? Copyright is one kind of intellectual property rights which is exercised by artists for their original literary and artistic works. Technically observing, we all are copyright owners. Copyright law doesn't make it mandatory to register the work to be a holder of copyright for any original literary or artistic work so; we all have copyright in our names. But, the question is after getting a copyright, how much right an artist can exercise over his copyrighted material when the material is lawfully transferred to someone else?

The answer to this question is addressed successfully by Visual Artists Rights Act, 1990 (VARA Act). The act is the first federal copyright law of United States that protects the moral rights of artists. Upon research conducted by Copyright office of U.S. it was found that nine states were there that recognised moral rights of artists before enactment of VARA Act. Those nine states followed two different kinds of model for recognising moral rights of artists:

1. "Preservation Model" – This model protects artists' right to attribution and right to integrity and also empowers them against unauthorized destruction of their work.

What exactly is right to attribution and right to integrity, we will see in the later part of the paper.

2. "Moral Rights Statutes" – These statutes didn't protect artists against unauthorized destruction. They provided protection only regarding attribution and integrity in visual and graphic works of recognised quality.

3. "Third Model" – This model was adopted by the tenth state after enactment of VARA Act. It protected the right against alteration or destruction and also protected the right of attribution. But, this model only applies to work publicly displayed in state buildings.

These models were adopted by states before and after enactment of VARA Act but were more or less somewhat different from VARA Act. VARA Act came into existence by the means of 17 U.S.C. 106A. VARA Act extends protection to those artistic and visual works which fulfil some requirements of the act and this way, artists of those works are given some additional rights under the act. For instance, a painter painted a painting, the copyright of the work lies with the painter and he has all the exclusive rights over the painting till the time the painting is with him but what after he sells away the painting to somebody else? Will he lose all his rights attached to the painting? VARA Act answers the question in this way. It says, if the creation of the painter fulfils all the requirements led down by the act, the painter will have the right of reputation over the painting even after its ownership has been lawfully transferred to someone. The person will not be

allowed to mutilate, alter, destruct or do any such thing with the work that will affect the reputation of artist who created it.

Visual Artists Rights Act is the first federal copyright law of United States that protects moral rights of the artists i.e., protects the reputation of the artist by protecting his creation to which his goodwill is attached. This protection of VARA Act extends even after the ownership of the creation is not with the artist anymore. The act successfully guards over the person who has been transferred the lawful ownership of the creation by the artist. But, the guard over owner by VARA Act is not absolute, it remains intact until the artist himself waives off his right of protection. The waiver in the part of the artist must be through an agreement in writing, signed or else it will not be considered valid. The agreement must also specify the waiver is regarding which work of the artist and also it should mention the precise uses to which the waiver applies. Also, when any waiver is done it is the duty of the examiner to check the background of such waiver for ascertaining whether it's a free waiver or not. The right of waiver was not recognized before the enactment of VARA Act. The history of protection of artist's moral rights can be traced back to France and other European countries and back then artists didn't have a right to waive off their own right of moral rights protection.

VARA Act came as a consequence of Berne Convention in 1990 in which it was demanded from the signatories to invoke protection of moral rights in their domestic laws. The law was enforced in year 1992. The act lays down some requirements which need to be fulfilled by the creation for it to be protected under VARA Act. The requirements are:

1. Protection of VARA Act applies to these categories of works only and those are:
 - a. Paintings;
 - b. Drawings;
 - c. Prints;
 - d. Sculptures;
 - e. Still photographic images.
2. The work must be produced for exhibition only;
3. The work must exist in single copy or in limited editions of 200 or fewer copies.
4. The visual art must be signed and numbered by the artist.

If these requirements are fulfilled by the visual work then VARA Act provides artist with some additional rights under 17 U.S.C. 106A and those are:

A. Rights of Attribution:

1. Right to claim authorship;
2. Right to prevent the use of one's name on any work the author didn't create;
3. Right to prevent use of one's name on any work that has been distorted, mutilated, or modified in a way that would be prejudicial to the author's honour or reputation
4. Right to prevent distortion, mutilation, or modification that would prejudice the author's honour or reputation.

B. Rights of Integrity

1. Any intentional mutilation, distortion or modification that is detrimental to the honour or reputation of the author shall be prevented;
2. Prevention of destruction of any work that is recognized stature.

After reading through the introduction of VARA Act, we all have a fair share of idea about what VARA Act is all about and it extends its protection till where. But, now the question arises whether the act is self-sufficient in protecting the moral rights of artists or it has some loopholes that create space for amendment in the act. The VARA Act protects visual arts only which include drawings, paintings, sculptures, prints and still photographic images. The limited area of VARA act makes it controversial with the contention that whether creators of other forms of copyrightable items shouldn't be protected? The root of the act lies in the reputation of creator and then further it limits the subject matter which eventually leads to the conclusion that other works are not bearers of creator's reputation which is a very untrue fact to state. All the copyrightable materials bear reputation of their respective creators and hence, the protection should be extended to them all. This very contention calls for an amendment in VARA Act.

In this paper, this question will be tried to be answered with the help of concepts, facts, theories and case laws.

What is Visual art?

Understanding of what is visual art is necessary because the whole idea of the act and moral rights is based upon the requirement of a work being a visual art only. Visual art has been defined under 17 U.S.C. 101. The section specifies, “(1) a painting, drawing, print, or sculpture, existing in a single copy, in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author, or, in the case of a sculpture, in multiple cast, carved, or fabricated sculptures of 200 or fewer that are consecutively numbered by the author and bear the signature or other identifying mark of the author; (2) a still photographic image produced

for exhibition purposes only, existing in a single copy that is signed by the author, or in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author.”²

*“To further clarify the matter it goes on to identify what is not considered to be a **"work of visual art"**:*

(A) (i) any poster, map, globe, chart, technical drawing, diagram, model, applied art, motion picture or other audio-visual work, book, magazine, newspaper, periodical, data base, electronic information service, electronic publication, or similar publication;

(ii) any merchandising item or advertising, promotional, descriptive, covering, or packaging material or container;

(iii) any portion or part of any item described in clause (i) or (ii);

(B) any work made for hire; or

(C) any work not subject to copyright protection under this title.”³

The visual arts include disciplines like ceramics, drawing, painting, sculpture, printmaking, design, crafts, photography, video, filmmaking, and architecture that produce largely visual works. Since many artistic fields (such as performing arts, conceptual art, and textile arts) incorporate elements of both the visual and other types of arts, it is important not to apply these criteria too rigorously. The applied arts, such as industrial design, graphic design, fashion design, interior design, and ornamental art, are also categorised within the visual arts.

Although it wasn't always the case, the phrase “visual arts” now refers to fine art and the applied, ornamental, and craft disciplines. The term “artist” was frequently limited to a man employed in the visual arts (such as painting, sculpture, or printmaking) rather than the handicraft, craft, or applied art media before the Arts and Crafts Movement in Britain and abroad around the turn of the 20th century. The dichotomy was underlined by Arts & Crafts Movement painters who respected popular as well as fine art. Since a craftsman could not be regarded as an artist, art schools distinguished between the fine arts and the crafts.

² The Visual Artists Rights Act, 1990, §106A.

³ *Ibid.*

Moral rights of artists

The phrase “moral rights” is a version of the French phrase “droit moral,” and it has nothing to do with the “morals” that the religious right promotes, but rather with the power of authors to decide how their works will ultimately be used. Authors are believed to have the “moral right” to be in charge of their creations. Thus, the relationship between a writer and her creation is essential to the idea of moral rights. Moral rights safeguard a work's creator's personal and reputational value in addition to its monetary worth. Although the extent of an author's moral rights is unclear and varies with provided by the traditional of authorship and ownership, they may include the right to accept or reject credit for one's work, to stop it from being changed without one's consent, to decide who owns the work, to decide whether and how it will be showcased, and/or to receive royalties from sales of one's creations. Through court interpretation of many copyright, trademark, privacy, and defamation statutes as well as under 17 U.S.C. 106A, often known as the Visual Artists Rights Act of 1990, moral rights are safeguarded under American law (VARA). VARA only pertains to visual art. Moral rights are much more extensively protected by regular copyright law in Europe and elsewhere.

The phrase “moral rights” often refers to an author's ability to stop revisions, alterations, or distortions of her work in the United States, independent of the ownership of the work. A visual work's creator has the moral right, as defined in VARA, to avoid association with works that aren't wholly her own and to stop defacing her own creations.

There is a special bond between an artist and his or her creation, and that bond is protected by moral rights. They allow the user to direct the production process. In French, the term for moral rights is “Droit Moral.” The creator of a work does not gain any monetary benefit from moral rights. They aid in keeping the original text intact. The originality of a piece of writing can never be compromised thanks to moral rights. The concept of moral rights does not directly oppose the concept of immoral rights or legal rights.

Moral rights are principally protected in the US through VARA. The “derivative work” clause of the Copyright Act, the defamation laws, the rights to privacy and press coverage, the principle of misappropriation, and particularly the Lanham Act, which regulates trademarks and unfair competition, were all difficult for courts and commentators to find moral rights in before VARA was passed.

A. What constitutes infringement of moral rights?

Authors of visual works are given two rights by VARA: the right of attribution as well as the right of integrity. With the help of the right of attribution, an author can stop a work from being wrongly credited and demand that the authorship be kept a secret (i.e. remain anonymous). The right to integrity prohibits the deliberate alteration, mutilation, or even other modification of a composition if doing so is likely to damage the author's reputation. It also forbids the eradication of any well-known work. Therefore, I would have violated the moral rights of the artist under VARA if I painted moustaches on a work by a well-known painter like Roy Lichtenstein or Frank Stella. On the other hand, if I draw a moustache on an Andy Warhol painting, I will not have infringed Warhol's VARA rights because the protection provided by the VARA terminates when the creator passes away.

Due to trademark laws' protection of the integrity of some works not covered by VARA, the number of ways wherein moral rights may be violated in the United States may grow (especially works for hire). According to the Lanham Act (15 U.S.C. 1051), "unfair competition" is prohibited if someone tries to pass off another person's work as their own or the author's own work. Any alteration or distortion of the work may be considered trademark "dilution" if the author's work is sufficiently well-known to be widely recognised as an authorial work or it has been filed as a trademark.

Kinds of moral rights

A. The attribution right

It is also known as the Right to Authorship or the Right of Paternity. Ownership of the work is established through this right. The audience can learn about the author of the work thanks to this right. According to the Right of Attribution, if a person created the work, he or she must be acknowledged as the author. This right allows for the avoidance of plagiarism. The reproduction or adaptation of the work must include the author's name as well. Some nations require assertion in order to exercise the right of attribution. The proprietor of the work must be explicitly stated by the author. A legal contract can be used to make an assertion. A piece of art that has been published in an exhibition can be verified by affixing the name to the frame. This right may only be exercised once. This right's exercise shouldn't take too long. This privilege also entitles the author to use a pen name.

The right to attribution states that the author of a work must be acknowledged whenever:

1. A piece of literature, theatre, or music is replicated, published, performed, conveyed, or altered;
2. Reproduction, publication, exhibition, or communication of a creative product;
3. A movie is reproduced, shown, or broadcast.

The following instances would constitute infringements of the right of attribution:

1. A musical composition is used in a television programme without the composer being credited as the writer of the song's lyrics or music.
2. When a writer submits a piece of writing to something like a magazine for publication, the publisher makes changes to the article's body and publishes it without mentioning the writer.
3. An artist purchases a work of art created by another artist and adds his own signature on top of the original before selling it.

B. Integrity as a Right

This right prohibits disparaging treatment of the author of the work. Derogatory treatment includes modifying, destroying, or materially distorting the work. The author's and the work's reputations are both safeguarded by this privilege. The work shouldn't be altered in such a way that the change devalues the original. This privilege protects the author's reputation from being ruined. Work integrity may be impacted by unfavourable evaluations or remarks about the work. The same exclusions that apply to the Right to Attribution also apply to the Right to Integrity. When a work is converted through one form to another, this right will be put into use. If the work receives disparaging treatment that harms the author's honour or reputation, that violates the right to integrity.

Basically, derogatory treatment is:

1. a literary, dramatic, or musical work's physical distortion, mutilation, or change in order to display any artistic work or architecture, or the work's exposition in an offensive setting or style.
2. Anything done in regard to a work or film that is detrimental to the originator; material distortion, mutilation, or alteration of a film.

There are two components to the right to integrity. Those are:

1. A major change, mutilation, or distortion of the work;
2. Or the performance of anything else connection with the work that is damaging to the author's reputation or honour.

C. The right against false attribution:

This right says that a person shouldn't falsely claim about being the owner of a piece of work. This right makes sure that the person isn't given credit for work when he isn't the creator of the work. Other moral rights include the right to privacy, the right to publish a work, the right to stop selling a published work, the right to stop selling the work, and the right to keep the author's reputation from being harmed.

Moral Rights Guaranteed Under Indian Copyright Law

Visual Artists Rights Act, 1990 is an act that operates in United States and it protects the moral rights of Attribution and Integrity of artists in US but it's not the scenario that only US recognised the moral rights of artists. Before the enactment of VARA Act, there were nine states that recognized moral rights of creators on varied levels of degree. Similarly, India also extends protection to moral rights under Section 57 of Indian Copyright Act, 1957. India enacted its provision to protect moral rights of authors and creators in India way before Visual Artists Rights Act, 1990 came into existence. Earlier, in India also the debate was regarding the subject matter of moral rights protection under Section 57 of Indian Copyright Act, 1957 that it should be only the literary works but then later on, the protection was extended to all the forms of copyrightable materials because it was realised that all the forms of copyrightable items are representatives of author's or creator's reputation and none of them can be excluded. The protection of moral rights was extended to all forms of copyrightable materials in the case of *Mannu Bhandari V. Kala Vikas Pictures Pvt. Ltd. and Ors. AIR 1987 Delhi 13*.

In this case, one Hindi writer gave right over his novel "Aap ka Bunty" to one of the producers who desired to make a movie on the novel and eventually he did and the name of the movie was "Samay ki Dhara." But, what happened was the author claimed that the movie has some changes that the literary work doesn't talk about and in reply the producer later on claimed that the plot of the movie and the novel were different and he didn't use anything from the novel. The producer claimed that the movie was his original creation which ultimately led to loss to the reputation of the author. Resultant, the author of the novel filed a suit for permanent injunction on the movie. The main contention in this case was it is evident and acceptable that literary works are protected under Section 57 but whether this moral right also extends to movies and documentaries? Can a permanent injunction be imposed on the movie considering it a subject matter of the section?

The court held that the protection of copyright doesn't only extend to the literary works but it also

extends to movies and documentaries that are based on such literary works. This was the first case where such inclusion was done by the honourable court through interpretation. The court further said that in this case, a bridge needs to be created between author's right and producer's right. If we look from the perspective of the author then it is unfair and violation of his moral rights indeed that the movie will give a wrong idea to the audience about the novel but if we go from the perspective of the producer, it is also not possible to view what exactly the literature says because depicting exactly as it is written in the novel is not practically possible. Novels and literary works are readable items and they are based on expression basically which cannot be seen. Imagination of the reader acts as the medium of conveyance in readable items but when it comes to movies and documentaries, imagination of a person plays very less role in expression because it is something that can be visualised. The court was of the opinion that it is not at all possible to show exactly what has written so finally, the court ordered the producer to remove the reference of the movie from all the sources so that this message is not disseminated in the society that the movie was made out of the novel. Therefore, Mannu Bhandari's concern was well-founded, and the court's handling of the situation offers some rules to follow. The court carried out its mandate in Section 57 and placed emphasis on an accurate reproduction of the book rather than automatically turning to the set contractual conditions. The need for adjustments was another topic on which the court discussed. When a literary piece is turned into a film, like in the example given, some adjustments and changes are unavoidable. It is incredibly unkind to demand that a film exactly replicate the literary work on which it is based. However, it's important to strike a balance between the producers' interests and the authors' moral rights. Therefore, the true question isn't whether it's okay to make changes to a literary work when making a movie. Instead, it is necessary to decide how much flexibility is permitted. She had granted the producers the right to make the necessary alterations and revisions in accordance with the agreement that Mannu Bhandari and Kala Vikas Pictures Ltd. had made. The court did, however, take into account the degree and type of alterations. A literary work shouldn't undergo more changes during film production than is absolutely essential. The author claimed that the plot of her book had been changed and that the portrayals of the characters had been severely mangled in the film "Samay ki Dhara." It was noted that the changes ran the risk of tarnishing the integrity of the book as well as harming the author's reputation. The primary topic, characters, and premise of the novel needed to be maintained, and the producers were only allowed to make changes if they were absolutely necessary. As a result, the court's justification follows logic and offers a fair summary of the overall situation.

Moral rights give the creator the right to alter or eliminate the work and safeguard his reputation. When the work is created, they are automatically assigned. Moral rights uphold the author's connection to the work while denying the author any financial gain. Moral rights shouldn't be disregarded because they are directly related to the author's personality. These privileges grant the author creative control in order to protect his expressions or ideas.⁴

Berne Convention

The Berne Convention covers the rights of authors as well as the preservation of works. It is founded on three fundamental principles and includes a number of articles that specify the minimum level of protection that must be provided, as well as exceptional measures that developing nations may apply.

(1) The following are the three fundamental ideas:

(a) The principle of "national treatment" requires that works with their origin in one of the Contracting States—i.e., works whose author is a national of that State or works first published there—be accorded the very same safeguards within each of the other Contracting States as the latter does for the works of its own citizens.

(b) The principle of "automatic" protection states that protection cannot be contingent upon the fulfilment of any formality.

(c) Protection does not depend on whether there is protection in the nation where the work was created (principle of "independence" of protection). However, if a Contracting State grants a longer period of protection than the minimum period required by the Conventions and the work loses its protection in the place of origin, protection may be revoked.

(2) The minimal requirements for protection concern the works and rights that must be safeguarded as well as the length of the safeguards:

(a) According to Article 2(1) of the Convention, works that are protected must "cover every output in the literary, scientific, and aesthetic realm, regardless of the style or form of its presentation."

(b) The following rights, subject to any permissible reservations, restrictions, or exceptions, must be recognized as exclusive rights of authorization:

(c) The right of performing in public dramatic, dramatic-musical, and musical works; the right to

⁴ Avikalp Mishra, Mannu Bhandari V. Kala Vikas Pictures Pvt. Ltd. and Anr. International Centre for Intellectual Property Laws, <https://lawessential.com/ip-case-laws/f/mannu-bhandari-v-kala-vikas-pictures-pvt-ltd-and-anr-1987?blogcategory=IP+-+Case+Laws> ; November 11, 2022.

read literary works in public; the right to disseminate to the public a performance of such works; the right to translate; the right to adapt; the right to arrange;

The right to make reproductions in any way or form (with the possibility that a Contracting State may permit, in certain special cases, reproduction without authorization, provided that the reproduction does not conflict with the normal exploitation of the work and does not unreasonably prejudice the legitimate interests of third parties) and the right to broadcast (with the possibility that a Contracting State may provide for a mere right to equitable remuneration instead of a right of authorization).⁵

The ability to reproduce works in any way or form, with the probability that a Contracting State may grant a right to equitable redress with regard to sound recordings of musical works if the reproduction does not conflict with the work's regular exploitation and does not unreasonably prejudice the author's legitimate interests in those special cases where a Contracting State may grant a reproduction without permission.

The Convention also establishes “moral rights,” which include the ability to claim authorship of a work as well as the right to object to any alteration of the work that would be detrimental to the honour or reputation of the author. With regard to the length of the protection, the general norm is that it must be provided until the 50th year following the author’s passing. However, there are certain exceptions to this generalisation. The term of protection for anonymous or pseudonymous works ends 50 years after the work has been lawfully made available to the public, unless the pseudonym is clear that the author is who they claim to be or the author reveals their identity during that time; in that case, the general rule is applicable. *For audio-visual (cinematographic) works, the minimum period of protection is 50 years following the public distribution of the work, or in the absence of such an event, 50 years following the creation of the work. The minimum period for works of applied art and photographic works is 25 years from the date of creation.*

The Berne Convention permits several restrictions and exceptions to economic rights, i.e., instances in which works that are protected may be used without the owner's consent and without being compensated. Articles 9(2) (replacement in certain special cases), 10 (quotations and use of

⁵ Summary of Berne Convention for the Protection of Literary and Artistic Works (1886); Website of WIPO; https://www.wipo.int/treaties/en/ip/berne/summary_berne.html; November 11, 2022.

works as examples in instruction), 10bis (reproduction of newspaper or similar articles and use of works for reporting current events), and 11bis all contain these restrictions, which are referred to as “free uses” of protected works (ephemeral recordings for broadcasting purposes).⁶

Loophole in VARA Act

Berne convention deals with right of authors and their preservation. Berne convention that took place in the year of 1886 was adhered to by United States in the year of 1988. As a result, VARA Act was enacted in the year of 1990. The basic idea of Berne Convention was to protect the moral rights of artists. United Nation was of the opinion that federal and union laws are sufficient to guarantee all the moral rights of the artists and Congress wanted to cover all the copyrightable items under the ambit of VARA statute. Initially, the idea of Congress was to protect the rights of all the creators and not of just “work of visual art” but the scenario that time in U.S. was such that only a set of creators were complaining against mutilation of their work, complaining that they were not getting any profit on resale of their creation or were worried that their work of “reputed stature” were being destroyed, they were given preference of protection under VARA Act. Also, at that time many countries had concept of limited moral rights only which influenced congress debate of having a statute that covered interest of only artists of “work of visual art”.

One other factor also played a role in the enactment of VARA Act with limited protection to moral rights and the factor was ‘Economic Incentive Theory’ of Posner. It is believed by many researchers, artist community and has also been reflected in many case laws that the limited approach of VARA disregards the effectiveness of the statute.

The limited scope of the act highlights four categories of issues. The kind of issues are seen when the interpretation and application of VARA is in question. It becomes difficult to apply and interpret under the scope of the act. Those four categories of issues are:

1. Provision of VARA act acts as a threshold for claiming under the act but the scope of the same is so limited that it cannot be used completely. There is a problem with the application of the act and what is more problematic is the act lays down strict rules for seeking protection under this act and nobody can claim outside the ambit;
2. It is difficult to gain a workable standard from the drafted statute of VARA. The question is how VARA will work is not ascertained in a very perfect way yet because of the problem of

⁶ *Ibid.*

limited scope;

3. Duration process;

4. Public is not aware of the waiver provisions.

Majority of case commentaries has talked about the demerit of the VARA. They said that VARA statute is a very strong but it becomes difficult to claim rights under it because it offers very limited protection of integrity and attribution. The definition of “Work of visual art” acts as a threshold and without it, one cannot claim any remedy under the Act but the scope of this definition is so limited that two major categories are already excluded. Those are – 1. Works that is not visual in nature; 2. Works that are visual in nature but doesn’t cover under the definition of “Work of Visual Art”. Congress extended protection to only artists of visual art and the justification for the same was given by the congress that arts that exist in one copy or fewer copies reflects more personality of the artist in comparison to those arts that has multiple copies.

The courts in many case laws admitted that the statute in 17 U.S.C. 106A lays down the idea that “work of visual arts’ that has limited or one copy is to be treated special but the court also highlighted that the statute fails to explain as to why such works needs special treatment.

It was the opinion of the congress that arts that exist in one or limited copy has more hint of creator’s personality in comparison to those which has more copies and based on this notion only, they chose to provide limited protection of moral rights.

Conclusion with Suggestions to overcome the loophole of VARA Act

From the above discussion, it can be concluded now that the VARA Act and the U.S. Copyright law are capable of protecting the interest of artists though these laws have equal scope for improvement because there have been instances of dissatisfaction. It is believed that artists those who are not given protection under VARA Act have too many ways to protect their interests already for example, provisions against unfair competition and misappropriation. They don’t need inclusion into VARA Act to exercise or enforce their right of integrity and attribution. Still, if the moral framework of United States needs to be improved then there are some suggestions that will lead a way towards overcoming of the loopholes of the act. The very first difficulty that is faced in this topic is the limited threshold of 17 U.S.C. 106A. To overcome this difficulty, what can be done is courts should stop interpreting 17 U.S.C. 101 in its literal sense and should start interpreting it using common sense and through standards that are acceptable in the community of artists to ascertain whether a work falls under the definition or not.

The second suggestion that could improve the operation of VARA is that it must continue to exclude arts that are made for the purpose of “commercial use” but the way of interpreting “commercial art” should be changed. “Commercial art” should only be those which are made either pursuant to contract or for expressly for commercialisation. No work should be considered commercial in nature just because it is not limited in copies.

The third suggestion is that since, VARA focuses a lot upon arts of “recognized stature,” language.
