

*Andrew Paster**

I. INTRODUCTION

II. THE COMMON LAW NATIONS

Common Law Nations

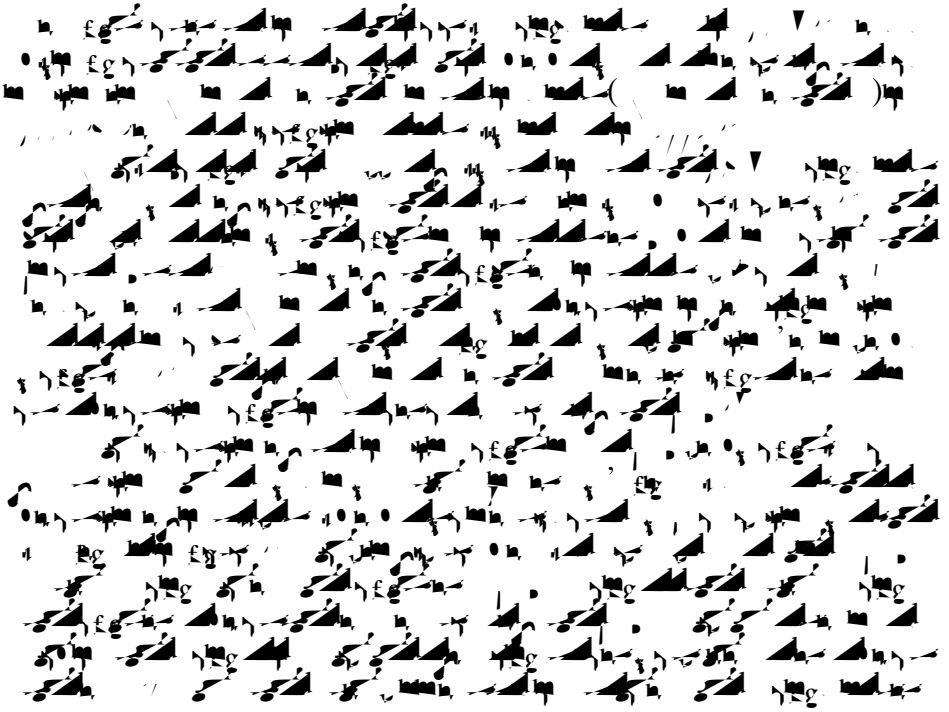
III. THE RIGHT OF WITHDRAWAL

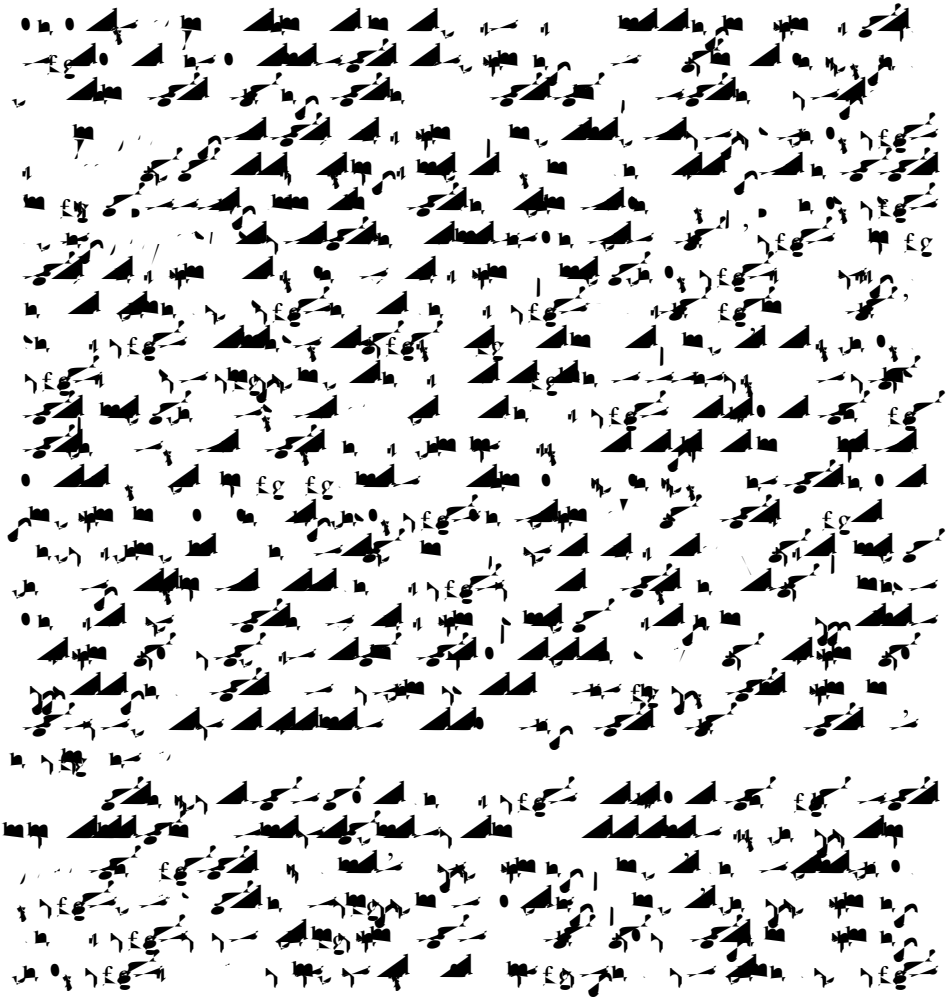
IV. RECIPROCITY

The Right of Withdrawal

Reciprocity

V. CONCLUSION



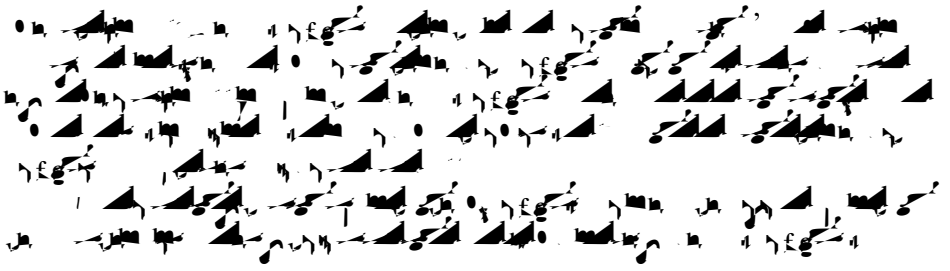


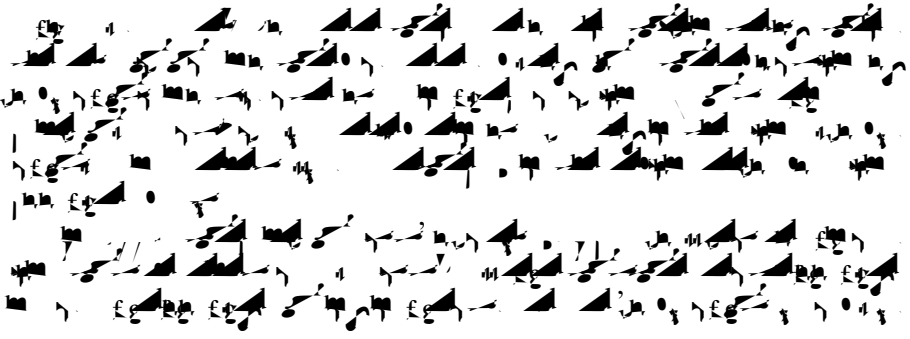
Id.

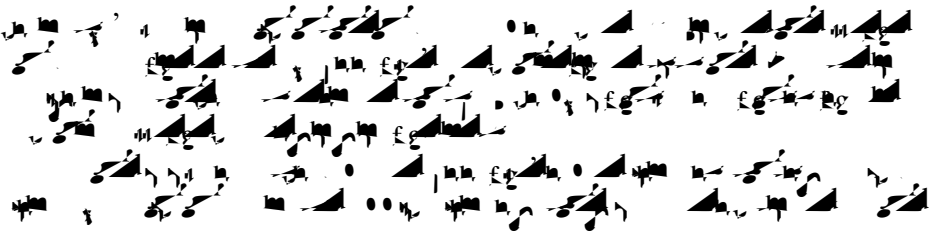
Id.

See, e.g., *Heritage Preservation as a Public Duty: The Abbe Gregoire and the Origins of an Idea* (1997), [http://www.copyright.com/copyright/copying/copying.html](#).

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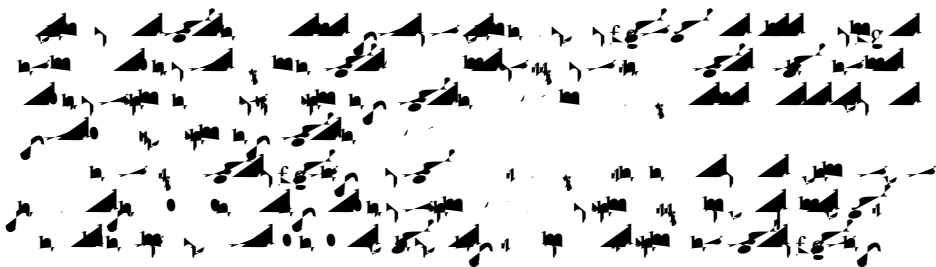






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sion.¹⁵² By doing so, the court honored the agreement's choice of law provision, resolving this dispute under French law.¹⁵³

While the court was silent as to its decision to apply French law, it may be presumed that it was due to the parties' mutual assent in their initial agreement that French law was to govern any and all disputes. The significance of this decision sets a precedent and encourages French courts to apply U.S. law when U.S. authors come before it and present a contract entered into under U.S. law with the intention that it be the sole law to govern a dispute, very much like it would in the entertainment contract discussed in Part IV.

While trademark law and copyright law are distinct areas of intellectual property, they are similar enough to justify that where a U.S. court decides to apply French law in a trademark dispute, a French court ought to reciprocate and apply U.S. law in a copyright dispute. The matter really lies in the court's decision to respect the parties' intention to have a particular nation's law be the governing law, despite where the suit may be brought. Article 1156 of France's Civil Code provides that the parties' intention when entering into a contract ought to prevail over the written word.¹⁵⁴ This could only strengthen the instance where the parties have explicitly set out their intention in their contract and thus, the intention and written word of the contract would be in harmony, compelling the application of the law set forth in the contract, particularly when the underlying policy of U.S. termination is in harmony with French public policy.

VI. C ONCLUSION

U.S. authors can overcome the territorial limitation of U.S. termination rights by demonstrating that its underlying policy is in harmony with the various policies of moral rights. Moral rights favor authorship over ownership,¹⁵⁵ justifying the application of U.S. termination in France. The underlying policy of the reversion of rights under U.S. termination is in harmony with the public policy of French moral rights. This policy recognizes reversion of U.S. rights as a quintessential right of an author that should prevail over any economic interest of an assignee and cause the author's rights to revert in France as well.

As demonstrated in Part II, The Berne Convention does not state which nation's laws ought to apply in the instance of copyright assign-

152. *Id.* at 628-30.

153. *See id.*

154. CODE CIVIL [C. CIV.] art. 1156 (Fr.).

155. *See* Rajan, *supra* note 34, at 125.

