



## Author's right and copyright – Comparative analysis –

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### **Abstract:**

There are two major legal traditions in the world, common law and civil law.

The protection systems for works of the mind are thus influenced by these different legal models.

Author's right includes all the prerogatives granted to the author of a work of the mind (writing, works of art, films...) which defined the legal system that we know in France.

**Keywords:** Author's right – copyright – moral right – literary and artistic work.

### **Introduction:**

Judicial systems differ from one country to another, two very widespread judicial systems are civil law such as France, and common law such as Anglo-Saxon countries.

Often the choice to use one system rather than another is based on the history of the country or region in question.

The protection systems for intellectual works are thus influenced by these different legal models, thus the United Kingdom, Ireland, The United States, Australia, and New Zealand, use the copyright systems, which has a different approach, from that of copyright.

In fact, the differences between author's right and copyright are explained by more fundamental differences between civil law and common law rights.

So, what is copyright on the one hand, and author's right on the other hand? These two systems are away from each other ?

In order to answer this problem, it is necessary to address the concept of both author's right and copyright in the first section, then to the distinction between them in the second section and finally the extent to which these two concepts can converge in the third section.

## **THE FIRST TOPIC : THE CONCEPTUAL FRAMEWORK OF AUTHOR'S RIGHT AND COPYRIGHT FIRST REQUIREMENT: AUTHOR'S RIGHT:**

### **Firstly : Definition of author's right:**

Author's right refers to the rights enjoyed by creators over their artistic and literary works, author's right is automatically acquired from the moment the work is produced, regardless of the form of expression used.

Author's right derives from human rights and related to the rights of creators. A work is defined as an intellectual, literary or artistic creation. There are different types such as a book, music, drawings or photographs, computer software, artistic creations, etc...

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Author's right therefore protects all works with an original character linked to the creativity of the author.

However, it requires a concretization of the work to be applicable, so ideas, concepts or methods are not covered of artistic and literary works, author's right is a possession of freedom of expression and is qualified as consubstantial with the flesh of the author.

## **Secondly : Components of author's right:**

Author's right has two very distinct components of law.

### **1- Moral rights**

Inalienable, imprescriptible, and perpetual, which binds the author to his work, from him derives the right of disclosure, paternity, respect for the integrity of the work and the right of withdrawal and repentance.

#### **a- The right of disclosure:**

The author or his heirs have the possibility of making a work public or not according to the methods of their choice.

#### **b- The right of paternity:**

The author has the right to make himself known publicly as an author, he has the right to use pseudonym, to be anonymous, he has the right to use a person who claims to be the legitimate author.

#### **c- The right of withdrawal and repentance:**

The author always has the possibility of putting an end to the exploitation or the distribution of his work without any justification.

Moral rights are a subjective concept characterizing the ownership of the work and the ability of the author to reproduce it. It in fact encompasses several concepts of the right of paternity, disclosure, respect for the integrity of the work, withdrawal... it is when the work is attached to the author that the author's right becomes inalienable, it is not transferable, it can not be sold but only transmitted to the heirs or the executors, perpetual and imprescriptible.

The moral right accompanies the author during the distribution of his work and in the protection of his integrity, it guarantees the respect of the name of the author.

### **2- The economic right**

Characterizes the interest of the author to make a profit from his work. This right is transferable and allows the author to make a profit from his work and to receive remuneration.

The exploitation of a creation of the mind always remains possible once the work has been broadcast for the first time.



Economic rights which confer on the author the monopoly of the economic exploitation of his work, contrary to moral right. They are not perpetual but expire beyond a certain period. Author's right protection is acquired by the mere fact of the creation of the work. No formality is required, the deposit is not necessary to be the holder of right on the work but to confer a certain date on a work and thus protect oneself in the event of litigation, in particular during an action for infringement.

The patrimonial right of the author carries several prerogatives, the first of which is the right of representation, that is to say the possibility for the author to communicate or have communicated his to the public. The reproduction right consists in the possibility for the author to have the material fixation of his work authorized on any support or by any means of his choice.

The resale right corresponds for the authors of graphic or plastic works to the right to have the inalienable right to participate in the proceeds of the subsequent resale of their work.

Finally, the right of destination allows the author to enforce the initial destination to which he wished to give his work.

The economic right characterizes the interest of the author to make profit from his work. This right is transferable and allows the author to make a profit from his work and to receive remuneration.

## **SECOND REQUIREMENT: COPYRIGHT**

### **Firstly : Notion of copyright :**

Copyright aims above all to protect works as intellectual property and the rights of their owners, rather than to protect the creations and creators of the works in question.

Copyright applies in countries adopting common law, such as the United Kingdom, Australia, Canada, United States.

Copyright is symbolized by the symbol ©, unlike author's right, copyright does not protect the author, but his work. It defines the right available to the author or his assignee to protect the exploitation of the work.

Copyright also gives has the right to allow third parties to reproduce the work, make derivative works, distribute copies for different purposes (sell, loan, rent) make a public performance of the work.

### **Secondly : Characteristics of copyright:**

The copyright system has a set of characteristics that we summarize as follows:



### **1- Copyright does not recognize moral right:**

In a copyright system, the author is not the center of protection, copyright rules do not recognize the right of paternity, of repentance for example, nothing prevents the modification of a work, without the consent of its author or his heirs, the author to oppose the distortion of his work, will have to act on the ground of defamation or consumer law.

### **2- The copyright requires a deposit:**

In a copyright system, one becomes the owner of the rights to a work after filing in with a competent office.

The symbol © is used to show that the work has been deposited, so the system is rather similar to that of trademark registration or patent registration.

### **3- Copyright protects the work rather than the author:**

Author's right attaches as its name suggests, to protecting the person of the author, the latter is at the center of all attention and has important property and moral right that protect his interests.

In a copyright systems, the logic is reversed, it is the work intended for publication that must be protected and not its author. It is therefore the person who ensures that the work is accessible to the public who is deemed to hold the rights to it.

## **THE SECOND TOPIC : DISTINCTION BETWEEN AUTHOR'S RIGHT AND COPYRIGHT**

The distinction between author's right and copyright is mainly due to the different systems to which they belong, author's right belongs to the Latin system and copyright belongs to the Anglo-Saxon system, and for this, it is necessary to know the essential differences between these two systems first, and then we address the differences between author's right copyright second.

Civil law is characterized by a strong element of codification, because the civil law system is a codified legal regime that traces its origin from Roman law.

Characteristics of a civil law system include:

- There is generally a written constitution as well as specific codes and law (civil, penal, law codes...) which set out the fundamental right and duties.
- Only legislative texts are considered binding for all case law is less important than the law in the civil, criminal and commercial courts.
- Freedom of contract is less important than in a common law system, many provisions are implicit in the contract in accordance with the law and the parties cannot enter into one enclosing these provisions.



Characteristics of a common law system include:

- There is not always a written constitution or codified laws.
- Court decisions are enforceable decisions of the highest court can generally be overturned by that court alone or by law.
- Extended freedom of contract some provisions are implicit in the contract by virtue of binding force.

From a comparative perspective, it seems interesting to come back to some characteristics which, in the eyes of more recent doctrine, would make it possible to distinguish author's right and copyright.

These are two systems are based on opposite guns:

Copyright is based on the person of the author, the right arises from the act of creation of a work, and the whole system is based on the protection of the rights of this author. The copyright system starts from the opposite postulate, that it is the author who creates the work, but it is the work that will be protected and not the author, and as the work is intended to be communicated to the public, the copyright will attempt to ensure that the public has the simplest possible access to the work, which means that the rights will be held not by the author but by the person who invests in the work and who is not exploited.

### **FIRST REQUIREMENT: THE QUALITY OF THE AUTHOR**

In French law, the audiovisual work is considered as a work of collaboration. That is to say that several authors participated in it, the quality of author is therefore recognized to the natural persons co-author who have created the work, author of the scenario, dialogues adaptation, musical composition, adapted pre-existing work and director, art. L113-7.

In American law, in the United States, audiovisual works are considered "works made of gold hire" (works carried out within the framework of a contract of hiring of works or services). The main difference in that the author of a works is the producer, whether it is a natural person or a legal production company.

### **SECOND REQUIREMENT: THE DURATION OF PROTECTION OF WORKS**

In French law, the period of protection of a work runs from the death of the last next of the co-authors, so a work is protected for 70 years from the death of the last living collaborator.

In American law, the period is calculated from the date of publication of the work, an audiovisual or cinematographic work is protected for 95 years from its publication.



### **THIRD REQUIREMENT: REMUNERATION**

Under French law, the author must cede his rights to the producer, in return the authors benefit from remuneration proportional to the revenue from the exploitation of the work.

American copyright is not equivalent to a fixed remuneration for the authors, because the scriptwriters and American directors have come together in powerful unions to negotiate the working conditions and remuneration of their members.

### **FOURTH REQUIREMENT: REMUNERATION**

The differences between author's right and copyright have significant consequences, it is important to know:

#### **Firstly: The possibility of assigning the rights:**

In the context of work, the employer becomes the author of a work created by an employee for the copyright system, however, this is only possible if the employee and the employer establish a contract stipulating the transfer of ownership.

#### **Secondly: The form of expression:**

Copyright only protects works fixed on a material medium (computer file, drawing...) and whether the work is published or not.

For its part, copyright protects all creation of the mind fixed on a material support or not.

### **FIFTH REQUIREMENT: THE FORMALISM REQUIRES BEFORE THE APPLICATION OF THE MODEL**

Copyright naturally applies to the author of a work, no formalism is required. Historically, a deposit was necessary to assert copyright and this condition constituted another difference between the two systems. From common law to the Bern convention, this registration is no longer mandatory.

However, it continues to constitute a presumption of proof as to the validity of copyright and is therefore still very widely practiced, if the formalism of the deposit on works protected by copyright is used in France, the mentions copyright © or all rights reserved, do not play an informative rule since their absence does not in any way change the scope of copyright protection.

The moral rights of an author over his work:

The difference that has historically separated the two systems is the recognition of moral right and not by copyright. Thus, in the family of civil law, the author benefits from a moral right, which recognizes in the work the expression of the personality of the author, and protected as such. Historically,



such prerogatives do not exist in copyright, which has long made it a purely economic model.

### **THE THIRD TOPIC : BRINGING THE TWO SYSTEMS TOGETHER**

The philosophical distinctions between copyright, which defends a natural right of the author, and copyright which protects above all the economic investments of producers, testifies in part to the reality, in part only because the patrimonial aspect of the right copyright is judged according to an economic logic quite identical to that of copyright, it should be noted that moral rights have gradually become part of American copyright law. So that eleven states explicitly recognize it. The state of California and that of New York recognize the right of authors to the integrity of their works. Reciprocally, French legislation regulates moral rights in order to limit their perverse economic effects. The French law of 1985, widely recognized the role of investors in the creative process in the same spirit obvious economics.

However, most countries have harmonized their legislation on this issue by adopting the revised Bern convention of 1971.

The United States are nevertheless an exception, having refused to apply the part relating to moral rights of this act.

Thus, if moral rights are recognized in certain states, such as those of New York and California, it is not in many other state and federal levels.

### **Conclusion:**

Copyright is the legal system which governs these same rules but in Anglo-Saxon countries, and which places the work and not the author at the center of the system. If there are clearly differences between the right of author's right and copyright, these two systems tend to join since the right of author becomes more and more an economic protection and the copyright begins has largely does not integrate the moral right, and if these differences have long been considerable, there is today a clear rapprochement between the two traditions, in particular since the Bern convention of 1971 which harmonized the legislation.

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