

**THE AUTHOR'S RIGHT V. COPYRIGHT :
A COMPARATIVE STUDY OF THE COMMON LAW
AND THE CIVIL LAW JURISDICTIONS**

FATIN BINTI YUSOF

**KULLIYAH OF LAWS
INTERNATIONAL ISLAMIC UNIVERSITY
PETALING JAYA
SELANGOR DARUL EHSAN
MALAYSIA
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Preface

This thesis will be discussing on the concept of author's right and copyright. The question which is raised and discussed is, whether the Common Law and the Civil law jurisdictions emphasis on author's right or on copyright.

The first chapter will be discussing on the evolution of copyright in the UK (which represents the Common Law jurisdiction), and the Continental countries i.e. France and Germany (which represent the Civil Law jurisdiction).

This will be followed by a discussion on the five factors which determine whether a system of law is more towards author's right or on the economic exploitation of a work. The third chapter will be dealing with the concept of moral rights under the UK and the Continental countries.

The last chapter will be discussing on the position under the Malaysian Law; with regards to its inclination; either it lays stress on the status of an author or on the economic exploitation of an author's work.

The conclusion to this chapter will surmise all of the discussion.

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French

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Germany

Copyright Act of 1965 (as amended in 1985)

Malaysia

Copyright Act of 1987

Abbreviations

A.C.	Appeal case
A.I.P.J.	Australian Intellectual Property Journal
A.J.C.L.	American Journal of Comparative Law
All E.R.	All England Report
A.L.R.	Australian Law Report
Ch.	Chancery
C.L.J.	Current Law Journal
E.I.P.R.	European Intellectual Property
E.R.	English Report
F.S.R.	Fleet Street Report
I.P.J.	Intellectual Property Journal
K.B.	King's Bench
L.J.O.S.	Law Journal Old Series
M.C.C.	MacGillivray's Copyright Cases
M.L.J.	Malayan Law Journal
M.L.R.	Modern Law Review
P.C.	Privy Council

Q.B.	Queen's Bench
R.I.D.A.	Revue Internationale Droit d'Ateur
T.L.R.	Times Law Report
W.L.R.	Weekly Law Report
p.m.a.	Post Mortem Auctoris

INTRODUCTION

1.0 Problem Defined And Statement of Intent

Copyright plays a significant role in the society of many countries in the world. Every book, magazine, movie, film, etc. are now ensured protection by copyright laws. The ways we use those things are very much influenced by our perception of copyright.

Copyright is a form of property right protecting certain types of human creation that are recorded in some form. It is a right to stop others from copying or exploiting the authors' works in various other ways without permission and subsist for a limited period. Typically, layman associates copyright law with the rights of an author in relation, for example, to the books he writes. However, copyright covers far more than that as it also confers rights to those who create literary, artistic, dramatic and musical works.¹

Thus, copyright law is the law that protects the economic interest of authors, giving them the right to exploit their works and to control their unauthorised use.

¹ Dworkin, G., Blackstone's Guide To The Copyright, Designs And Patents Act 1988, (1989) 1.

The primary purpose of copyright law is to promote the dissemination of knowledge by giving authors an interest in coming forward with their works. This principle was endorsed in the 18th Century case of *Millar v. Taylor*,² where Wiles J. said;

'It is wise in any state, to encourage letters and the painful researches of learned men. The easiest and the most equal way of doing it, is by securing to them the property of their own works...He who engages in a laborious work which may employ his whole life, will do it with more spirit, if, besides his own glory, he thinks it may be a provision for his family'.

Copyright law is of a twofold nature; it is to encourage progress in the arts and science for the benefit of the public and it is also to secure a fair return for creators of works so as to ensure continued creativity.³ This is evident in the plain words of Lord Mansfield stated in the case of *Sayre v. Moore*;⁴

'...[w]e must take care to guard against two extremes equally prejudicial; the one, that men of ability, who have employed their time for the service of the community, may not be deprived of their just merits, and the reward of their ingenuity and labour, the other, that the world may not be deprived of improvements, nor the progress of the arts be retarded'.

² (1769) 4 Burr 2203.

³ Khaw, L.T., *Copyright Law In Malaysia*, (1994) 1.

⁴ 102 E.R. 139 at 140.

From this, we can see that, the fundamental theory of copyright law in the strict sense, is based on the need of mankind to have access to the fruits of knowledge and the collorary necessity to stimulate the search for knowledge by rewarding the searchers.

Thus, copyright law is a branch of Intellectual Property Law which protects the proprietary rights of authors in relation to their creative works. Without copyright protection, there would be no way of safeguarding the exclusivity of interest in the works of writers.

A question however needs to be asked whether copyright law is concerned with an author's right. Does copyright law recognise the status of an author with regard to his work or does it merely concern with the economic exploitation of a work. Some jurisdictions emphasise on the recognition to author's rights in all its manifestation, but some other jurisdictions concentrate more on the economic exploitation of a work.

1.1 Aims and Objectives of Study

The aim of this thesis is to discuss and analyse on the concept of copyright and author's right under the Common Law and the Civil Law jurisdictions. It is the main objective of this thesis to see on how far legal

principles in these two systems of law emphasise on the recognition of an author's rights rather than on the economic exploitation of a work.

Finally, it is also the main objective of this thesis to see the position under the Malaysian Law, which has a deep influence of the Common Law. The discussion will give us a clearer picture of the position of copyright law in Malaysia; whether it emphasises on the recognition of the status of an author or on the economic exploitation of a work.

1.2 Scope of The Study

In discussing the Common Law jurisdiction, the discussion will concentrate on the position in the United Kingdom. This is due to the fact that the Common Law evolved and developed in the UK. Even now most of the Common Law countries still follow and based their law on the UK law. Under the Civil Law jurisdiction, the discussion will concentrate on the position in France and Germany. These two jurisdictions are chosen because France and Germany are the two major Civil Law countries.

For the purpose of our thesis, a cursory examination of the evolution of copyright in the UK and the Continent (i.e. France and Germany) is important. It may provide us a clearer picture of the position of

copyright law in these two jurisdictions. Thus, the first chapter of this thesis will be dealing with the history of copyright.

The second chapter of this thesis will be discussing on five factors which are important in determining whether a system of law emphasises on an author's rights or on the economic exploitation of a work.

This five factors are:-

- 1) the concept of authorship;
- 2) the concept of ownership;
- 3) the requirement as to originality;
- 4) the requirement as to fixation;
- 5) the duration of copyright protection.

Though there are other factors which may be considered as well, it is enough, for the purpose of our discussion, if we confine and concentrate on these five main factors. They are the most important and distinguishing factors in determining whether a system of law emphasises on the recognition of the status of an author or on the economic exploitation of a work. The discussion on these five determining factors will give us a clearer picture as to which jurisdiction recognises the status of an author and which jurisdiction concentrates on the economic exploitation of a work.