



AENSI Journals

## Advances in Environmental Biology

ISSN-1995-0756 EISSN-1998-1066

Journal home page: <http://www.aensiweb.com/AEB/>

## Natural Right of the Exclusive Copyright

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### ARTICLE INFO

#### Article history:

Received 18 July 2014

Received in revised form 27 August 2014

Accepted 12 October 2014

Available online 3 November 2014

#### Keywords:

intellectual ownership, author and creator, intellectual right, properties and Islami Jurisprudential

### ABSTRACT

The right which is created due to the artistic or literary ability is called the right of the author and it is a collection of the rights which is recognized for the creator of the work due to its intelligence. These rights include the exclusive right for using the work for a limited period of time for the creator or after his death for his predecessors. The main goal of the copyright is to support the properties or economic rights of the author so that the society can use it with confidentiality and information is not limited for them. The aim of supporting the copyright is to protect the benefits of the author on one hand and observing the public interest. Different views have been considered such as the author and publisher and expressing different views to introduce the philosophical bases and intellectual ownership and the copyright in Islamic law are described, too.

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**To Cite This Article:** Farzad Jalilian., Natural Right of the Exclusive Copyright. *Adv. Environ. Biol.*, 8(12), 1175-1180, 2014

## INTRODUCTION

The issue of supporting the intellectual ownership is related to intellectual works and creations of human being. Article 2 of the statement of establishing the international organization of intellectual property (WIPO) has mentioned a list of the issues under the statement of copyright which include the “artistic and literary works, scientific works, artistic performance and recording organization of the innovation in all the fields of the human attempts, scientific discoveries, industrial plans, barand, geographical bases, supporting against the unfair competition and all other rights which are due to the activities in scientific, literary, artistic and industrial field”. The intellectual copyright is divided into to main parts:

1. The intellectual right or the right of the author or copyright which include all the written and non-written works such as books, novels, plays, film, status and other artistic works and oral works and software.
2. The industrial right which is divided into the subsections such as innovation, names and brands, geographical signs, business secrets and industrial plans.

The right of artistic and literary ownership is one of the main branches of the intellectual right, the aim of which is to protect and support the artistic and literary and scientific works. However, the lawyers of some countries use the term “right of the author” instead of the right of “literary ownership”: although at first look, it seems that the right of the author is not a comprehensive combination of the literary and artistic ownership is more used for the authors and for example we do not have the photographer or sculptor as the author, but this problem is going back to the background of the intellectual right; since first, only books and authors were supported and then gradually, the advancement in the societies cause other creations of humankind are supported. In English countries and also America, the term “copyright” and in Germany the term “urheberrecht” is used as the word for the right of the authors and the term “droit dauteur” in France means the right of the literary and artistic ownership [11].

*The aim and benefit of the copyright can be found in obtaining fame, economic reward and professional satisfaction which is included in the hidden motivation of human activities.*

The introduction mentioned above makes the main and subsidiary questions of the article. Who is the author of the work and what are his rights? What is the right of the author and what is its nature? What are the theoretical and philosophical bases of intellectual right? What are the views and opinions about copyright in the Islamic law? The research method of the article is descriptive and analytical and the writer tries to answer the questions with scientific and historical findings.

*Expression and Definition:*

Considering the necessity of knowing some concepts about the right of the author, the expressions used in this article are defined and recognized in sum.

Defining author and composer: the law of supporting the right of the authors and composers and artists which is approved in 1956 in Iran does not have any definition of author and composer, so the literary meaning of the related words should be described for defining these words.

Author is someone who created new book and written work using some books, articles and other written ones such as collecting the poems which have same meaning from different poets in a book. Composer is someone which writes a book using his thought and mind and his experience and creates a work. Article 1 of the law for supporting the rights of the Iranian writers has mentioned that: the law is related to the author or composer and artist that some consider it as the creator" [24].

In this article, the author is defined as a general term and so it includes the composer.

*Definiton of the work:*

Based on the article one of the law of supporting Iranian authors and writers, "what is gained through knowledge or art or innovation, without considering the taste or method of creating it, is called a work". Although this legal term is too general and if we consider the surface meaning of it, the discoveries and innovations will be included too, but there is no doubt that this type of mental work is out of the realm of this law unless it is formed as a literary masterpiece [35] in French regulation and international contracts of Bern, the term Oeuvre Littevaive has the same meaning (ibid).

*The materialistic right (financial and property) of the author:**A: definiotm of the author's property:*

Author has the exclusive right of using the work any way he likes. In other words, any use of the work which is financial is devoted to the author. Legislator of Iran has defined this right as the materialistic right. However, if we use the term financial right instead of the materialistic right, it is near its French term. Some of the lawyers believe that the right is materialistic or non-materialsitc. This definition does not have a correct base since right is always materialistic and material is the thing that is defined as the property.

Right is something moral which is created from the mind as an abstract entity and each of objective or personal right- the subject of which are materialistic and property- are moral and one cannot imagine they are materialistic. So, the right of ownership is moral the subject of which is property. In addition, other subjective rights whether main or something related to using is and all the personal rights are moral not materialistic.

*Intellectual right (non-financial, property) of the author, legal nature and symbols:**The moral or intellectual rights of the author:*

As it is understood based on the definitions and meaning of the intellectual rights, today the lawyers and also most of the countries of the world believe that the intellectual rights have a dual nature. Author is not only use the financial benefits of the work but also has other rights about the work which are not economical and are related to his person and it is necessary to define them as intellectual or moral right. Regulations and law of Iran which are related to the literary and artistic works emphasize on the existence of this right. Intellectual or moral right is the right through which everyone has to respect the author and others cannot use, remove, add or change anything in the work. This right in contrast with the materialistic right cannot be transformed and is always fixed [3].

*Definition of intellectual right of the author:*

1. *Being untransformable:* according to the article 19 of the law the right of the author approved in 1957 of French, it is determined that the intellectual right of the author after his death is transformed to someone who has been determined to maintain and protect his right for respecting him and if no one is determined, this rights are transformed to the ones after him.
2. *No local and temporal limitation:* intellectual rights in contrast to the materialistic rights are not limited to time and special period of time and are in process for ever even after the death of the author and passage of time doesnot reduce its validity and they are not limited to place, either. However, there an agreement that the intellectual right of the author has four symbols:

*a) The right to decide about the work:*

Decision making about publishing the work or not publishing it is the exclusive right of the author. No one can make him to do this. In fact, he is the only one who can decide about the works and if he can publish it for the public or not. This principle is seen in evry legal system in different forms but with the same meaning. After the death of the author, if he had not prevented the publication after hid death, the legal predecessor of him can publish it.

*The right of respecting the name and title:*

This right is true for every author to have the ownership of his creation and so his name and title should be mentioned on the work. The author can use the rewards of the work in addition to the use of materialistic use. So, it is necessary that the public can related the work to that person. This right is usually called the right of the "fatherhood" on the work since it remembers the relationship between father and son and it is the mental production of human being.

In addition, he has the right to prevent the publication of work in which his name is removed for any reason. This right is global and in the regulation in forms of the right of the author, in most cases the right of fatherhood is used and other regulation systems have used the term "observing the name".

About translation, some of the French writers believe that if the translator does not respect the content, the author can claim for financial pay and question the translated work in public.

*b) The right of respect for the work:*

Destiny of the mental work should be a function of its creator and not limited by the people and time. Sometimes the literary work can change by the publication and in this case the work can be defined as the mental tool. Sometimes, the work which is transformed is damaged by the owner and due to the rights out of the ownership. It means that the respect of the work has to type of created and taken. First, only the author has the right to change the work, add something to it, delete some parts of it or replace it and even produce counter theories against the previous ones. Scientific advances and having access to new information and dynamism of the thought over the time can create some changes for the work. The terms that an editor of a newspaper or editor does in the written works should be put into practice when the author agrees with it. So, edition after the death of the author or any addition or deletion or revising the main context in addition to the footnotes are considered as damage to the work since they change the content seriously.

*c) The right of repending or return (in French regulation):*

This right is also called the right of regret or returning and using this term is common in France and countries the law of which is affected by the French system of law. Other countries do not use the term. Based on this, the author can prevent publication and edition in the work even after transforming it to another one.

However, according to the right of France, the author of the right is not completely free in using this right but it depends on the damages and new decision in the future.

*B) Meaning and nature of the financial right of the author:*

Before entering the main discussion, it should be noted that the author has two materialistic rights:

1. The right of ownership on the work and its versions which is the right on the origin of the property. This ownership is a function of the public rules and can be transformed and changed and the author can transform it in any price and under any regulation which is called the ability to transform the work.
2. The exclusive right of the author on the work means that only author can publish his work and put it for public use and any kind of financial use is in his hand and others cannot print it without allowing by him. This right is called the right of usage.

*Definition of financial rights of the author:*

In the scientific principles, a science is defined so that the philosophy and meaning of it is cleared but some of the legal scholars believe that defining the intellectual right is not possible precisely. However, definitin and meaning of the mental ownership paves the way for knowing the aspects and the laws related to it and knowing the legal systems [15].

Based on this fact, some of the lawyers defined the intellectual right as: "intellectual rights are the rights which allow the owner to exclusively use the activity and thoughts of themselves" [18].

*Studying the views:*

Scholars did not use the same method in defining the philosophical principles and the intellectual rights. Economic, legal, natural, personality, moral and contract principles are the approaches taken in this regard.

*1. Intellectual right:*

It is due to the work and the rights of the work (based on natural right)

Some of the lawyers put the intellectual rights in the frame of the law of labor and believe that the right of the author and innovator is due to their work and the creators of the intellectual works have the validity to be paid for their work. Based on the views, everywhere there are no regulation for these intellectual issues, it is included in the general law of labor. This view is criticized seriously and does not have many fans since the intellectual work is the result of the creation and mental innovation and cannot be compared with physical work of a worker which has no innovation [37].

2. *Ownership due to the creator:*

It is one of the main and effective principles in the realm of intellectual ownership (especially for moral modification of the intellectual creations such as the right of respect and the right of the work respect which cannot be modified based on some principles) are the bases for personality. This view is the main principle of the creator. In contrast to the view of the labor rights which have the main role in work and intellectual work, in this view the intellectual work of the creator is due to his personality, present condition of the author (based on Hegel's view) or necessary for the personality of the creator (based on Kant's view) [15].

3. *Intellectual right as a type of ownership:*

One of the most important and challenging views about the intellectual ownership which has a lot of supporter today is that the right of the author is known as a kind of ownership. So, the lawyers and many important characters emphasize it. For example, L'martin has said that the literary ownership "is the holiest type of ownership". Chapelle also reported that the literal ownership is the most personal and legal type of ownership since if the normal ownership of object is for people, literal ownership is related to their mind which is a part of him.

4. *Intellectual rights are due to the moral principles:*

The relationship between rights and morals is the philosophical based on law. Some such as Kant have emphasized on separation of rights and morals. In contrast, some such as Goerge Piere emphasized on their close relationship. If we accept the second theory, we can use some moral principles such as the principles of unfair owning and some moral titles such as unfair completion, insult, contract and privacy right for proving the intellectual rights [15].

5. *The contract base for the intellectual right:*

Some of the bases of social contracts are used for the modification of the intellectual ownership. For example, Sterling counted intellectual ownership as a social contract. Society provides the field for growing the artists and artist in turn would return his work as a reward to the society. So, author has defined the social and mental contract between the artist and the society in order to modify the intellectual ownership (ibid, p.241). The private base of the contract can be used for modification of the intellectual ownership system (ibid, p. 34).

6. *The intellectual ownership and public and private rights:*

Private right modifies the private relationship of people and states and state organization. So the rights of intellectual ownership are one of the branches of the private law. At the introduction of the agreement of Trips, the intellectual right is defined as the private right. It does not mean that public right does not have any conflict with this right but this branch of private right such as many other branches is not protected from the intervention of government. Giving the obligatory approvals is a clear example of intervention of public law into the private section [26].

7. *The intellectual right and financial and non-financial rights:*

Non-financial right is the right that does not create a benefit which is changeable into money. In other words, the subject of these non-financial relations are people and they do not have the value for trading and recording, they cannot be changed into money directly such as: the right of being spouse, the right of partnership. Financial rights are in contrast to the non-official rights such as the right of ownership and right of using. The right which the author has on the work is both financial and non-financial (financial right such as the right of publishing the literary work). However, in the current condition and considering the common norms, the intellectual right is over the financial right and should be considered as the financial rights (Ibid, p.35).

8. *The intellectual right and objective and religious rights:*

Financial right or the objective right or religious right is the right for the person without any intermediaries and the most complete of them is the right of ownership. The religious right is the right that a person has about another one and can ask him to the work [20].

Some people believe that the nature of the intellectual right is not compatible with any of the objective and religious rights and a third category of intellectual right should be added by developing the concept of objective right and intellectual right is objective.

9. *Intellectual right and properties and non-properties:*

There is no disagreement upon the fact that the intellectual rights are non-property but some of the lawyers (Iranian) do not consider the right included in article 20 of the civil law and considered it as the properties and some others used the article 21 and based on the article 18 to consider the rights as the properties (ibid, p.37).

The right of respect or authority (that is publishing the work without the name of the author or with another name) is forbidden and can be punished. The right of respect means that no one is allowed to change a work without permission of the author.

#### 10. *Theory of the intellectual right:*

After expressing ideas about nature of the authors' right, it should be studied that which of the theories are more compatible with the legal principles. It is clear that the author needs to be supported and in order to create order in the society and prevent the conflicts with state, some regulations are needed but the place of these rights in other regulation systems should be considered. Definitions provided by some lawyers are due to the intellectual rights which considered it legal to use the mental activity of human mind and consider it as the origin of the right. These are rights that let the owner to use the benefits and special forms of human thought exclusively [18].

#### C) *The views and opinions about the financial right of the author in Islamic law:*

Discussion about the right of the author is a new issue considering the Islamic law and so it is not developed among the Shia and Sunni jurists. However, there are some cons and pros in the votes of the jurists, considering the issue with different reasons. One of the reasons is that the right of the author and the right of the innovator and exclusive right of a trade mark are not religious and if there is the term "copyright" the ownership is not created and others do not have any duty. So, people can use and publish any book after owning it and nobody can prevent them.

Some of the jurists considered the right of the author as conditioned by the official contracts and accepted it about the internal rights and conditioned it for the foreign authors with the contracts between Iran and other countries.

#### D) *Description of the materialistic right:*

After describing and defining the ideas and opinions about the right of the author, the features and description of these rights are provided here.

Financial and economic rights are due to mental efforts in the field of literary and artistic works have some features which have to be dealt with. The materialistic right can be transformed and is also recordable by the judges and finally these rights are contemporary and can be supported for a short time.

##### 1. *Transformability:*

The author or creator can transform the work instead of a pay or without a pay and freely all the financial and materialistic privileges of his work. If something is paid, this is called a type of trading and if there is no pay, the author cannot use it financially and publish its work directly or indirectly. In addition, he can transform part of the right for himself [21].

##### 2. *Being permanent:*

Another feature of the materialistic right is that it is permanent and in contrast to the traditional ownership which is permanent, is one of the main features. It is not for ever and the exclusive right of it is limited to time. Being permanent or not permanent has some pros and cons which should be dealt with in different fields.

##### 3. *Being valuable for loan:*

In foreign law including the law of France, Germany and England, the materialistic law of literary works are economically valuable since they can be used as guarantee and in other words this is like other rights and can be used as loan.

#### *Conclusion:*

About the right of the author, it should be said that the one who creates a work is recognized as the creator, author, composer or painter of the work and some rights are considered for him in case that the work is original and does not include plagiarism. However, defining these concepts is not possible and there are some differences. The right of the author is not just economic and financial. The right of the author recognizes the intellectual right and necessitate the society to respect him and has some special features.

It is concluded that the mental works of an author have to be supported intellectually and any disruption should be prevented and the author has the financial right on his work. It is concluded that the mental work cannot be as a property the right of which are excluded from the owner as soon as it is sold (Abulhamd and others, 1984). Another result is that the changes of modern life create some rights which are not compatible with the nature of any right. For example the right which author has on its written works is like ownership and cannot be divided into three categories of objective, religious and spiritual rights [21].

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