

The Property Institution and Personality Theory in Copyright Law

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Abstract

The theoretical foundation of Copyright Law, as we know it today, originates in the 18th century in continental Europe, during the philosophical discussions about natural rights. It was at this time that the distinction was made between the economic rights and the personal rights of the creator within the intangible property framework. At this stage, it can be stated that the primary strength of the personality theory lies in its justification of the creator’s personal rights and moral rights. In practice, the fundamental assumptions of the personality theory have permeated copyright law as a whole, including the economic aspects of copyright.

Keywords: personality theory, Copyright Law, Hegel, Kant, Fichte.

1. Introduction – Personality Theory

The Personality Theory justifies an individual’s control over their property, viewing it as an expression of their inner personality in the external world. In the case of creation, it is seen as a formative expression of the creator’s personality (Dagan, 2009).

According to the Personality Theory, the human connection to a creation is reflected in the way the work and the resources from which it was made encapsulate the creator's past and present experiences.

The clearer and more direct the connection between the formative resource and the creator, the stronger the justification for granting proprietary rights to the creator. The legal system supports this connection through the legal protection provided by the Moral Right. This is most clearly evident in the Moral Right, as the protection of such formative resources holds independent social and moral value (Dagan, 2009).

Based on the Personality Theory, rooted in Natural Law, exploiting a creation or using it without the creator’s permission constitutes a violation of the creator’s right to their personality and an infringement on their liberty and autonomy as an individual (Pesach, 1961). The connection between Copyright and Personality Theory also extends to a broader level, relating to the general justification of property rights based on Personality Theory.

2. Hegel, Kant and Fichte: The theoretical basis for personality theory

The theoretical and philosophical basis of the Moral Right in Intellectual Property can be traced to the writings of Immanuel Kant, Georg Wilhelm Friedrich Hegel, and Johann Gottlieb Fichte, specifically the personality theory developed by Hegel and Kant. These writings were profoundly influenced by the Romantic movement, which guided the philosophical discourse and cultural creation of the 19th century (Adeney, 2006).

In his writings from the late 18th century, Fichte differentiated between the tangible printed copy and its content, as well as between the intellectual expressions written in the printed work and the form in which those expressions were conveyed. According to Fichte, the abstract ideas, upon their publication, became part of the public domain. However, the tangible copy and the economic rights derived from its dissemination remained the exclusive property of the creator.

In essence, Fichte relied on the theory that the creator's rights over their works originate from their ownership of the tangible copy. Once this foundation was laid, the theory justifying Copyright based on personality theory, as proposed by Kant, began to develop during the same period (Adeney, 2006; Galily, 2023).

Kant's moral philosophy developed the concept of the creator's autonomy, expressed through their works. In his 1785 essay *On the Wrongfulness of the Unauthorized Publication of Books* (Kant, 1785), Kant establishes the creator's right, through the proprietary rights of the publisher, over their works, including the creator's right to make changes to their work (Treiger-Bar-Am, 2008).

Kant's most prominent expression regarding the Moral Right was his assertion that the creator has the right to have their work attributed to them and not to others and to prevent its harmful use without their consent. In Kant's words, this is "*an inherent right in his own person, namely a right to prevent another making him address the public without his consent*" (Adeney, 2006).

Thus, by the late 18th century, the Moral Right was established in its two main aspects—integrity and attribution—in the writings of one of the most significant thinkers in philosophical thought.

Hegel expanded on Kant's personality theory and, in addition to asserting that the external expression of a creation represents the creator's inner self, sought to distinguish between inalienable cultural assets and transferable assets. Hegel cited as an example essential characteristics that reflect the creator's personality, such as religious beliefs or aspirations, which cannot be transferred. The transfer of an internal asset that is inalienable would result in alienation from the creator's personality, affecting their inner essence and negating the autonomy and will that underpin their existence (Netanel, 1993).

3. The foundation of the moral right in the Personality Theory and the difference between the continental law to Anglo-American law

Kant and Hegel's Personality Theory gained legal recognition in the Moral Right as reflected in continental law. This legal system places significant weight on the creator's subjective perception of the harm done to their creation. Furthermore, a distinction is made between the German and French approaches to the Moral Right. The German legal system examines the purpose of the foundational creation against the nature and scope of the changes made, assessing the extent of the harm to the creator's intellectual interests.

By contrast, the French legal system places greater emphasis on the subjective connection between the creator and their creation. Under the French approach, the creator has

the right to prevent alterations to their work, as the right to integrity also encompasses the right to respect for the work, with all its implications for the creator's personality and dignity in their subjective perception (Khoury, 2009).

4. The utilitarian approach and Work Theory

Beyond the personality theory, two additional central theories are used to justify the recognition of Copyright: The Utilitarian approach and the Labor Theory. A brief discussion of these two theories will help frame the focus on the personality theory as it pertains to the Moral Right.

The Utilitarian approach, often referred to as the "incentive argument," recognizes Copyright to encourage the creation and dissemination of expressions, works, and other abstract goods with societal value. This purpose is achieved by providing economic incentives through the granting of Copyright. The Utilitarian approach recognizes Copyright when it benefits society as a whole, as the creator serves as a public agent and a means of promoting the public interest rather than being viewed as an independent entity deserving protection (Pesach, 1961).

The Labor Theory, sometimes referred to as the "reward argument," is a perspective that views Copyright as a fair reward owed to the creator for the effort and resources invested in producing the protected work. This theory is primarily based on considerations of justice and fairness and derives from the philosophy of John Locke. According to Locke's property theory, when an individual takes a natural resource, provided by God, and enhances it with labor and creativity, that resource becomes their property (Locke, 1690).

However, it is worth noting that while Locke himself did not explicitly address intellectual property in the context of Copyright, scholars have interpreted his theory as providing a foundation for the justification of intellectual property rights (Hettinger, 1989).

The Anglo-American approach does not place significant emphasis on the Moral Right or the integrity of the work and does not base the Moral Right on the Personality Theory. Instead, this approach prioritizes the Utilitarian rationale for Copyright. Nevertheless, in recent years, the Personality Theory has gradually gained traction within the Anglo-American legal framework.

5. Conclusion – Over-application of the Personality Theory

It can be stated that the main strength of the theory of personality lies in the justification of the personal and moral rights of the creator (Pesach, 1961). In practice, the basic assumptions of the theory of personality have permeated copyright law as a whole, including the economic aspects of copyright. One example of this, as demonstrated by scholars, is found in the requirement of originality, which is an integral part of copyright law in various legal systems. Although this requirement reflects the basic assumption of the theory of personality regarding the personal and immediate connection between the creator and the work – an assumption that should ostensibly apply only to moral rights and not to other economic rights – originality has, in practice, become a condition for the recognition of copyright in its entirety, including its economic aspects. This recognition demonstrates that the existing legal doctrine sometimes suffers from the over-application of personality theory and its assumptions, even in areas that are not based on personality theory and are not intended to achieve its goals (Pesach, 1961).

Over-application of personality theory may lead to unjustified and unjustified harm to various external interests, while relying on the theory as presented in this chapter. On the other

hand, such over-application does not necessarily harm the foundations that justify the existence of moral rights. As argued earlier, the most distinct expression of personality theory lies within the framework of moral rights (Tsekov, 2016).

Therefore, it can be said that the connection between moral rights and personality theory remains strong. Moral rights are based on the personal qualities of the creator and on the protection against harm to his dignity. Over-application of personality theory should not lead to the conclusion that it is necessary to reduce the strength of moral rights (Tsekov, 2024).

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