

NATURE OF THE PROTECTION IN THE COPYRIGHT LAW OF THE UNITED KINGDOM

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1. Introductory thoughts

While the ancient Greek world is considered as the cradle of art and culture, the United Kingdom is undeniably the birthplace of copyright law legislation and codification. The reason for this is that the world's first copyright law, the Queen Anne's Statute on Copyright¹ was born in Great Britain. Before the Statute was adopted, in the fifteenth century copyright derived from the monopoly privileges granted by the Crown to the printers. In line with the printing privileges, which are granted by the Crown, the printing trade also developed its own system of regulation through the Stationers' Company in London.² The proposal of the abovementioned Statute (from 1707) has already used the term that authors have "undoubted property" in their books. This term has been changed to the term "sole right and liberty of printing" in the adopted law, primarily because of positivistic viewpoints.

Therefore, the copyright law legislation was first emerged in England at the time of the reign of Queen Anne, when she issued the Statute in 1709, which entered into force on April 10, 1710. The significance of Queen Anne's Statute can primarily be found in the fact, that it was not only the first written law on copyright in Great Britain, but in the whole world. As part of this process, the Statute was a major step to creating the so-called civil state as well.³ The Statute of Anne actually created an *alienable copyright* and it aimed at protecting not only the authors, but publishers too as legal successors of authors.⁴ Following this pioneer activity of the United Kingdom in the field of copyright law, other countries embarked on copyright law legislation. Following the British copyright law, the first copyright law of the United States was adopted in 1790.⁵ Even in the same century, the first

¹ http://avalon.law.yale.edu/18th_century/anne_1710.asp (Date of downloading: 19. 07. 2018.) The title of the Statute from 1707 was: Bill for the Encouragement of Learning and for Securing the Property of Copies of Books.

² STOKES, Simon: *Art and Copyright*. Hart Publishing, Oxford and Portland, Oregon, 2012, p. 27.

³ CSÉCSY György: A szellemi alkotások jogának fejlődéstörténete. In: MISKOLCZI BODNÁR Péter (szerk.): *A civilizáltika fejlődéstörténete*. Bibor Kiadó, Miskolc, 2006, p. 97.

⁴ BOYTHA, György: Whose Right is Copyright? In: CSEHI Zoltán (szerk.): *Boytha György válogatott írásai*. Gondolat Kiadó, Budapest, 2015, pp. 186–187.

⁵ Copyright Act of 1790. The full title: An Act for the encouragement of learning, by securing the copies of maps, Charts and books, to the authors and proprietors of such copies, during the times

modern French copyright law was adopted,⁶ than the Prussian⁷ and the Austrian⁸ acts were born in the 19th century.

The national regulations of the countries intended to provide transboundary copyright protection for works. Both authors and jurists noticed the characteristic of copyright works that these works are able to flow through the countries. In the 1840's, the countries settled their copyright relations due to bilateral agreements.⁹ The first multilateral international copyright convention, the Berne Convention were adopted in 1886. Between the adoption of the Berne Convention and the Statute of Anne there were several initiatives, which were unfortunately shipwrecked.¹⁰

The importance of legal regulations on copyright relations and on copyright works can be found in the thought of *Thomas B. Nachhar*, who said that “*The copyright system allocates control over certain creative content by awarding copyright protection to authors for their creative expression.*”¹¹ The cited thought shows the main mission of copyright law, which aim is stived to be ensured by legislation and legal interpretation as well.

2. Historical development of the British copyright law legislation and jurisdiction — from the Statute of Anne to the CDPA

The development of copyright law of the United Kingdom has been characterized by a kind of fragmentation, which was mostly shown by the legislation policy that

therein mentioned. A jogszabály elérhető: <https://copyright.gov/about/1790-copyright-act.html> (Date of downloading: 25. 07. 2018.)

⁶ In France the relevant legislation was adopted on 19 July 1793, with the following original title: “*Décret de la Convention Nationale du dix-neuf juillet 1793 relatif aux droits de propriété des Auteurs d’écrits en tout genre, des Compositeurs de musique, des Peintres et des Dessinateurs (avec le rapport de Lakanal).*” See: RIDEAU, Frédéric: Commentary on the French Literary and Artistic Property Act (1793). In: BENTLY, Lionel–KRETSCHMER, Martin (eds.): *Primary Sources on Copyright (1450–1900)*. http://www.copyrighthistory.org/cam/tools/request/showRecord?id=commentary_f_1793 (Date of downloading: 25. 07. 2018.)

⁷ The Prussian copyright law was born on 11 July 1837. *Gesetz zum Schutze des Eigentums an Werken der Wissenschaft und der Kunst gegen Nachdruck und Nachbildung*. See in detail: http://www.lwl.org/westfaelische-geschichte/portal/Internet/finde/langDatensatz.php?urlIID=4961&url_tabelle=tab_quelle (Date of downloading: 25. 07. 2018.)

⁸ In Austria an imperial edict was adopted in 1846, which aimed to protect copyright works. *Gesetz zum Schutze des literarischen und artistischen Eigentums gegen unbefugte Veröffentlichung, Nachdruck und Nachbildung*. See in details: LEGEZA Dénes: „*Egyszer mindenkorra és örökáron*” a szerzői jog és forgalomképessége Magyarországon a reformkortól 1952-ig. (PhD-értekezés), Szeged, 2017, pp. 34–38.

⁹ For example, the bilateral agreement between Austria and Sardinia, which was born on 22 May 1840, have already contained the conceptual and general definition of “work”. LEGEZA Dénes: „*Egyszer mindenkorra és örökáron*” a szerzői jog és forgalomképessége Magyarországon a reformkortól 1952-ig. (PhD-értekezés), Szeged, 2017, p. 35.

¹⁰ We can mention the pursuit of *Johann Rudolf Thurneysen*, the professor of the University of Basel, from 1738. After this, a dutch lawyer, *Elie Luzac* initiated legislation in 1745, which was against piracy. See in detail: VON LEWINSKI, Silke: *International Copyright Law and Policy*, Oxford University Press, 2008, pp. 13–14.

¹¹ NACHHAR, Thomas B.: Rules and Standards in Copyright. *Houston Law Review*, 2014/2, p. 589.

the separate types of artworks were protected by separate acts. This legislative technique basically resulted, that there were no uniform principles, which would govern the general and uniform regulations of the different types of copyrighted works.¹² To illustrate the fragmentation of the British copyright law, the following copyright law acts were created: Statute of Anne 1709, Engraving Copyright Act 1734, Sculpture Copyright Act 1798, Dramatic Copyright Act 1833, Lectures Copyright Act 1835, Fine Arts Copyright Act 1862, Copyright Act 1911, Copyright Act 1956 and the contemporary effective Copyright, Design and Patent Act (henceforward abbreviated: CDPA), which was adopted in 1988.¹³ The aforementioned fragmentation can be seen from this list and the titles of the acts too. So, we can state that, while in Hungary we have the fourth act on copyright law since 1884,¹⁴ the United Kingdom has the ninth act in this field.

In order to facilitate the process of legislation, a number of important judicial decisions were born in relation to separate artworks, but these decisions and interpretations promoted not only the concrete artworks' legal protection but advanced the development of the whole system of copyright law. For instance, in 1769 the King's Bench stated that authors have special rights relating to their artworks in the *Millar v. Taylor* case.¹⁵ One year later, the court interpreted the questions concerning to publishing a work in the *Macklin v. Richardson* case. The play in question¹⁶ was never published, but it was performed numerous times between 1759 and 1766. The starting point of the dispute was that the owner of a newspaper sent an employee to see the performance of the work, and then describe the story. The play was published in the newspaper in 1766, and the author thought it infringes his rights on the play. The representatives of the periodical argued that: "*The performance gave a right to any of the audience to carry away what they could and make any use of it.*"¹⁷ They also argued that "*The plaintiff has not sustained, nor can sustain, any damage, as he has, and will continue to receive the advantage arising from the representation upon the stage.*"¹⁸ It is interesting to read in the argument that the defendant emphasized the author's ethical appreciation and his moral

¹² PATTERSON, Lyman Ray: *Copyright in Historical Perspective*. Nashville, Vanderbilt University Press, 1968, p. 222.

¹³ This list does not include the bills and the amendments of the laws. Behind the title of the law, it is the year when the law was adopted.

¹⁴ In Hungary the first copyright act was the Act XVI. of 1884 on Copyright, the second was the Act LIV. of 1921, the third was the Act III. of 1969 and the contemporary, fourth is the Act LXXVI. of 1999 on Copyright Law.

¹⁵ *Millar v. Taylor* (1769) 4 Burr. 2303.

¹⁶ Charles Macklin: *Love a la Mode*.

¹⁷ DEAZLEY, Ronan: Commentary on Dramatic Literary Property Act 1833. In: BENTLY, Lionel-KRETSCHMER, Martin (eds.): *Primary Sources on Copyright (1450–1900)*. 2008. http://www.copyrighthistory.org/cam/tools/request/showRecord?id=commentary_uk_18 (Date of down-loading: 30. 07. 2018.).

¹⁸ DEAZLEY, Ronan: Commentary on Dramatic Literary Property Act 1833. In: BENTLY, Lionel-KRETSCHMER, Martin (eds.): *Primary Sources on Copyright (1450–1900)*. 2008. http://www.copyrighthistory.org/cam/tools/request/showRecord?id=commentary_uk_18 (Date of downloading: 30. 07. 2018.).

rights. This approach is all the more interesting, because the Anglo-Saxon law rather focuses on the property nature and economic value of copyright, than on the moral side. The author won the dispute, and the court was on the position, that the author has the right to decide about the first publication of the work, which right covers the publication in a newspaper as well. The judgment reflected to the defensive arguments of the newspaper and enhanced that “(...) *the advantage from the performance, the author has another means of profit, from the printing and publishing; and there is as much reason that he should be protected in that right as any other author*”.¹⁹

In 1988, the Copyright Design and Patent Act was adopted, which is currently in force. It is important to note, that when the bill of the CDPA was discussed by the Parliament, the harmonization with the rules of moral rights of the Berne Convention²⁰ was highly emphasized. In fact, guaranteeing the authors’ moral rights facilitated Great Britain to ratify the BC.²¹

3. Overview of the CDPA and the relevant judicial decisions

As its name presents, the Copyright, Design and Patent Act, unlike the Hungarian Act, not only contains the relevant norms of copyright relations, but it provides the legal protection of designs and patent as well. The first part of the Act is concerning to copyright relations, which consists of ten huge chapters.²² The second part of the Act still remains in the field of copyright law, because it deals with the rules of performing rights within four chapters,²³ and the rules on designs and patents can be found in the last two parts.

3.1. The nature of the protection

According to the Section 1 of the CDPA “*Copyright is a property right (...)*”. In relation to the meaning of copyright as a ‘property’, we can read an expressive and ingenious thought line in the monograph of *Lior Zemer*, who writes, that “*I have a copyright’ is a challenge to the world. It denotes a property rights against all other conflicting rights and interests. It is superior to all non-rights. Like property, the*

¹⁹ DEAZLEY, Ronan: Commentary on Dramatic Literary Property Act 1833. In: BENTLY, Lionel–KRETSCHMER, Martin (eds.): *Primary Sources on Copyright (1450–1900)*. 2008. http://www.copyright-history.org/cam/tools/request/showRecord?id=commentary_uk_18 (Date of downloading: 30. 07. 2018.).

²⁰ Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886. Henceforward abbreviated: BC.

²¹ ADENEY, Elizabeth: *The Moral Rights of Authors and Performers. An International and Comparative Analysis*. Oxford University Press, New York, 2006, p. 285.

²² In order: Subsistence, ownership and duration of copyright; Rights of Copyright Owner; Acts Permitted in relation to Copyright Works; Moral Rights; Dealings with Rights in Copyright Works; Remedies for Infringement; Copyright Licensing; The Copyright Tribunal; Miscellaneous and General.

²³ In order: Introductory; Economic Rights; Moral Rights; Qualification for Protection, Extent and Interpretation.

*strength of the title secures excessive rights of use and exclusion.*²⁴ The approach of copyright law as a “property” is an important difference between the common law and continental law countries. The so-called ‘creator doctrine’²⁵ can be found in the CDPA too.²⁶ According to this doctrine the author is the initial copyright owner of the works. This doctrine leads to the difference between “authorship” and “ownership”. The importance of the difference can be found, that “ownership flows from authorship”.²⁷ Normally, the author is the first owner of the work,²⁸ (s)he created it.²⁹ A significant exception is the area of works made for hire. If the author is an employee whose job requires to make an artwork, the employer is the first owner of any copyright in the work.³⁰ If the author is the first owner of copyright, it does not mean, that (s)he remains the all-time owner of the work, because (s)he can assign, transfer or licence the rights to another.³¹ Consequently, the author has the moral rights³² and the owner has the economic rights.³³

3.2. *The protected works under CDPA*

The CDPA lists the protected works. Another important difference in relation to the nature of copyright protection is that the list of the protected works in the CDPA is an exclusive list³⁴, unlike to the Hungarian Copyright Act³⁵ and to the German Copyright Act.³⁶ Both in the HCA and in the UrhG we can see the list of the *most common* works protected by copyright and the texts of these acts refer to the non-exclusive nature of the lists with the expression “*in particular*”.³⁷ In accordance

²⁴ ZEMER, Lior: *The Idea of Authorship in Copyright*. Routledge Press, London–New York, 2016, 43.

²⁵ GOLDSTEIN, Paul–HUGENHOLTZ, Bernd: *International Copyright. Principles, Law and Public*, Oxford University Press, 2013, p. 247.

²⁶ CDPA Section 2 and Section 9.

²⁷ NWABACHILI, Chioma O.–NWABACHILI, Chudi C.: Authorship and Ownership of Copyright: A Critical Review. *Journal of Law, Policy and Globalization*, Vol. 34., 2015, p. 1.

²⁸ CDPA Section 11(1).

²⁹ creator-doctrine

³⁰ CDPA Section 11(2).

³¹ The legal basis is the Section 90 of the CDPA, which states, that “copyright is transmissible by assignment, by testamentary disposition or by operation of law, as personal or moveable property”.

³² The so-called Paternity Rights (CDPA Section 77–79), Right of Integrity (CDPA Section 80–83), Right to privacy of certain photographs and films (CDPA Section 85) See in details: ADENEY, Elizabeth: *The Moral Rights of Authors and Performers. An International and Comparative Analysis*. Oxford University Press, New York, 2006.

³³ NWABACHILI, Chioma O.–NWABACHILI, Chudi C.: Authorship and Ownership of Copyright: A Critical Review. *Journal of Law, Policy and Globalization*, Vol. 34., 2015, p. 4.

³⁴ APLIN, Tanya: Subject matter. In: DERCLAY, Estelle (ed.): *Research Handbook on the Future of EU Copyright*, Edward Elgar Publishing, Cheltenham, 2009, p. 54.

³⁵ The Act LXXXVI. of 1999. on Copyright Law (henceforward abbreviated: HCA).

³⁶ Gesetz über Urheberrecht und verwandte Schutzrechte (Urheberrechtsgesetz), 1965 (henceforward abbreviated: UrhG).

³⁷ HCA 1. § (2) All literary, academic, scientific, and artistic works are protected by copyright, regardless of whether they are designated in this Act. The following *in particular* are considered works of this kind.

with the CDPA the legal protection covers original literary, dramatic, musical or artistic works, sound recordings, films, and the typographical arrangement of published editions.³⁸ The CDPA also gives us supports to the conceptual interpretation of the abovementioned protected works.³⁹

According to the text of the Act, *literary work* means any work, other than a dramatic or musical work, which is written, spoken or sung, and accordingly includes a table or compilation, a computer program, preparatory design material for a computer program, or a database. The judicial practice decided in a case⁴⁰, that a telegraphic code, consisting of a table matching sequences of electrical pulses to the letters of the alphabet can be regarded a literary work.⁴¹ In the interpretation of the legal literature, in line with the legal rules, literary works covers computer program, databases and the preparatory materials of computer programs as well.⁴² The legal literature emphasizes, that the statutory definition about literary works is not exhaustive.⁴³ In relation to computer programs, the literature points out that production of a program is a complex process involving the expression of an analysis of the functions to be performed as a set of algorithms, its restatement in a computer language and the translation by a computer running under a compiler program of the source code into a machine-readable language.⁴⁴ It also states, that we cannot find any definition for computer programs, but “*the lack of a definition a computer program is to avoid failure to cover advances in the technology; arguments that object code is incapable of copyright protection are no longer sustainable*”.⁴⁵

Furthermore, the Act states *dramatic work* includes a work of dance or mime. British legal literature explains that there is a lack of legal definition of dramatic works, because the definition of literary, dramatic and musical works is less relevant in relation to the implications of copyright protection.⁴⁶ According to the British legal literature and legal interpretation, dramatic works *shall be able to public performance*.⁴⁷ This requirement originates from the ascertainments of the *Hugh Hug-*

UrhG § 2(1) Zu den geschützten Werken der Literatur, Wissenschaft und Kunst gehören *insbesondere*.

³⁸ CDPA Section 1 a) b) c).

³⁹ CDPA Section 3.

⁴⁰ D P Anderson v Lieber Code Co [1917] 2 KB 469.

⁴¹ The decision was cited by: PRESS, Tim: *Intellectual Property Law Concentrate: Law Revision and Study Guide*. OUP Oxford, 2013, p. 13.

⁴² PRESS, Tim: *Intellectual Property Law Concentrate: Law Revision and Study Guide*. OUP Oxford, 2013, p. 13.

⁴³ MACQUEEN, Hector–WAEDELDE, Charlotte–LAURIE, Graeme–BROWN, Abbe: *Contemporary Intellectual Property. Law and Policy*. Second Edition, Oxford University Press, 2008, p. 62.

⁴⁴ MACQUEEN, Hector–WAEDELDE, Charlotte–LAURIE, Graeme–BROWN, Abbe: *Contemporary Intellectual Property. Law and Policy*. Second Edition, Oxford University Press, 2008, p. 64.

⁴⁵ MACQUEEN, Hector–WAEDELDE, Charlotte–LAURIE, Graeme–BROWN, Abbe: *Contemporary Intellectual Property. Law and Policy*. Second Edition, Oxford University Press, 2008, p. 64.

⁴⁶ MACQUEEN, Hector–WAEDELDE, Charlotte–LAURIE, Graeme–BROWN, Abbe: *Contemporary Intellectual Property. Law and Policy*. Second Edition, Oxford University Press, 2008, p. 69.

⁴⁷ MACQUEEN, Hector–WAEDELDE, Charlotte–LAURIE, Graeme–BROWN, Abbe: *Contemporary Intellectual Property. Law and Policy*. Second Edition, Oxford University Press, 2008, pp. 70–71;

*es v Broadcasting Corporation of New Zealand*⁴⁸ case from 1989. In this case, the rule of CDPA⁴⁹ was of central importance, because it states that copyright protection depends on the fixation of the certain work (literary work, dramatic work or musical work).⁵⁰ The requirement of fixation is also a difference between the British and the Hungarian copyright law system, because the domestic law does not prescribe such a condition for the legal protection.

In line with the law, *musical work* means a work consisting of music, exclusive of any words or action intended to be sung, spoken or performed with the music.

According to the Act, *artistic works* are graphic works, photographs, sculptures or collages, irrespective of their artistic quality, furthermore works of architecture being, a building or a model for a building, or works of artistic craftsmanship.⁵¹

Sound recordings means a recording of sounds, from which the sounds may be reproduced, or recording of the whole or any part of a literary, dramatic or musical work, from which sounds reproducing the work or part may be produced, regardless of the medium on which the recording is made or the method by which the sounds are reproduced or produced.⁵²

According to the legislation *films* means a recording on any medium from which a moving image may by any means be produced.⁵³ One of the most famous and widely cited decision⁵⁴ dealt with the connection and differences between films and dramatic works.⁵⁵ The question had to be answered whether and on what conditions a movie can be a dramatic work. In the lawsuit the applicant stated that the defendant reproduces a substantial detail from the applicant's film, *Joy*, into his film, titled *Anticipation*. The *Joy* is a very short movie, approximately one-minute length, in which only one character can be seen and he does not say a word but he performs an odd dance at the top of a London house. *Mehdi Norowzian*, the applicant used the so-called "jump cutting"⁵⁶ technique for making the film. The de-

BENTLY, Lionel-SHERMAN, Brad: *Intellectual Property Law*. Oxford University Press, 2014, p. 70. "The Privy Council has stated that a dramatic work must have sufficient unity to be capable of performance (...)" See the same: TORREMANS, Paul (ed.): *Holyoak and Torremans Intellectual Property Law*. Oxford University Press, United Kingdom, 2016, p. 206.

⁴⁸ Hugh Huges Green (Appeal No. 18 of 1989) v Broadcasting Corporation of New Zealand (New Zealand) [1989] UKPC 26 (18 July 1989).

⁴⁹ CDPA Section 3(2) Copyright does not subsist in a literary, dramatic or musical work unless and until it is recorded, in writing or otherwise; and references in this Part to the time at which such a work is made are to the time at which it is so recorded.

⁵⁰ On this topic, see also: GRIFFITHS, Jonathan: United Kingdom. In: HILTY, Reto M.-NÉRISSON, Sylvie (eds.): *Balancing Copyright — A Survey of National Approaches*, Max Planck Institute for Intellectual Property and Competition Law, Munich, Springer-Verlag, Berlin-Heidelberg, 2012, p. 1061.; CRONE, Tom: *Law and the Media*. Focal Press, Oxford, 1995, p. 45.

⁵¹ CDPA Section 5.

⁵² CDPA Section 5A.

⁵³ CDPA Section 5B.

⁵⁴ *Norowzian v Arks Ltd & Anor* (No. 2) [1999] EWCA Civ 3014 (04 November 1999).

⁵⁵ See details: KAMINA, Pascal: *Film Copyright in the Euroean Union*. Cambridge University Press, 2016, p. 74.

⁵⁶ The essence of this technique is that the entire film is cut and creates a surreal look at the end.

fendant made an advertisement for *Guinness* beer, with the title *Anticipation* in which a man performs a strange dance, while waiting for his beer. In the ad *jump cutting* technique was applied too. *Norowzian* argued that the *Joy* is a dramatic work, fixed in film and the defendant copied the essential elements of the *Joy*, consequently he infringed his copyright. The first-instance decision rejected *Norowzian*'s claim and stated that a film cannot be regarded merely a dramatic work,⁵⁷ because the law categorises these two types of works separately. Furthermore, the *Joy* can be regarded an audiovisual work, not a dramatic work. Because of it, the hiring of style and cutting technique does not result copyright infringement.

3.3. *The authors' economic rights under CDPA*

The legal literature emphasizes that various national laws differ in how they define economic rights.⁵⁸ The second chapter of the CDPA regulates the economic rights of authors and the Section 16 lists these economic rights. The title of this Chapter is "*Rights of Copyright Owner*". This expression refers to the abovementioned approach, that the authorship and ownership can be different and to the fact, that the economic rights are bound to the copyright *owner*. Compared to the Hungarian law, it is an important difference, that in the HCA the main rule is that *authors have the exclusive right to utilize works* in whole or any identifiable part, whether financially or non-financially, and to authorize each and every use.⁵⁹ On the contrary, the CDPA expressly regulates the right of *owner, not the rights of author*. The reason of this rule is that, as we mentioned above: the subject of copyright ownership is not always the author. According to the law, '[t]he owner of the copyright in a work has (...) the exclusive right to to copy the work, to issue copies of the work to the public, to rent or lend the work to the public, to perform, show or play the work in public, to communicate the work to the public and to make an adaptation of the work or do any of the above in relation to an adaptation'.⁶⁰

It is also a significant difference between the British and the domestic system, that the CDPA approaches the economic rights from the viewpoint of infringing copyright law, because of the different dogmatical system. For this reason, the regulation of CDPA has a sanctioning character, as opposed to the Hungarian copyright law. The British Act distinguishes two types of copyright infringements: *primary* and *secondary infringements*. The most important difference between the two concepts can be shown that while primary infringing acts involve the initiation of infringing activity, secondary infringement typically means activities in relation to infringing copies of such works.⁶¹ In line with the abovementioned, according to

⁵⁷ DAVIS, Jennifer: *Intellectual Property Law*. Oxford University Press, Oxford, 2012, p. 27.

⁵⁸ GOLDSTEIN, Paul–HUGENHOLTZ, Bernt: *International Copyright. Principles, Law and Practice*. Oxford University Press, 2013, p. 306.

⁵⁹ See: HCA 16. § (1).

⁶⁰ CDPA Section 16(1).

⁶¹ PRESS, Tim: *Intellectual Property Law Concentrate: Law Revision and Study Guide*. OUP Oxford, 2013, pp. 24–25.

the relevant rules of the CDPA, we can talk about primary infringements, if the work is copied, issued to the public, rent or lend public, performed public, communicated to the public or adapted without the consent of the author.⁶² Secondary infringements incorporate the following activities: importing infringing copies to the United Kingdom, possessing or dealing with infringing copies, providing means for making infringing copies, or permitting use of premises for infringing performances.⁶³ The legal literature interprets the difference between the two types of infringements with the reason, that there is a mental, subjective element in the case of secondary infringing acts, namely '*the infringer must know or have reason to believe they were committing the act in relation to an infringing article or performance*'.⁶⁴

3.4. *The interpretation of certain economic rights*

As we mentioned it before, the CDPA lists the economic rights in the field of copyright law. In the paper we would not like to deal with all the economic rights, but only with those which raise some interpretative questions.

The section 17 of the CDPA provides the *right to copying*, in other words the *right of reproduction*. According to this, the copying of the work is an act restricted by the copyright in every description of copyright work. The Act regulates the right of copying in relation to the difference categories of works. Copying in relation to a literary, dramatic, musical or artistic work means reproducing the work in any material form, which includes storing the work in any medium by electronic means. In relation to an artistic work copying includes the making of a copy in three dimensions of a two-dimensional work and the making of a copy in two dimensions of a three-dimensional work. Copying in relation to a film includes taking a photograph of the whole or any substantial part of any image forming part of the film. Copying in relation to the typographical arrangement of a published edition means making a facsimile copy of the arrangement.⁶⁵

Right of reproduction is the most fundamental economic right, which covers many separate rights deriving from a multiplicity of methods, such as printing, engravings, lithography, or photocopying.⁶⁶ The legal literature emphasizes, that an important element of copying, is the connection between two works, which are similar. The similarity of two works can result in infringement in some cases, but in most of the cases it is not a problem. The legal literature reflects to the fact, that "*generally, problems begin to arise, when works are similar but not the same. (...) The issue is perhaps more acute, when where it is alleged that a work has been*

⁶² CDPA Sections 17–21.

⁶³ CDPA Sections 22–26.

⁶⁴ PRESS, Tim: *Intellectual Property Law Concentrate: Law Revision and Study Guide*. OUP Oxford, 2013, p. 25.

⁶⁵ CDPA Section 17 (2)–(5).

⁶⁶ UNESCO: *The ABC of Copyright*. Paris, 1986, p. 28.

reproduced in a different medium from the original."⁶⁷ In relation to right of reproduction we can mention a case⁶⁸, in which Dan Brown, the author of the famous book, *The Da Vinci Code*, was sued because of copyright infringement. According to the lawsuit, Dan Brown infringed the right of reproduction of Michael Baigent and Richard Leigh, two of the three authors of book, *The Holy Blood and The Holy Grail*. The pair sued the Random House publisher, which published *The Holy Blood and the Holy Grail* and *The Da Vinci Code* as well, claiming that the theme of Dan Brown's book was copied from their work.⁶⁹ The claimants argued that Brown used the central elements and theme of their book, so infringed their copyright. The evidence showed that Brown indeed used *The Holy Blood and The Holy Grail*, when he was working on *The Da Vinci Code*, and there was some limited textual copying as well, but these copying were insignificant. In the final trial, the Judge said, that "[i]t does not, however, extend to clothing information, facts, ideas, theories and themes with exclusive property rights, so as to enable the claimants to monopolise historical research or knowledge and prevent the legitimate use of historical and biographical material, theories propounded, general arguments deployed, or general hypotheses suggested (whether they are sound or not) or general themes written about".⁷⁰ So, the case was closed by rejecting the claim of Baigent and Leigh, because historical facts, themes and ideas can be only protected by copyright in the way, how these were put together in a work. The facts, themes, and ideas in themselves are open to everybody.⁷¹

In relation to the *right of public performance*, it is important to interpret the meaning "public" and "performance" too. According to the CDPA, the performance of the work in public is an act restricted by the copyright in a literary, dramatic or musical work.⁷² The term "performance" includes delivery in the case of lectures, addresses, speeches and sermons, and in general, includes any mode of visual or acoustic presentation, including presentation by means of a sound recording, film of the work. In addition the legal definition of performance can be found within the rules on neighbouring rights, which states, that a dramatic performance (which includes dance and mime), a musical performance, a reading or recitation of a literary work, or a performance of a variety act or any similar presentation, which can be a live performance given by one or more individuals and can be "record-

⁶⁷ MACQUEEN, Hector–WAEDELDE, Charlotte–LAURIE, Graeme–BROWN, Abbe: *Contemporary Intellectual Property. Law and Policy*. Second Edition. Oxford University Press, 2008, p. 134.

⁶⁸ Baigent and Leigh v The Random House Group Ltd (CA) [2007] EWCA Civ 247.

⁶⁹ See also: <https://www.theguardian.com/uk/2007/mar/28/danbrown.books>;
<https://www.scribd.com/document/325447714/Baigent-and-Leigh-v-The-Random-House-Group-Ltd-docx> (Date of downloading: 12. 10. 2018.) The full judgement can be read:
<http://www.5rb.com/wp-content/uploads/2013/10/Baigent-v-Random-House-CA-28-Mar-2007.pdf> (Date of downloading: 12. 10. 2018.).

⁷⁰ <http://www.5rb.com/wp-content/uploads/2013/10/Baigent-v-Random-House-CA-28-Mar-2007.pdf>, point 156.

⁷¹ MACQUEEN, Hector–WAEDELDE, Charlotte–LAURIE, Graeme–BROWN, Abbe: *Contemporary Intellectual Property. Law and Policy*. Second Edition. Oxford University Press, 2008, p. 140.

⁷² CDPA Section 19.

ing”. Recording in relation to a performance, means a film or sound recording, which is made directly from the live performance, from a broadcast of the performance, or directly or indirectly, from another recording of the performance.⁷³

In the case of the work is performed without the permission of the owner and the number of audiences is not limited, furthermore the performance is made for profit, the performance will be unlawful (primary infringement).⁷⁴ In relation to the right of public performances it is emphasized by the legal literature, that this is the traditional way of utilizing stage performances. *Eaton S. Drone* illustrated that the right of performance is able to the public performance of musical works.⁷⁵

In the British copyright law, the content of the law of public performances has been developed by judicial practice,⁷⁶ which resulted a quite flexible concept.⁷⁷ With regard to its content, the watershed issue is whether the performance goes beyond the family life and circle of friends.⁷⁸ So, the expression “*public*” means that the usage of the work goes beyond the circle of members of the family and friends.⁷⁹ The *Court of Appeal* dealt with the issue of *publicity* in relation to the performances in 1884. The interpretation was inferred in relation to a performance of an amateur group. In this case, an amateur performance was performed in a hospital room, without the permission of the copyright owner, and the audience were doctors, nurses and family members.⁸⁰ According to the summary of the judgment, the hospital room where the performance was realized can not be considered as a public location, consequently there were no copyright infringement, nevertheless, approximately 170 people participated in the performance.⁸¹ According to the justification this “*quasi-domestical*” performance can be regarded private performance, so it can not be considered public, infringing performance.

The Section 21 of the CDPA regulates the *right to adaptation*. According to the relevant rule, the making of an adaptation of the work is an act restricted by the copyright in a literary, dramatic or musical work. In relation to a literary or a dramatic work, adaptation means translation of the work. Furthermore, with regards dramatic works, it covers a version of a dramatic work in which it is converted into a non-dramatic work or, as the case may be, of a non-dramatic work in which it is

⁷³ CDPA Section 180(2).

⁷⁴ MACQUEEN, Hector–WAEDELDE, Charlotte–LAURIE, Graeme–BROWN, Abbe: *Contemporary Intellectual Property. Law and Policy*. Second Edition, Oxford University Press, 2008, p. 152.

⁷⁵ DRONE, Eaton S.: *A treatise on the law of property in intellectual productions in Great Britain and in the United States. Copyright in Works of Literature and Art, and playright in Dramatic and Musical Compositions*. Little, Brown and Company, Boston, 1879, pp. 553–554.

⁷⁶ DAVIS, Jennifer: *Intellectual Property Law*. Oxford University Press, Oxford, 2012, p. 57.

⁷⁷ APLIN, Tanya: *Copyright Law in the Digital Society: The Challenges of Multimedia*. Hart Publishing, Oxford–Portland Oregon, 2005, p. 126.

⁷⁸ The same interpretation can be found in the copyright law of the United States of America. [USC 106. § (4)] See: GASAWAY, Laura N.: Copyright Basics: from Earliest Times to the Digital Age. *Wake Forest Intellectual Property Law Journal*, Vol. 10, No. 3, 2009–2010, p. 251.

⁷⁹ STRONG, William S.: *The Copyright Book. A practical guide*. The MIT Press, Cambridge, 2014, p. 182.

⁸⁰ *Duck v. Bates* (1884) 12 QBD 79.

⁸¹ BAINBRIDGE, David I.: *Intellectual Property*. Pearson Education, 2009, p. 162.

converted into a dramatic work and a version of the work in which the story or action is conveyed wholly or mainly by means of pictures in a form suitable for reproduction in a book, or in a newspaper, magazine or similar periodical.⁸² In relation to a musical work, adaptation means an arrangement or transcription of the work.⁸³ Making an adaptation of a work results another work, which is called derivative work. It is important, that shortening a literary work can not be regarded as adaptation.⁸⁴

4. Summary

The United Kingdom is a pioneer in the field of copyright law legislation, because of the Statute of Anne. Nowadays, the European Union put special emphasis on copyright law and intellectual property law in general. In the EU there are twelve directives and some regulations which are dealing with the issues of copyright, especially the challenges of copyright law in the modern world and these legal instruments shall be applied in the legislation of EU Member States. The question can arise that whether British Copyright law will be changing after the Brexit? We think it can cause some surprises, but we don't believe that it will cause radical changes. The minimum standards and fundamental rules of copyright law shall be provided in the national laws because of international conventions and agreements. Furthermore, differences could be found in Anglo-Saxon and continental copyright law since its birth, such as the different approach of authorship and ownership. Despite of the diversity of the legal systems and some rules, the most important thing always (shall) remain the same: "*Authors are the heart of copyright.*"⁸⁵ and they shall be protected, because if there is no author, then no work and if there are no artworks, there won't be culture, art and science.

⁸² CDPA Section 19(2). See: HOWELL–FARRAND (2014), p. 46.

⁸³ CDPA Section 19(3).

⁸⁴ PRESS, Tim: *Intellectual Property Law Concentrate: Law Revision and Study Guide*. OUP Oxford, 2013, p. 25.

⁸⁵ GINSBURG, Jane C.: The Concept of Authorship in Comparative Copyright Law. *Columbia Law School, Public Law & Legal Theory Research Paper Group*, Vol. 51, 2003, p. 3.