

Does It Make A Difference To Follow Monism or Dualism?

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Introduction

For classification of copyright systems, many writers distinguish between ‘*droit d’auteur*’ systems and ‘copyright’ systems but there are writers who use three different systems. According to P. Geller, these are the Anglo-Saxon system, the French system and the German system. The main reason is perhaps the conflicting approaches of French dualism and German monism. However, although Dietz and Stewart distinguish German copyright law from French copyright law, they emphasize also the common ideas behind them.¹ Consequently, these two laws belong to the same system but have minimal differences resulting from their doctrinal developments. I do not agree with Davies that this is an obstacle for making precise distinctions between common law and civil law.²

In the nineteenth century, when author’s personality right was acknowledged by doctrine and case law of both countries, monistic theory was developed in Germany. However, the concept of moral right resulted in an opposite approach in France, namely the dualistic theory.

At first sight, the way both theories are named leads one to think that

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1 Strowel, A., *Droit d’Auteur Et Copyright: Divergences et Convergences: étude de droit comparé*, Bruylant, 1993, at 5-6; Sterling, J. A. L. and M. C. L. Carpenter, *Copyright Law in the United Kingdom and the Rights of Performers, Authors and Composers in Europe*, Legal Books Pty, 1986, at 474.

2 Davies, G., ‘The Convergence of Copyright and Authors’ Rights - Reality or Chimera?’, (1995) 6 IIC 965.

they comprise totally different ideas. In fact, there are some common points between these approaches, particularly after the modernization of the theories. In practice, the main construction of the German law is the Law on Copyright and Associated Rights (of September 9, 1965, as last amended by the Law of July 24, 1996)³ and the French law stems from the Law on the Intellectual Property Code (No. 92-2597 of July, 1, 1992, as last amended by Laws Nos. 94-361 of May 10, 1994, and 95-4 of January 3, 1995)⁴ which have many similarities, such as the regulation of the moral rights and the economic rights in different chapters,⁵ safeguarding both an author's intellectual and personal interests, and pecuniary interests by providing both moral rights and rights of exploitation,⁶ emphasize on the protection of the author's personal link with his/her creation.⁷ Some similarities arise from the fact that both countries are members of the Berne Convention, so that moral rights are granted. However, it is of importance that in both countries, moral rights are inalienable, so they cannot be licensed but can be only inherited. Moral rights in the French Act and the German Act comprise more prerogatives in addition to the two moral rights (rights of paternity and integrity) provided in the Berne Convention. Both Acts provide also for the divulgation right, the right to repent or to withdraw, although the German Act regulates the right to repent in a chapter separate from the chapter concerning moral rights.⁸ These examples are to show that moral rights in France and Germany operate in the same manner. One would ask then the reason why these two similar types of rights result in a dualistic approach in France and monistic approach in Germany.⁹ I will return to this question in the concluding part of my paper.

Article 11 of the German Act reflects the unitary idea,¹⁰ the main point of monism found also in the French Act. Accordingly, by accepting the unitary idea, both countries are partisans of monism but by regulating the two kinds of rights separately, they are partisans of dualistic approach. The obvious question would be whether there is a real difference between these approaches and if there is, how this is reflected in practice.¹¹ The objective of my paper should be to answer this question.

To understand the ideas behind monistic theory, this paper will begin by laying out the main principles of German monism. Then the

³ hereinafter referred to as "The German Act."

⁴ hereinafter referred to as "The French Act."

⁵ Dietz, A., 'The Moral Right of the Author: Moral Rights and the Civil Law Countries', 19 (1995) Columbia-VLA Journal of Law & the Arts 206.

⁶ Schricke, G., 'Introduction' in Beier, F.-K., Schricke, G. and Fikentscher *German Industrial Property, Copyright and Antitrust Laws*, VCH, 2nd ed., 1989, at 143.

⁷ Sterling, J. A. L. and M. C. L. Carpenter, *Copyright Law in the United Kingdom and the Rights of Performers, Authors and Composers in Europe*, Legal Books Pty, 1986, at 475.

⁸ Dietz, A., n.5 above, at 203.

⁹ *Ibid.*, at 206.

¹⁰ See the section on monistic theory.

¹¹ Dietz, A., n.5 above, at 207.

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reader will see the practical effects of monistic theory in the German Act and case-law. Afterwards, because of conflict with monistic theory, the main principles of dualistic theory will be summarized. Following theoretical aspects, the paper will demonstrate practical aspects in the French Act and case-law. This paper will conclude by comparing practical effects of dualistic and monistic approaches and explain whether it is necessary to include the German and French systems in different categories.

Principles of Monistic Theory

In the twentieth century, the monistic approach rose to its maturity. Modern monism was introduced at the beginning of the twentieth century, creating an effective doctrine for German lawyers and was finalized by Ulmer. Now, it forms the basis of both the German Act and case-law.

Allfeld was a founder of modern monism who affected contemporary German law with his thinking. This theory suggests that copyright is one right whose structure comprises both moral and patrimonial elements. The peculiarity of copyright comes from the fact that one general right gives rise to two different kinds of provisions in the same text. In short, copyright is a 'mixed right' composed of two different aspects. This unitary structure will be helpful when both interests exist at the same time and provisions serve to protect only one kind of interests, because the solution shall be the copyright system as a whole in such a problem.¹²

To draw a picture representing the different schools of thought and to link them to hidden interests, Ulmer mentions a copyright tree. This tree has roots symbolizing both the moral and economic interests of the author. Various prerogatives such as the rights of integrity and divulgation represent branches resulting from the trunk. The trunk stands for the copyright as one unit. Branches may find their power in economic interests or moral interests or both (for instance, in the case of right of divulgation). Accordingly, there may be cases in which the moral prerogative serves the economic interest (for instance, the paternity right of a novel writer serving an economic interest of procuring more business) or the economic prerogative serves the moral interest (for instance, a work has memorial meaning for a family or in the case of a rich author who wishes to preserve his or her popularity) or the economic prerogative draws its force from the economic interest (for instance, *droit de suite*, the right of lending and renting). Ulmer concludes that, since there is uncertainty in reality in determining whether a right is moral or patrimonial, these expressions are only use-

¹² Beier, F.-K. and G. Schrickler, *International Encyclopaedia of Comparative Law, Vol. XIV-Copyright and Industrial Property*, Mohr-Martinus Nijhoff, 1987, at 12.

ful in terminology; in fact, all prerogatives draw their force from the umbrella of interests which are under the protection of the integrated and unitary copyright as a whole.¹³ Without disregarding an author's permanent personal link with his/her creation and his/her moral interests, modern monistic theory or in other words, monistic and unitary theory, is based on the assumption that moral interests are protected by copyright as a whole. Therefore, the single trunk of copyright tree is inalienable and the author owns moral and patrimonial rights during the term of protection.¹⁴

Pursuant to the interpretation of monism, copyright is not an aggregate of economic and personal elements. Instead, it is a single right. This is not to say that it is only patrimonial or only moral. Nevertheless, monistic theory mentions the patrimonial and moral aspects of this unitary right; this is not in contrast to interpreting copyright as a single right. However, one must consider such distinction carefully: it is purely for classification purposes. In Germany, authors still refer to Ulmer's tree to indicate the single character of copyright.¹⁵ In this respect, monism is not a proper name for this theory; it does not disregard moral or patrimonial element. Therefore it is referred to as "integrated or synthetic theory" by Dietz and I follow this identification.¹⁶

Practical Effects of Monistic Theory on German Copyright Law

Article 11 of the German Act is considered to be a clear reflection of monistic theory since the unitary character of copyright is recognized by contemplating that copyright will protect an author both in his/her intellectual and personal relationships with the work and in the exploitation of his/her work. The explanatory memorandum of this article also confirms how the two aspects of the copyright 'form an inseparable unit.' As a result, the German Act grants the author a bundle of rights divided into economic rights and moral rights.¹⁷

An obvious effect of monism and the idea of the unitary character of copyright is that copyright as a whole or in part cannot be assigned to a third party, because moral and economic rights should always be subject to the same rules. Moral rights should be inalienable; therefore economic rights must follow them. Germany clearly follows this result by stating that copyright cannot be transferred between living people but only upon death by means of inheritance, testamentary disposition and partition of an estate.¹⁸ Copyright is transferred to heirs and spouse as a whole; therefore heirs acquire both moral and economic

13 Dietz, A., n.5 above, at 211; Strowel, A., *Droit d'Auteur Et Copyright: Divergences et Convergences: étude de droit comparé*, Bruylant, 1993., at 250, 251, 529, 531.

14 Dietz, A., n.5 above, at 212.

15 Strowel, A., *Droit d'Auteur Et Copyright: Divergences et Convergences: étude de droit comparé*, Bruylant, 1993, at 528, 529; Dietz, A., n.5 above, at 185.

16 Dietz, A., n.5 above, at 207.

17 Dietz, A., n.5 above, at 207; Strowel, A., *Droit d'Auteur Et Copyright: Divergences et Convergences: étude de droit comparé*, Bruylant, 1993, at 251, 528; Sterling, J. A. L., *World Copyright Law*, Sweet & Maxwell, 1998, at 48.

18 The German Act articles 28(1), 29.

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rights. Despite such inalienability, the author can grant licenses to use the work that may be, pursuant to the contract, limited as to place, time and purpose or without limitations, for a certain manner of use or for all known manners of use; they may be exclusive or non-exclusive. An exclusive licensee has the right to take action against infringements of the copyright without the consent of the author and to exclude everyone, including the author, in the manner specified in the contract.¹⁹ Exclusive licenses and licenses without time limit can be nearly as broad as assignments. However, firstly there are some differences between assignments and licenses; secondly there are some limits created by German law. As to the differences between assignments and licenses, firstly, licenses do not confer property rights on the licensees. Licensees are limited to actions written in the contracts. Secondly, licenses are not ‘regular transfers of rights,’ but only ‘simple permissions to use.’ The third difference is that except for exclusive licenses, licensees do not have a right to oppose infringements by other parties without the author’s consent.²⁰

The German Act contains some compulsory provisions for the interpretation of license agreements. The first restrictive rule is that licenses that grant licensee rights to exploit the work in an unknown manner at the time of contract are ineffective.²¹ Even for known manners of use, there are limits. The scope of the license agreement is determined according to the methods of use specifically enumerated in the contract. Therefore, the granted rights of use must be specified in the contract. If the rights of use are not precisely mentioned, the scope of the grant is limited to the purpose of licensing at the time of agreement.²² This principle is called the “purpose-of-grant theory,” introduced by Goldbaum and case-law. According to this doctrine, the licensee should not be granted more than he/she needs to achieve the purpose of the grant. There is a presumption in favor of the author in the event of doubt, so that the right at issue can still be used by the author after the grant. As this principle is applicable to both non-exclusive and exclusive licenses, it is significant to distinguish very wide exclusive licenses from assignments. With its protective aim for the author, it is compatible with the *droit d’auteur* approach, the general structure of the German Act and monism. What will be then the practical consequences of such two provisions? First, one must see the consequence for the parties. The contract will have no legal effect if it grants the licensee the right to exploit the work ‘in all possible’ methods because

19 The German Act articles 31(1), 31(1)(3), 32.

20 Dietz, A., n.5 above, at 208; Beier, F.-K. and G. Schrickler, n.12 above, at 43, 67, 83; Sterling, J. A. L., *World Copyright Law*, Sweet & Maxwell, 1998, at 394, 395; Spitz, V., ‘German Law’ in Metaxas-Maranghidis, G. (ed.) *Intellectual Property Laws of Europe*, Wiley, 1995, at 177; Campbell, D. and S. Cotter (eds.), *International Intellectual Property Law - European Jurisdictions*, Wiley, 1995, at 223; Schrickler, G., n.6 above, at 145; Sterling, J. A. L. and M. C. L. Carpenter, n.7 above, at 483.

21 The German Act Article 31(4).

22 The German Act Article 31(5).

this kind of stipulation means to license also unknown manners of use and comprises all the rights of the author in that work. Instead of such a stipulation, to avoid the risk of invalidity, the drafting of agreements should be in a form of listing the exclusive rights of the licensee and ‘prospective’ ways to utilize the work. This is reasonable because otherwise the license will include only the rights necessary to attain the intended purpose. The consequence for the author is that these provisions are affected by the principles of monistic theory. Even against an exclusive licensee or licensee having a very wide scope of rights, the author is still strong in the sense that there is always a patrimonial prerogative left in his/her hands that he or she can utilize as long as the term of protection of the copyright. In terms of Ulmer’s copyright tree, the trunk belongs to the author and the branches belong to the licensee. The trunk combines the moral rights and possible methods of exploitation, namely the economic faculties that remained with the author. In a world where there is always a possibility of invention for technical exploitation methods, the author will at least have the right to exploit such branches in the future since an agreement enumerating all manners will certainly not cover these new modes; this is an exact illustration of Ulmer’s copyright tree. Moreover, the license agreements granting rights as to future works are required to be in the writing unless there is a detailed specification rather than making a general reference. The author has also a right to terminate a contract as to future works after five years on the condition of giving 6-months prior notice, unless otherwise agreed.²³ Furthermore, the author can rescind the contract in case of failure by the licensee to exercise the economic right or in case of a change in the heart of the author.²⁴ The aim of all these provisions is the protection of the author against any unnecessarily comprehensive disposition of the licensee. This structure is a clear indication of how the German Act is affected by the moral rights and the approach of the personality right. As seen above, monistic theory also accepts such an approach.²⁵

In a case from 1991, the application of paragraphs 3 and 5 of Article 31 was illustrated. The plaintiff had an exclusive license to copy and issue novels to the public in paperback editions. On the other hand, the defendant was granted an exclusive license to copy and issue to the public a hardbound edition of the same novels. The purpose of the plaintiff was to prohibit the defendant from copying the novel and issuing to the public unless the price of hardbound edition was higher than that of the paperback. The German Supreme Court remarked that

²³ The German Act Article 40(1).

²⁴ The German Act articles 41, 42.

²⁵ Dietz, A., n.5 above, at 208-210; Beier, F.-K. and G. Schrieker, n.12 above, at 67, 82, 87, 88; Spitz, V., ‘German Law’ in Metaxas-Maranghidis, G. (ed.) *Intellectual Property Laws of Europe*, Wiley, 1995, at 177; Campbell, D. and S. Cotter (eds.), *International Intellectual Property Law - European Jurisdictions*, Wiley, 1995, at 223, 224; Schrieker, G., n.6 above, at 145, 146; Colombet, C., *Major Principles of Copyright and Neighbouring Rights in the World: A Comparative Law Approach*, UNESCO, 1987, at 67, 68, 72.

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a right to prohibit hardcover editions was not specified in the license agreement, and therefore held, by applying Article 31(3), that since two such editions were independent manners of exploitation of the copyright, the right of an exclusive licensee to exclude others would be separate with each manner of use. This case shows how licenses are used because of the prohibition of assignments and how the rights of even an exclusive licensee may be subject to limitations. It also illustrates that Article 31(5) is applicable even in exclusive licenses, therefore in the case where a right (in this case, the right to exclude others in hardcover editions) is not stipulated, the contract will bear the risk of being subject to the interpretation of the court which will decide according to the intended purpose of making the grant.²⁶

Principles of Dualistic Theory

The French copyright doctrine completed its development at the end of nineteenth century so as to firmly follow the dualistic approach. This theory has remained more or less the same until now. It considers copyright a ‘double right’ and it embraces both economic right and the ‘right of the personality.’ In monism, moral aspect prevails so that if there is a conflict between two rights, the problem will be solved according to personal element.²⁷

H. Desbois, the partisan of dualism, opposed Ulmer’s copyright tree idea by suggesting that the protection of moral interests and the protection of patrimonial interests are justified by two different objectives and by the “observation of facts,” copyright can be dissociated. Therefore the moral right and economic right are isolated from each other. One can conclude from this idea that moral and patrimonial rights will be subject to different rules in a dualistic system, in contrast to the moral and patrimonial rights being analogous in a monistic system.²⁸ Accordingly, on the one hand the moral prerogatives will be “inalienable, perpetual and imprescriptible,” but on the other hand patrimonial faculties will be “alienable, subject to prescription and limited in time.”²⁹

The temperate or finalized French dualism (*dualisme tempéré ou finalisé*) also separates the two groups of prerogatives in a copyright but is moderate by accepting, to a certain extent, the unitary character of copyright. In this respect, finalized dualism approaches the starting point of monistic theory.³⁰

In French dualism, two groups of prerogatives are considered autonomously and copyright is not regarded as a mixture because it is not

26 Pilny, K. H., ‘News Section: National Reports: Germany’, 7 EIPR D-135.

27 Beier, F.-K. and G. Schricker, n.12 above, at 9, 19, 42.

28 Strowel, A., *Droit d’Auteur Et Copyright: Divergences et Convergences: étude de droit comparé*, Bruylant, 1993, at 251.

29 Dietz, A., n.5 above, at 207.

30 Ibid.

reasonable to think of a single right as both transferable and inalienable, both perpetual and not perpetual.³¹ This view shows the basic point of separation of dualism from monism. The moral right is a part of the author; therefore the link between the author and the work never dies. One can see that this is an approach of the personality right. The nonpecuniary component is dominant and the provisions concerning protection of this personal element constitute the basis of copyright law.³² For this reason, moral rights cannot be totally waived. To justify this idea, dualistic theory defends that the moral right existed before the economic right (for instance divulgation right), which is perpetual, in contrast to the economic right which is limited in time. On the one hand, the pecuniary element is for satisfaction of economic interests in the exploitation of the work; on the other hand, the nonpecuniary element is directed at the protection of personal interests and the link between the author and the work.³³

Practical Effects of Dualistic Theory on French Copyright Law

By stating that the author's right comprises "attributes of an intellectual and moral nature as also attributes of an economic nature," at first sight, Article L.111-1 of the French Act affirms the dualistic theory. However, by accepting the fact that there is a single right made up of two kinds of attributes, it reflects the idea of unity of copyright defended by monism. Accordingly, the French Act is an illustration of the finalized French dualism.³⁴

The French Act grants moral rights as well as economic rights as two components of copyright. There are two separate chapters on these rights, Chapter I and Chapter II of Title II. It is noteworthy that the heading of Chapter I is "*Droits moraux*" instead of "*Droit moral*" which was the term used in dualism. In accordance with dualism, the moral right should have been interpreted as a distinct right. It is important since this fact indicates that the French Act does not follow dualism in the strict sense, but confirms the unitary character of copyright to a certain extent by considering the moral right as a bundle of prerogatives included in the single right.³⁵

As an indication of a point of separation from the German Act, an assignment of pecuniary rights is permitted by the French Act. Therefore, not only licenses but also assignments are possible in the French copyright law. An author may totally or partially transfer his or her patrimonial rights in a work (only that specific right), as well as in

31 Ibid, at 208.

32 Beier, F.-K. and G. Schriker, n.12 above, at 42.

33 Dietz, A., n.5 above, at 207.

34 Strowel, A., n.28 above, at 251; Dietz, A., n.5 above, at 206; Sterling, J. A. L., *World Copyright Law*, Sweet & Maxwell, 1998, at 45, 284.

35 Dietz, A., n.5 above, at 201-202; Spitz, V., 'German Law' in Metaxas-Maranghidis, G. (ed.) *Intellectual Property Laws of Europe*, Wiley, 1995, at 138; Campbell, D. and S. Cotter (eds.), *International Intellectual Property Law - European Jurisdictions*, Wiley, 1995, at 138; Sterling, J. A. L., *World Copyright Law*, Sweet & Maxwell, 1998, at 317.

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consideration of payment or without consideration. Such a transfer of ownership may be completed by assigning different faculties to different people or making one prerogative subject to two contracts. For instance, one assignee may own the right of broadcasting and the other may own the right of reproduction, or one assignee may own the right of reproduction for hardcover editions and the other may own it for the paperback editions.³⁶

Although the author is allowed to assign his or her economic rights, this ability is not without limits but these limits derive only from the French Act and not from the nature of the transfer. First of all, since the moral rights are inalienable, the transferee is obliged to respect the moral rights of the author, in particular the right of integrity. Such an obligation of the assignee can be clearly seen in the case of *Delorme v. Catena-France*³⁷ where the rights in the design were assigned to Catena “for all purposes” and the plaintiff took an action for infringement of his moral rights when Catena modified the logo (the work). According to the court, the assignment of the copyright “for all purposes” did not grant the right to modify the work without the author’s consent. The moral right at issue was the right of integrity. It is of importance that the defendant’s good faith or assignment with a wide scope did not affect the result. Another restriction is that the transfer of the right of performance does not include at the same time the transfer of the right of reproduction or vice versa.³⁸ According to Article L.122-7(4), in the case of a complete transfer of the right of reproduction or the right of performance, the effect thereof will be limited to the manners of exploitation stipulated in the contract. Furthermore, there is a requirement of written form for the performance, publishing and audio-visual production contracts.³⁹ Article L.131-3(1) provides a strict requirement for the parties to be obliged to specify the assigned rights and to determine the area of exploitation as to the scope, duration, purpose and territory. Otherwise, the assignee might be totally or partially deprived of exploiting the work. Similarly, for partial assignments, Article L.131-7 provides that the conditions and limitations must be laid down. Article L.131-3(1) is illustrated by the *Robert & Partners v Joker*⁴⁰ case at the time of the previous Act that provided for the same provision. The contract comprised a clause providing for assignment “including all rights” in favor of the advertiser. The Cour de Cassation (Court of Appeals) held that such a clause did not fulfill the requirements of Article 31(3) of the Act of 1957. Therefore that

36 Spitz, V., ‘German Law’ in Metaxas-Maranghidis, G. (ed.) *Intellectual Property Laws of Europe*, Wiley, 1995, at 151; Campbell, D. and S. Cotter (eds.), *International Intellectual Property Law - European Jurisdictions*, Wiley, 1995, at 144; Sterling, J. A. L., *World Copyright Law*, Sweet & Maxwell, 1998, at 394.

37 *Delorme v Catena-France* (Paris Court of Appeal, 4th Chamber, 12 December 1988, PIBD no. 454 III 231) discussed in Le Stanc, C., ‘News Section: National Reports: France’, (1989) 10 EIPR D-182.

38 The French Act articles L.122-7(1), L.122-7(2).

39 The French Act Article L.131-2(1).

40 *Robert & Partners v Joker* (Cour de Cassation, Cass. Civ. I, 9 October 1991, JCP 1991, IV, 429) discussed in Lucas, A., ‘News Section: National Reports: France’, (1992) 5 EIPR D-90.

clause was held to be not effective to be relied on by the advertiser. There is another protective provision for the author, which declares the complete assignment of future works of an author to be null and void.⁴¹ Regarding the manners of exploitation unforeseeable and not foreseen at the time of the assignment, the parties are required to provide for an explicit provision in the contract which also “shall stipulate participation correlated to the profits from exploitation.”⁴²

Pursuant to the French Act, the patrimonial and moral rights are not subject to the same rules of succession. Article L.121-2 concerning the right of divulgation and Article L.121-3 with respect to the misuse of the right of divulgation prove such a distinction. In this respect, as confirmed also by Desbois, the French Act clearly follows the idea of dualism that the moral right and the patrimonial right should have different fates.⁴³

In several articles, the French Act reflects the thesis of dualism that the moral right should prevail over the economic right. First place is given to the moral and intellectual interests of the author in French copyright law. Examples of such preponderance are the right of withdrawal as opposed to the rules of contract law,⁴⁴ the right of access as opposed to the rules on ownership and as per Article L.121-9, the exclusion of copyright from the community property within the context of marriage.⁴⁵

Conclusion

Both copyright laws examined in this paper are to a significant extent affected by the doctrinal developments prevailing in those countries. The reflection of Professor Ulmer’s tree as inalienability of the entire copyright in Germany but the reflection of dualism as inalienability of only moral rights in France, also the special succession rules established for moral rights in France but not in Germany are the most remarkable examples. In particular, the basis of the German Act is established by Ulmer’s theory.⁴⁶

I now return to the question to which I have referred in the introductory part concerning the reason for the existence of two separate theories although they both accept the two components of copyright. The answer is that the partisans of dualism reject that the copyright is an extensive right but that it also comprises two separate kinds of rights. In fact, despite the consideration of moral and patrimonial rights as distinct from each other, Article L 111-1 proves the confirmation by the French copyright law of the unitary concept of copyright to a cer-

41 The French Act Article L.131-1.

42 The French Act Article L.131-6.

43 Strowel, A., n.28 above, at 494; Dietz, A., n.5 above, at 217.

44 The French Act Article L.121-4.

45 Strowel, A., n.28 above, at 495.

46 Sterling, J. A. L. and M. C. L. Carpenter, n.7 above, at 473, 474.

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tain extent. Moreover, as defended by Ulmer, there is always a possibility where a moral right will have an economic touch or the vice versa, or where these rights will be in conflict with each other. As the partisans of dualism insist on not to see such facts, they part from the monistic vision that the proper protection of both moral and economic interests of the author would be to regard the copyright as a whole. Actually even in the case of acceptance of the unitary character of copyright, there would exist two distinct sets of rights regulated differently by law. One can conclude from abovementioned facts that the two theories came closer to each other in the twentieth century.⁴⁷

The other task of my paper was to decide whether there is a real difference between two approaches. Although both theories start by accepting the unity of copyright, the monistic theory establishes also practical results from such idea by providing for more provisions than the dualistic theory, for the sake of protecting the integrity of copyright. Monism takes more steps in addition to the starting point, with the illustration of the copyright tree. According to German law, the author will remain both the author and the owner of the copyright since copyright can never be transferred completely. There will always be something left with the author. On the other hand, in accordance with French law, the author can be also an owner or only an author of the copyright since assignments are allowed. In practice, there exists a considerable difference in the exploitation of economic rights. For instance, if an author wishes to publish a manuscript as a book, in Germany the author transfers to the publisher only that specific right to publish the book. This results in contracts being very detailed. The author can grant a license only in relation to manners of use known at the time of contract. Therefore when the technology of internet was invented, authors were entitled to make their books available on the internet since it was not expressly stipulated in the contract. However, in accordance with French law, when the author has transferred his or her all economic rights, the publisher can avail of every manner of uses, except for a presumption in favor of the author in case of doubt. Accordingly, the publisher can also make the book available on the internet because the copyright is assigned. The author can assign his/her rights for any use in the future or in relation to works in the future provided that it is not a total transfer of future works. Another example given by Sterling is a licensee having a grant to use a work in films at the time before video grams are invented, who cannot utilize the work in video grams after the invention. Consequently, the assignee will never be in the same position with the exclusive licensee since the author will keep an element either by way of new technology or in the case of unclear contract, by way of delimiting the scope of the contract to the purpose of granting.⁴⁸

47 Dietz, A., n.5 above, at 207, 208; Beier, F.-K. and G. Schrieker, n.12 above, at 19.

48 Dietz, A., n.5 above, at 208, 211; Sterling, J. A. L., *World Copyright Law*, Sweet & Maxwell, 1998, at 395.

Apart from the abovementioned difference, the German monism and French dualism are very close to each other. In particular, they are similar to each other in the operation of moral rights. In fact, the origin of both is the theory of the right of personality. Neither of them would accept that the author has only an economic ground in his or her mind during the exercise of his or her moral right. Even the actions for damages in the cases of infringements of moral rights that appear in both countries, do not infer the opposite opinion in this respect.⁴⁹

In conclusion, in consideration of the importance conferred on the personal and intellectual interests, which is common to both countries, it is reasonable to mention a *droit d'auteur* system rather than two systems for continental copyright laws. The aforementioned differences are not enough to form two sub-divisions in comparison with the precipice between the copyright and *droit d'auteur* systems.⁵⁰

49 Beier, F.-K. and G. Schrieker, n.12 above, at 42; Dietz, A., n.5 above, at 213.

50 Dreier, T. K., 'Authorship and New Technologies from the Viewpoint of Civil law Traditions', (1995) 6 IIC 989.