

# Comparative study of music copyright in the legal system of the United States and Iran

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**ABSTRACT:** Copyright is defined as the legal right to create art and literature works, including music. Music existed long before the concept of copyright and would exist without it. But without copyright, the music industry is unlikely to survive. The main assets of the music industry are songs and recordings that are protected by copyright. Without copyright, songwriters and music publishers cannot own and make money from their songs. Copyright is always in conflict between two essential interest groups competing with each other. On the one hand, it requires the principle of freedom that creative works must be readily made available to the public so that society can enjoy them; On the other hand, creators and publishers have spent time and money creating and producing creative works, and justice demands that these cravings be compensated. Copyright strives to balance the principles of freedom and justice by compensating creators for encouraging them to create creative works that will be available to the public over time. In the following article, by studying the legal systems of the United States and Iran regarding music copyright, we find that the legal system of the United States of America is more comprehensive than the other two systems; This is because the copyright law of this country deals specifically with music copyright and covers most of the issues raised in this regard. However, in the Iranian legal system, there are no specific rules regarding music.

**Keywords:** Copyright, Music Effect, Originality, Copyright Infringement.

## INTRODUCTION

For many years, in advanced societies, the rights of creators, such as copyright, have been regulated and become Law, so that Law and the judiciary protect creators, and their works are stolen. Culture is safe. The increasing growth of science and technology has made copyright one of the needs of human societies and has made it one of the essential pillars for the development and progress of any society. Copyright is defined as the right of the creator to decide on the publication and sale of his work with the legislator's support. Therefore, the work owner does not worry that others will violate his material and creative rights and deprive him of these inalienable rights. However, the protection of the Law by the creator is limited to a certain period, and after the expiration of that period, the work enters the field of public property and is available to everyone. Copyright is a branch of literary and artistic property rights under intellectual property rights. Intellectual property rights deal mainly with issues that are the product of human thought and are related to his mental creations. The subject of the present study is the study of copyright in one of the seven arts and perhaps the most important of them, namely music. Music has been a subject with him since the beginning of human history and is considered a valuable heritage of human history that existed even before the advent of copyright. In music, copyright means that the creator of the work of music has the exclusive right to publish, distribute, present, perform and materially and spiritually exploit the work of music. Having copyright allows the creator of the work to charge a fee for the

exploitation of his work. This causes the spirit and motivation to create new and creative works that require the flourishing and development of a society. Now, if copyright laws do not exist or are ignored in a country, creators will have no incentive to create new works, art will stagnate in that country, and "imitation" and "fraud" will replace "creative work"; That is why developed countries have new copyright laws and guarantee civil and criminal enforcement for violating them.

The purpose of this study is to study the two legal systems of the United States of America and Iran to get acquainted with the similarities and differences between the two systems in terms of copyright in music and if there are weaknesses in domestic Law, try to eliminate it. Let's go.

### **The concept of copyright**

Copyright is a branch of the literary and artistic property rights of the Minister of Intellectual Property. Intellectual property law is a new legal concept that determines how to protect and use human intellectual creations, which mainly deals with human thought issues and are related to his mental creations. There is disagreement among Iranian jurists about using the term "intellectual property" or "intellectual property." Some have translated intellectual property rights into intellectual property rights, and the word "intellectual" does not seem to be as relevant as it should be because of its broader meanings. Intellectual property means rights that originate from human thought, reason, and intellect. Intellectual property is also the exact Persian equivalent of the English phrase "intellectual property." But the word "spiritual" is opposite to the word "material" and is not a suitable word (Entezari, 2003).

According to many, one of the seven arts, the most important of them is music, which expresses the feelings of its creator, such as love, hate, protest, and so on. The definition of music states that music is "the art of expressing human emotions through sounds." A work of music is a work based on a musical idea; It begins in a specific step that, after several ups and downs, often ends in the beginning step of the piece or its family notes and is taken and presented as a book note or audio work. Copyright in music means that the creator of the musical work has the exclusive right to publish, distribute, supply, perform, and materially and spiritually exploit the musical work. Recognition of copyright in music is a guarantee for the creator of the work of music, which is the exclusive right of the creator of the work.

### **Copyright history**

#### ***United States legal system***

In the early history of the United States, many areas of law, including copyright, were derived from British Law. Before the founding of the United States, many American colonies enshrined copyright under British Law. Even after American political independence from Britain, the new leaders established much of the American legal system based on British Law. Therefore, it is not surprising that the former US copyright law is very similar to the British "law" (Ansari, 2006).

Its "law" is the first copyright law globally, passed by the British Parliament in 1710. The Law is named after the then Queen of Britain, Anne Stewart. The Law recognized the author as a copyright holder and granted copyright for a period of 14 years. This period could be extended only once upon request and under certain conditions; therefore, another 14 years would be added to this period in the case of republishing. The significance of its "law," apart from being "primitive," set a pattern for other powers in Britain and several other countries. One of the countries was the newly established United States at that time (Ghafouri, 2016).

Before enacting the Law by the British, the works of the creators were not only not considered their property, but they had no control over their works; Because the right to own and supervise the works was reserved for the queen of the church.

The development of copyright in America was very similar to the evolutionary course of rights in Britain. Numerous authors in the colonies fought for this right; Noah Webster, author of Grammatical institute of the English Language (more than 71 million copies). It has been sold) and Thomas Paine, author, inventor, and pioneer of the founding of the United States, is one of them. The first American copyright law was passed in 1783 in the state of Connecticut.

In 1786, 12 of the 13 colonial states each passed their copyright law. This created problems with coordination and law enforcement. As a result, the need to enact a single national copyright law became apparent. On March 11, 1783, the American Continental Congress established a committee to measure better the tools for cultivating original and valuable arts throughout the United States, which was possible by supporting the property of authors and publishers of new books. Representatives of the Constituent Assembly, known as the Fedelphia Assembly, unanimously added a clause to the constitution that allowed the federal government to pass copyright laws. The Congress will have the authority to "promote the advancement of the useful sciences and arts by upholding the exclusive rights of authors and inventors for a limited period." This clause indicates that the primary purpose of US copyright law in The United States is to develop the creation and dissemination of creative works to the public.

Because the best way to encourage people to create new works is to provide them with a financial incentive, without this financial incentive, people will be less interested in creating new works (Moser, 2012).

### ***Iranian legal system***

Until the beginning of the present century, no government order or decree, or limit has been found, which is a prerequisite for the observance of the rights of the creators of intellectual works, at least so far. In Iran, industrial property rights have a longer lifespan than literary and artistic property. The first Law on the industrial property is related to the registration of trademarks and industrial trademarks in 1935. This Law was terminated with the approval of trademarks and inventions in 1931. This Law was continued in 1948 and simultaneously with Iran's accession to the Convention for the Protection of Industrial Property Rights (Paris Agreement) with a new amendment (Entezari, 2003).

But first, legal attention was paid to literary and artistic property in Articles 245 to 248 of the Penal Code (the basis of conspiracy and fraud in business) approved in 1931. This material, which was, in fact, a translation of Articles 425 to 429 of the French Penal Code, was used to print another composition or composition without permission, to use the works of the author in another work without mentioning the source, to sell or import another work, and to publish the composition. Another with a name other than the author's name had predicted the payment of compensation (Zarkalam, 2009).

In 1967, the then Ministry of Culture prepared a bill on the rights of authors, writers, and artists, and in 1968 it was submitted to the National Assembly. . This Law has 32 articles, which include the definition of the author and the author, the census of the protected literary and artistic works, the material and intellectual rights of the creator, the period of protection and the guarantee of its violation. As a result, the mentioned articles in the criminal Law were terminated. The Law on the Protection of the Rights of Authors, Writers, and Artists will protect the material rights of the creator when the work is first published, distributed, or executed in Iran, and none of these has been done in another country before. He did not mention the sub-works, i.e., translation and adaptation. Receipt. The Law is complementary to the Law of 1969, and none of its provisions negates the recent Law.

### **Creators and their rights**

The creator of literary and artistic works, and in particular musical works, has full authority and domination due to his genuine federal work and therefore has privileges that are granted to him by Law. Due to the preservation and protection of the work, the legislator provides material and intellectual rights for the creator and in case of violation of his rights, the violator will be prosecuted.

The United States Copyright Act of 1976 does not explicitly define the creator. However, it can be deduced from Article 102 (a) that a creator presents his work in a genuine manner and in any way that is now known. Has been or will be known in the future, establish it; In other words, he is the creator of a person who either establishes an original work tangibly and objectively or gives permission to establish it to another person. Article 1 of the Law on the Protection of the Rights of Authors, Writers and Artists, adopted in 1969, states: "In terms of the law, the author, author, and artist are the 'creators' and what arises through their knowledge or art or their origin without He considered that the method or method used in expressing or appearing or creating it is called "effect."

### **Sponsored works**

#### ***United States Law***

In addition to specifying general conditions for the protection of works, the US Copyright Act also provides eight categories of copyrighted works; According to paragraph (a) of Article 102 of the said Law, these eight categories are: 1) Literary works 2) Musical works 3) Theatrical works 4) Soundless performance (pantomime) and dance 5) Visual, graphic and sculptural works 6) Animated images And other audio-visual works 7) Recorded sounds 8) Architectural works

The copyright law does not define the terms used in some of these categories; Because the parliament believed that the words mystics had intelligible meanings. In addition, in some cases, work falls into more than one category. Like a recorded sound, it can be part of a moving image. This overlap may lead to the emergence of several specific rights in work. Because Article 106 of the Law provides different rights for each category and Articles 108 to 120 also sets restrictions on these rights for several categories.

These 8 categories are not necessarily the only copyrighted categories. It is possible to create new types of works that do not fit into any of the categories. The fact that the Law mentions only 8 categories of works does not mean that no other categories can be added. This is specified by paragraph 11 of Article 112, which includes "categories" of eligible works. In Article 101, the word "inclusive" is considered to mean non-exclusive.

#### **Iranian Law**

According to Article 2 of the Law on the Protection of the Rights of Authors, Writers, and Artists, the works that must be protected in terms of material and creative rights are 1. Books, treatises, pamphlets, plays, and any other scientific, technical, and literary writings. Art. 2. Poems, songs, hymns, and compositions that have been

written, recorded or published in any order and method. The order and method of writing or recording, or publishing. 4-The work of music that has been written or recorded, or published in any order and method. Wedge of decorative effect and visual effect that has been created in any way and method in a simple or combined way. 6- Any sculpture (sculpture.) 7- Architectural effect such as design and plan of the building. 8- Photographic effect that with the original method and Innovation has emerged. 9- The original work related to handicrafts or industrial arts and carpet and flower design. 11- The original work that has emerged is based on popular culture (Foldloo) or cultural heritage and national art.11- The technical work that has the aspect of the invention. 12. Any other innovative effect, which is a combination of several of the works mentioned in this chapter.

According to paragraph 4 of Article 2 of the said Law, musical works that have been recorded and published in any way will be protected by Law.

### ***Duration of copyright protection***

Copyright protection of works is limited to a specific period. During this period, creators of works of art and literature enjoy rights and benefits. At the end of this period, the work enters the field of public property. No one can own a work that has entered the public domain, and everyone can use it freely.

#### ***Duration of copyright protection in the United States***

According to the US Constitution, copyright protection must be limited to a specific period. In other words, if Congress passed a law that would continue to protect copyright forever, it would be unconstitutional.

When a copyright term for a work expires or expires, the work enters the public domain. No one can own a work that is part of the public domain, and everyone can use it freely. In addition, copyright can be essential for the creator of the work because it creates a financial incentive for him and also for the companies that invest in the production of that work in the field of public property; Because it offers many creative works to the public that can be used freely and to create other creative works. For example, the song "West Side Story" was based on a publicly owned work, Shakespeare's Romeo and Juliet. However, to use a work that is still under copyright protection requires the permission of its creator and a fee to use it. The copyright owner may even be reluctant to grant permission to use the work.

Copyright rules can be very complex; Basically, because there are different periods for different works. To determine what Law applies to work, one must first know when the work was created. Works produced before 1978 - the year in which the Copyright Act of 1976 enters into force - are governed by the Copyright Act of 1909, while works created in early 1978 and after that are governed by the Copyright Act of 1976.

#### ***Duration of copyright protection in the Iranian legal system***

In the Iranian legal system, legal protection of material rights is limited to a certain period, which according to Article 12 of the Law on Protection of the Rights of Authors, Writers, and Artists, is valid for 30 years from the date of death. For 30 years, the material rights belong to the heirs or to the person to whom the rights were transferred by will. If the creator had no heirs or did not transfer his rights to someone through a will, for 30 years, all rights Material belongs to the Ministry of Culture and Guidance. Some consider the reason to be limited to public use and public access to the work, while others are based on utilitarianism, denial of monopoly, community interests, creating competition, encouraging the creators of these works. Know short-term support. Others justify the restriction by arguing that the creator added something to the collective knowledge to make the division of interests acceptable over time. In addition to material rights, the author's intellectual rights have also been considered and protected in the Law on the Protection of the Rights of Authors, Writers, and Artists. These rights, which are related to the personality of the creator of the work, are enshrined in the said Law as intellectual rights, according to which all persons are required to recognize the author's copyright ownership and assign it to him, without the right to infringe the integrity of the work or Have a part of it. According to Article 4 of the Law, the intellectual rights of the creator are not limited to time and place and are always at the center of protection. Even after the death of the owner of the work, if someone violates his creative rights, he will have a guarantee of execution (Oliaei-Fard, 2016).

Assessing the term of protection in Iranian Law, it can be said that compared to other legal systems, the period of 30 years is very short.

#### ***The concept of copyright infringement***

Within the scope of non-proprietary copyright ownership, violation of the right is equivalent to theft of a physical asset. In general, copyright infringement occurs when a person infringes on the copyright without the author's permission.

### ***Copyright infringement in the USA***

According to Section 501(a) of copyright Act: "Anyone who violates any of the copyright owner's exclusive rights, as provided in Articles 106 to 118, or whoever makes copies or billboards in violation of Article 602, Entering the United States is a copyright infringement." Single copyright law may infringe one or more of the proprietary rights of the owner. For example, if someone copies a copyrighted song without the owner's

permission, he or she has infringed on the copyright. If the person gives or sells the recorded song to someone, he has also violated the distribution right.

Copyright infringement is not subject to its use. The standard answer given by a person accused of copyright infringement is that I have not received any money for this. However, copyright infringement results from the unauthorized use of the owner's proprietary rights and is not dependent on the exchange of money or the motive for making a profit. There is a similar analogy in that if someone steals your car, their future intends to drive the stolen car and not sell it to someone else; it will not help you. Although the car is an objective property, the copyright owner (like the car owner) is still barred from using the work, unlike the copyrighted work. (Or at least he is deprived of the benefits of his work.) The key to winning a copyright infringement lawsuit is that the defendant has copied the claimant, but there are circumstances in which even if the defendant Copied the applicant's work, it does not lead to copyright infringement. Because copying should be asymmetric as the work, at least some of the copied elements must be relevant and copyrighted rather than unprotected or in the public domain to create asymmetric ownership.

The mere similarity of the works of two people to each other does not mean violation of the rights of the other party. There may be many ineffective similarities without a person copying another work. In music, where creative vocabulary is quite limited, there are many similarities between different works. Each song typically shares standard rhythmic notes, chords, and patterns.

### ***Copyright infringement in Iran***

The Law on the Protection of the Rights of Authors, Writers, and Artists guarantees criminal execution. According to Article 23 of this Law, "Everyone may use all or part of any other work protected by the law in his name or the name of the creator without his permission or intentionally." "The name of any person other than the creator of the publication, distribution, or supply will be limited to six months to three years of disciplinary imprisonment."

Also, according to Article 24, "Anyone who publishes and distributes another translation in his name or the name of another without permission will be sentenced to imprisonment for a misdemeanor from 3 months to 1 year." Permission of the creator or not to include the name of the creator and the details of printing houses and enterprises, workshops, and persons who print or publish, publish, record, or reproduce the protected works, as well as the misuse of the name, title, and unique mark According to the Law, the punishment will be imprisonment from three months to one year. In Article 7 of the Law on Translation and Duplication of Books, Publications and Audio Works of 1973, violation of the provisions of Articles 1, 2, and 3 of this Law, as well as import or export of copying, recording, or duplicating audio works that have been illegally produced abroad, Has considered it a crime and has punished of three months to one year for the violators (Zarkalam, 2009: 366).

Regarding the guarantee of civil enforcement, the Law passed in 1969 has not independently ruled on the possibility of claiming material and moral damages resulting from the violation of the rights of creators, which is unfortunate. However, the silence of this Law regarding the guarantee of civil enforcement prevents the victim of the violation of federal property rights from claiming damages under the Civil Liability Law of 1960. However, as Iranian jurists have pointed out, according to Article 1 of the Law The basis of liability is based on fault because, as a general rule, it stipulates that the damage to another must be the result of intent or negligence; Deferring compensation for damages resulting from the violation of federal property rights to prove the guilt of the perpetrator is not compatible with the nature of federal property rights (Zarkalam, 2009: 403)

Unfortunately, the Law on the Protection of the Rights of Authors, Writers, and Artists, passed in 1969, has a territorial nature; That is, the protection granted to copyright by Law is available only in the territory of Iran. That is why an Iranian can copy or translate works published abroad without the owner being able to sue him for his actions in the Iranian imitation. Conversely, Iranian productions and works abroad are copied or translated without the future of Iranian copyright.

## **CONCLUSION**

When we compare different societies, in countries where copyright laws are more robust, and people in the community generalize to this framework, they see more efficiency, creativity, and creativity; However, in societies where these rules are not observed or do not exist, there is less creativity. The lack of copyright creates intellectual and cultural laziness. From the totality of studies conducted in the legal systems of the United States of America and Iran regarding copyright in music, the similarities and differences between the two systems can be summarized as follows:

1. Both legal systems cover music works as one of the copyright-protected categories. But the United States is more comprehensive than Iran. This is because US copyright law deals specifically with music copyright and covers most of the issues raised in this area; However, in the Iranian legal system, it is sufficient to mention only musical works as works that are protected by copyright law, and there are no specific regulations regarding music.

2. Musical works, to be protected by copyright, must necessarily have the three principles of authenticity, expression, and affirmation. These three principles are set out in US copyright law. But nowhere in Iran is the Law protecting the rights of authors, writers, and artists and the Law translating and copying books, publications, and audio works mentioning the need for the works to be original.

3. Copyright protection of music and other literary and artistic works can not continue forever, and in the two legal systems of the United States and Iran, this issue has been considered, and a certain period has been provided in the laws of these countries. The estimated period of protection for the creator in Iranian Law is 31 years. This is a brief period compared to the one mentioned in US copyright law, which is 70 years, and it is hoped that the legislature will increase this period.

### **Conflict of interest**

The authors declare no conflict of interest.

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