

# The Legal Protection of Copyright

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## Abstract

Due to the gathering momentum of access to knowledge issues, over the past few years, the issue of access to knowledge has become a concern for many countries and competent parties, in developed or developing societies alike. This is because the problem of intellectual property is universal as it is not concentrated in a single country. Therefore, intellectual property issues and the protection of Copyright are among the most important and critical issues, related to knowledge and its accessibility. This is the reason that prompted many Arab and foreign countries to make amendments in its legislative system by setting controls and guarantees for the mechanisms of the exchange and dissemination of knowledge to preserve the rights of authors and creators and keep pace with the phenomenal scientific and technical advances.

## Keywords

protection- legal- right- author- scientific work

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## Introduction

To identify the Copyright, regarding his Scientific Work, we shall initially define the meaning of the author, and then we shall study the legal nature of this element and clarify its element. Due to the considerable jurisprudential debate on the nature of the author's right, we shall review the dual nature theory, representing the preponderant opinion of jurists. The Author: is any person who produces intellectual production, whether literally or artistic, and whatever the mode or form of its expression whether by writing, drawing, imagining or any other forms. The Saudi copyright protection regime stated that "an author is any person who publishes a work attributed to him by mentioning his name on the work or by any other means used to attribute works to their authors, unless there is evidence to the contrary".

### Study Problem

The problem of the study revolves around the problem of poor awareness of the author's rights, its nature and the mechanism of protection, the types of works subject to legal protection and the duration of this protection, and the failure to strengthen the role of the competent community institutions in monitoring and overseeing, as these institutions can have an effective protective role in protecting the Copyright.

### Study Objectives

The study aims at identifying the legal nature of the author's rights and its elements, knowledge and respect of those rights, and learning more about the scope of the legal protection, its duration, and its mechanism, in accordance with national legislation and international conventions, in an attempt to raise the awareness of the culture of the Copyright.

### Study Methodology

This study, as a legal study, relied on the descriptive, analytical, and deductive method, by analyzing the legislations, related to the author's rights protection, a rigorous and focused analysis, and extracting the total provisions to identify the partial provisions of the national and international legal regulations, protecting the Copyright.

## Literature Review

### The Legal Nature of the Copyright

The jurisprudential theories varied in interpretation of the Legal Nature of the Copyright. Some of these theories stated that the Copyright is one of the of the intellectual property rights, some other theories stated that the Copyright is one of the personal rights, while other theories stated that the Copyright is of a dual nature. We shall discuss the preponderant opinion of jurists in most of the Arabian, foreign countries, and international covenants (Albadrawi- Alsagheer 2008).

### The Copyright is of a dual nature

The jurists have established that the Copyright is of a dual nature, i. e the author has two rights regarding his work: moral right and financial right. The author's moral right can be defined as: set of benefits that the law grants to the author, regarding his intellectual production, which can be assessed and valuable as this right is related to the author's personality and freedom of thoughts. Our professor, Dr. Abdulrazil Al Sanhoury stated that the author's moral right is one of the personal rights, highly relevant to the author as the parental right. Thus, the author's moral right is independent and concentrates on the protection of the author's personality and characteristics -as the creator of the work- and the protection of the work in its self as something worthwhile (Al-Rahahla, Al-Khalidi, 2012). On the other hand, the author's financial right lies in the material value of his work. This right may be determined according to benefits or the potential commercial profits of the publication of these works, because it's only fair to give every initiator the chance to take

advantage of his invention through enabling him to make use of the fruit of his reflection and diligence, through making these works available for public. This chance shall be beneficial to the author, taking into account that this right is exclusive for the author, for a period freely determined by the laws and regulations, and shall not be exploited by any other party without prior permission (Al-Matiet, 1967).

## **The Elements of the Copyright**

The author has two rights, regarding his work, one is moral and other is financial, and we shall capture these elements as follows:

### **The Author's Right in the Ownership of his Work**

The Eighth article of The Saudi copyright protection regime stated that "The author shall have the right to exercise any of the following: a) Attribute the work to himself or publish it under a pseudonym or anonymously. This right is called Parental right, and is recognized by all laws and international conventions, and is inherent right of the author who write his work from the intellectual and mental production of his mind, accordingly, this work shall be attributed to him (Al Shawarbi, 1997).

### **The Author's right in publishing his work**

The Saudi copyright protection regime stated that "The author shall has the right to print and publish the work in a readable format". This right is confined to the author only, thus, no one can force him to publish his work or make use of this right on his behalf during his life, but the situation is different after his death, as the right to publish the work shall be passed to the heirs. It is noteworthy that the author is the only person who shall decide on the work completion and the publication decision shall be exclusive for the author and shall has absolute discretion. Accordingly, no one can debate with the author in this regard or in determining the publication date (Kana'an, 1987).

### **The Author's right in amending his work**

After the completion of his work, the author may think that there is defective idea, and wants to amend this idea through adding some points, or think that he overstated specific idea and wants to amend this idea through deleting (Al Shawarbi, 1997).

### **The author's right in withdrawing his work from circulation**

The withdraw right is the corresponding right to the publication of the work, just as he has the right to publish this work at such time as he considers necessary, he also has the right to withdraw his work from circulation, where there are substantial grounds for that (Lotfi, 1988).

### **The author's right in objection to any infringement on his work and prevent any deletion, change, addition, distortion, corruption, or any other form of tampering with the work itself**

The author shall have the right to object to any amendment to his work or change thereof. The author shall also has the right to take all the appropriate legal actions to prevent and combat such abuse, and shall also has the right to report such infringement to the competent authorities (Awashriah, 2013).

### **The author has the right to suspend the circulation of his work for a limited period**

If the legislator granted the author the right to withdraw the work from circulation entirely for substantial grounds, estimated by the judge, if a case is brought before him in this regard, then from our point of view, and a fortiori, the author shall has the right to suspend the circulation of the work for a period of time he deems appropriate, as the author may deem it appropriate to suspend the circulation of this work for a limited period without withdraw the work completely.



## **The author's financial rights**

The majority of international legislations and treaties provided for financial rights of the author, regarding his work, thus, these legislations and treaties explicitly decided that the author has the right to financially exploit his work in any way he deems appropriate. Accordingly, no one may exercise this right without written permission from the author or his heirs. This right includes the following:

### **Printing and publishing the work in a readable format**

Second: Recording it on audio or video tapes, compact disks, electronic memories, or any other means of dissemination.

Third: Translating the work into other languages, quoting or altering it, or redistributing audio or visual material.

Fourth: All forms of material exploitation of the work in general, including permissible commercial rental.

Fifth: Communicating the work to the public via any possible means, such as displaying, acting, broadcasting, or data transmission networks.

## **Works subject to legal protection**

### **The nature of the work and the conditions for its protection**

The work – in copyright field- can be defined as all the original intellectual inventions that are expressed in reproducible form or in other words all forms of intellectual creativity in literature, arts, and science fields (**Al Metait, 1967**). The work has been explicitly defined in the Saudi copyright protection regime as " Any literary, scientific, or artistic work."

### **The conditions that shall be met in the works, subjecting to the legal protection**

#### **The work authenticity condition**

The majority of copyright legislations emphasized the need for authenticity and innovation in the legally-protected works and it might be considered a pre-requisite for the protection of this work. Innovation can be defined - regarding any work: as demonstrating the personal character of the author through the expression of the idea. Authenticity and innovation are usually relative rather than absolute, so what is considered innovative now shall inevitably become familiar later. It is worth noting that the assessment of the availability of the intellectual innovation condition in the work is up to the judge, who can assess whether the work include some degree of innovation or creativity.

#### **The protection of work shall focus on the expression of the author's ideas not the idea itself**

The protection of copyright shall include the mode of expression of the author's ideas not the idea itself as the protection of idea shall subject to the industrial property acts, especially the patent (Al jazi, 2004).

#### **The Copyright protection shall focus on the innovative works, regardless of its quality, mode of expression, its objective, or scientific value.**

The protection scope shall cover all the innovative works, regardless of its quality, mode of expression, its objective, or scientific value. This innovative works may be artistic such as the works related to drawing, photography, sculpture and applied arts. It also may be musical or other types of works. The communication of the work to the general public may be in written or oral form. The work may be produced for educational or cultural purposes, or it may be produced for purely utilitarian or commercial purposes. The scientific, literary, or artistic value of the work does not affect the copyright protection (Al-Jazi, 2004).

### **The Copyright protection shall focus on the specific in nature works**

Copyright protection laws and treaties have mentioned lists of the types of the protected works, using various expressions in this regard. Some of these laws stipulated that the scope of protection includes literary, scientific, artistic, and musical works, and innovative or modern works.

### **The legal protection of the work shall focus on the physical presence of the work**

Most of the comparative copyright protection laws have settled on the work being subject to the prescribed protection after the completion of its elements and its coming into existence in a tangible form. Therefore, works that are still ideas in the mind of their author or that are still under consideration, revision, change and modification are not covered by protection, because the idea is not worthy Protection is what remains in the mind of its owner, but if it emerges into the world of existence by expressing it - whatever its appearance - the law bestows protection on it..

### **The protection granted to the work shall focus on the work after taking certain formal requirements**

Some of the Copyright protection laws require certain formal procedures to protect the work, while other laws may require that the work shall be in physical form. There are some Copyright laws that require certain formal procedures such as works registration in a private department, specialized in this type of registration. These procedures may be considered as prerequisite for protection from the standpoint of these laws. Also, there are some foreign countries that require the work to be in physical form.

## **Types of the Protected Works**

The national Copyright legislations and international treaties included specific articles in which it defined the types of the protected works. The protected works- in terms of Copyright- can be divided into two main categories:

- Original Works: the works authored by its author without any quotation from any previous works.
- Derived Works: Works based on a pre-existing work and the rights related to thid types are known as (Neighboring Rights) (Lotfi, 1988).

### **The original works include**

(Literary and scientific works) : This is the most important type of works, protected according to Arabic and foreign legislative systems. This type includes all the forms of intellectual innovation (Written- Oral) that reflects the author's character in the fields of literature and science. This type includes books, booklets, and similar written material. It also includes the oral works such as speeches, lectures, preaches, and pleadings.

### **Artistic works**

An artistic work is defined as an intellectual innovation, which its main purpose is to attract the aesthetic sense of the person. The artistic works usually have an effect on sense and feeling, and thus, it differs from literary and scientific works whose effect is mainly on the mind and thinking. (Al-Amri, 1973)( Artistic works differ from literary and scientific works in terms of its mode of expression, the role of the author in its creation and implementation, and the time of its completion. These works include: Drawings, photography, architecture, sculpture, engraving, lithography, artistic needlework, tapestries, photographic works, works in which a style similar to photography is used, pictograms, geographical maps, architectural plans, architecture, designs, and applied arts (whether craft or artificial), industrial models, cinematographic works, similar works expressed in a style similar to the cinematic style, musical works, musical theatrical works, choreography works, and pantomime (Al-Rahhala, Al-Khalidi, 2012).

## Modern works

Are a product of the development, undergone during the later half of the twentieth century in the field of mental production of sciences, literature, and arts. This development was accompanied by a development in the means of transferring mental production to the public and the means of its circulation and use. The consequence of this development was the emergence of new works that differ in its nature from traditional works. These new works have become the subject of study and the issue of concern to experts and specialists in the field of intellectual property at the local and international levels. These studies aimed at determining the legal nature, content, and means of protection of these works. Hence, our study shall include the protected types of works which shall include a study of what we called modern works, the most important of which are: Electronic computer programs, databases, audio and audio-visual recordings, and Folklore works.

## Derived Works

Can be defined as "every work that is created based on a pre-existing work. The derivative work shall have the protection of copyright, since its creation requires a certain amount of special knowledge and creative efforts. Derivative works require a paraphrase, adaptation or transformation of the pre-existing work, and also require permission from the author of the previous work to produce these derivative works such as translations, derivative works by summarization and adaptation, derivative works by addition, or revision, or investigation. Also, include encyclopedias and anthologies which are deemed creative with respect to the selection of content or arrangement works, works related to sets of documents, and official texts that require innovative effort, collections of works that have come into the public domain if they include innovative effort (Al-Jazi, 2004).

## Works not covered by legal protection of copyright

National and international legislations excluded some works from the protection of copyright, which imply a departure from the general rule that stipulates the application of copyright protection to literary, scientific, and artistic works for the benefit of its authors. These legislations allowed the use of such works, without considering this use as deliberate attempted violation of the Copyright, if such use met the conditions, contained in these legislations. The works that are not covered by protection can be divided into two types: the first: is the free and legitimate use of the protected works and the second type is the translation and duplication licenses as these licenses are considered as restriction on the copyright (Al-Badrawi, Al-Sagheer, 2008).

### The free and legitimate use of the protected works

The free use of works - which is an exception to protection - can be defined as the possibility of using the protected work without any permission from the author in some special cases. That has often been because the free use of the protected work is aiming at achieving certain purposes such as: criticism or comment, or presenting the current events, or teaching, research, training, citation, or duplication in some specific cases. These cases include: daily news, various events, as well as citing short paragraphs from a work that has been legally placed to the public domain, using works for the purpose of educational clarification, reproducing articles, published in newspapers, periodicals, or broadcasts on (political, economic or religious) topics of the day, and using any work that can be heard or seen on the occasion of presenting current events, by means of photography, cinematography, or any other means, for public information (Clugin, 1995).

### Forms of copyright infringement and means of protecting it

Copyright infringement refers to the unauthorized use of a work covered by protection under the copyright protection law if the permission is necessary by law. It is called an infringement or undermining the copyright regardless of the forms of such use whether by display, reproduction, representation, or broadcasting or for use or others. It is worth noting that the national and international legislations have varied in the way of handling the issue of copyright infringement. We will review the forms by which copyright can be violated according to the legislation.

## Forms of Copyright Infringement

## Infringement on literary and scientific works

The subject of this form is often represented in (books). This infringement may take the form of illegal quotation or exclusion, or unlicensed translation, or the reprinting of some books by some publishers without the permission of their authors or those who have certain rights related to them or the infringement on the title of the work. We will present, in brief, the most important forms of assault on books as they are the important container for literary and scientific works due to the importance of this issue with regard to the subject of the research.

A. Illegal quotation or (cutting off): The quotation that constitutes an infringement of the author's rights can be defined as the transferring or quoting part of a protected work without reference to this work as it is not reasonable to transfer the whole or most of the work because, if this is done, it is not considered a quotation but rather an imitation of the original work (Al-Badrawi; Al-Saghir, 2008 AD).

B. Some publishing organizations may reprint some books without obtaining the permission of the owners of those who have rights related to them. This form takes place when some publishing houses select the books that of high demand or that have been printed for a long time or the books whose owners have died. All this occurs in the absence of deterrent means that can protect copyright and prevent any type of infringement. (Abdul Karim 2011).

C. Translating works without obtaining permission from the owner of the work copyrights. This form takes place by translating the works without permission or prior permission from the actual holders assuming that the translation carried out by third parties leads to a similarity in the idea and method of presentation, and even in the essence of the subject between the original work and the translated one.

D. Assaulting the title of the work: This form modifies or changes the title of the original work by misleading the reader that this title belongs to the forged work not the original one.

## Forms of assault on technical works

**Infringement on works of painting, sculpture, engraving, architecture, decoration, and the like**

It is not surprising that the technical works are different from and literary works in terms of their nature and characteristics. As a result, there will be a difference in the ways and forms of assault on each of them. The forgery or imitation of this type of technical works is limited to the method of expressing an idea. Accordingly, this idea may unite by several painters but each of them expresses it in his own way which represents a reflection of his self and his personality. Thus the result is not in composition as is the case in literary and scientific works, but in the external view that the artist has attained.

## Assault on cinematic works

It can be said that the cinematic work is one of the joint works that is characterized by a complex nature due to the large number of people who contribute through their efforts to the production of the cinematographic film. Thus, the forms of assault on a single cinematic film vary. Since this topic is outside the scope of our research, we will not discuss it in details.

### Assault on modern works

### Assault on folklore works (folklore)

The majority of the developing countries tend to assign a legal protection to folklore works from any type of assault. It has become an urgent matter in light of the rapid development of technology and the advanced means of communication which led to the exploitation of the forms of the folklore expression from the commercial aspect, outside the local communities in



which they have arisen without due respect for the customs, traditions, and cultural and economic interests of these societies and without waiving any share of the profits or proceeds resulting from such exploitation for the benefit of the peoples who created this folklore. The forms of assault against the forms of folklore expression can be summarized as follows:

A. Displaying the forms of folklore expression without prior permission from the competent authority: This form displays the verbal expression, musical expression, kinetic expression and tangible expression without obtaining prior permission from the authority specified by law, or making these forms with the intention of profit outside their traditional or familiar context. These methods include printing, reproducing and distributing copies of the forms of folklore expression, or reciting the representation or performance of these forms and other forms of transferring the forms of folklore expression to the public, whether such transmission was directly or indirectly.

B. Misleading the public and distorting the form of folklore expression: This image mainly misleads the public in the process of alteration which is based on creating the impression within the public that something is related to a folklore expression issued by a particular local community while the truth and reality are contrary to that. Distorting the form of folklore expression is represented in any public use that leads to distorting the form of folklore expression whether directly or indirectly which results in harming the cultural interests of the local community (**Abdul Karim ,2011**).

C. Using the folklore outside its original context, in a way that leads to its distortion: The distorted use of folklore outside the country or the concerned country concerned is usually done without taking into account the importance of the continuous traditions and customs for achieving commercial purposes or for tourist exploitation which leads to serious consequences that harm the authenticity of folklore such as plagiarism, imitation and caricature in addition to other forms of assault.

D. The cultural theft and looting and other types of capturing the forms of folklore expression that are carried out by some researchers or institutions that exploit them commercially outside the local communities in which these forms originated.

### **The assault on audio and audio-visual recordings**

This category of technical works is characterized by distinctive characteristics, the most important of which are: the steady increase in the number of shops and clubs that deal in selling and renting them and the development of the means of dealing and circulation them among the public in many developing and developed countries alike which has resulted in an increase in the features of illegal dealing with these works including the phenomenon of duplicating and renting audio and audio-visual recordings without taking into account the rights of their producers which led to an increase in the urgent need to find legal measures to protect them and limit means of assault. (Klugin, 1995).

### **Assaults directed to works that are related to the public domain after the expiry of their protection period**

The problem of protecting works that were protected by copyright guarantees and whose term has expired, then this protection has passed to the state represent one of the most important issues that occupies the interest of jurists, experts and specialists in this field, at the national and international levels. The most important reasons for this interest are the wide spread of this category of works at the present time. The forms of assault on works belonging to the public domain vary according to the nature and type of the work. Some of them are made by the publisher such as the modifications that are made to the work when issuing a new edition to strip the work of its personal character of its author and the originality of its composition. There are many other forms such as harnessing the works for the purposes of advertising in a context that contradicts their purpose and nature, and the translation and quotation of works in a manner that lacks due accuracy and integrity.

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

All laws affirm that the economic rights of the author over his work are protected throughout the



life of the author and for a certain period after his death. This confirms that the copyright on his work is guaranteed for the duration of his life, no matter how long his life is. The national and international legislation in the field of copyright laws have provided protection for this right after the author's death and its capacity in a period that generally ranges between twenty-five and fifty years after the author's death as in the Saudi system. Some of them went further than that as the American legislation stipulated that the period of protection is seventy years after death (Clugin, 1995).

### **The fate of the works after the expiry of the protection period**

After the expiry of the period prescribed for protecting the copyright, or in the event of non-observance of the required procedures, any person can use it without the author's consent and for free. In case the work belongs to the public domain, the author's rights expire forever. It is worth noting that there are laws in some countries that indicate the establishment of a system known as public property that is used in return for a fee according to which those who use works that have become public property must pay specific fees and the collection of these fees is handled by certain authorities usually a governmental authority. The state spends these amounts in aspects such as the general cultural revival and providing financial aid to authors or their families..... etc, (Al-Salami, 1431).

## **Copyright Protections**

There are many means of protection of copyright in an attempt to limit the forms of assault on protected works. Below, we will present the different means of copyright protection. These means include legal deposit of works, preventive measures for protection, the detention of counterfeit works, civil penalty, criminal penalty, borrowing and photocopying controls in university libraries as a contribution to copyright protection and law enforcement.

### **Legal deposit of works**

The copyright protection laws concerned with regulating the legal deposit of works contained detailed provisions in which they determined the works that are subject to the legal deposit system, the persons committed to deposit and the number of copies required to be deposited according to the nature of the work and the authority in which the copies of works are deposited, the deposit procedures and penalties resulting from the non-fulfillment of the commitment to the deposit. We deal with this aspect in this study.

### **Works subject to legal deposit**

Most copyright protection legislations require depositing a specific number of copies of the work from which several copies are extracted through printing, photocopying, or any other means of reproduction. The author will be responsible before the deposit centers for conforming the deposited copy to the original work (Matlaqa, 2000 AD). Examples of works that are subject to legal deposit include: books, periodicals, pamphlets and others if they are intended for publication, university theses (thesis), musical and lyric publications (notes) intended for sale or publication, the official gazette of the state, and statistics printed and published by governmental agencies for the purpose of sale or distribution, photographs, wall posters, and illustrated engravings if they are prepared for commercial or distribution purposes in multiple copies and other materials considered as works by the competent authorities under the deposit of works through a statement to be published in the official Gazette.

### **Persons committed to legal deposit.**

In general, all persons who work in the field of authorship, publishing and printing, such as authors, publishers and printers are obligated to deposit whether they are natural or legal persons affiliated with government agencies, public institutions or the private sector including the author, publisher, producer, distributor, printing house owner, head of the official department or semi-official.

### **The number of copies to be deposited of the works.**

The number of copies of works to be deposited in depository centers varies according to the nature and type of the work that has been published or produced. It is learned from the extrapolation of the deposit laws that the number of copies of the works required to be deposited is usually as follows:-

- One copy of the following works: Theses, musical and lyrical publications, audio and audio-visual recordings, photographs and wall posters intended for distribution, and models and sculptures intended for distribution, publications that are prohibited by the competent authorities.
- Two copies of the following works: Works that are printed and published outside the country by authors, translators, investigators or the like, or publishers who are citizens of the country, magazines and newspapers, atlases, photographs and maps, works whose number of publications does not exceed a specific number, which is relatively small (From one hundred to two hundred copies).

### **Deposit centers (national libraries)**

Most of the deposit laws determine the legal deposit centers of works, which are mostly the houses of national books in the countries determined by the deposit law. Some deposit laws stipulate that the ministry concerned with publications and cultural affairs will be centers for depositing works. Other laws determine deposit centers according to the type of work to be deposited as in the Saudi system issued in 1410 AH that stipulates that the deposit will be in the National Book House in the country as a center for depositing copies of works that are published by way of printing such as books and the like and the Music Institute as a center of depositing musical recordings, the National Institute of Arts or what replaces it as a center for depositing works of drawing, and fine works and the National Film Institute as a center for the deposit of cinematographic films and audiovisual recordings, While other laws specify technical libraries affiliated with the National Book House to deposit audio and audio-visual recordings of all kinds owing to the special preservation methods required to copy such works and to avoid their use by beneficiaries except in specific ways (Matlaqa, 2000 AD).

### **The period during which the work must be deposited**

Copies of works must be deposited at the Deposit Center determined by the Depository Law within a certain period which is usually a month from the date of publication. The determination of a long period as a deadline for depositing the work after its publication may delay the depository center's obtaining the work and thus researchers and scholars have no opportunity to review it in a timely manner. Some publishers deliberately omit to mention the date of publication. Therefore, it is better to deposit copies of the work that was published within the borders of the state immediately after its completion and before its circulation, as for the works published outside the borders of the state, the copies can be deposited before circulation (**Ogsburger 1982**).

### **Precautionary measures to protect copyright**

The majority of copyright protection legislation stated preventive measures (conservative) to protect copyright. These procedures are usually initiated at a later time to infringe the copyright on his work constitute an assault on this workbook. These preventive measures were contained in copyright laws and stipulated in those legislations, for example, but not limited to, as in Article 22.7 of the Saudi legislation which permitted the confiscation, destruction, detention or prohibition of all copies or forms of the illegal work, amending the work or deleting parts of it as a precautionary measure when the matter requires that. The committee entrusted with examining these violations is given the discretionary power to take this measure.

### **Civil Protection**

Arab and foreign legislation provided a set of legal penalties for copyright infringement in addition to precautionary (preventive) measures. If the competent judicial authority does not need to

resort to these types of measures, then the penalty for copyright infringement is compensation. The compensation will be for the material and moral damages. The material compensation is related to the idea of damage, i.e. the financial loss suffered by the author and the loss of profit. The civil penalty is a legal way to reform the situation and return it to the way it was before the copyright infringement or infringement if that is possible (Al-Amiri, 1973).

## **Damage that constitutes copyright infringement**

The availability of the element of damage in the violation of copyright is a prerequisite for the civil penalty represented by compensation. Harm can be defined as any harm inflicted on a person against one of his rights or in a legitimate interest. For the availability of the element of damage resulting from copyright infringement, a set of conditions must be met, namely: the damage inflicted on the author must be proven with certainty meaning that the infringement takes a tangible form on one of the author's moral rights that the court can verify without trouble. Besides, the damage must be direct, a natural consequence of the act of the aggressor. This is a discretionary matter of the judge of the subject according to the circumstances of each issue, and that there is a causal relationship between the error and the damage. In other words, it must be proven that the damage was a natural result of the illegal act.

## **Compensation Methods**

1. In-kind compensation: The offender in this type of compensation must amend what he did and returning the situation to the way it was before committing the mistake that led to the damage. The in-kind compensation that is decided on to reform the damage is mostly better for the author than the compensation with a fee as it leads to the omission of the harm that affects the author instead of sustaining the damage and giving the author a sum of money.
2. Financial compensation: this type often takes the form of financial or monetary compensation. The judge resorts to it when it is not possible to treat the damage caused by the assault on the work by way of in-kind execution. For example, when the work subject of the assault was broadcast and spread so that seizure is not feasible to stop or prevent the assault on it, or if it has become impossible to rule for the destruction of a copy or the addition of parts to it or the deletion of it, so there will be no way before the judiciary except through the way of monetary compensation.

## **Criminal Protection**

Author's copyright enjoys protection other than the civil protection previously mentioned which is criminal protection which is considered complementary to civil protection as the decision of imposing criminal penalties on anyone who infringes on copyright would ensure effective protection of these rights. The following summarizes the most important criminal crimes in the field of assaulting the Copyright of the author (Matlaqa, 2000 AD). In the Saudi system, the law stipulates that the following actions are considered an infringement of the rights protected by the law:

1. Publishing a work that is not owned by the person who published it, or publishing it claiming its ownership, or publishing it without obtaining written permission or a contract from the author of the work, his heirs, their representatives or others.
2. The producer, publisher or printer reprints the work without obtaining the prior written consent of the right holder, or if he does not have documents that authorize him to reprint.
3. Removing any written and electronic information that may cause the rights of the owners of the work to be forfeited.
4. Removing and decoding any electronic precautionary information that guarantees the use of the original copies of the work such as encryption, laser-typed information, or others.
5. Commercial use of intellectual works by means of fraud that are not permitted by the authority owning the right such as the use of copied software or the unauthorized receipt of the encrypted broadcasts.



6. Manufacturing or importing tools - for the purpose of selling or renting - for any means that facilitate the reception or exploitation of works in ways other than the methods specified by the authority owning these rights.
7. Copying or photocopying parts of a book or group of books or parts of any work with or without compensation without obtaining the written approvals of the owners of the right and the concerned authorities in the Ministry except for the cases of lawful reproductions set forth in article 15 of this law.
8. Importing forged, imitated or copied works.
9. Keeping non-original works in the commercial facility, warehouse, or any other locations directly or indirectly affiliated to it through any proof.
10. Violating any of the protected rights stipulated in this Law, or committing a violation of any of its provisions.

## **The crime of imitation and its pillars**

Since most of the legislations did not set an explicit definition of the crime of imitation, we believe that imitation can be defined - in the field of copyright infringement – as the crime committed by whoever infringes the copy rights of the author by imitating literary, scientific or artistic works. The Saudi law confirms that in article(27) which mentioned the forms of imitation which do not differ in content from the crimes stipulated in the penal laws which require a material and another moral element to be available.

### **The material element of the crime of imitation**

The material element in the crime of imitation is represented either in the form of direct or indirect assault on the work. Examples of direct assault are: the infringer's publication of the author's work without his consent, or the infringer making modifications or deletions to the work that affect its integrity and distortion of form or content which have been accepted by the author without written permission from him or his successors. Besides, if the infringer's directly transmits the work to the public such as public recitation, music signature, theatrical performance, cinematic presentation, radio broadcasting by loudspeaker or television panel, or indirectly such as copying copies of the work to be accessible to the public. All of these acts are considered as physical acts of the crime of imitation (Awad Allah, 1979). Among the most important forms of indirect assault is selling a forged work in the territory of the state, exporting or shipping works that were imitated in the territory of a state that previously published in another state or bringing a work into the territory of a state without the permission of its author if this imitated work was published in another state.

### **The moral element of the crime of imitation.**

The crime of imitation in the field of copyright protection is held a deliberate crime in which the elements of the general criminal intent are required with the availability of its pillars of the criminal intention: knowledge and will. Knowledge here means the knowledge of the material aspect of the crime which requires the necessity of forensic science that he imitates a work protected by law by one of the direct or indirect forms of imitation with his free and chosen will to do so. The criminal intent is not the only pillar of imitation, but rather the perpetrator must have bad faith, that is, the private criminal intent. Error or good faith is not imagined in the crime of imitation but the burden of its proof is within the responsibility of the accused person. Bad faith or severe negligence is assumed in the imitator simply because he committed the material act of imitation, which is considered sufficient as evidence of his intent to cheat and deceive. Thus, he has to prove that what he committed was not with the intention of imitating and that he had good faith in what he did which is a matter that is up to the judge of the issue, such the use of imitated clichés by the printing press, for example, without his knowing (Abu Al-Yazid Al-Mutait, 1967 AD).

## **Imitation Penalty**

Copyright laws usually stipulate the penalties to be imposed by the judicial authority in the event of a crime of counterfeiting. These penalties vary according to the nature and severity of the assault. These penalties are divided into original penalties whose judgments are imprisonment or a fine, or both, including what is complementary - that is, complementary to the original penalties

- represented in: Confiscation of the counterfeit work. The judgment may combine between criminal penalties (original and supplementary) and the civil penalty representing in the civil compensation for moral and material damages caused to the damaged author, and the referral of the situation to what it was before the attack. In the Saudi system, Article 30 stipulates that the jurisdiction of the committee to consider crimes against copyright will be held by a committee formed by a decision of the Minister of Information. Its members must not be less than three members and the necessity of including a legal advisor. This law indicated the penalty of the aggressor stating the punishment of any one who violates one of the provisions of this law is subject to one or more of the following penalties:

1. Warning.
  2. A fine not exceeding two hundred and fifty thousand riyals.
  3. Closing the infringing facility or the one that contributed to the copyright infringement for a period not exceeding two months.
  4. The confiscation of all copies of the work, as well as the materials allocated or used in committing copyright infringement.
  5. Imprisonment for a period not exceeding six months.
- Second: In the event of repeated infringement on the same or another work, the maximum penalty, fine and closure may be doubled.

## Conclusion

1. All national and international legislations have established protective controls for copyright, varying in their strength. They also set a time range for including these rights with legal protection. Some of them stressed upon these controls at the expense of access to knowledge, such as the American DMCA law.
2. The laws and regulations have determined the works subject to protection and stated them exclusively in their legislative systems in addition to illustrating the ways and forms of infringing them.
3. It has become difficult, in the era of the availability of knowledge by all modern technological means for legislation to fully control the guarantee of this right.
4. The reasons behind the spread of intellectual property crimes, the most important of which are the crimes of literary robbery in the Arab countries, can be summarized as follows:
  - The high prices of books and computer software, especially foreign ones, which makes copying a financially feasible business.
  - Weak control by the state authorities of the places where the violating copies are made or distributed and traded.
  - Failure to prepare inspectors specialized in censoring works.
  - The lack of technical protection for the original copies which exposes them to copying more easily than the copies that have protection, especially computer programs.
5. The efforts are combined to establish an office or department for copyright protection in university and public libraries that receive complaints and communications from the public of beneficiaries including students, faculty members, and library visitors, especially with regard to cases of literary theft from commercial libraries located outside universities and within their surroundings.
6. Adding the principles of copyright protection to the vocabulary of the research subject course taught by undergraduate, masters or doctoral students so that they have full awareness during their research of the rights covered by the legal sponsorship of the author.
7. Exchanging visits and missions between Arab countries to disseminate and generalizing best practices and experiences in the field of copyright and to seek the assistance of the expertise of international governmental and non-governmental organizations specialized in this field.
8. On the legislative level, the emphasis on the intellectual property unit in the League of Arab States by moving forward in preparing the guiding Arab law on intellectual property rights which was issued by a decision of the Council of Arab Ministers of Justice.
9. The need to urge Arab countries to develop their legislation to keep pace with developments in the field of digital technology.

10. Establishing courts specialized in intellectual property issues to expedite the settlement of disputes of intellectual property rights. We strongly support the idea of having a judge specialized in dealing with intellectual property cases.
11. The necessity of activating legal and regulatory legislation and applying it in practice. The existence of modern legislation that keeps pace with the latest developments at the national and international level is not sufficient.
12. The laws of global copyright and intellectual property protection must include accurate details that keep pace with the digital world and take into account the technical development to ensure copyright rights, and determine the rules of digital publishing as many copyright laws - especially in developing countries are still inadequate in covering the details of these aspects, if not most of them.

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