

Protection of literary and artistic intellectual property in the digital environment under the Algerian legislation

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Abstract:

The topic of intellectual property is one of the topics that many tried to highlight with its industrial and literary artistic sections. In this subject we will study the section of intellectual and artistic intellectual property and specifically copyright from the perspective of information specialist, we will try to unveil this subject, which entered the specialty of library science and forced us to define its terms and research in its history and origin and sections and then to go deeper further in the problems raised in the subject of rights. The author in the light of modern technological developments, from infringements on the rights of authors in a very sophisticated digital environment. Finally, we will investigate the procedures and reactions of the Algerian legislator on this subject at the international and internal levels.

Keywords:

Intellectual property; copyright; technology development; Algerian legislation; digital environment.

1. INTRODUCTION

Informations are the main basic for the progress of nations at various levels, and today it has become a means of pressure by the developed world on the world on the path of growth, especially in the scientific, economic and even political fields until these countries impose their control in all fields, and it is not a secret to us that information is one of the fruits of the human thought, which later turns into a stock of knowledge from which humanity derives everything it needs to facilitate the ways of human life, and this service that humans provide to each other necessitated the community's recognition of the owners of these great works of their right to be attributed to them for their works, i.e. recognition of their intellectual property for these works. It is sufficient to fulfill their right. Rather, we must strive to protect these rights, both industrial, artistic and literary, which will be the subject of our study, specifically copyright, where copyright and neighboring rights are among the fields that have known major transformations during these recent years caused by information technology that effectively affected the

various rules of the legal system. The current one in terms of its foundations and in terms of the legal relations resulting from it, the clear impact of which appeared in the field of intellectual property, specifically in Concerning the provision of protection to the new works produced by the digital revolution¹.

Therefore, one of the most important challenges currently presented to those in charge of this society is to build a coherent and balanced legal system that contains the variables of the new economic, social and cultural model while guaranteeing basic freedoms and rights in the digital environment, of which copyright is one of the most important and perhaps the most important at all². Algeria is among the countries that are trying Every time such a legal system was built, the first copyright law was established in 1973 and the last was in 2003 under the order 05/03 on copyright and related rights, which will be the subject of our study entitled **“Protection of literary and artistic intellectual property in the digital environment under Algerian legislation.”** We tried to deal with this descriptive analytical topic through three axes that came as follows:

The first axis dealt with a general introduction to intellectual property in terms of definition, sections and the subject of conflict of laws in one field, while the second axis dealt with copyright in the digital environment, which included copyright on the Internet and the attacks on it, as well as attacks on copyright in digital libraries. The third and final axis came to talk about copyright within the Algerian national text and it dealt with the following elements: the most important legislative texts related to copyright, and finally a conclusion. The main objective of our study is to know the extent of the Algerian legislator's awareness of modern technological changes that require finding legal and logical solutions. Based on these data, we ask about **“to what extent does the Algerian legal text protect copyright in the digital environment?”**

Hypotheses always remain as a temporary answer to the problem, and their validity is only achieved after analysis and experimentation. To answer the questions of our study, we suggest the following hypotheses:

- The shortcomings of Algerian legislation on copyright protection in the digital environment.
- The available legal procedures do not legally cover digital information sources.
- The Algerian legal text did not keep pace with technological developments that affected copyright in the digital environment.

¹ Ossama Ahmed Badr, Circulation of Works on the Internet, p. 133 and beyond. KEREVER, A. Le droit d'auteur en Europe Occidentale «hommage a DESBOIS (h) Etudes de propriété intellectuelle ed. Dalloz: 1974, p36

² Benboudiaf Mohamed.El Kamel. La protection de l'Ouvre Numérique dans l'Espace Virtuel. (Mémoire de master, Droit et Santé. Université Lille 2, 2008/2009. introduction.

2. General Introduction to Intellectual Property

2.1. The nature of intellectual property

2.1.1. Definition of intellectual property

A. Idiomatic definition :

It was said that the word PROPERTY came from the Latin word 'PROPRUIS' which means the right of the owner, i.e. human rights in relation to the fruit of his thought and an intellectual term. As for the intellectual or intellectual right¹, DROIT INTELLECTUEL is a name sometimes given to immaterial property and its subject is purely intellectual and immaterial, and PROPRIETE INTELLECTUELLE is a general expression that includes literary and artistic property and industrial property, which is related to the realization of a work, but rather its perception of a material difference².

B. Linguistic definition :

The subject of intellectual property is one of the topics related to the science of law, and as is known in this field, financial rights were previously divided into two basic sections only, namely, personal rights and rights in kind and intellectual property rights, a third section appeared for the reason that it cannot be included under one of the two previous sections. We would like to note here that personal rights differ It is completely different from the rights in kind, and we will learn the meaning of each one of them in order to understand why intellectual property rights cannot be included under them.

- **The concept of personal rights** : It is defined in civil law as “a bond between two persons, one of whom is a creditor and the other is a debtor.”³ It is also known as “the jurisdiction of a person called the creditor with money owed by another person called those who are a jurisdiction recognized by law.”⁴ That one performs the other a specific work.

- **The concept of rights in rem** : means the authority of a person over a specific asset, that is, over a specific material thing, so that the ownership of this thing is transferred to him and he can dispose of it freely, such as the right of ownership over a piece of land.

- **As for the third type, that is, intellectual rights**, they cannot be included under the previous two sections. Dr. Salah Zain Al-Din defines intellectual property as “a legal term that denotes the specific ideas produced by the human mind that are translated into

¹ Jermy Philips;Alisen Fifth.Introduction to intellectual property low.1990.P.3

² Abdul Razzaq Al-Sanhouri, Explanation of the Civil Law, Part 8, 3rd Edition, 1964, p. 206.

³ Abdul Razzaq Al-Sanhouri, the mediator in explaining the civil law, ibid., p. 128.

⁴ Abdul Razzaq Al-Sanhouri, Same refrence . p. 129.

tangible things. All rights resulting from human intellectual activity in The artistic, literary, scientific, industrial, commercial, and the like fields, then intellectual rights expand to include everything that the human mind possesses through what he possesses of intellectual property and mental flair.”¹ As the lawyer Dr. Younes Arab defines it, “they are also the legal rules established for the protection of intellectual creativity emptied within perceptible works (rich and literary intellectual property) or the protection of the moral elements of industrial and commercial projects², industrial property, while the Egyptian Center for Intellectual Property and Information Technology defines it as “everything that the mind produces and creates.” The human mind is the ideas that are embodied in tangible forms that can be protected, and it is represented in intellectual and mental creations and innovations such as inventions, signs, designs, designs and integrated circuits³.

2.1.2. Legal nature of intellectual property :

It is known in the science of law that it is divided into two main parts : the public law, which is concerned with regulating the relationship of individuals with the state, “aiming at the care of public interests. It restricts the will of individuals, as under its provisions, the state’s authority over individuals and its superiority over them is achieved⁴. The second part is the private law” that regulates the relationship Individuals each other aiming to take care of their own interests, so it releases the will of individuals, as freedom and equality⁵ are achieved under its provisions, so it is the complete opposite of the first section, but this does not mean that they are either completely separate, but sometimes they marry or overlap and a third section appears, which is the mixed law, and this was confirmed by Dr. Zain Al-Din Salah in his reference to the entrance to intellectual property. To which of the two sections does intellectual property belong ? Or does it include under the mixed section sections ? Some have called for the need for intellectual rights to be within the law to which the public authority is a party, and this is aware that intellectual rights, especially those related to patents, are branches of public law, not private, and their arguments in this are that intellectual rights enjoy penal protection, and the objection to their ownership It is necessary to refer to the civil law to determine the nature of the intellectual right as a section of the rights, and this is what was addressed in the definition of intellectual rights, as well as to determine the extent of their protection civil protection on the other

¹ Zine El-Din Salah, Introduction to Intellectual Property, p. 25.

² Younes Arab, Encyclopedia of Law and Information Technology, Book One: Computer Law, 1st Edition, Publications of the Union of Arab Banks, Beirut, 2001, p. 298.

³ Abdullah Mustafa Hamdallah, Protection of Intellectual Property and its Impact on Information Security, Sixth Conference of the Library and Information Association, Safe Information Environment, Concepts, Legislation and Applications, Riyadh, from 6 to 7 April 2010, p. 03.

⁴ Hasan Kubra, Introduction to the Science of Law, 5th Edition, Mansha’at al-Maaref, Alexandria, D.S., p. 57.

⁵ Hasan Kubra, same reference. p. 14.

hand.

2.2. Sections of Intellectual Property:

Intellectual property is divided into two main parts : literary and artistic intellectual property, which is known as copyright and neighboring rights, which is the subject of our study.

2.2.1. Industrial and commercial intellectual Property:

It is one of the important sections of intellectual property and it responds to a moral movable, patent, industrial designs and models, factory marks, trademarks, service marks, trade name and shop, and we will get acquainted with the definition of each of these sections :

- **Patents** : It is any creative idea reached by the inventor in any of the technical cases and related to a product or a method of manufacture or both of them that lead to the solution of a specific problem in any of the fields¹ and it is regulated in Algeria by Presidential Decree No. 66-54 of March 3, 1966 which includes the inventor's certificates and patents Official No. 19 issued on March 8, 1966.

- **Industrial models** : They mean every form, mold or structure used to manufacture goods and merchandise in a way that gives them a special appearance that distinguishes them from others, as is the case in the manufacture of shoe molds, car bodies, perfume bottles, etc².

- **Industrial fees** : It means every arrangement and coordination of lines in a specific and innovative way that gives goods and merchandise a beautiful and attractive luster that attracts the attention of the consumer, as is the case in the fees related to textiles, carpets, ceramics, etc., regardless of the way these fees are placed on the goods or merchandise³.

- **Trademark** : The trademark is one of the important sections of industrial property and means "every distinctive physical sign that the manufacturer, merchant or service provider takes to distinguish his industry, goods or services from similar ones."⁴ Consumers.

¹ Abdullah, Abdul Karim Abdullah. Legal protection of intellectual property rights on the Internet: a comparative study of the legal frameworks for protection with an explanation of the legal system of intellectual property in Egyptian, Jordanian and European legislation and the two Internet treaties. New University House: Azarita, 2008. p. 22 and 23.

² Zinedine, Salah. Introduction to Intellectual Property - previous reference p. 34 .

³ Zinedine, Salah. The previous reference. p 34.

⁴ Zinedine, Salah. The previous reference. p 34.

- **Trade name and commercial address** : Mr. Hassan Al-Fakhani defines the commercial address as “the label that the merchant gives his shop to distinguish it from other similar or pedestrian stores.”¹ As for the trade name, it pertains to the merchant in and of itself, and it is the name that is dealt with on the documents, and Mr. Salah Zain Al-Din believes “Each of them is an independent term from the other in its nature, function and elements to the extent that it can be said that the trade name of the merchant corresponds to the civil (ordinary) name of the non-trading person, and that the commercial address of the merchant corresponds to the regular address (domicile) of the non-trading person.”²

- **Literary and artistic intellectual property** : It is the section that will be the subject of our study in this topic. It is also known as copyright and related rights. You will first learn about copyright and then related rights.

First : Copyrights :

- **The legal nature of copyright** : Whatever the work is literary or artistic, it is always the fruit of a human’s idea and effort. Rather, it is a manifestation of his personality so that he expresses it, discloses its underlying features, and reveals its virtues and shortcomings. For the individual as a being with rights independent of the group, this becomes clearer and more stable. This special nature of the copyright on its host raised a lot of the legal table “It has been noted that the copyright over his work differs from some aspects in the right of moral property because it is a temporary right that falls upon its expiration in the public domain, while the right of ordinary ownership is a permanent right inherited by the successor from the predecessor.”³ Also, the author deals with a purely literary aspect that authorizes the author alone in deciding to publish his work to the public, and it is not permissible for others to alter it by addition, deletion or modification, and this is what is expressed as a moral right, and the copyright also deals with a material aspect if the author decides to publish his work It makes this right come under his financial responsibility, which is expressed as a moral right, and copyright also deals with a material aspect. Three theories to determine the nature of this right, namely :

*Copyright is a property right : Proponents argued in this theory that copyright is one of the intellectual property rights, and therefore the characteristics of the property right are the characteristics of this right. That thing, the right of ownership rests on a material, tangible thing, and the right in itself is a moral matter, “they substituted the characteristics of the material thing over the right on it, that is, the place of the right of

¹ Hassan Al-Fakhani, Mediator in Civil Law No. 34 of 1976, vol.1, dn, dm, 1987, p. 227.

² Zain Al-Din Salah, Legal Provisions for the Name and Address of Merchants in Jordanian Legislation, Volume 1, January, 2000.

³ Younes Aziz, who has priority Author's rights or reader's rights Arab publisher, Cairo, 1983, p. 52.

ownership, so that the right of ownership became material as the thing on it.¹” Thus, the Romans divided rights into material rights, which is on ownership. Except for the right to property, they considered it intangible. According to the proponents of this theory, “the right of ownership is the right in kind that authorizes its owner from the powers that enable him to obtain the benefits of the thing.”² Since the right of ownership legally gives its owner the authority to use, exploit and dispose of, he saw the side of jurisprudence based on the foregoing that the copyright that enjoys the financial right over His work, and since he can dispose of the financial right, this from the point of view of jurisprudence is sufficient to consider it a property right.

*Copyright is a personal right : The basis of this theory stems from the author’s moral right, which is focused on the copyright’s place, which is an intellectual and mental production, and therefore it is closely related to the author’s personality. Any other work. As for the financial right incurred by this work, such as the material exploitation of the work, whether directly or indirectly, it is nothing but a manifestation of the circulation of this right. Considering that a person’s thoughts are part of his personality and inherent to him, they are therefore inseparable from him and are linked to him. He considered that the financial exploitation of this right comes from the work itself, which is the manifestation of the author’s personality. Therefore, “these profits do not exceed their being merely financial profits that the author derives, just like financial shares.”³ For companies and institutions, the right is the basis for these profits, and it is the work, which is far from the person’s financial responsibility. “This theory tends a lot towards the author and the benefits he obtains in return for the harm that affects the public community, for example,” according to this theory, the copyright after his death or during his life, the state cannot seizing it for the public interest, no matter how important it is.”⁴

*Copyright has a dual nature : the proponents of this trend see the duplication of copyright, so they do not prevail over one over the other. In this direction, many have argued that the nature of copyright is a dual nature. The author’s moral right is one of the personal rights such as the right of fatherhood and the material right is also independent and existing. In itself, it is an original right in kind and it is movable money. The material right of the author differs from the moral right, as the former may be waived and is temporary and expires after a certain period of the author’s death. As for the moral right, it may not be waived and it is permanent and is transferred by inheritance in some aspects and remains even after the end of the protection period that the law enumerated. Copyright is a dual right, and the Berne Convention has supported

¹ Ahmed Swailem Al-Omari, *Mental Production Rights*, Dar Al-Kitab Al-Arabi, Cairo, 1967, p. 30.

² Ahmed Swailem Al-Omari, *The previous reference*, p. 37.

³ Anwar Tolba, *Protection of Intellectual Property Rights*, Modern University Office, Alexandria, 2004, p. 69.

⁴ Sounia Hakkad, Scheherazade Dhoudhi, *Electronic information between freedom of circulation and the right of copyright*, previous reference., p. 67.

this trend, as Article 16 states : “Secondly, according to the theory of duality, it is not possible to make copyright a personal right because we have neglected one of the aspects of the right, which is the material aspect. He made it a real right because it finds its basis in the possession and appropriation of a material thing, so that copyright is not a material thing but is the product of thought and reason.” Ron.

Second : Rights adjacent to copyright : Copyright has been associated with other rights related to it, on the grounds that it also seeks to communicate the work to the public and contribute to bringing it to the ground so that it can be exploited, for which we will try to present some definitions, although this term is compensated by many terms in some legislation Including “existing rights, associated rights, and there are those who call them associated rights.”¹

2.2.2. Definition of rights related to copyright :

- **Linguistic Definition :** Neighborhood is a language derived from the word “neighborhood,” meaning being close to something, so it does not merge with it nor separate from it due to the presence of resemblance.²

- **Idiomatic definition:** jurisprudence defines it as : “those rights resulting from copyright and similar to it in a technical modification of this work to be presented to the public or those audio recordings related to it”³ and it is also known as : “those works that aim to publish literary and artistic works without creating them”⁴ as others defined them They are : “Those rights whose subject matter is the transmission of works to the public, whether through performance, acting, audio or audio-visual recording, or radio broadcasting.”⁵ Law 17 / 03 and the owners of these rights are : - Representatives who are loyal and executing, and their rights focus on their performance.

3. Copyright attacks on the Internet:

The universality of the Internet and the ease of transmitting and retrieval of information on it facilitated the occurrence of attacks on the rights of authors in this virtual digital environment, so that in some laws it is not classified as an attack but a crime.

¹ Youssef Ahmed Al-Nawafleh, Legal Protection of Copyright, previous refrence, p. 22.

² Abd al-Rashid Mamoun Shadid, The Author's Moral Right, The General Theory and Its Applications, Dar Al-Nahda Al-Arabiya, 1987, p. 87.

³ Abd al-Rahman Khalfi, previous reference, p. 69.

⁴ Mohieldin Okasha, Lectures on Literary and Artistic Intellectual Property, Diwan of University Publications, 1999, p. 51.

⁵ Ahmed Zaki Badawi, The Facilitated Arabic Lexicon, Egyptian Lebanese House of Books, p. 683.

3.1. The concept of copyright infringement:

The abuse is exceeding the permissible limits, as well as the violation of something protected by law, or the unlawful use of something without the owner or owner being aware of it. An infringement of copyright is the illegal exploitation or use of a copyright provided without the permission of its owner i.e. the author

3.2. Typess of copyright infringement:

Although copyright, as mentioned in the previous chapter, is one of the sections of intellectual property and is protected by the literary and artistic intellectual property law, but from the aspect of criminalization, penalties and criminal protection, it is protected by the penal law and in many countries, it is considered one of the crimes committed On funds, because the author's product in the work is movable money, so these laws are applied to it. However, the Algerian legislator considered them to be mere infringements in the copyright law and stipulated the penalties resulting from such attacks, especially the act of imitation, and we return to that in the last chapter in some detail and generally the most important of these attacks she : Infringing on one of the author's moral or financial rights, which were previously mentioned in previous elements, or on the owners of neighboring rights, such as preventing the author from publishing his work or attributing it to someone other than his true author, or making modifications, distortions or distortions that cause damage to the author's material rights and shake and destabilize his enjoyment status, All of these attacks occur in the absence of permission or a license from the author to the aggressor, and this permission or license is required to be in writing, just as the aggressor can publish the author on the Internet without the author's permission, and how many such incidents are, especially in this digital age. And many books and made a digital library on the Internet without the permission of the owners, and we return to this matter in the digital library and copyright.

3.3. Information crime:

There have been many definitions of information crime, but the principle has always existed, which is the harmful harm to information, its product, its user, or even the person himself, by using or through modern technological means. The Organization for Economic Cooperation for Development (OCDE) defines it as : The attack on material and moral funds results directly or indirectly from the interference of information technology.”¹ There are several definitions that are directly linked to the means used to carry out the crime, which is the computer. It is also defined as “every crime against money related to the automated processing of information.”There are several definitions that are directly linked to the means used to carry out the crime, which is the computer. The German jurist Tiedemann defined it as : “All forms of illegal or harmful behavior to society that is committed using the computer.” It is also known as “every crime against money linked to the automated processing of information.”

3.4. Attacks on copyright in the digital library :

¹ Ahmed Khalifa, the previous reference, p. 79.

Traditional libraries have not witnessed many terrible violations of copyright in this paper environment, and even if that happens, it is easy to discover the violation, as well as easy to apply the necessary laws stipulated by the legislation clearly and without ambiguity compared to what is happening today in An environment that most distinguishes it is the high speed in the spread of information to all parts of the globe with just one hit or a click of the mouse or a computer keyboard button, and modern technological means have contributed terribly to the spread of these attacks even if the reason for their invention was not the violation or Contributing to the infringement of the rights of others, while this is in an indirect way, consciously or without the awareness of the user of these modern means or technologies.

4. Copyright within the Algerian national text :

4.1. The most important Algerian legislative texts related to copyright :

Algeria, like other countries, has tried to enact special laws, seeking to embody its awareness of the importance of protecting copyright and neighboring rights through a set of laws every time they amend or cancel them and replace them with what is appropriate for living conditions and to keep pace with developments in our society In this section, we will address the most important of these laws, if we do not quote the legislative texts that have a direct or indirect relationship to copyright, and we will present in some detail the last of these legislations, which are valid to this day .

4.2. Previously Applicable Legal Texts :

The first Algerian legislative text on copyright was the text issued under :

- Ordinance No. 14/73 of April 3, 1973, relating to copyright, after which was issued : Ordinance No. 26/73 of Jumada I 4, 1393 AH corresponding to : June 5, 1973, relating to Algeria's accession to the 1952 International Convention on Copyright, revised in Paris on July 24 year 1971.
- Ordinance No. 16/73 dated 25 Jumada al-Thani 1393 AH corresponding to July 25, 1973, which includes the events of the National Copyright Office (M.W.M.) A decision dated 7 Ramadan 1394 AH corresponding to September 24, 1974 specifying the terms of guarantee for authors on the grounds of a national copyright gain.
- Order No. 10/97 of Shawwal 27, 1417 H corresponding to March 06, 1997 relating to copyright and other rights. Executive Decree No. 98/366 of Shaaban 02, 1419 H corresponding to November 21, 1998 containing the basic law of the National Office of Copyright and Neighboring Rights
- Executive Decree No. 2000/41 of Dhu al-Qa'dah 17, 1420 AH corresponding to February 22, 2000 specifying the methods of authorization and control related to royalty on the special copy.
- dated 12 Safar 1421 AH corresponding to May 16, 2000 setting the proportional rates of arbitrary prices for royalties imposed on the special copy .

- Ordinance No. 05/03 dated Jumada Al-Oula 19, 1424 AH corresponding to July 19, 2003, relating to copyright and related rights, which is the legal text currently in force.
- The Penal Code amended by Law No. 04-15 of November 10, 2004.

4.3. Ordinance No. 05/03 currently governing copyright in Algeria :

Algeria is one of the countries that is aware of the importance of copyright protection, and perhaps the best evidence of this is the set of legal texts that are issued every time, which have already been mentioned, and also its participation in international support for this issue by joining many conventions, and every time each text comes with something new, even if it is a reformulation In line with the requirements of society for some articles or clauses, or details of some articles for more clarification, even if these legal texts lack a lot of detail and clarity. After the issuance of Ordinance 97/10 dated March 6, 1997, related to copyright and related rights, which was the subject of a study that I submitted to obtain a bachelor's degree titled : Electronic information between freedom of circulation and copyright, and this study was in light of this matter, and I found through this research that this text The legal system was very, very scarce with regard to copyright in the digital environment. Then, on July 19, 2003, Order No. 05/03 related to copyright and bracelet rights was issued, which canceled the aforementioned order. So, the latest text in force with regard to copyright in Algeria is the order 05/03. This order consists of 164 articles divided according to the following axes :

First Axis : Introducing Copyright and Neighboring Rights : This topic contains three basic articles.

The second axis : protected and unprotected literary and artistic works.

The third axis : Penalties resulting from infringement of copyright and neighboring rights.

5- Conclusion

The protection of literary and artistic intellectual property in the digital environment in the light of Algerian legislation was a legal study from the perspective of an information specialist who is in direct contact with the world of information. Despite the slow and modest attempts by the Algerian legislator to keep pace with the technological progress that positively and negatively affected copyright and the amazing changes in this digital world, he showed his interest and awareness of the importance of protecting these rights by updating his laws as well as by joining the international bodies and conventions that It shares the goal with it, which is to protect copyright in every place, every time and under all circumstances, and it has worked to implement the terms of many agreements, especially the « Bourne » agreement, which is also represented in establishing a collective management system for copyright.

This does not mean that the Algerian legal text is complete and very problematic. On the contrary, it suits copyright protection in a traditional and paper environment more than in the digital environment. It is also far from all the details that need to be clarified in the legal text regarding the detachments of the digital medium such as digital works and procedures that can be implemented effectively. In this medium. Permission of the legislator :

- Reconsider this matter.
- Involving different parties, especially the computer media specialist, to clarify some technical issues.
- Trying to find the appropriate and legally appropriate formulas to be included in the legal text.

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