

Legal Classification of the Digital Manuscript within the Framework of Copyright Law

التكييف القانوني للمخطوط الرقمي في اطار قانون حق المؤلف

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Abstract:

Manuscripts are considered among the most significant cultural and historical artifacts produced by civilizations and cultures throughout history, due to their pivotal role in preserving knowledge, tracking intellectual development, and documenting it. Additionally, they are a crucial source for research and investigation, and they represent the finest embodiment of Arab-Islamic heritage. Therefore, the nations possessing them have sought to employ every possible means to preserve them, with digitization being one of the most important strategies. However, despite being regarded as one of the key methods to ensure the longevity and sustainability of manuscripts, digitization has raised several questions regarding the creative effort involved in achieving it on one hand, and the protection of the rights of their original owners on the other. This paper seeks to address these issues by examining whether the process of transferring a manuscript from its traditional form to a digital one constitutes a creative work deserving of protection under copyright law. The study concludes that the digital manuscript should be regarded as a creative work in the context of copyright law, as it involves intellectual contribution, while also extending protection to its original components. The study further suggests allocating a percentage of the revenues generated from its exploitation to the owners of the original manuscripts, akin to the tracking right.

Keywords: cultural heritage, digital manuscript, copyright, Author's rights, manuscript sustainability.

ملخص:

تعد المخطوطات أهم الآثار الثقافية والتاريخية التي افرزتها الحضارات والثقافات على مر العصور، لما لها من دور جلي في الحفاظ على المعرفة وتتبع التطور الفكري وتوثيقه، وكذا اعتبارها مصدر للبحث والتحقيق، كما انها تعتبر احسن تجسيد للتراث العربي الاسلامي، لذا سعت الامم التي تحوزها، لطرق كل السبل التي تمكن من الحفاظ عليها، ومن اهم تلك السبل رقمتها، غير انها، ورغم اعتبارها من اهم طرق ضمان ديمومة المخطوطات واستدامتها، إلا انها اثار عدة تساؤلات حول الجهد الابداعي الذي بُذل لبلوغ ذلك، من ناحية. والحفاظ على حقوق ملاكها الاصليين من جهة اخرى، وهو ما ستحاول هذه الورقة البحثية التطرق اليه، بالبحث في مدى اعتبار نقل المخطوط من شكله التقليدي الى الرقمي، ابداع يستأهل الحماية وفق ضوابط قانون حق المؤلف، اين توصلت الدراسة الى وجوب اعتبار المخطوط الرقمي ابداع وفق مفهوم قانون حق المؤلف لتوفر المساهمة الفكرية ضمنه، دون اغفال مد الحماية لمكوناته الاصلية، كما تقترح الدراسة تخصيص نسبة مئوية من عائدات الاستغلال لصالح ملاك المخطوطات الاصلية على شاكلة حق التتبع.

الكلمات المفتاحية: تراث ثقافي، مخطوط رقمي، حق المؤلف، استدامة المخطوطات.

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Introduction:

Manuscripts constitute an important part of the cultural heritage of nations, as they represent an essential entry point for reading the components of their societies, a recovery of a past that reveals their cultural depth, and a starting point for exploring the depths of the future. Therefore, preserving and documenting these manuscripts naturally contributes to the sustainability of the history and culture of the peoples and civilizations whose various knowledge and experiences have known humanity over time; and with the emergence of digital technology, which made it possible to convert these historical and literary manuscripts into digital formats represented in electronic formats, it became possible to convert this cultural heritage into electronic formats available to everyone via the Internet, which enhances the dissemination and accessibility of global cultures and their knowledge in a more open and comprehensive manner.

Converting historical and literary manuscripts into digital formats raises many important ethical and legal challenges, mainly related to protecting the rights of the authors and original owners of these valuable manuscripts. Although digital technology enables broader and faster access to knowledge and culture, it may, in return, allow infringement and infringement of the rights of authors who contributed to transferring the manuscript from its traditional paper form to the digital form that can be published electronically, which leads us to ask how to deal with this transformation in a legal manner that guarantees the rights of creators on the one hand, and ensures that the rights of the original owners of manuscripts are not diminished on the other hand, which will not be possible unless there is a need to establish a legal adaptation of the digital manuscript, ensuring that everyone benefits from the inherent benefits of this transformation without prejudice to the fair interests of manuscript owners and authors, because finding effective ways to provide legal protection for digital manuscripts, and developing mechanisms that regulate their legal and legitimate use, will allow creating ways to encourage authors and owners to convert paper manuscripts to digital formats without negatively affecting their rights.

Based on the above, this research paper will seek to achieve the above-mentioned goal, by approaching the digital manuscript with the controls of the Copyright Law, and achieving an appropriate legal framework that balances the rights of those who intellectually contributed to transferring and modifying the manuscript from its traditional form to its digital form, and to preserve the rights of the owners of the original manuscripts, by answering the following forms:

How can the transfer of a manuscript from its traditional form to its digital form be considered a creation worthy of protection, according to the controls of copyright law?

The article uses a comprehensive comparative and descriptive approach to address this problem, by analysing the legal classification of the digital manuscript in the light of copyright law controls, with the aim of reaching a legal adaptation that balances the protection of the creative effort in digitizing the manuscript with the rights of original manuscript owners.

The aforementioned problem was answered according to a systematic division, as the first section explains the concept of the manuscript, and the second section defines the digital manuscript from the perspective of copyright law, while the third section examines the approach to digital manuscripts with protected works.

1: The concept of the manuscript

Searching for ways to adapt the digital manuscript in accordance with copyright law requires starting from defining its meaning terminologically, and investigating the existence of a definition for it according to copyright law, so that we can then approach it according to its controls.

1.1 Definition of manuscript

A manuscript is defined terminologically as a work written by hand, and the American Encyclopedia defines a manuscript as written by hand in any type of literature, whether on paper, or on another material, except printed materials, while the Encyclopedia of Library and Information Science Terms defines a manuscript as a book written by hand, to distinguish it from a letter, paper,

or any other document written by hand, especially those books that were written before the era of printing, and the International Arab Encyclopedia defines manuscript as a term for any document written by hand or by machine. Thus, a manuscript is every scientific or artistic work written by hand, whether it is a letter or a book, or an image on paper, or similar stones, clay tablets, or skins, which were not copied in multiple copies, before the era of printing.¹

1.2 Definition of manuscript according to copyright law

The comparative copyright laws did not include a definition of the manuscript, as Order 03/05 containing the copyright law in Algeria did not include a definition of the manuscript, but rather considered it a cultural heritage and Article 8 of it stipulated in its last paragraph:

“Traditional cultural heritage works and national works that fall within the public domain benefit from special protection, as stipulated in the provisions of this order.

National works that fall within the public domain consist of literary or artistic works whose material rights have expired for the benefit of their authors and rights holders, in accordance with the provisions of this order”.

This is the same approach of the Saudi legislator, evident in Ministerial Resolution No. 1688/1, issued on 4/10/1425 AH, which only referred to the rights contained on the manuscript in Article 6 thereof, by saying:

“Authors of original works of plastic art and authors of original musical manuscripts, even if they relinquish ownership of the original copy of their works, have the right to participate in a percentage of the proceeds of each sale of these works, but this does not apply to works of architecture and works of applied art”.

As for the Egyptian legislator, it did not refer to the manuscript as a work that falls within the traditional cultural heritage works, despite its stipulation about the popular heritage originating in the Republic of Egypt in Article 138/7, entitled National Folklore², but it is included among the works excluded from protection initially, or whose protection period for the financial rights to it has expired in accordance with the Copyright Law.

2 : The digital manuscript classified according to the Copyright Law

Considering any work as a protected work according to copyright law requires that it fall within these laws. Therefore, we will define a definition of the digital manuscript, and then discuss its legal adaptation.

2.1: Definition of digital manuscript

To define the concept of the digital manuscript, it is necessary to clarify the concept of digital technology as the basis and foundation of digital work. From a copyright perspective, digitization is defined as a technology that allows information to be copied, and its power lies in what can be called the ability to “dissolve,” as every content, regardless of its form, can be dismantled, reduced, and stored, but its importance lies in its ability to be reshaped again, because each reduction can undergo the reverse process of recreating the content exactly similar to the original.³

It can also be defined as the technical means that allows the transfer of information from a tangible phenomenon in an analog form, such as the sensation of sound, color, and light, to a phenomenon that is perceived in a digital capacity using numbers according to double numbering.⁴

The Consultation Committee on the Digital Book, held on May 19, 1999, defined digital technology in its report as: “A group of technologies based on converting a signal into several strings of (0.1), generally requiring the use of a computer.

In other words, moving from the world of atoms and tangible, incomprehensible physical elements, to the intangible, immaterial, virtual world of bytes (BITS)⁵, and infinitely treatable”.⁶

Accordingly, digitizing a manuscript is converting it from its traditional paper form to a digital form, which can be processed by computer, by using special digitization machines, which ultimately produces a digital manuscript.⁷

It is worth noting that it is not possible to imagine a digital manuscript that was created digitally, as the origin of the digital manuscript is limited to its prior existence in a traditional form,

whether it was written on paper or leather, and it was digitized by one of the available means for that.

2.2: Basis for protecting digital manuscripts according to copyright law

According to the Copyright Law, granting protection to intellectual creations requires the availability of fundamental conditions, which are mainly the formal and substantive elements, as without them it is not possible to say that there is protection, which requires research into its availability in the digital manuscript, since it is considered a protected work and its author is granted moral and financial rights.

2.2.1: Formal condition

For an innovative work to be subject to legal protection, it must take a tangible form represented by a physical form that can be perceived by any person with one of his senses⁸. The formal element of the work, which is considered one of the conditions for granting protection, is its departure - the work - from the field of thought to the field of reality, so that it becomes a sensory entity, which the Algerian legislator expressed in Article 03 of Order 03/05 with the wording⁹: "once the work is created"¹⁰. The Algerian legislator relied on the necessity of fulfilling the formal condition for the work by completing its elements and coming into existence in a tangible form, this is the same approach of the French legislator that appears in Article L111-1, with the word "once it is created"¹¹, which is confirmed by Article L111-2 by saying: "once it is created"¹², this he means "just taking him out of the world of ideas and into embodiment".

It should be noted, that the copyright system aims to protect the formal aspect of works without their content, and ideas remain outside the scope of application of literary intellectual property, which focuses only on the form that ideas take and through which they are expressed. Based on the principle that copyright protects this template from the time it leaves a tangible impression.¹³

Accordingly, the ideas that are in the mind of their authors or that are still under consideration, revision, change and modification cannot be considered works protected on the basis of copyright law, because they lack embodiment¹⁴, because what protection includes is the tangible¹⁵ embodiment of these ideas and data that are not originally protected when they are expressed, and which are selected and arranged creatively by their owner¹⁶, despite the emergence of a dissenting opinion that believes that the digital medium requires the protection of some ideas regardless of their embodiment, especially if they are of economic importance.¹⁷

It is noteworthy that despite the proven freedom, circulation and transfer of ideas, and therefore their inability to be owned, which prevents anyone who owns an idea and has not contributed to its implementation, from claiming to be a co-author, which was confirmed by the French judiciary by saying: "Literary and artistic ownership does not protect ideas and perceptions, but rather the original form to express it."¹⁸ However, in return, he can rely on the rules of unfair competition, as we find scope here for their application, especially Article 1382 and Article 1383 of the French Civil Code, and the burden falls on the plaintiff to prove his relationship with the idea or his paternity of the idea, and that it was used unfairly after he By informing them in a way that ensures their confidentiality.

The formal element of digital works did not raise any problems, as its publication online or offline was considered an embodiment of the work, on the basis that the Internet is a support that allows it to be communicated to the public, despite its association with the physical embodiment perceived by the senses¹⁹, The digital manuscript will not deviate from this, as there is no doubt that the formal element is present in the digital manuscript, whether its digitization aims to be published online or offline.

2.2.2: Objective condition

The objective condition, according to copyright law, means that the work contains some innovation, such that it becomes clear that the author has imbued it with some of his personality. Innovation is the basis on which protection is based²⁰, while the originality of a work is its

attribution to its author, who did not obtain it wholly or primarily from another work. For example, two people - each of them individually - reach the same conclusion and enjoy the copyright for the work, if that work was not transferred from a previous work covered by copyright protection, and therefore the original work is the product of the received thought and work of one person.

Most comparative legislation agrees on considering originality as an essential objective condition for granting protection to any creativity, whatever its form, subject matter, or method of expression, including Article 03 of Order 03/05 containing the Algerian Copyright Law, which stipulates: "Every owner of an original creation of a literary or artistic work shall be granted the rights stipulated in this order".²¹

This is the same approach of the Egyptian legislator, as he stated in Article 138/1 of the Copyright Law in his definition of the concept of the work: "A work is any innovative literary, artistic or scientific work..."²² ; In the second paragraph of the same article, he adds a definition of the meaning of innovation by saying: "Innovation: the creative character that gives originality to the work."

The French legislator also relied on the condition of originality to grant protection. Although he adopted the term "work of spirit" and did not mention it specifically²³ except in Article L112-4, relating to the title of the work, and Article L112-3, relating to derivative works, this does not mean that it did not. It is adopted as a condition for granting protection on the basis of copyright law. The American legislator also adopted the same approach in Article 102 of the Intellectual Property Law, stipulating that this law is only applicable to "original works resulting from the author's creativity".²⁴

We must note that the originality of the work is not dependent on seriousness, which means introducing new mental innovation, nor is it dependent on the artistic merit of the work, as it differs in its concept from both. According to the jurist Henris Desbois²⁵ , originality constitutes a basis in the field of copyright, and must be distinguished from seriousness, which is considered the basic criterion for industrial property. Originality is estimated on a personal basis, as it is the character of the personality resulting from the efforts of the creator, because seriousness is measured by an objective standard, as it represents the absence of a counterpart to something new in the past, and in most cases seriousness is determined by creativity, thus establishing the priority and precedence of a particular work over another.²⁶

The originality of the work, as a basic and important condition for granting protection, does not raise a problem when talking about digital manuscripts, as we cannot deny the existence of intellectual effort in transferring manuscripts from their traditional form to their digital form, and even if we acknowledge the lack of intellectual effort in that, which is unlikely, We cannot at all deny the existence of intellectual contribution, which is considered the basis for the existence of originality, and thus the digital work or manuscript is considered authentic, based on the modern trend in researching the issue of originality of works, which was approved by the judiciary in the "Pachot" case²⁷ on March 6, 1986, as the French Court of Cassation relied on the expanded concept of originality, and adopted the word "intellectual contribution," or intellectual share, instead of the phrase "intellectual effort," which was used when considering the issue of originality. It was excluded because it was not compatible with the new intellectual works produced by the digital environment, as it is dominated by intellectual or intellectual contribution rather than intellectual effort²⁸ , which is what was called for by the French advisor M.jorqueres, who considered that the classical criterion - originality - does not allow the protection of works of this type, which belong to the digital medium, especially when these works are completed by machines, so we must resort to the impersonal standard. He calls for abandoning the classic standard of originality and adopting other standards that are close to those in force in the field of industrial property, as he believes that apport intellectuel must go beyond the simple choice made by the creator, and adopt the element of seriousness or new work undertaken by the latter. Advisor M.jorqueres calls for merging the objective concepts of industrial property and the concept of originality.²⁹

3: Adapting the digital manuscript according to copyright law

If the description of the digital manuscript is confirmed as a protected work, due to the availability of the conditions of originality and physical embodiment, we must compare it with works whose protection has been established in accordance with copyright law, and compare it with new digital works, in order to finally determine ways to adapt it.

3.1: The approach according to traditional works in copyright law

Research into the approach of the digital manuscript to the protected works included in the copyright law requires listing the totality of these works and considering the possibility of including them in the digital manuscript. Referring to Order 03/05, we find that the Algerian legislator and the majority of comparative legislation³⁰ did not mention the manuscript as a protected work, as the Algerian legislator stipulates in Article 04 of the aforementioned law in its listing of protected works that they are considered in particular as protected literary or artistic works as follows:

- Written literary works, such as: literary attempts, scientific and technical research, novels, stories, poems, computer programs, and oral works such as lectures, speeches, and other similar works.
- All theatrical works, dramatic works, musical and rhythmic dramas, and pantomimes.
- Musical works, sung or silent.
- Cinematographic works and other audiovisual works, whether accompanied by sounds or without them.
- Works of plastic arts and applied arts such as: drawing, oil painting, sculpture, engraving, lithography and carpet art.
- Drawings, diagrams, blueprints and mini-engineering models of art, architecture and technical installations.
- Charts, maps, and drawings related to topography, geography, or science.
- Pictorial works, and works expressed in a style similar to photography.
- Clothing innovations for fashion and scarves.

Article 5 of the same law did not include a mention of the manuscript, as it stipulated: The following works are also considered protected works:

- Translation works, adaptations, musical arrangements, editorial reviews, and other original adaptations of literary or artistic works.
- Collections and selections of works, collections of traditional cultural heritage works and databases, whether reproduced on a machine-operable support, or in any other form.

Protection is guaranteed to the author of derivative works without prejudice to the rights of authors of the original works.

Based on the above, it is unlikely that the manuscript will be considered classified according to what was mentioned in Articles 4 and 5 of Order 03/05, even though the Algerian legislator indicated in paragraph 3 of Article 5 mentioned above that: "Collections of works of traditional cultural heritage are considered protected, in accordance with Copyright Law." However, Article 8 of the same law specifies traditional heritage works, which do not contain a reference to the manuscript, as it reads as follows:

"Traditional cultural heritage works consist of:

- Traditional classical music works.
- Musical works and popular songs.
- Popular expressive forms produced, nurtured and established within the national group, which have features of the country's traditional culture.
- Anecdotes, poetry, dances and popular performances.
- Folk art works such as: painting, oil painting, engraving, sculpture, ceramics and mosaics.
- Manufactures made of metal and wood, jewelry, sewing, carpets and textiles".

We must point out that approaching the digital manuscript with composite, collective, or shared works does not suffice for the purpose, on the basis that it is, firstly, a digital work, and

secondly, the collective work requires the participation of several authors in its creation, and on the initiative of a natural or legal person, under his supervision, and who bears the responsibility of publishing it in his name³¹. This assumption is not a general rule, as a manuscript can be digitized with undivided participation from several contributors, especially if it includes the feature of interactivity associated with pictures, graphs, and/or other works via axial links.

As for the approach of a digital manuscript to a composite work, which is based on merging, including, approximating, or modifying, original works without the participation of their original authors³², it is undermined by the participation of technicians side by side with the original authors, with the exception of the author of the paper manuscript, who contribute by including pictures, diagrams, or illustrations, or even voices, because the digitization of the manuscript allows that.

Whereas the adaptation of a digital manuscript as a joint work, which is defined as a work co-created or completed by several authors and which can only be disclosed within the limits of the owners' agreement³³, cannot be taken absolutely, especially since it allows for electronic integration of the artistic and creative³⁴ content included in the digital manuscript, which makes it impossible to separate the contributions it contains of texts, sounds, and still or moving images.

We should say that digitizing a manuscript can also be approached by digitizing an original author, such as scientific or literary books that are still under protection or have fallen into the public domain. Here, problems do not arise regarding works that are not in the public domain, as a license must be obtained from their author or rights holders to digitize them³⁵, while those that are not in the public domain, it can be said that modifying them into a digital form is considered creativity, and makes the digital manuscript an original digital work³⁶, as Like ordinary works, however, saying this does not solve the legal adaptation of a manuscript that has been transferred from paper form to digital form.

Based on the above, it is necessary to investigate the possibility of adapting the digital manuscript according to another concept, which takes into account its digital and technical characteristics, the contributions of the authors to it, as well as the rights of the owners of the original manuscripts, as the rights of the owners of the manuscripts, or their owners, must be taken into account. Here, with the aim of optimal exploitation of rights by those entrusted with digitizing the manuscript, it is possible to adopt the right of traceability over the manuscript, by arranging a percentage of each financial exploitation for the benefit of the rights holders, or the owners of the manuscript. Although the right of traceability is available to works of plastic arts, in accordance with Article 28 of Order 03/05, this right can be extended as an exception here, based on the text of Article 14 of the Berne Convention, which granted freedom to member states to extend this right, to include original literary and musical manuscripts.

3.2: The approach according to the newly developed digital works

Digitization and electronic publishing have created new forms of works and ways of circulating them, starting with traditional works that are transferred to the digital medium, such as texts, images, sounds, etc., which are considered digital works. However, the most important consequence of digital technology and electronic publishing is the creation of works that would not have existed otherwise, such as digital databases, multimedia works, logbooks, and websites, these works raise problems in reality and in law, and require careful consideration in defining their concept, and the extent to which they are considered works protected on the basis of copyright law, so that we can then approach the digital manuscript with them, as defining the concept of works created with digital technology is still a matter of controversy, especially with the emergence of artificial intelligence, which has undermined the established rules of copyright, although the digital work belonging to the information technology environment and characterized by originality does not affect its belonging³⁷ to the branches of intellectual property.

3.2.1: The digital manuscript as a multimedia work

Any legal definition of the concept of a multimedia work cannot be an equivalent image of its technical reality, which is the merging, not joining, of disparate, pre-existing works. It is therefore

necessary to think about the existing jurisprudential data and legal jurisprudence regarding a multimedia work, before approaching the digital manuscript with it.

3.2.1.1 Defining the concept of a multimedia Work

Since a multimedia work is considered a product of the digital revolution, which has allowed individuals to perceive this type of work in all parts of the world as a result of connectivity to the Internet, its concept must be controlled as a hybrid work, not related to the legislative enumeration of protected works, and to provide overlap and connection between it and other works.

Jurist Claude Colombet believes that the definition provided by Professor Pierre Yves Gautier is the closest to clarifying the meanings of a multimedia work from the perspective of copyright law³⁸, as he defined it as: “a complex or complex creation that combines, after digitally merging, a total of texts, still images, and/ Or animation, and/or music, mounted on a support (cdrom / cdi) that requires the use of a device (a reader integrated into a computer or a separate device or a television set...) that allows the recipient to access it,” in light of the reluctance of comparative legislation to define it, as the French legislator avoided mentioning a multimedia work, which is the same thing observed in the Egyptian Intellectual Property Law No. 82 of 2002, and the Algerian legislator did not deviate from that, as Order 03/05 of July 19, 2003 did not mention any reference to the multimedia work.

3.2.1.2 : Considering multimedia classified according to its copyright law and approaching the digital manuscript with it

The issue of the legal adaptation of a multimedia work has raised a jurisprudential debate, as one side of jurisprudence considers it a collective work, or a joint work, and sometimes a composite work according to what the jurist B. Edelman³⁹ stated. While another side of jurisprudence considered it an audio-visual work, which is what the jurist A. Latreille called for, while another side considered it a digital database, based on the definition of databases in the English text of the proposal submitted by the USA to the two committees of experts in the two sessions of May 1996 regarding the protection of databases, where the word (collection) was used, while the word (compilation) was used in Article 201 of the Agreement on Trade-Related Aspects of Intellectual Property (TRIPS), which stipulates databases, where in both cases it was translated into the word (collection) in Arabic⁴⁰, despite the presence of a type There is agreement in jurisprudence to describe it as a collective work⁴¹, but it still requires scrutiny and scrutiny until a clear description is reached that stems from a deep understanding of the characteristic of this work, which relies on digital technology as its motivation and is characterized by effectiveness as its essence.

Based on the above, it is not possible to compare the digital manuscript to a multimedia work, despite its participation in matters imposed by digital technology, as the digital manuscript may be characterized by an interactive feature that enables research into its contents, or it may even include pivotal links that support what it contains, it also does not harm the digital manuscript or its value by adding data, images, or sound that support what it contains, or approximate what it contains from recent studies, however, this does not make the digital manuscript considered a multimedia work, for several reasons, the most important of which is the failure to establish the legal status of the multimedia work per se, also, the availability of a digital manuscript with an interactive feature, and its inclusion of images, sound, or pivotal links, is an exception and not a general rule.

3.2.2: Digital manuscript - digital database

Before discussing the approach of the digital manuscript to the digital database, and its legal adaptation on that basis, it is necessary to take into account the concept of the digital database, and research its place among the works protected according to the copyright law.

3.2.2.1: Definition of digital databases

Databases are defined as a collection of data or other materials, regardless of their form, if they are considered intellectual innovations due to the selection and arrangement of their contents, but this concept does not include any database that is not considered an innovation.⁴²

While digital databases are defined as: “the work of selecting, collecting, and assembling literary, artistic, or musical works, computer programs, or any other data such as texts, images, documents, numbers, and facts, which are arranged and stored in an organized and systematic manner, and cannot be accessed and information retrieved from them except by means of information or any other means.”⁴³

The Algerian legislator did not define databases⁴⁴, but rather referred to them among the protected works in Article 05 of Order 03/05 only, unlike the French legislator who defined them in Article L112-3 of the Intellectual Property Law by saying: “Databases mean a group of independent works, data, or any other materials arranged in an organized or systematic manner, which can be accessed individually by electronic or other means”.⁴⁵

3.2.2.2: Considering digital databases as a workbook and approaching the digital manuscript with it

It is established jurisprudentially and legally⁴⁶ that databases are works protected in accordance with copyright law, as their originality comes from the way in which the total data, information, or works organized in the database are arranged or classified. However, the question arises about the fulfillment of the condition of innovation and originality in digital databases that are read by special computer programs, which is something that most legislation has not overlooked, rather, it explicitly stipulates that databases that are readable by a machine, computer, or any other digital device are considered protected works within the meaning of copyright law⁴⁷, if they meet the condition of originality and innovation. The essence of granting protection to digital databases comes from the systematic or organized method that was followed in arranging the data or works, from which it can be inferred that the author has made an intellectual effort in selecting the materials, data, works, or manuscripts, as well as in the way they are arranged.⁴⁸

According to what was previously explained, and by projecting this onto the digital manuscript, which essentially consists of a collection of digitized manuscripts, arranged according to an original order and organization, it shows an intellectual effort in selecting, arranging and organizing the manuscripts, which allows legal protection in accordance with the copyright law to be granted to it, and it is considered a digital database. and on this basis, the selection, choice, and arrangement become a reason to protect the digitized manuscript by the provisions of the Copyright Law.

In addition to considering the digital manuscript a digital database, to converge the basis of the search for originality within them, the inclusion of the digital manuscript with central links, and/or images, and/or sounds, and/or illustrations, as well as the interactive feature, requires it to be close to a multimedia work -as previously stated-, although jurisprudence does not agree on it, its original and integrated components deserve protection on the basis of copyright law, independently of the protection of the creative effort in producing the digitized manuscript itself.

In general, the digital manuscript, although it is not explicitly stated that it is considered a protected work according to copyright law, its fulfillment of the conditions for granting protection, including a formal condition and a substantive condition, makes its exclusion from the number of creations that must be protected undesirable, according to the general rules of copyright law. At least, which Article 3 of Order 03/05 expressly included by saying: “Every owner of a literary or artistic creation shall be granted the rights stipulated in this Order.”

Protection is granted regardless of the type of work, its mode of expression, degree of merit, and destination, as soon as the work is created, whether it is proven or not, with any basis that allows it to be communicated to the public.

3.3: The digital manuscript is of a private nature sui generis

Providing the conditions for granting protection and adapting the digital manuscript as a database allows its author to enjoy literary and financial rights in accordance with the copyright law, taking into account the rights to the works included in it, whether the matter relates to the original

manuscript itself, or the original works added to it as part of its digitization, such as literature linked by axial links, illustrations, or graphs.

Considering the digital manuscript a protected work, according to what was previously stated, would protect and support creativity and innovation, regardless of its type and method of expression, it also contributes to protecting the material cultural heritage and ensuring its continuity by protecting it from disappearance and damage, as this motivates those who own or possess a manuscript to digitize it and include interactive features within it or without it. Therefore, the Algerian legislator - to accommodate any newcomer in the style of creativity - must adopt the expanded approach to originality, which is represented in intellectual contribution instead of intellectual effort, regardless of the mechanism that helped or led to this.

However, it must be said that this adaptation is not absolute, but rather varies according to the case of the digital manuscript, as the merging of several contents with the digital manuscript allows it to be adapted in certain cases, as a multimedia work, especially if it includes the interactive feature, and in other cases it can be adapting the digital manuscript as a digital database, especially if it includes many manuscripts, or includes, in addition to the original manuscript, other original works, integrated with techniques that demonstrate an intellectual contribution to selection, arrangement, and production. In addition to all of the above, the possibility of adapting the digital manuscript as a digital book only, where it is modified from paper form to digital form, and is not enhanced by the interactive feature, or merging several other works within it, from digital works, from scientific works, whether they are cultural, Or historical,...etc. Therefore, it is advisable to adopt an adaptation that is compatible with the form of the work, depending on the case, whether a digital database, a multimedia work, or a digital book, and to extend protection to its original components protected by copyright law.

Conclusion:

Through the research paper's endeavor to find effective ways to provide legal protection for digital manuscripts, and to establish mechanisms aimed at regulating its use, in a way that allows authors and owners to be encouraged to convert paper manuscripts to digital formats without prejudice to their rights, it reached the following results:

- A manuscript is every scientific or artistic work written by hand, whether it is a letter or a book, or an image on paper, or the like, such as stones, clay tablets, or skins, and which was not copied in multiple copies, before the era of printing.
- Comparative copyright legislation does not include a unified definition of the manuscript, although some include referring to it as cultural heritage.
- A digital manuscript is every manuscript that has been converted from its traditional paper form to a digital form, according to which it can be processed by computer, by using special digitization machines, which ultimately produces a digital manuscript.
- The digital manuscript has the controls for granting protection according to the Copyright Law, which are mainly represented by the two formal and substantive conditions.
- The digital nature of the digital manuscript imposed the exclusion of approaching it with traditional works.
- Integrating several contents with the digital manuscript requires the possibility of adapting it, and in certain cases as a multimedia work, especially if it includes the interactive feature, and in other cases, the digital manuscript is adapted as a digital database.
- The manuscript that was modified from paper format to digital format is close to it and does not include the feature of interactivity or the integration of several other works within it, from digital works, from scientific, cultural, or historical works,...etc.
- Converting a digital manuscript from its paper form to a digital form requires providing it with legal protection on the basis of copyright law, in view of the positive effects resulting from whoever took the initiative to digitize the manuscript, as well as its original owner.

Based on the previous results, the research paper proposes the following recommendations:

- It is recommended that copyright legislation consider the act of digitizing a manuscript as a creative work that deserves protection.
- Copyright legislation should adopt intellectual contribution instead of intellectual effort, when researching the originality of works, to comprehend the digital manuscript and similar works.
- The digital manuscript takes several forms, which converge with several digital works, from a digital database, multimedia, and a simple digital workbook. Therefore, to give it protection according to the copyright law, it is advisable to adopt an adaptation that is compatible with the form of the work, or to extend the protection of its original components protected by the copyright law to it.
- To establish a balance between the rights of the owners of the original manuscripts, and the rights of the shareholders in their modification and digitization, we recommend adopting a percentage in favor of the owners of the manuscripts included in the digital manuscript, similar to the right of traceability granted to works of plastic arts.

¹ Moulay M'hamed, Manuscript and Scientific Research - An Evaluation Study of the Activities of Manuscript Research Laboratories in Algerian Universities: Oran, Algeria, Constantine, a thesis for obtaining a master's degree in library science and documentary sciences, University of Oran, Sania, 2008-2009, p105.

² See Article 138/7 of Law No. 82 of 2002, which includes the Egyptian Intellectual Property Law.

³ "Digital technology is a technique that allows the transcription of information, its strength lies in what can be called its capacity for "dissolution", any content whatever its form, can be decomposed, reduced and preserved, its interest lies in its capacity for restitution, identical to the original content", Copyright and the internet report of the working group of the academy of moral and political sciences, university press of France, 1st edition, 2001, p 16 .

⁴ It is the technical means of transforming information. It allows the transition from a phenomenon apprehended in an analog way (for example sound, color, light apprehended by man in a continuous and global way) to a phenomenon apprehended in a digital or digital way using numbers in binary mode (0 and 1), Digitization study published on the site: www.sup.doc.enseignement.fr consulted on 05/20/2006.

⁵ Electrons are very small particles to the point that it is absolutely impossible to see them. One of the characteristics and features of electrons is that they are not fixed in one place, but the truly extraordinary property is that they travel very quickly, about 300,000 kilometers in one second, as an electron can revolve around the Earth 7 times, and if it moves inside a wire Electric, we do not feel it, and on the contrary, if billions of electrons move inside the electrical wire, we will feel it, it is the bit. So a bit is a regiment or a group of billions of electrons that are transmitted. See the details of this in: Kamal Karlouf, A Journey into the Depths of the Computer, second edition, Houma House, Algeria, 1997, p. 35.

⁶ Digital designating a set of technologies based on a transformation of a signal into numbers follows "0" and "1" a spice in general the use of a computer.

In other words, from a world of atoms, material elements, palpable and irreducible, we move to a universe of (bit) immaterial, virtual elements, infinitely manipulable.

Read the following article at: www.eduscol-education.fr/numériquedossier/lectures/livre-électronique-livre-numérique.

⁷ Moulay Mhamed, op. cit., p. 108.

⁸ Bakri Youssef Bakri, Legal Protection of the Right to Literary and Artistic Property in Light of the Current Intellectual Property Protection Law No. 82 of 2002, University Thought Publishing House, Alexandria, Egypt, 2011, p. 52.

⁹ Article 3 of Order No. 03/05 of 2005 containing the Algerian Copyright Law stipulates: "Protection is granted regardless of the type of work, its style of expression, its degree of entitlement and its destination, once the work is deposited..."

¹⁰ Fadli Idris, Copyright and Related Rights, Office of University Press, Algeria 2008, p. 80.

¹¹ Art L111-1 C.P.I.FR: "The author of an intellectual work enjoys over this work, by the sole fact of its creation, an exclusive intangible property right enforceable against all".

¹² Art L111-2 C.P.I.FR: "The work is deemed to be created, independently of any public disclosure, solely because of the realization, even if unfinished, of the author's conception".

¹³ Diala Aissa Wansa, Copyright protection on the Internet, a comparative study, issued, Lebanon, 2002, p 23.

¹⁴ Nawaf Kanaan, Nawaf Kanaan, Copyright, Contemporary Models of Copyright, House of Culture, Jordan, 2009, p. 206.

¹⁵ Concrete Achievement.

¹⁶ Diala Aissa Wansa, op. cit, p 24.

¹⁷ Philippe Le Tournam, electronic commerce, is published on the site: www.lexis.com

See also Diyala Issa Wansa, op. cit., p. 24.

¹⁸ Guillaume Blanc-Jouvan, Intellectual property law, Vuibert, Paris, September 2011, p 21.

¹⁹ Andres Lucas, op.cit, p 24.

²⁰ Abd Erazzak Ahmed Al-Sanhouri, The mediator in explaining civil law (property rights with a detailed explanation of things and money), Part 8, in a new third edition, Al-Halabi Legal Publications, Lebanon, 2005, p 292.

²¹ "Any creation of literary or artistic work which has an original character..."

²² Article 138/1 of Law No 82 of 2002, containing the Egyptian Intellectual Property Rights Law.

²³ Art L112-3 C.P.I.FR: "The authors of translations, adaptations, transformations or arrangements of works of the mind enjoy the protection established by this code without prejudice to the rights of the author of the original work."

²⁴ "Original works of authorship". André Bertrand, copyright and neighboring rights, 2nd edition, Dalloz, Paris, 1999, p 131.

²⁵ Andres Bertrand, op cit, p133.

²⁶ Nawaf Kanaan, Copyright, op. cit, p 198.

²⁷ The decision of the French Court of Cassation issued on March 7, 1986 in the pachot/babolat case was considered a development in the concept of originality in the field of computer software protection. It defined what could be a subject of protection in the Logical, and provided a definition of originality by saying: The author has proven the existence of a special intellectual effort that goes beyond simple, automatic, and binding implementation, and that the embodiment of this effort existed within the framework of an independent variable. Look:

Herbert Bitan, protection and control of logic and donation foundations, Lamy edition, France, 2006, p239.

²⁸ Diala Aissa Wansa, op. cit, p 28.

²⁹ Ibid, p 27.

³⁰ See, for example, Article: Article 140 of Law No 82 of 2002, containing the Egyptian Copyright Law. Article 2 of Law No 7 of 2002, containing the UAE Copyright Law. Article 2 and Article 3, of Executive Regulations No (M/W/1688/1) dated May 29, 2004 containing the Saudi copyright protection system.

³¹ Article 18 of Order 03/05 containing the Algerian Copyright Law.

³² Article 14 of Order 03/05.

³³ Article 15 of Order 03/05.

³⁴ Osama Ahmed Badr, Multimedia - Between the reality of electronic merging of works and the law protecting intellectual property rights, New University House, Alexandria 2004, p 141.

³⁵ Isabelle Wekstein, Rights related to copyright and digital rights, Litec, Paris, 2002, p 34.

³⁶ Osama Ahmed Badr, op. cit, p 74.

³⁷ Rokaya Aouachria, Legal Protection of Electronically Published Works Under the 1996 UEPO Copyright Treaty (Evaluation Study), Generation Human Rights Magazine, p 107.

³⁸ a complex creation bringing together, after computer formatting, a set of texts, still and/or animated images and/or music, accessible on compact disc (cd/cdi), which requires the use of a device (isolated drive), or inserted into a computer or television etc, so that users can become aware of it. Claude Colombet, literary and artistic property and neighboring rights, 9th edition, Dalloz Delta, France, 1999, p112.

³⁹ Claude Colombet, op.cit, p 112 .

⁴⁰ Osama Ahmed Badr, op. cit, p 197.

⁴¹ Xavier Daverat, Literary and artistic property law, Breal, France, 2011, p 41.

⁴² Nawaf Kanaan, op. cit, p. 248.

⁴³ Diala Issa wanssa, op. cit, p. 39

⁴⁴ It should be noted that the United States lawmaker does not use a uniform definition of databases, but rather knows how much he needs them in each case, a legislative trend recognized in the framework of ecclesiastical legislative thinking. Look at that:

Omar Mohammed bin Younis, Databases: The Problem, Vision for Future Protection, working paper presented to the Egyptian Society of Internet Law, Egypt, 2005, p 06.

⁴⁵ Art L112-3 C.P.I.FR: "A database means a collection of works, data or other independent elements, arranged systematically or methodically, and individually accessible by electronic means or by any other means."

⁴⁶ The French Court of Cassation in the well-known case "Microfort-le monde", where a Canadian company collected, organized, indexed, computer-stored and placed in public access French newspapers, held that the company's intellectual effort was based on a classification protected by copyright law.

⁴⁷ Article 05 of Ordinance 03/05 containing the Copyright Act.

Article 40 of Act No. 82 of 2002 containing Egypt's intellectual property law.

Article 3/2 of the Model Legislation for the Protection of the Author's Right in the Arab World, 1999.

Article 3 of the Lebanese Law on Intellectual Property of 1999.

Article 3/3 of the Jordanian Intellectual Property Act of 1998.

⁴⁸ Mohamed Attiya Ali Mohamed Al-Razzazzazi, Legal Protection of Databases in Egyptian Law and Comparative Legislation, New University House, Alexandria, 2013, p. 255 onwards.

Bibliography:

A- Books:

- Osama Ahmed Badr, multimedia, between the reality of electronic integration of works and the law on the protection of intellectual property rights of the New University House Alexandria 2004.
- Bakri Youssef Bakri, Legal Protection of Literary and Artistic Property Rights in Light of Current Intellectual Property Protection Law 82 of 2002, Dar al-Thakr University, Alexandria, Egypt, 2011.

- Diala Issa and Nissa, Online Copyright Protection, Comparative Study, Exported, Lebanon, 2002.
- Abd al-Razaq Ahmed al-Sinhouiri, Mediator in Civil Law Commentary (Right to Property with Detailed Explanation of Objects and Funds), Part VIII, New Third Edition, Halabi Rights Publications, Lebanon, 2005.
- Fazeli Idris, Author's Rights and Adjacent Rights, Algiers University Publications Office 2008.
- Kamel Karlov, Computer Deep Picnic, second edition, Homé House, Algeria, 1997.
- Mohamed Attia Ali Mohamed Al-Razzazzazi, Legal Protection of Databases in Egyptian Law and Comparative Legislation, New University House, Alexandria.
- Nawaf Kanaan, Nawaf Kanaan, Copyright Contemporary Models of Copyright, Culture House, Jordan, 2009.
- Claude Colombet, literary and artistic property and neighbouring rights, 9th edition, Dalloz Delta, France, 1999.
- André Bertrand, le droit d'auteur et droits voisins, 2nd edition, Dalloz, paris, 1999.
- Andres Lucas, Copyright and Digital, LITEC, Paris, 1998.
- Guillaume Blanc-Jouvau, Intellectual Property Law, Vuibert, paris, Sep 2011.
- Herbert Bitan, Protection and Counterfeiting of Software and Databases, Lamy Edition, France, 2006.
- Isabelle Wekstein: Droit voisins du droit l'auteur et numérique, Litec, paris, 2002.
- Xavier Daverat, Literary and Artistic Property Law, Breal, France 2011.

B – Theses:

- Mulai Hamad, Author and Scientific Research, Evaluation Study of Research Laboratory Activities in Manuscripts in Algerian Universities and Oran, Algeria, Constantine, Memorandum of Master's Degree in Library Science and Documentary Sciences, Oran Sanya University, 2008-2009.

C - scientific articles:

- Riabi Muhammad, Ben Hamida Mariam, Mechanisms for the Protection of Algeria's Cultural Heritage, Journal of Legal and Political Research, Vol. 4, No. 1, 2022.
- Raqih Awashir, Legal Protection of Electronically Published Works under the 1996 WIPO Copyright Treaty (Assessment Study), Journal of the Generation of Human Rights.
- Nahid Bassiouni Mohammed Salem, manuscript protection legislation in the Sultanate of Oman and its impact on information services, field study, study available on the <https://ajadi.weebly.com> site, consulted 30/11/2022.

D- Report:

- Copyright and the Internet report of the working group of the Academy of Moral and Political Sciences, Presses universitaires de France, 1st edition, 2001.

E - Websites:

- Philippe le tournam, e-commerce. Accessed at www.lexis.com.
- www.eduscol-education.fr/digitaldossier/readings/e-book-e-book.
- Digitization study published on: www.sup.doc.education.fr, accessed 20/05/2006.