

Intangible Assets and the Conflict of Applicable Law

Noria CHEBOUROU*

Djillali LIABES University - Sidi Bel Abbès, Algeria

noria.chebourou@univ-sba.dz

Date of submission: 10/10/2025 - Date of acceptance: 14/12/2025 - Date of publication: 28/12/2025

Abstract: The issue of conflict of laws is one of the most significant challenges raised by cross-border financial transactions related to intellectual property rights, due to the intangible nature of such assets, their multiple places of use and exploitation, and the demand for their protection. The Algerian legislator, through the introduction of Article 17 bis under Law No. 05-10, sought to address this issue by adopting the connecting factor of the location of the property to determine the applicable law governing intangible assets. Thus, they are subject to the law of the place where they exist at the time the cause leading to the acquisition of possession, ownership, or other real rights—or their loss—occurs. The legislator also tackled the difficulty of determining the location of intangible assets by setting specific criteria and rules for each type of such property, thereby facilitating the application of the law of the situs.

Keywords: Intangible assets; literary and artistic property; copyright; industrial designs and models; trademarks; trade name.

*Corresponding author: Noria CHEBOUROU.

Introduction:

Technological development and the expansion of means of transportation and communication in the modern era have had a significant impact on the spread and complexity of relations between individuals at the international level. This has led to the emergence of the issue of conflict of laws and the determination of the applicable law governing such relationships with a foreign element. Financial relations between individuals from different countries are among the most important cases that raise the problem of determining the appropriate law for their settlement, given their prevalence at the international level¹.

The general rule refers to the application of the law of the situs to property, whether movable or immovable. In order to apply the connecting factor of the location of the property with respect to tangible movable assets, the condition of the occurrence of the legal cause must be fulfilled. In other words, tangible movables are governed by the law of the jurisdiction in which they are located at the time when the cause arises that results in the acquisition of possession, ownership, or other real rights, or their loss².

While determining the location of property does not raise difficulties with respect to tangible assets, it becomes problematic when the property has no specific physical situs. This is the case for intangible property, which consists of non-physical objects beyond direct human perception, yet capable of being the subject of real rights. Such property is not connected to any tangible asset, but it nevertheless possesses financial value³—for example, intellectual and literary property rights, as well as commercial and industrial property rights.

Intangible assets assume a particularly important character in contemporary law and are the subject of extensive dealings in private international relations. Given their immaterial nature, such assets may be exploited in more than one country, which necessitates the determination of the law that ensures their protection—especially since the legislation of different states varies and diverges in the level of protection afforded to these rights.

Accordingly, this study seeks to shed light on the problem of conflict of laws in disputes involving intangible assets with a foreign element, by determining the law competent to govern them in light of different doctrinal approaches and international conventions, while also highlighting the position of the Algerian legislator through an examination and analysis of Article 17 bis of the Civil Code⁴. Before addressing the question of the applicable law to intangible rights, however, it is necessary to first define these rights and identify their various types. It should be noted that the scope of this study is limited to those intangible assets

¹Radi Nabih Radi Alawneh, *The Applicable Law to Property – A Comparative Study*, Master's Thesis, Faculty of Graduate Studies, An-Najah National University, Nablus, Palestine, 2015, pp. 1–2.

² Article 17 of the Algerian Civil Code provides: “The characterization of property, whether immovable or movable, shall be subject to the law of the State in which it is located. Possession, ownership, and other real rights over immovable property shall be governed by the law of the situs. Tangible movables shall be governed by the law of the jurisdiction in which they are located at the time the cause arises that results in the acquisition of possession, ownership, or other real rights, or their loss.”

³ Hassan Hashemi, *Intellectual Rights and the Applicable Law in Algerian Private International Law*, published contribution within the framework of the National Symposium on the Regulation of Private International Relations in Algeria: An Evolving Reality, Faculty of Law and Political Science, Kasdi Merbah University – Ouargla, April 21–22, 2010, p. 155. Available at: <https://dspace.univ-ouargla.dz> (last accessed 02 August 2025 at 16:30).

⁴ Ordinance No. 75-58 of 26 September 1975 containing the Civil Code, as amended and supplemented by Law No. 05-10 of 20 June 2005 and Law No. 07-05 of 13 May 2007.

Intangible Assets and the Conflict of Applicable Law

expressly mentioned by the legislator when determining their situs in the aforementioned Article 17 bis.

On this basis, the main research question posed is: What law is applicable to cross-border disputes concerning intangible assets?

To answer this central question, the following sub-questions must be addressed:

- What is the concept of intangible assets, and what are their types?
- How has the Algerian legislator dealt with the issue of determining the situs of intangible assets?

Consequently, this study is divided into two main sections:

- The Concept of Intangible Assets.
- The Determination of the Applicable Law to Intangible Assets.

I. The Concept of Movable Intangible Property

As a general principle, intangible objects cannot be classified as either immovable or movable property, given that the basis of this distinction lies in the characteristic of permanence and the (im)possibility of being moved or transferred— a feature that applies only to tangible objects. Nevertheless, intangible objects are deemed by legal fiction to be movables and are therefore subject to the rules governing movable property. This classification is based on the legislator's view that anything not considered immovable is by definition movable, and since intangible objects are not immovable property⁵, they are consequently regarded⁶ as intangible movables.

Within this chapter, the first section will be devoted to defining intangible assets, while the second section will address their various types.

Section One: Definition of Intangible Movables

Intangible or incorporeal property refers to things that cannot be perceived by the senses, such as ideas, innovations, and inventions. Nevertheless, they may constitute the object of a real right. Their nature is considered movable, since they do not pertain to immovable property, nor are they exercised over tangible things, but rather over non-material entities⁷.

Thus, intangible property consists of incorporeal elements that, although imperceptible to the senses, are capable of being given monetary value and disposed of legally. They are described as intangible things, yet their existence can be conceived intellectually. This category

⁵ Hadjira Dnoui Ben Sheikh El-Hussein, Summary of the Introduction to Law – The General Theory of Law and the General Theory of Rights and Their Application in Algerian Legislation, Dahleb Publications, p. 189.

² The Algerian legislator defined immovable property in Article 683 of the Civil Code, which stipulates: "Anything that is fixed in its place and firmly attached thereto, and cannot be removed without damage, is considered immovable property; whereas all other things are considered movable property..."

⁷ Radi Nabih Radi Alawneh, The Applicable Law on Property – A Comparative Study, Master's Thesis, Faculty of Graduate Studies, An-Najah National University, Nablus, Palestine, 2015, p. 72.

includes intellectual rights such as the ideas of authors, the inventions of inventors, and all forms of intellectual output.

Such property is distinguished by its incorporeal value, which manifests through the rights it confers upon those who create or hold them. In other words, they are legal prerogatives granted to a person over an intangible entity—for example, an author’s right over their literary or musical work, an inventor’s right over their invention, or a designer’s right over their creation⁸.

Section Two: Types of Intangible Property

The term *intangible movables* includes all non-material property, such as copyright, patent rights, intellectual, literary, and industrial property rights, as well as personal rights when regarded as intangible assets that may be transferred or pledged through assignment⁹.

Thus, intangible movables refer to incorporeal rights such as copyright, patent rights, trademark rights, design rights, and model rights—collectively referred to as literary, artistic, and industrial property. The concept of intangible property also includes certain personal rights that may serve as objects of legal transactions, such as debts, in view of their financial value¹⁰, as well as personal rights embodied in negotiable instruments or transferable securities¹¹.

What distinguishes intellectual or intangible rights is that their holder enjoys the exclusive prerogative to benefit from their intellectual creation, whatever its nature. They possess the right to exploit their creation financially—this constituting the material or pecuniary aspect of the intellectual right—while also retaining the right to have their authorship acknowledged—this constituting the moral aspect of the intellectual right. Accordingly, such rights are characterized by a dual nature, combining elements of both real rights and personal rights, which is why they are referred to as *rights of a dual character*¹².

In this section, we will focus on two categories of intangible rights: literary and artistic property rights (*Subsection One*), and industrial and commercial property rights (*Subsection Two*).

Subsection One: Literary and Artistic Property Rights

This is the right acquired by an author over a work or over their intellectual creation, whether that creation is literary or artistic.

Accordingly, literary and artistic property consists of two elements: the subject of the right (the work) and the holder of the right (the author).

⁸Ahmad Abdel Karim Salama, *Private International Law*, Dar Al-Nahda Al-Arabiya, Cairo, 2008, p. 1010.

⁹Kahloula Yamina, *Lectures in Private International Law*, prepared for third-year LMD students in Private Law, Faculty of Law and Political Science, University of Oran 2, 2022, p. 96.

¹⁰Ali Ali Suleiman, *Notes on Private International Law*, 4th ed., University Publications Office, Algeria, 2006, p. 103.

¹¹This refers to bearer instruments, such as bearer bonds and bearer shares; registered instruments, such as registered shares and bonds; and order instruments, such as bills of exchange and checks. See: Fouad Dib, *Private International Law II*, Syrian Virtual University Publications, Syrian Arab Republic, 2018, pp. 167–169.

¹²Yahi Samia, Lecture Two in “Introduction to Legal Sciences (Theory of Rights)” entitled “Classifications of Rights”, prepared for First-Year Law students, Groups (A) and (B), Academic Year 2024/2025, p. 17. Available online at the following link: <https://www.facebook.com/100064032007650/posts> (accessed on July 26, 2025, at 19:40):

Intangible Assets and the Conflict of Applicable Law

The author is the originator of the intellectual creation who produced the literary, artistic, or scientific work—that is, any person who creates an intellectual product, regardless of its form or the means of expression, provided that the creation reflects a certain degree of innovation¹³. The term “author” does not only refer to writers of books; it encompasses every individual who produces an original intellectual work in literature, the arts, or the sciences, irrespective of the type of work, the manner of its expression, its importance, or its purpose¹⁴. Thus, authors include writers, painters, composers, and others. The author may be either a natural or a legal person¹⁵.

The author’s right is defined as: *“The power exercised by the author over the works they create, whether oral, written, visual, or artistic, as fixed by law.”* It has also been defined as: *“The set of moral and economic advantages conferred upon a writer, artist, or scholar in respect of their creation.”* Hence, copyright is a dual right—both moral and pecuniary—granting the author control over their intellectual rights as recognized by law, entitling them to seek protection and enforce their claims. Such rights may originate in either natural persons or legal entities¹⁶.

Article 13 of Ordinance No. 03–05 concerning authors’ rights and related rights in Algeria provides: *“Unless proven otherwise, the copyright holder shall be deemed to be the natural or legal person who publishes the work in their name, lawfully makes it available to the public, or files a declaration in their name with the National Office of Copyright and Related Rights, as provided for in Article 131 of this Ordinance...”*¹⁷

As for the subject of the right, namely the work itself, Article 1 of Ordinance No. 73–14¹⁸ defines it as: *“Every intellectual creation, whatever its type, form, or mode of expression, and regardless of its value or purpose, which grants its author a right known as copyright.”*

Accordingly, a work may be expressed through writing, sound, drawing, photography, and so forth. The Algerian legislator, through Articles 4 and 5 of Ordinance No. 03–05, has provided a list of literary and artistic works subject to legal protection. This list is illustrative rather than exhaustive¹⁹.

¹³Ibid. p. 9.

¹⁴Malika Atoui, *Copyright under Algerian Legislative Provisions*, Algerian Journal of Communication, University of Algiers 3, Vol. 13, No. 21, March 1, 2011, p. 118.

¹⁵Article 12 of Ordinance No. 03–05 of 19, Jumada al-Awwal 1424 (corresponding to July 19, 2003), relating to copyright and related rights, defines the author of a literary or artistic work as follows: “The author of a literary or artistic work, within the meaning of this Ordinance, shall be deemed to be the natural person who created it. A legal person may be regarded as the author in the cases provided for in this Ordinance.”

¹⁶Radi Nabih Radi Alawneh, op.cit, p. 73.

¹⁷Paragraph 2 of the same article addresses the case of a work being published without the author’s name, providing: “If a work is published without the author’s name, the person who lawfully makes it available to the public shall be deemed to represent the rights holder, unless proven otherwise. If an anonymous work is published without indicating the identity of the person who makes it available to the public, the exercise of rights shall be undertaken by the National Office of Copyright and Related Rights until the identity of the rights holder is established.”

¹⁸Ordinance No. 73–14 of April 3, 1973, concerning Copyright, Official Journal No. 29 of April 10, 1973.

¹⁹Article 4 provides: “The following shall, in particular, be considered as protected literary or artistic works:

- a) Written literary works, such as literary essays, scientific and technical research, novels, short stories, poems, computer programs, as well as oral works such as lectures, speeches, sermons, and similar works;
- b) All theatrical works, dramatic works, musical-dramatic and choreographic works, and pantomimes;
- c) Musical works, whether with or without lyrics;
- d) Cinematographic works and other audiovisual works, whether accompanied by sound or silent;

Subsection Two: Industrial and Commercial Property Rights

Industrial property rights encompass two aspects: a pecuniary aspect, which consists in the individual's right to exploit their invention, and a moral aspect, which lies in their exclusive right to control such inventions²⁰. Industrial property rights take several forms, the most significant of which are:

First: Patents

A patent is an official certificate granted to an inventor for every new innovation capable of industrial application, whether the innovation consists in a novel invention or in a newly developed method. This certificate allows the inventor to exploit their invention economically, to enjoy exclusive use thereof, to oppose any infringement by third parties, and to dispose of it as they wish.

Article 2 of Ordinance No. 03–07²¹ defines a patent as a document granted for the protection of an invention, and defines an invention as an idea devised by an inventor that provides a practical solution to a specific technical problem.

Article 3 of the same Ordinance sets out the conditions required for an invention to be patentable: it must be new—meaning that it has not been disclosed to the public, whether in writing, orally, or by any other means, anywhere in the world prior to the filing date of the patent application or the priority date claimed²².

The invention must also result from inventive or creative activity, i.e., it must display an inventive step that goes beyond the current state of technical knowledge²³. Finally, the invention must be susceptible of industrial application—meaning it can be manufactured or used in practice in any field of industry, whether traditional, agricultural, medical, or technological. In other words, it must be capable of being made or used in any type of industrial or productive activity²⁴.

Second: Industrial Designs and Models

An *industrial design* is any arrangement or composition of lines or colors that gives a specific appearance to an industrial or artisanal product, distinguishing it from other similar products.

e) Works of fine art and applied art, such as drawings, paintings, sculptures, engravings, lithographs, and carpet art..."

Article 5 further provides: "The following works shall also be protected: translations, adaptations, musical arrangements, editorial revisions, and other original transformations of literary or artistic works..."

²⁰Yahi Samia, op. cit., p. 17.

²¹Ordinance No. 03–07 of 19 Jumada al-Awwal 1424 (corresponding to July 19, 2003), concerning Patents, Official Journal of the People's Democratic Republic of Algeria, No. 44, July 23, 2003.

²²Article 4 of Ordinance No. 03–07 provides: "An invention shall be considered new if it is not included in the state of the art. The state of the art comprises everything made available to the public by written or oral description, by use, or by any other means anywhere in the world prior to the filing date of the application for protection or the date of priority claimed..."

²³Article 5 of Ordinance No. 03–07 provides: "An invention shall be deemed to result from an inventive activity if it is not obviously derived from the state of the art."

²⁴Article 6 of Ordinance No. 03–07 provides: "An invention shall be considered industrially applicable if its subject matter can be manufactured or used in any type of industry."

Intangible Assets and the Conflict of Applicable Law

A *model*, by contrast, is the form or shape in which a product appears in industry, setting it apart from other similar models.

Article 1 of Ordinance No. 66–86²⁵ defines a design as: “*Any arrangement of lines or colors intended to give a special appearance to an industrial or artisanal product.*” Examples include embroidery or decorative patterns. The same article defines a model as: “*Any shape that can be formed, with or without colors, or any industrial or artisanal object that may serve as an original template for the production of other units, and that is distinguished from similar models by its external form.*” Examples include car body designs and watch designs²⁶.

Paragraph 2 of Article 1 of Ordinance No. 66–86 further stipulates that protection under this Ordinance is granted only to original and novel designs and models. This means that the legislator required both *originality* and *novelty* as conditions for legal protection. A design or model is considered novel under this Ordinance if it has not been previously created²⁷—that is, if it represents a new innovation distinct from other disclosed designs and models, and is not identical to any pre-existing one. In addition, the design or model must be original, meaning that it bears a special character reflecting the personal imprint or creative touch of its originator²⁸. The holder of a design or model thus enjoys the right to exploit it²⁹.

Third: Trademarks and Industrial Marks

A trademark or industrial mark is “*any sign or indication placed by a trader or manufacturer on the products they sell or produce in order to distinguish them from other similar goods.*”³⁰

The Algerian legislator defines trademarks in Article 2, paragraph 1, of Ordinance No. 03–06³¹ as: “*Any symbols capable of graphic representation, in particular words (including personal names), letters, numerals, drawings or pictures, distinctive shapes of goods or their packaging, and colors, whether alone or combined, which are used to distinguish the goods or services of a natural or legal person from those of others.*”

Article 4 of the same Ordinance further provides that no mark may be used for goods or services within the national territory unless it has first been registered or an application for its registration has been filed with the competent authority, namely the Algerian National Institute of Industrial Property³².

Thus, the right in a trademark is acquired through its registration with the competent authority³³. Registration grants the holder ownership of the mark with respect to the goods or

²⁵Ordinance No. 66–86 of 7 Muharram 1386 (corresponding to April 28, 1966), concerning Designs and Models, Official Journal of the People’s Democratic Republic of Algeria, issued Tuesday, 12 Muharram 1386 AH.

²⁶Bouamra Assia, Industrial Designs: What Protection?, Journal of the Voice of Law, University of Khemis Miliana, Vol. 5, No. 2, October 2018, p. 356.

²⁷Paragraph 2 of Article 1 of Ordinance No. 66–86 provides: “The protection granted under this Ordinance shall apply exclusively to original and novel designs and models.”

²⁸Bouamra Assia, op. cit., pp. 357–361.

²⁹Article 2 of Ordinance No. 66–86 provides: “Every holder of a design or model shall have the right to exploit their design or model, subject to the conditions laid down in this Ordinance.”

³⁰Boubetra Tarek. “The Trademark and the Requirements for Its Protection. Journal of Research in Contracts and Business Law, Faculty of Law, University of Frères Mentouri, Constantine, No. 06, June 2019, p. 59.

³¹Ordinance No. 03–06 of 19 Jumada al-Awwal 1424 corresponding to July 19, 2003, concerning Trademarks, Official Journal of the People’s Democratic Republic of Algeria, No. 44, July 23, 2003.

³²Article 06(2) of Ordinance No. 03–06 of July 19, 2003, concerning Trademarks.

³³Article 05(1) of Ordinance No. 03–06 of July 19, 2003, concerning Trademarks.

services designated. Trademark ownership entitles its holder to transfer it, to grant licenses for its use, and to prohibit others from using the mark without prior authorization on goods or services identical or similar to those for which the mark was registered³⁴. Moreover, the legislator has made the exercise of the rights conferred by registration contingent upon the genuine use of the mark, whether affixed to goods, their packaging, or in connection with the services identified by the mark³⁵.

Fourth: The Trade Name

The trade name is the name used by a merchant to distinguish their commercial establishment from other similar establishments, and it is considered one of the intangible elements of the commercial business³⁶. Thus, the trade name is the designation employed by the trader in the conduct of their business to differentiate their commercial enterprise from others.

Article 02/05 of Ordinance No. 03-06 defines the trade name as: *“the designation or title by which the establishment is identified.”*

Furthermore, Article 78 of the Algerian Commercial Code considers the trade name of the commercial establishment, along with its business title, among the movable assets necessary for the operation of the commercial business.

II. The Law Applicable to Intangible Movable Property:

In view of the importance of intangible movables, the Algerian legislator, when amending the Civil Code in 2005, addressed the issue of determining the law governing such movables by introducing a specific conflict-of-laws rule under Article 17 bis of Ordinance No. 05-10³⁷.

This article, in its first paragraph, sets out a general rule stipulating that intangible property is subject to the law of the State in which it is located at the time of the occurrence of the legal event giving rise to the acquisition, possession, ownership, or other real rights over it, or their loss. In paragraphs 2 through 6 of the same article, the Algerian legislator further specified the governing law applicable to various categories of intangible property, namely literary and artistic property, patents, industrial designs and models, trademarks, and trade names, by establishing their legal or notional situs, thereby facilitating the application of the conflict-of-laws rule governing intangible property³⁸.

Article 17 bis of the Civil Code provides as follows:

“2. The situs of literary and artistic property shall be the place of first publication of the work or its creation.

3. The situs of a patent shall be the country in which it has been granted.

³⁴Article 09 of Ordinance No. 03-06.

³⁵Article 11 OF Ordinance N. 03-06.

³⁶Essam Hanafi Mahmoud, Commercial Law (Commercial Transactions – The Merchant – The Commercial Establishment), Vol. 1, Dar Al-Maseera, Egypt, 2007–2008, pp. 297–298.

³⁷Ordinance No. 75-58 of September 26, 1975, containing the Civil Code, as amended and supplemented by Law No. 05-10 of June 20, 2005, and Law No. 07-05 of May 13, 2007.

³⁸Hassan Hashemi, op. cit., p. 156.

Intangible Assets and the Conflict of Applicable Law

4. The situs of an industrial design or model shall be the country in which it has been registered or filed.

5. The situs of a trademark shall be the establishment where it is exploited.

6. The situs of a trade name shall be the country where the principal place of business of the commercial establishment is located."

Accordingly, the Algerian legislator subjected intangible property to the law of its situs, just as in the case of tangible property. Thus, with respect to the law applicable to intangible movable property, the legislator did not deviate from the general rule that real rights over both immovable and movable property are governed by the law of the situs.

However, the legislator did not suffice with a general reference to the situs of intangible property, but rather sought to define its situs more precisely for various categories of intangible assets, given their intangible nature and the inherent difficulty in identifying their location. This was achieved by establishing a legal or notional situs under paragraphs 2 through 6 of Article 17 bis of the Civil Code.

On the basis of Article 17 bis of the Civil Code, we shall first address the law applicable to literary and artistic property (Section One), before turning to the determination of the law governing industrial and commercial property rights (Section Two).

Section One: Determining the Law Applicable to Literary and Artistic Property

Scientific and technological advances, rapid innovations, the emergence of electronic globalization, and the accompanying crimes and electronic piracy have rendered the author's right over their work—whatever its type—vulnerable to theft and piracy³⁹. The divergence among national legislations in defining the scope of copyright protection has further contributed to the emergence of the conflict-of-laws issue concerning the determination of the applicable law to these rights.

Jurists have expressed differing views on the law applicable to copyright, as the competent law varies depending on whether the author has published their work, published it simultaneously in more than one country, or has not published it at all⁴⁰.

First: The Case of Publication by the Author

This refers to the situation where a literary or artistic work is published, meaning that the work and its content are made perceptible to the public—whether through oral delivery or public performance, such as reciting a poem, a song, or playing a musical composition; through writing, printing, and publishing an article, book, or lectures; or through visual means, such as recording a video and broadcasting it via audiovisual media⁴¹, and so forth.

In this case, the law applicable to literary and artistic property rights is the law of the State in which the work was first published. This is known as the law of the country of origin. Under this law, intellectual and literary property is governed in terms of its substance, the scope of

³⁹Hassan Hashemi, op. cit., p. 157.

⁴⁰Radi Nabih Radi Alawneh, op. cit., p. 74.

⁴¹ Hassan Hashemi, op. cit., p. 158.

rights conferred, and their duration. This principle was adopted by the Berne Convention of September 19, 1886, concerning the protection of literary and artistic works⁴².

The recourse to the law of the country of origin is based on several considerations, the most important of which are:

- Publication reflects the value of literary or artistic production, for an idea bears fruit only through dissemination and circulation. It is publication that embodies the right and gives it a perceptible form recognizable to the public. The place of first publication is thus the place from which the idea emerges into tangible reality.
- The country of publication is the country in which the author perceives the possibility of realizing his literary and financial interests, as well as securing exclusivity and monopoly, owing to the receptiveness of the consuming public to his intellectual output. From the moment of publication, the work becomes a form of property within the society in which it is published, and may therefore benefit its author or others. It is thus logical that the law of the country of first publication should regulate all rights pertaining to the work, since the place chosen by the author to release his work for the first time is presumed to provide a sound legal environment ensuring full protection of his rights⁴³.

However, another view holds that the author's rights should be subject to the law of the state in which the work is registered or deposited, without giving importance to the place of publication. This is because registration and deposit are considered to have a constitutive effect in creating and protecting the author's rights, especially in legal systems that expressly require registration or deposit as a condition for legal protection⁴⁴.

This view, however, was not endorsed by the Berne Convention of 9 September 1886, which clearly established in Article 5(2) that the enjoyment and exercise of copyright shall not be subject to any formality such as registration or deposit, and that protection is independent of the existence of protection in the country of origin.

A third approach has argued for the application of the legal rules of the country where protection of the work is sought, on the basis that this state is typically the place where the infringement occurs—for example, where a counterfeit or pirated copy of the work is published. Adopting this approach also spares the courts the difficulty of determining the place of publication in light of modern communication technologies, particularly in cases where a work

⁴² This Convention has undergone several amendments at special conferences, the most notable of which are:

- Amendment at the Berlin Conference on November 13, 1908.
- Amendment at the Rome Conference on June 2, 1928.
- Amendment at the Brussels Conference on June 26, 1948.
- Amendment at the Stockholm Conference on July 14, 1967.
- Amendment at the Paris Conference on July 24, 1971.

Algeria acceded to the Berne Convention on September 13, 1997, by virtue of Presidential Decree No. 97-341 of September 13, 1997, concerning Algeria's accession to the Berne Convention, published in the Official Journal, No. 61.

⁴³ Radi Nabih Radi Alawneh, previous reference, pp. 74–75.

⁴⁴ Khaled Falas, *The Applicable Law to Intangible Property in the Field of Private International Law*, p. 3, on the following website, dated 26/07/2025 at 12:10: <https://www.marocdroit.com/القانون-الواجب-التطبيق-على-الاموال-المعنوية-في-مجال-القانون-a4552.html>

Intangible Assets and the Conflict of Applicable Law

is published simultaneously in multiple countries⁴⁵. Moreover, granting jurisdiction to the law of the state where protection is requested ensures stronger safeguards for authors, in contrast to the application of the law of the country of origin, which may impose additional restrictions on authors in addition to those already contained in the law of the country of protection. Applying the law of the country where protection is claimed therefore aligns more closely with the nature of literary and artistic property, as a work is inherently international in character and is not tied to a single state. Copyright does not arise in one country only to be later exercised in another; rather, it arises simultaneously in every country where it is exercised⁴⁶.

The aforementioned Berne Convention enshrined this principle by providing that copyright protection is to be governed by the law of the country where protection is sought, regardless of whether the law of the country of first publication grants such protection or not. As for the duration of protection, if the law of the country of first publication does not grant protection at all, the applicable term is that provided by the law of the country where protection is sought⁴⁷. If, however, the law of the country of first publication grants protection for a fixed term, the duration of protection in the country of protection may not exceed that term.

The Geneva Convention of 1952 on Copyright⁴⁸ also affirmed that copyright protection is to be granted in accordance with the law of the country where protection is sought, provided that the duration of such protection does not exceed that granted in the country of origin, where that country affords protection to the work⁴⁹.

The position of the Algerian legislator is clear: by defining literary and artistic property as intangible movable assets, subject as a general rule to the law of the place where they exist at the time of the occurrence of the event giving rise to acquisition of possession, ownership, or other real rights, or their loss (Article 17 bis/01). Moreover, the legislator has determined that the place of existence is the place of first publication or completion of the work (Article 17 bis/02). This means that Algerian law subjects literary and artistic property to the law of the state where the work was first published or completed, i.e., the law of the country of origin.

The applicable law on copyright thus determines which works enjoy legal protection and under what conditions. It also establishes the duration of protection, the method of calculating its commencement, and the fate of works once that duration expires. Furthermore, it defines the substance and components of copyright, organizing both the author's moral rights and his economic rights. It also governs the extent to which copyright may be transferred to third parties and the means by which such transfer may occur⁵⁰.

⁴⁵ Ahmed Abdel Karim Salama, *Private International Law (Nationality, Domicile, Treatment of Foreigners, Conflict of Laws, and International Civil Procedure)*, 1st ed., Dar Al-Nahda Al-Arabiya, Cairo, p. 933.

⁴⁶ This approach was adopted by the Turkish Private International Law and Procedure Act of 2007 in Article 23/01. Radi Nabih Radi Alawneh, *op.cit.*, p. 77.

⁴⁷ Bachour Fatiha, *Lectures in Private International Law – Conflict of Laws*, addressed to third-year undergraduate students – Private Law specialization, Faculty of Law and Political Science, Akli Mohand Oulhadj University, Bouira, 2016–2017, p. 51.

⁴⁸ This convention is known as the Universal Copyright Convention, concluded by UNESCO on 06/09/1952, and joined by Algeria on 05/06/1973 pursuant to Ordinance No. 73-26 of 05/06/1973 concerning Algeria's accession to the Universal Copyright Convention, Official Journal No. 53.

⁴⁹ Ali Ali Suleiman, *op.cit.*, p. 104.

⁵⁰ Radi Nabih Radi Alawneh, previous reference, pp. 85–86.

Second: In the Case of Publication in More than One Country

The publication of a work in more than one country raises the problem of determining the applicable law among the different national laws concerned. Both the Berne Convention and the 1952 Geneva Convention have adopted the rule of applying the law of the state whose legislation provides the shortest term of copyright protection.

This approach has been criticized on the grounds that it is illogical to determine the applicable law based on the substantive content of the competing laws governing the disputed relationship. Furthermore, such a solution may prove difficult for the judge, as it requires a comparative analysis of the laws of all the countries in which the work was published, in order to identify the one with the shortest term of protection⁵¹.

This has led some scholars to advocate for the application of the law of the state where the principal or original publication took place⁵². If it appears that the work was published simultaneously in more than one country, then the law of the country where the publication was of greater significance should apply, as measured by the number of copies sold and the reception of the work among readers⁵³. If this proves unfeasible, reference should be made to the intention of the author or rights holder, taking into account his domicile or nationality⁵⁴.

Third: In the Case of an Unpublished Work

If a work is not published and remains in manuscript form, the applicable law, according to certain scholars, is the personal law of the author. This view is based on the notion that the work is the product of the author's intellect and is therefore closely connected to him, which justifies the application of his personal law⁵⁵. This approach was adopted by the Berne Convention of 1886.

Another doctrinal position, however, argues for the application of the law of the place where the physical object embodying the author's ideas is located—namely, the place of the original copy. This is because the original copy, whether intended as a book, painting, statue, or otherwise, constitutes tangible property subject to the law of its actual situs⁵⁶. This opinion has been criticized on the grounds that intellectual rights arise from the very act of creative expression, regardless of whether the idea is fixed on a tangible medium⁵⁷.

With respect to the position of the Algerian legislator, Article 17 bis of the Civil Code does not require publication alone to determine the situs of such intangible movable property, but also recognizes the case of completion of the work. In other words, where the holder of

⁵¹Hassan Hashemi, *op.cit.*, p. 159.

⁵² Fuad Abdel Moneim Riyad and Samia Rashed, *Conflict of Laws, International Judicial Jurisdiction, and the Effects of Foreign Judgments*, Dar Al-Nahda Al-Arabiya for Printing, Publishing and Distribution, Cairo, 1994, p. 312.

⁵³ Habar Mohamed, *Private International Law*, Al-Ru'ya Publishing and Distribution, 2013, p. 182.

⁵⁴ Fuad Deeb, *op.cit.*, pp. 165–166.

⁵⁵ Hisham Ali Sadiq, *Conflict of Laws (A Comparative Study in the General Principles and the Positive Solutions Established in Egyptian Legislation)*, 3rd ed., Manshat al-Maaref, Alexandria, 1993, p. 814.

⁵⁶ Fuad Deeb, *op. cit.*, p. 165.

⁵⁷ Radi Nabih Radi Alawneh, *op. cit.*, p. 79.

Intangible Assets and the Conflict of Applicable Law

literary or artistic property has completed his work without publishing it, the place of completion is deemed to be the relevant situs⁵⁸.

Section Two: The Applicable Law on Industrial and Commercial Property Rights

This section will address, first, the law applicable to industrial property rights (subsection one), and then proceed to identify the law governing commercial property rights (subsection two).

Subsection One: The Applicable Law on Industrial Property Rights

In this branch, we will examine the law applicable to patents (First), and the law governing industrial designs and models (Second).

First: The Applicable Law on Patents

It is a well-established principle in private international law doctrine and in modern legislation⁵⁹ that patents are subject to the law of the state granting the patent. This is because the patent itself creates the inventor's right and constitutes the legal source of that right. It is the state authority that grants the patent, and it is well known that states intervene to protect and regulate patent rights by granting patents to inventors who register their inventions, thereby establishing their priority over the innovation⁶⁰.

The Algerian legislator has adopted this approach. Following the amendment of the Civil Code by Law No. 05-10, Article 17 bis explicitly defines the situs of a patent as the country granting the patent. Consequently, Algerian law subjects patents to the law of the state that issues them.

This law determines the conditions for granting a patent and its validity, the effects of filing a patent application, the rights of the inventor and the extent to which such rights may be transferred or assigned, as well as the causes for the lapse or invalidation of the patent, among other matters⁶¹.

Nevertheless, another doctrinal approach favors the application of the law of the state in which protection of the invention is sought, on the grounds that the rules governing patents are closely tied to the economic regulation and industrial security of the state. From this perspective, it is inconceivable that a judge would set aside national rules in favor of foreign ones⁶².

⁵⁸ Amara Amara, Lectures on the Course of Private International Law – Conflict of Laws –, addressed to third-year students (Private Law), Faculty of Law and Political Science, University of Mohamed Boudiaf, M'sila, 2022/2023, p. 100.

⁵⁹ In Kuwait, for instance, Law No. 05 of 1961 determined that the law governing patents is that of the place where the patent is registered, considering the place of the patent to be the country that granted it. It states: "Patents shall be governed by the law of their place, and the place of the patent is deemed to be the country that granted it." Hassan Al-Haddawi, Private International Law (Conflict of Laws, General Principles and Positive Solutions in Jordanian Law, A Comparative Study), 2nd ed., Dar Al-Thaqafa Publishing and Distribution, Amman, Jordan, 1997, pp. 139–140.

⁶⁰ Fuad Deeb, op.cit., p. 166.

⁶¹ Radi Nabih Radi Alawneh, op. cit., pp. 105–106.

⁶² Ibid., pp. 103–104.

From a practical standpoint, too, a patent issued by a public authority in one state has no international effect outside the territory of that state unless recognized by other states⁶³. Therefore, if an inventor wishes to protect his invention beyond the borders of the state that granted him a patent, he must obtain a separate patent in each state where he seeks such protection⁶⁴.

Second: The Law Applicable to Industrial Designs and Models

According to the prevailing doctrinal view, industrial designs and models are subject to the law of the country in which they were deposited or registered, on the basis that registration determines the environment within which the right is exercised⁶⁵. Indeed, through registration or deposit, the right over the innovative idea is materialized and spatially localized. Moreover, designs and models derive their entitlement to protection from their registration and deposit⁶⁶.

The Algerian legislator has adopted this approach, as Article 17 bis of the Civil Code provides that intangible property is subject to the law of the place where it is located at the time of the occurrence of the event giving rise to the acquisition of possession, ownership, or other real rights, or their loss. To facilitate the application of this rule, paragraph 4 of the same article specifies that the place of existence of an industrial design or model is the state in which it was registered or deposited⁶⁷.

Within the scope of this law falls the determination of the nature of an industrial design or model, the conditions of its validity, all requirements for legal protection, the duration of protection, the deposit system, the obligations of the depositor, the system of assignment or disposition of rights over the design or model, the real rights attached to it, and the extinction of such rights⁶⁸.

A part of legal scholarship, however, maintains that the law of the country where the design or model is exploited should apply, even if it has not been registered there, on the grounds of considerations relating to the security of industry and commerce and to the territorial nature of the legal systems governing industrial designs and models⁶⁹.

Subsection Two: The Law Applicable to Commercial Property Rights

In this section, we will address the law governing trademarks first, followed by the law applicable to trade names.

First: The Law Applicable to Trademarks

A group of scholars considers that the law of the state in which the establishment of exploitation exists has jurisdiction over trademarks, on the basis that the trademark is a means

⁶³ Fuad Deeb, op. cit., p. 166.

⁶⁴ Aarab Belkacem, Private International Law, Conflict of Laws, Part One, Dar Houma, 2003, p. 296.

⁶⁵ Ibid., p.297.

⁶⁶ Falas Khaled, op.cit., p. 5.

⁶⁷ This is the same approach adopted by the Kuwaiti legislator, who, through Article 50 of Law No. 5 of 1961 on the regulation of legal relations involving a foreign element, subjected industrial designs and models to the law of their place. The place of an industrial design or model was defined as the country in which it was filed or registered.

⁶⁸ Radi Nabih Radi Alawneh, op.cit., p. 112.

⁶⁹ Fuad Deeb, op.cit., p. 166.

Intangible Assets and the Conflict of Applicable Law

of protection against unfair competition. Accordingly, the right in a trademark is established through its use⁷⁰, since competition cannot be conceived without actual use.

In cases where the trademark is used in more than one country, some scholars argue that legal acts relating to the trademark should be subject to the law of the state where the first use occurred⁷¹. One advantage of this opinion is that it preserves the unity of the law applicable to the trademark in situations where an enterprise markets its products and employs its marks in multiple countries⁷².

Another doctrinal approach, however, grants legislative competence to the law of the state in which the trademark is registered, on the grounds that registration is the only means by which a trademark is recognized. A trademark is not protected until it is registered, since it is merely a technical instrument to distinguish the services, products, and goods produced by a given enterprise from those of others⁷³.

The Algerian legislator, through Article 17 bis, paragraph 5, has determined that the place of existence of the trademark is the establishment of exploitation. Accordingly, the entity that uses the mark on its products constitutes the locus of that trademark⁷⁴, and the law of that state applies to all matters relating to the acquisition and protection of the trademark.

Second: The Law Applicable to Trade Names

In the final paragraph of Article 17 bis of the Civil Code, the Algerian legislator determined the place of existence of the trade name as an intangible asset subject to its place of existence; namely, the state where the principal place of business of the commercial establishment is located. Consequently, legislative jurisdiction concerning the trade name devolves to the law of the state in which the principal place of business is situated. This law governs all matters relating to the acquisition of the trade name, the determination of the effects resulting from its acquisition, the duration of its use, and the means of its protection⁷⁵.

Conclusion:

In conclusion, it can be stated that determining the law applicable to intangible property is one of the complex issues in private international law, due to its immaterial nature, which raises the problem of identifying its place of existence at the time the cause giving rise to the acquisition of possession, ownership, or other real rights over it occurs, or at the time of their loss. This complexity has led to differing opinions among scholars regarding the location of intangible property and the assignment of the applicable law, resulting in several approaches concerning the law governing intellectual rights: some advocate applying the law of the country of origin, others the law of the country in which the rights are used, the law of the country of registration or deposit, or the law of the country where protection of these rights is sought.

The Algerian legislator, through Law No. 05-10, addressed the previously prevailing uncertainty and resolved the dispute regarding the place of intangible property. The law established a rule of attribution to determine the law applicable to international disputes

⁷⁰ Aarab Belkacem, op.cit., p. 297.

⁷¹ Hassan Hashemi, op. cit., p. 162.

⁷² Khaled Falas, op. cit., p. 6.

⁷³ Khaled Falas, Ibid., p. 6.

⁷⁴ Amara Amara, op. cit., p. 101.

⁷⁵ Kahloula Yamina, op. cit., p. 98.

concerning intangible rights and incorporated it into Article 17 bis. This article explicitly subjects intangible property to the law of its place of existence at the time of the cause giving rise to the acquisition of possession, ownership, or other real rights, or their loss.

The same article also defines the place of existence of intangible property despite its immaterial nature, in order to link the applicable law to a tangible element and facilitate the application of the attribution rule. Consequently, literary and artistic property is subject to the law of the state representing the place of first publication or creation of the work; patents are governed by the law of the state that granted them; industrial designs and models are subject to the law of the country in which they were registered or deposited; trademarks are governed by the law of the state of the establishment using them; and trade names are subject to the law of the state where the principal place of business is located. The Algerian legislator made a sound decision by adding Article 17 bis, providing national courts with a clear reference to determine the applicable law in disputes over intangible property, particularly in light of the growing cross-border transactions in the fields of intellectual and industrial property.

However, the legislator did not address cases in which a work is published simultaneously in more than one country and the question of which law should apply in such cases. Additionally, the legislator should have considered the law of the state in which protection of the work is sought, since this state usually represents the place where an infringement occurs, and applying the law of protection aligns more closely with the nature of literary and artistic property.

Similarly, the legislator must take into account the law of the state in which a person seeks protection for a patent, since, in practice, a patent issued by a public authority in one state has no international effect outside that state unless recognized by other states.