

# Legal Protection of Literary and Artistic Works in Accordance With the Jordanian Copyright Law

## "A Comparative Study"

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### Abstract

The Jordanian legislator ensured on a variety of means aimed at protecting copyright material and moral of assault in order to ensure the safety of protected works of distortion and all that would detriment them, and thus ensure the rights of the author on the works. As the Jordanian legislator between what the precautionary measures that aim to stop abuse and reduce the aggravation of the damages caused by that and prevent the risk of publishing the work Impersonator or stop trading and delete some of its parts, or some modifications in addition to booking the impersonator workbook and that at the request of the author or withdrawn in order to stop publishing the imitator and the prevention of circulation and to prevent the aggressor from the disposition of counterfeit copies of the work as part of the booking procedures prescribed by law.

As if the attack took place on the work protected under copyright law, it is not the author's methods, but civil and penal responsibility, which aims to deter the aggressor to copyright through civil sanctions in the form of compensation to the author who is the right holder. In addition to criminal penalties original or dependency as a result of the prescribed legal assault on the rights of the author of what injury caused by material and moral damage.

Key words : assault , Jordanian legislator , counterfeit , copyright

### 1- INTRODUCTION

#### LEGAL PROTECTION

#### FOR LITERARY AND ARTISTIC WORKS IN ACCORDANCE WITH THE JORDANIAN COPYRIGHT LAW

The literary and artistic works are the fruits of human thinking and the mirror of his personality. They are a manifestation of the personality itself, which expresses and exposes its powers and reveals its virtues or imperfections. Therefore, the author must have been recognized for his literary rights, , and to defend these rights against the aggressors because of the importance of these rights to the writer, where the pain of aggression and lack of protection, then be disappointed, quenched the literary production, and weaken the concern, and depart from the authorship and creativity, thus collapsing an important corner of the humanity progress, which is the foundation of our high lives , by which we rise above the other living things <sup>(1)</sup>.

Therefore, the legislator is keen to guarantee and protect the author's material and literary rights from assaulting them, in order to ensure the safety of the protected works from distortion and falsification, and all that would harm them, and thus guarantee the rights of the author on his works by various means aimed at protecting copyright. These means of preventive measures aim at stopping the assault on the work, limiting the aggravation of the damages resulting from this assault, preventing the publication of the counterfeit work or suspending its circulation, or making some amendments thereto, in addition to the seizure of the counterfeit work or withdrawing it at the request of the author to stop publishing the counterfeit work and preventing circulation as part of the detention procedures determined by law <sup>(2)</sup>.

If the copyrighted work is infringed, the author shall only follow the civil and criminal liability methods,

which are intended to deter the aggressor, by means of civil remedies in the form of compensation to the author of the right, in addition to the original penal sanctions or subordination prescribed by law as a result of the infringement of the copyright of the material and moral damage. Accordingly, our study of the civil and criminal means of copyright protection is as follows:

## CHAPTER ONE

### CIVIL MEANS FOR THE PROTECTION OF LITERARY AND ARTISTIC COPYRIGHT.

The legislator is keen to guarantee and protect the financial and literary copyright from infringement in order to ensure the safety of works protected from distortion and falsification, and all that would harm them and thus guarantee the copyright of works by various means aimed at protecting copyright, but they differ in their nature, means of implementation and their severity in deterring the aggressors of copyright<sup>(3)</sup>

These means, which we will study in this chapter, are the precautionary measures aimed at stopping the aggression, reducing the damage caused by it, preventing the publication of the counterfeit work or suspending it, or making some amendments thereto, in addition to the reservation of the counterfeit work at the request of the author within the detention procedures specified by the law<sup>(4)</sup>. If the copyrighted work is infringed, the author shall only follow the civil liability methods intended to deter the infringer of copyright by inflicting civil remedies in the form of compensation to the author of the right. Therefore, our study of the civil protection means of copyright in this chapter is as follows:

## THE FIRST TOPIC

### PROCEDURAL PROTECTION OF COPYRIGHT (CASE OF URGENCY AND DANGER)

The legislator has authorized the adoption of the necessary procedural measures to protect the literary or financial rights of the author from to protect them from offense until such time as the substantive proceedings have been adjudicated which may be prolonged<sup>(5)</sup>. The procedural protection includes two types of procedures: preventive and precautionary measures, where copyright safeguards are concerned with instituting proceedings to end the violation of their rights, forcing the aggressor to stop the assault on his right, and to stop his continuation in the future<sup>(6)</sup>. The preventive measures also includes procedures to stop the infringement of the work or stop circulation, or deleting some parts, or making some amendments to the work and the confiscation of illegal copies, and the destruction of counterfeit works and restrict the revenue resulting from these works.

Therefore, our study of the procedural protection of copyright requires that we examine the procedural and preventive protection of copyright in the first requirement, and the second requirement to study the precautionary protection of copyright, and in the third one the specialized court of these procedures, as follows:

## FIRST REQUIREMENT

### THE PROTECTIVE PROCEDURAL PROTECTION

Article 46 of the Copyright Act stipulates that the author shall take the necessary procedural measures to protect his literary and financial rights, namely, to stop the infringement of the work, to prohibit the publication of the counterfeit work, to suspend its circulation, to confiscate illegal imported copies, to destroy counterfeit works, or amend them. This is explained in the following sections:

## SECTION I

### STOP INFRINGEMENT OF THE WORK

The copyright law provides that the author has an exclusive right to his work, which enjoys legal protection, and that he has the right to use the work within the limits legally permitted by law, and therefore any unlawful use of a work protected by copyright law constitutes an infringement of copyright such as copying or displaying the work before the public without the permission of the author, and if it happens, the author or his heirs shall have the right to resort to the legal means necessary for the

preservation of their right, including the suspension of infringements on their work. The Jordanian Copyright Act initiative on this procedure the goal of maintaining the copyright of the assault in the Article 46 of the Jordanian copyright law<sup>(7)</sup>. The author must, according to the provisions of the Jordanian Copyright Law, apply to the Court of First Instance through a written request that includes a detailed and comprehensive description of the work to be protected and distinguished from others, such as a book in arts or literature, a play or film<sup>(8)</sup>, may be submitted before, during or after the suit, requesting the court to issue an urgent injunction to stop the infringement of his work. If the court determines that the author is a right holder and that his rights have been infringed or is imminent, the court must order the suspension of the infringement, or the maintenance of evidence related to the act of the aggressor.

The plaintiff must stop the infringement, and according to the provisions of the Jordanian copyright, the case shall be brought before the competent court within a period of (8) days from the date of the order of the judge to stop the infringement. If the case is not filed during this period, any effect of the judgment of the Court shall cease. If the author or his heirs have the right to demand that the infringement be stopped before the suit is filed, they shall have the right to request the suspension of infringement of their work during the course of the case. The plaintiff submits a request within the framework of the case and requests the court to issue the decision in an urgent manner to stop the infringement of the work, the subject for legal protection. There is no doubt that the cessation of infringement is one of the effective means of preserving the rights of the author to continue to violate it as a precaution, pending the end of the dispute before it, and then order to stop this infringement final and order the aggressor to refrain from any future or new assault on the right concerned.<sup>(9)</sup>

## SECTION II

### CONFISCATION OF COPIES OF THE ILLEGAL WORKS.

The confiscation of imported and counterfeit copies is a preventive measure to protect literary and artistic works from distortion and falsification. The Article 4 of the Jordanian Copyright Law provides that: "The Court may, at the request of the right holder or any of his heirs or successors, take any of the measures set forth below in respect of any assault that has received the rights set forth in Articles 8, 9 and 23 of this Law provided that the request contains a detailed and comprehensive description of the work, performance, sound recording or program that has been infringed: 2. Confiscating illegal copies of the work, as well as the materials and tools used in the reproduction

It is clear to us from the previous text that the court has the right to confiscate illegal copies of the work, as well as the materials and tools used in the reproduction, in order to protect the literary and artistic rights of the author and to protect intellectual and artistic thought and creativity from subversion, loss and misrepresentation. The Berne Convention also authorized the seizure of illegal imported works and recordings without the permission of the parties concerned in a State which they deemed to be contrary to the law.<sup>(10)</sup>

In Article 4, the Jordanian legislator used the term confiscation, and confiscation is the transfer of ownership to States without compensation<sup>(11)</sup>. It was therefore better for the legislator not to use the term "confiscation" to contradict its concept with what it intended in the text, the term "sale of copies of the published work and the amount of compensation for the benefit of the affected author" should be used instead of the term "confiscation". As for the confiscation of illegal copies entering the borders of the State, this procedure is a duty of the State to stop the entry of illegal works into its territory. Accordingly, the court or the holder of the right to the request shall take all necessary measures to confiscate the imported and illegal copies of the work<sup>(12)</sup>, and the materials and tools used in the reproduction, in order to prevent the circulation of the work among the public, and at the same time submit the confiscated and seized copies as evidence to the competent court. The plaintiff must submit the case within a period of (8) days. Otherwise, any effect of the judgment shall be canceled according to the provisions of Article (46 / F) of the Jordanian Copyright Law<sup>(13)</sup>.

## THE SECOND REQUIREMENT

### Conservative Procedural Protection

"The precautionary measures constitute an effective means of countering copyright infringement because of its speed and simplicity<sup>(14)</sup>." The legislator therefore provided the procedures for which the author has the right to resort, in order to stop publication of the work and prevent the aggressor from disposing of it by way of attachment and as well as a reservation on the revenue resulting from the exploiting it, and therefore we must in this requirement explain what the reservation and conditions and materials that may be seized, and works excluded from the custody, within the following sections:

### SECTION I

#### The Concept of Conservative Reservation of the Counterfeit Work

The reservation used by the author as a precautionary measure differs depending on the counterfeit work and its copies and the machinery used in it, which is regulated by the copyright law, which the creditor uses to get back his debt, organized by the Code of Civil Procedure and which is the recourse by the creditor to the forced application for execution, which is normally made by seizure and sale of the debtor's funds and the demand for debt requirement. As the creditor's recourse to the debtor's debt in the event that the debtor fails to fulfill its obligation is replaced by a sum of money and is determined by legal rules defining the procedures for its execution, namely, recourse by the creditor to the forced application for execution, which is usually made by seizure and sale of the debtor's funds and the demand for debt. While the reservation used by the author is intended to stop the publication of the work in question and put it under the hands of the judiciary by reserving it, in order to stop the assault on the protected work and prevent the aggressor from acting copies of the work that has been imitated or circulated among the public, as the result of such conduct and illegal circulation of material and moral damage to the author<sup>(15)</sup>. The reservation imposed by the author as a precautionary measure shall be aimed at several objectives, the most important of which is to stop the publication of the counterfeit work and to prevent its circulation among the public, with a view to stopping the infringement of copyright from the date of placing the attachment on the work and keeping the work from damage, the seized in possession of the aggressor may damage it because the proceedings may be prolonged and may transfer the work to others and destroy as a result of use, as well as prevent the aggressor from acting in the counterfeit work and submit it as a physical evidence condemning the aggressor and confirms the extent of his aggression on the copyright of literary.<sup>(16)</sup>

In addition to the execution of the counterfeit work and the tools used in its production in the case of the award of compensation to the damage suffered by the author, by implementing these materials and selling them and obtaining the amount of damage from their price<sup>(17)</sup>. This is stated in Article 47 (a) of the Jordanian Copyright Law, which gave the court the power to seize works in fulfillment of the compensation required by the author.<sup>(18)</sup>

### SECTION II

#### MATERIALS THAT MAY BE SEIZED AND CONFISCATED

The legislator of the copyright law may state that copies of the counterfeit work and the materials and tools used in illegal reproduction may be seized. The court may also rule on the confiscation of copies of the work or of the images taken from it and the materials used in its removal and the confiscation of proceeds resulting from the illegal exploitation. This is what we will look at as follows:

#### 1 – CONFISCATING COPIES OF THE COUNTERFEIT WORK

That means confiscation of the original work, sound recording or radio program, regardless of the means of expression, whether by means of writing, design, recording or other means created by the author and transferred to others illegally, or that the work was illegally transferred to him without the right to publish it<sup>(19)</sup>. Article 47 (c) of the Jordanian Copyright Law provides that (The Court may decide to confiscate the copies of the work or the images taken from it and the materials used for its production and sale, within the limits of the author's compensation for damage suffered, instead of damaging or altering such copies and images or altering their features.). The reservation is not limited to the original work, but

includes copies and pictures which mean all what others do to publish based on the original work or a copy thereof, such as books, magazines, newspapers, forms, statues, cinematography, music and drawings<sup>(20)</sup>. However, the author or his successor may not request the attachment of the work for which the author publishes one copy for personal use<sup>(21)</sup>.

As for the works of architecture, it may not be attached to private buildings, works, and what appears from carving, paintings, decorations, and geometric forms developed in an innovative way, because the reserving of these buildings may cause severe prejudice to the violator, contrary to the requirements of the public interest, in addition to the financial value of these paintings and designs that illegally used on the buildings, and cost the owners large sums of money, and it is considered a national wealth contribute to the urban progress and contrary to the public interest. The architectural author whose designs and drawings have been assaulted, can only claim compensation for this assault in order to preserve his rights<sup>(22)</sup>. Article (47) of the Jordanian Copyright Law: (In any case, the buildings, drawings, decorations, and geometric shapes shall not be subject to seizure, nor shall they be ruled against, altered or confiscated in order to preserve the rights of the architectural author who used his designs for construction and his drawings therein without prejudice to his rights to just compensation for that.).

## 2. MATERIALS AND TOOLS USED IN ILLEGAL COPYING .

In addition to the confiscation of the counterfeit work, there is also the confiscation of the materials used for the unlawful reproduction, whether by publishing, performing, phonogram, radio program, and as stipulated in Article 47 of the Copyright Jordanian law : (The Court may decide to confiscate the copies of the work or the images taken from it and the materials used for its production). Therefore, the work may be confiscated ... as well as the materials used for the reproduction of this work, performance, sound recording or radio program on condition that such material is valid only for the reproduction of the work, performance, sound recording or radio program. The applications on that are the seals or (clichés) used in printing the drawings, and other writing in newspapers, books which are valid only for the re-publication of the work shall not be used for other purposes.<sup>(23)</sup> Similarly for lithographic machines dedicated to print old books because they are devoted to re-publish only the work and is not suitable for other work. The reservation also includes templates prepared to cast statues and models that will be prepared by placing certain materials in the mold, and can repeat this process in the re-publication of the work<sup>(24)</sup>.

## 3. CONFISCATION OF PROCEEDS FROM ILLEGAL EXPLOITATION .

In this case, if it is not possible to confiscate works that are illegally published among the public, such as rhythm, performance or declamation, the court may order that the revenue resulting from the publication or the offer be seized and reserved. This is stated in Article 46/3 of the Jordanian Copyright Law: (The court has the power to confiscate proceeds from illegal use). The reason for reserving revenues resulting from music, acting, or declamation among the public is that it is not possible to place an attachment on these works because of their intangible nature and they are presented to the public and perish after presenting. Therefore, it is replaced by a reservation to the resulting income.<sup>(25)</sup> If music, acting, or declamation is not intended as a result of any financial gain or profit, it is not possible to request attachment, such as in music, acting, or casting in a family meeting, or in the meeting of association or private forum or school.

## THIRD REQUIREMENT

### THE COMPETENT COURT IN THE PREVIOUS PROCEEDINGS .

We have mentioned earlier that the author has the right to resort to the competent court so as to stop the infringement on the moral of his work, as well as the request for the confiscation of copies of illegal works, or request for the destruction of counterfeit works or confiscating it. The competent court is Court of First Instance which is handled by the judge of urgent matters, in accordance with the provisions of the Jordanian Author's Law<sup>(26)</sup>. For those who wish to apply for the procedural, provisional protection to the competent court to be the copyright owner or any of his heirs or any successor<sup>(27)</sup>.

A natural or juridical person may also have recourse to the competent court of dispute to take

precautionary measures to protect intellectual property rights <sup>(28)</sup>. So it is in the case of an actual infringement of copyright, or that infringement is imminent, it must be the author or any of his heirs to submit a written request to the Court Of First Instance in order to take the protection procedures provided for by the law, provided that the request contains a detailed and comprehensive description of the work, performance or phonogram, or of the program that has been attacked, provided that such request shall be accompanied by an adequate financial guarantee to prevent abuse and to ensure any damage to the defendant if the plaintiff is not right in his claim. However, this request is not subject to the general rules in the filing of the proceedings, in terms of registration of the case and the determination of a hearing, but at the request of the concerned parties, under the order issued by the competent court, and can be submitted prior to filing the lawsuit, to prove the author's right to infringement of his work, or during such proceedings or after filing the lawsuit, as well as it does not require the presence of litigants, so as to achieve the objective of the issuance of this order: the opponent's surprise with a precautionary seizure before smuggling his money <sup>(29)</sup>.

If turns out to the judge of urgent matters at the Court of First Instance, that the plaintiff is the owner of the right, and that his rights have been infringed upon, or that infringement is imminent, it must be that the order was issued to make a detailed description of the machines and tools that are used or have been used in committing the crime <sup>(30)</sup>, or to order a detailed description of the work or performance or voice or radio program registration <sup>(31)</sup> so as to prevent infringement from happening, or in order to preserve evidence related to the infringement. However, in cases where the delay is likely to cause harm to the rightful owner of the right, or there is a risk that can be proved by the loss of the evidence by the infringement, the Court may take any of the procedures provided for in the law and in a reservation, without the defendant being informed and in his absence. It is either an order to stop infringement or confiscation of illegal copies, any materials and tools used for reproduction, or confiscation of proceeds resulting from illegal exploitation, or other actions <sup>(32)</sup>.

However, in order to guarantee the rights of the affected parties to the proceedings taken by the Court, they must be notified immediately upon the implementation of any of the preceding proceedings. The defendant may request the court to hold a hearing for a reasonable period of time after notification of the action. The Court shall decide at this hearing whether the precautionary measure should be confirmed, amended or repealed <sup>(33)</sup>. However, in all cases, If the copyright holder submits a request before, during or after the action for procedural and reservation protection, he must submit his claim to the competent court (Court of First Instance) to prove his right to the occurrence of the attack on his work during a period of 8 days from the date of issuance of the court order to take the specific procedures in accordance to the Jordanian copyright law, otherwise the court must order the suspension of all precautionary measures taken before filing the suit at the request of the defendant <sup>(34)</sup>.

## THE SECOND TOPIC

### CIVIL PROTECTION OF COPYRIGHT

We have previously stated that the author, the right holder or any of his heirs shall have recourse to preventive and precautionary measures, in order to preserve his rights and prevent infringement or suspension of such infringement. If the copyright infringement occurred before taking preventive and precautionary measures to prevent the occurrence of this assault, the author or any right holder can only resort to the civil way, either to repair the case and return it to where it was, if possible, or to obtain fair compensation as estimated by the competent court, as well as temporary and conservative actions may stop infringing copyright, but they are not sufficient to erase the material and moral damage suffered. Therefore, the legislator gives him the right to resort to the civil way to demand compensation for all the damage he suffered <sup>(35)</sup>. Therefore, we must explain the concept of moral damage to the author and then determine the elements of civil liability, and the statement of compensation owed by the author or the right holder or his heirs as a result of the attack on the work, all within the following demands:

### FIRST REQUIREMENT

#### THE CONCEPT OF MORAL HARM TO THE AUTHOR

What is meant by moral harm is the harm to the person in his or her honor, reputation, passion, social status or financial consideration, and, is the sense of sadness or pain, and consequent compensation to the

author as a result of the infringement of the author's literary rights such as the right to the publication of his work, the re-publication thereof, the right to amend it, the right to share the work and the right to withdraw it from circulation.<sup>(36)</sup> The moral harm is divided into two groups, namely the harm to the social aspect of the person, such as assault on his honor, reputation or consideration, as well as the damage to the emotional side of him, such as the suffering caused by the death of a loved one<sup>(37)</sup>. As for the author's compensation, it is for the damage that affects the social aspect of the author's person as a result of the infringement of his or her moral rights<sup>(38)</sup>.

Since the infringement of literary copyright affects the author himself /herself and caused him/her to suffer psychological pain because of it, may lead him/her to refrain from writing in the future when the attack was serious in its social status and psychological impact, because the author does not provide authorship unless assured that his work will be safe from the tampering aggressors<sup>(39)</sup>. The legislator has granted the author the right to seek compensation for the moral damage caused to him, within the scope of the tort liability and sufficient satisfaction to the victim, and it does not remove the moral damage definitively, but it reduces the impact a lot<sup>(40)</sup>. Article 267 of the Jordanian Civil Code<sup>(41)</sup> stated that (1-The right to guarantee also deals with moral damage. Any person who infringes upon his freedom, presentation, honor, reputation, social status or financial consideration makes the infringer responsible for the guarantee. As for the Jordanian Copyright Law, it did not provide for the moral damage explicitly, but it states in Article (49) that (The author of the violation of any of the rights to which he is entitled to work under the provisions of this law shall have the right to obtain fair compensation for this, provided that the author's cultural status, the value of the literary, scientific or artistic work, the value of the original work in the market shall be taken into consideration). Therefore, "Any literary damage to any of the literary rights of the author shall therefore be compensated in accordance with the general rules of civil liability. The compensation for the literary damage to the author's copyright, honor, reputation, and cultural status shall be the result of the infringement of any of the author's moral rights, which is stipulated by the Jordanian legislator: The right to be assigned to his work, the right to decide the publication and republish of his work, the right to amend it, and the right to withdraw his work from circulation.

## THE SECOND REQUIREMENT

### DEFINING THE ELEMENTS OF CIVIL LIABILITY FOR COMPENSATION.

Jurisprudence and judiciary agree unanimously that the elements of civil liability, contractual or tortious, are of three pillars: error, harm and causal relationship between them. If these elements are fulfilled, the perpetrator of the error is held responsible and committed to compensate the injured person for the damage he sustained<sup>(42)</sup>. Therefore, we must define the elements of civil responsibility and apply them to assault on literary and artistic works<sup>(43)</sup>.

#### First: Harm

Article (256) of the Jordanian Civil Code states that: "Any harm to third parties is binding on its doer, even if not privileged to ensure damage." And damage is all harm to the person's right or legitimate interest<sup>(44)</sup>. It is required to do tort in the Jordanian Civil Law that the act be harmful, and in the area of contractual liability: the debtor's failure to perform his commitment arising out of the contract.<sup>(45)</sup>, as if the contractor does not comply with the author's implementation of all or some of its obligations or delays in its implementation, as in the contract of publication, if the publisher refrains from publishing the work or publishing without the permission of the author one of his works which he was entrusted with publishing, it constitutes an attack on the financial and literary rights of the author<sup>(46)</sup>. The Copyright Act defines what literary copyright is, which is part of the author's character, and that any attack on any of the literary rights of the author entails damage that requires compensation when proven. The availability of the element of harm in the infringement of the author's rights requires that the damage be investigated, and the damage shall be investigated if it really happens<sup>(47)</sup>.

Therefore, if a third party publishes a work without the permission of the author or makes an amendment or withdraws from circulation, it is considered the harm in these cases to be immediate, not imaginary or hypothetical, and the court can ascertain its existence and have its discretion<sup>(48)</sup>. But if there is no immediate harm, but the author feels the threat of aggression threatens his moral right, as if there were attempts by the publisher or others to distort his work or misrepresentation, is he entitled to resort to the

judiciary to stop this danger? <sup>(49)</sup>

We agree with the Egyptian and French jurisprudence that the authors may resort to dispute settlement in order to prevent infringement of their literary and artistic rights, if the questionable acts have become confirmed, and no longer between them and the work only to start implementation <sup>(50)</sup> , especially that the Article (46) of the Copyright Jordanian law shows that the court if found that copyright infringement has become imminent, it may take any of the actions set forth in paragraph ( a ) of Article (46) in a precautionary manner to prevent the act of infringement .

While another aspect of the jurisprudence sees that the author should follow the general rules that require him to prove the damage suffered as a result of the attack on his moral right , and the aggressor can not prove that what he has done from the attack did not cause the author of any literary damage, because this issue is the sole competence of the author in view of the paternity bond that binds him to his work , provided that the judge has discretion in verifying the damage to the author <sup>(51)</sup> .

Second : Causal relationship

The causal relationship between the act and the damage in the Jordanian Civil Code is a cornerstone of civil liability because it is obvious that the perpetrator is only being asked for damages which are considered to be the result of his act. This is stipulated in Article 256 of the Jordanian Civil Code <sup>(53)</sup> . Also, Article (266) of the Jordanian Civil Code also states that the liability is estimated to the extent that the affected person has suffered the damage and the loss of his gain provided that it is a natural result of the harmful act . Accordingly , civil liability is required to establish a direct causal relationship between the act and the harm in the Jordanian Civil Law, but this causal relationship is absent if there is a foreign cause, such as force majeure, fault of others, or the fault of the same victim and can't claim the liability and for compensation, . And the assessment of the causal relationship of the civil liability or not , is a matter of substance which leaves its discretion to the competent court. <sup>(54)</sup>

### THIRD REQUIREMENT

#### FORMS OF COMPENSATION FOR MORAL HARM TO THE AUTHOR

There is no doubt that when the elements of civil liability are available , act , harm and causal relationship, it is the author 's right to receive a fair compensation . The court shall consider the author's literary and cultural standing and the extent to which the author has benefited from the exploitation of the work. <sup>(55)</sup> . The indemnity caused to the author affected by the illegal exploitation of protected works is for material damage and moral damage . The material damage, in return, would have been paid by the aggressor to the author if he had obtained a prior written authorization of the process of copying . Moral damage is the damage to the author's reputation, cultural or artistic status <sup>(56)</sup> and this is what the Jordanian Civil Code in the article (267) states :( The right to guarantee also deals with moral damage. Any person who infringes on his freedom or his presentation, his honor, his reputation, his social status or financial consideration makes the aggressor responsible for the guarantee). Article 49 of the Jordanian Copyright Law stipulates that "the author shall be entitled to fair compensation, in which the court shall consider the cultural status of the author and the value of the literary, scientific and artistic work and the extent to which the aggressor takes advantage of the exploitation of the work". " There is no doubt that the primary objective of the compensation is to remedy the damage to the author. The reparation is different depending on the nature of the material affected, and if the damage can be finally removed by returning the thing to a place previously it is considered compensation in- kind . If in-kind compensation is not possible, the court may only resort to non-in-kind compensation whether money or otherwise<sup>(57)</sup>. Thus , the compensation arising from a breach of civil responsibility in the field of copyright is one of two things : in- kind implementation and implementation paid ( compensation ) <sup>(58)</sup> . This will be discussed in the following sections :

#### SECTION I

##### IN- KIND IMPLEMENTATION

In-kind implementation is the restoration of the situation to what it was before the assault , which is better



than the compensation paid because it leads to the elimination of damage to the author. The implementation of in-kind and in the field of copyright takes several forms : the court may order to destroy copies of the infringing work, or published illegally, or to order the destruction of the material used in its publication, as stipulated in Article (47) of the Jordanian Copyright Law<sup>(59)</sup>. However , it requires the destruction of materials used in the publication should not be valid for other work<sup>(60)</sup> .

Other forms of in-kind compensation is the re - course to what it was in any work in which copyright had been assaulted, any amendment to the work or the deletion of some of its parts<sup>(61)</sup> and as stipulated in Article 47 of the Copyright Jordanian law :( it may be sentenced to re - case in any work whose copyrights have been assaulted to what it was including any amendment or deletion of parts of it to that end ). As is the case whether the amendment focused on the image placed within a book or theme in some of the ads, the amendment would be through the deletion by hiding the image features with a certain material or by covering the image with a particular type that hides it and prevents it from being seen<sup>(62)</sup>.

The edit may also be placed on a movie by deleting some snapshots before posting the image<sup>(63)</sup> . other forms of implementation in kind, that if the assault represents the title of the work, the author resort to the judiciary to publish the work with its real title . Similarly, if the author's right to the author is infringed by the publisher placing his name on the work, the compensation shall be by publishing it again with his name<sup>(64)</sup> . Furthermore, if the producer is late in presenting the audiovisual work, or delaying the introduction of the computer program in order to miss the opportunity to present it or not to put it at the right moment, which harms the author, he may return to the judiciary and demand the implementation in kind<sup>(65)</sup> . Similarly, if the infringement of the copyright infringed upon the author's reputation and dignity among the citizens, the in-kind implementation would be through the publication of the ruling in a newspaper, magazine or more at the expense of the party responsible for that , in response to the author's consideration of his cultural and social status<sup>(66)</sup> , and as stipulated in Article 50 of the Jordanian Copyright Law (The court may, at the request of the convict, decide to publish the judgment it issues under this law in one or more local daily or weekly newspapers at the expense of the convicted person ). Implementation in-kind as a form of compensation , stipulated by the Jordanian legislator in the Jordanian Copyright Law , as previously stated in articles (46 , 47 , 48 , 49 , 50 ) in order to redress the damage suffered by the author from the assault on his work.

## SECTION II

### NON-IN-KIND COMPENSATION .

Non-in-kind compensation means the compensation to which the judge applies when it is not possible to repair the damage caused by the assault on the work by means of in-kind implementation<sup>(67)</sup> . Non-in-kind compensation may be non-monetary compensation and may be monetary one<sup>(68)</sup> . Non - monetary compensation means the court shall order to perform a particular order as compensation<sup>(69)</sup> , and as a means of erasing and removing the damage<sup>(70)</sup> . In some cases, it is in the interests of the author to seek such compensation if he finds that he can not receive the amount of compensation paid to him, such that the author may, instead of requesting the destruction of copies published without his permission, to request the court to order that all copies or some of them be given to him, according to the moral damage caused by the infringement of his moral rights, and to sell them within the limits of what is sufficient to compensate him for the damage caused to him<sup>(71)</sup>. This is stated in Article 47 ( c ) of the Jordanian Copyright Law ( The court may decide to confiscate the copies of the work or the image taken from it, and the materials used in its production and sale, to the extent that it satisfies the author's compensation for the damage he has suffered, instead of damaging or altering such copies or images or altering their features) . Also, if the author has the right to request the sale of the copies to his account, he has the right to take these copies insofar as he has suffered damages as compensation, especially since they include his invention.<sup>(72)</sup> .

Another form of non-monetary compensation that if the damage has harmed the reputation of the author among the people, he shall have the right to seek compensation, and shall be by publishing the decision of the court, whether by the in-kind implementation of the destruction or alteration of features or confiscation, in one or more local daily or weekly newspapers at the expense of the convicted person on the response account of the author and reputation.<sup>(73)</sup>. This is stated in Article (50) of the Jordanian Copyright Law .

Cash compensation is the most appropriate way of guaranteeing repair of the damage caused by the

wrongful act<sup>(74)</sup>. It is the basis and origin of responsibility for the malicious act because the function of money is to repair the damage caused by the harmful act, whatever the type of damage physical or moral<sup>(75)</sup>. The explanatory memorandum of the Jordanian Civil Code stated that monetary compensation is the original, which states: "If in-kind implementation is the origin of contractual liability, on the contrary, such enforcement does not require the restoration of the status quo, except the status of the exception within the scope of the contractual liability. Implementation by paying or by cash compensation (or money) is the general rule of tort liability and the original compensation shall be a sum of money<sup>(76)</sup>"

### SECTION III

#### ESTIMATION OF COMPENSATION

The Jordanian legislator has established general rules in the estimation of compensation and the criterion to be used in the estimation in articles 264<sup>(77)</sup>, (268)<sup>(78)</sup> of the Jordanian Civil Code. The process of estimating compensation in the area of copyright is considered a matter of fact in which the judge takes exclusive possession of it so that The Court estimates the compensation according to the circumstances and conditions that accompany the case and the significance of the damage to the author<sup>(79)</sup>. The circumstances and considerations that are taken into account when assessing compensation for the assaulted author is the cultural, scientific and technical, status of the author as this position gives the fame seeds, and thus affect the amount of compensation. This is taken by the Jordanian Copyright Law in Article (49) thereof. (The author of the violation of any of the rights to which he is entitled to work under the provisions of this law shall have the right to obtain fair compensation for this, provided that the author's cultural status). The court will take into account when assessing the compensation the literary, artistic and scientific value of the work so that the assault on computer programs isn't like the attack on technical drawings<sup>(80)</sup>. This is what was taken by the Jordanian copyright law in Article (49) thereof: (The author of the violation of any of the rights to which he is entitled to work under the provisions of this law shall have the right to obtain fair compensation for this, provided that the author's cultural status, the value of the literary, scientific or artistic work, the value of the original work in the market, exploitation of the work...must be taken into consideration)

The court takes into account the significance of the infringement on the authors' literary rights. The infringement on the right to publish the work is not, in terms of its significance, such as infringing on the right to modify the work that shows the work in a distorted manner. This is because the assault in the second case exposes the reputation of the author to harm and distortion, so the amount of compensation for damage is more than in the first case<sup>(81)</sup>. One of the important things to be taken into consideration in estimating the compensation is the number of copies that have been infringed, where compensation is estimated by comparing the number of copies sold and the net exploitation to which they were sold<sup>(82)</sup>. This is stipulated in the Jordanian Copyright Law in Article (49) thereof: (The author of the violation of any of the rights to which he is entitled to work under the provisions of this law shall have the right to obtain fair compensation for this, provided that the author's cultural status, the value of the literary, scientific or artistic work, the value of the original work in the market, exploitation of the work...must be taken into consideration). Therefore, the author's compensation must be equivalent to the damage caused to him, because the breach of this idea entails that the affected author obtains more than what he deserves and benefits from the infringement. The compensation may not exceed the damage suffered by the author<sup>(83)</sup>.

### CHAPTER II

#### LEGAL MEANS FOR THE PROTECTION OF LITERARY AND ARTISTIC COPYRIGHT.

The legislator is keen to provide legal protection of copyright in criminal terms, because criminal punishment has the power to deter and speed the proceedings. (Article 51 of the Jordanian Copyright Law) deals with the offenses of assaulting the work and the penalties prescribed for it. This article states that: "A term of not less than three months and not exceeding three years and a fine of not less than 1,000 dinars and not more than 6,000 dinars or one of the following penalties shall be punishable by imprisonment:

1. Any person who has initiated without a legal title one of the rights provided for in Articles 8, 9, 10 and 23 of this Law.

2- Any offer for sale or circulation or for rent classified as imitations or copies of it or broadcast to the public in any way or used to achieve any material interest or entered into the Kingdom or out of it with his knowledge or if there are sufficient reasons and evidence for the knowledge that it is counterfeit.

(B) In the case of the repetition of any of the offenses set out in paragraph (a) of this article, the perpetrator shall be sentenced to a maximum sentence of imprisonment and a maximum fine. In this case, the court shall order the closure of the institution where the crime was committed for a period of not more than one year, certain or final.

## THE FIRST TOPIC

### THE CRIMES STIPULATED IN THE JORDANIAN COPYRIGHT LAW .

The Jordanian legislator has criminalized acts that constitute an attack on literary copyright in Article 51 of the Jordanian Copyright Law which we will address within the following demands :

#### THE FIRST REQUIREMENT

##### SELLING OR RENTING THE WORK OR PLACING IT FOR TRADING WITHOUT A PERMIT

The Jordanian legislator explained in Article (51) of the Jordanian Copyright Law that it is :( shall be punished ..... 2- Anyone offers for sale or circulation or for rent classified as counterfeited or copies of it or broadcast to the public in any way.....). Accordingly , the Jordanian legislator criminalized the sale or rental of literary and artistic works or ask for trading without a written permission of the copyright owner or the owner of the adjacent right in any form of trading, even if the seller or renter does not know the truth of such works<sup>(84)</sup>.

#### THE SECOND REQUIREMENT

##### IMITATION AT HOME OR THE SALE OR EXPORT OF A WORK PUBLISHED ABROAD .

The legislator has punished any offer for sale, circulation or rent of a counterfeit copy or copies thereof to the public in any way, or use it to achieve any material interest, or enter it into the Kingdom or bring it out with his knowledge , or if there are sufficient grounds and evidence for the knowledge that it is counterfeit copy as stipulated in Article 51 of the Jordanian Copyright Law (( a ) shall be punished by imprisonment for a term not less than three months and not more than three years and a fine of not less than one thousand dinars and not more than six thousand dinars , or one of the two penalties : .. ..... 2. Any offer for sale or circulation or for rent classified as imitations or copies of it or broadcast to the public in any way or used to achieve any material interest or entered into the Kingdom or out of it with his knowledge or if there are sufficient reasons and evidence for the knowledge that it is counterfeit.) Accordingly, we note, through the previous text, that the scope of legal protection of literary and artistic works includes the works of Jordanian and foreign authors published and unpublished outside the Kingdom by any means of publication. The legal protection also includes the works of authors whose country is a member of the conventions relating to the protection of copyright, , Although they are not citizens of the Kingdom. The Jordanian legislator also takes the principle of reciprocity on the works of foreign authors published or not published outside the Kingdom in the event that the provisions of the international conventions relating to the protection of the author's rights<sup>(85)</sup> .

#### THIRD REQUIREMENT

##### THE CRIME OF IMITATION

French jurisprudence defines the crime of imitation as the transfer of a work that has not fallen into the public domain without the permission of its author .<sup>(86)</sup> Dr. Nawaf Kanaan , has defined the crime of imitation as " a crime that committed by those who attack the literary, scientific or artistic rights of the author.<sup>(87)</sup> . Dr. Suhail Fatlawi defined it as " Any infringement of any of the literary and financial rights of the author, such as the right of the publishing report, the right to use, the right to print and translate the work, sell it and display it to the public, and any act concerning the modification, alteration or deletion of the work.<sup>(88)</sup> The Jordanian legislator did not define the crime of imitation in the copyright law, but defined the criminal acts, and punished the perpetrator of the crime of imitation in Article 51 of the Jordanian Copyright Act . However, Article 425 of the French Penal Code defined the crime of

imitation as any publication of written works, musical compositions, drawing, painting, and all sculpture production, and the ownership of the authors as a crime of imitation and every imitation is considered a misdemeanor<sup>(89)</sup>. Violation of any literary or financial right, such as the right to publish, print, translate or sell the work, or to broadcast it to the public in any way or use it to achieve any material interest, is considered a crime of imitation. The offense of imitating works stipulated in the Jordanian copyright law is no different from the crimes provided for in the Penal Code in terms of its constituent elements, namely, the material and moral components.

## THE FIRST BRANCH

### THE MATERIAL ASPECT OF THE CRIME OF IMITATION

The material aspect of the crime of imitation is verified by the aggressor attacking any moral or financial right of the author, such as publishing the work without the author's permission, or being traded in any form without the prior written permission from the author or his consent, amendments or alterations to the work, or deletion thereof without the written permission from the author. It is also a crime of imitation that the aggressor directly transmits the work to the public, such as public recitation, theater, television, cinema or Internet, or any means of mass media by radio<sup>(90)</sup>. Until the preceding acts constitute an assault, the material element has included works covered by legal protection, if the work is not covered by the legal protection, the element of attack in the crime of counterfeiting is not available. Also, there is no difference in the legal protection of works between the published works of national authors, as well as the works of foreigners, which are published or broadcast simultaneously in one of the Member States of the World Trade Organization (WTO)<sup>(91)</sup>. The material element is not available in the event that the partner in the joint work publishes the work, because the partner author has the right to publish the joint work without the consent of the other partners because he is considered to be a contributor to the author, and can not be held accountable for the crime of imitation, but can be held accountable civil, by compensating the rest of the partners for the damage they suffered.<sup>(92)</sup> If the publisher or the owner of the printing press publishes the work without the consent of all the authors, or with the consent of one or more of them, it constitutes a crime of imitation and is criminally liable to the rest of the authors<sup>(93)</sup>.

## SECTION II

### THE MORAL ASPECT OF THE CRIME OF IMITATION

It is not sufficient to do the crime of counterfeiting the availability of the material element in the crime of imitation by the perpetrator of an act constituting the crime of the imitation of literary and artistic works, but there must be the criminal intent to commit counterfeiting crime.<sup>(94)</sup> Some jurists believe that criminal intent in the counterfeiting crime is the general criminal intent, while others believe that it has to be the availability of special criminal intent in the crime of counterfeiting<sup>(96)</sup>.

In our view, the purpose of the crime of imitating literary and artistic works is general criminal intent, which is based on two elements: knowledge and management. This is what the Jordanian legislator decided in Article 51 (2) of the Jordanian Copyright Law (... whether with his knowledge or has sufficient reasons for knowing that it is counterfeit).

Good faith is not presumed to be in the crime of imitation, but the perpetrator must prove that what he did was not for the purpose of imitation and that he had good faith in what he had done<sup>(97)</sup>. If the defendant was able to tear down the moral aspect and proved his goodwill, this does not mean that he is finally exempt from any obligation towards the author, but must be sentenced to compensation as a result of the damage caused by his lack of reserve and the material element caused by confusion in the minds of individuals.

## RECOMMENDATIONS

- 1- We propose that the legislator not destroy the copy of the infringing work that was copied unlawfully, as well as the material used in its publication at the request of the interested party, as the destruction of the work violates the rule known in the urgent judiciary in some urgent matters, and therefore we suggest that the competent court be given the right to decide to destroy the work if it becomes clear to it from the scrutiny and conduct of the case that the work was published illegally
- 2- The legislator did not specify the period of time during which the injured person must

**request a hearing to hear his statements, but the legislator explained that this period should be within a reasonable period of time. Therefore, we propose that the Jordanian legislator amend Article (46) paragraph (d) and determine the length of time for the statements of both parties to be heard clearly and accurately.**

**3. We propose that the legislator provide a text in which offenses which would render technology measures ineffective for any technical protection used by the author or the adjacent right holder, as well as a ban on the manufacture, sale or circulation of devices used to deactivate or circumvent technological measures for the protection of copyright shall be criminalized.**

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- (1) Ahmed Sweilem Al-Omari, Intellectual Production Rights, Dar Al-Kitab Al-Arabi, Cairo 1976, pp . 27-28
  - (2) Nawaf Kanaan, Copyright, Contemporary Models of Copyright and its Means of Protection, Dar Al-Thaqafa 2004 p 434 . Abdul Rashid Mamoun and Mohamed Sami Abdel-Sadiq - Copyright and Neighboring Rights in the Light of the New Law on the Protection of Intellectual Property Rights No. 82 of 2002, First Book - Copyright - Dar Al-Nahda Al Arabiya 2004 . 499
  - (3) See Nawaf Kanaan - Copyright - ibid. P. 434 . Abdul Rashid Mamoun and Mohamed Sami Abdel-Sadiq - Copyright and Neighboring Rights – p. 499
  - (4) See Nawaf Kanaan - Copyright - ibid. P. 434 . Abdul Rashid Mamoun and Mohamed Sami Abdel-Sadiq - Copyright and Neighboring Rights – p. 499
  - (5). See Nazih Mohammed Al-Sadiq Al-Mahdi, General Theory of Commitment, Part One, Sources of Commitment with the Implementation of the Theory of Commitment and Civil Liability in the Field of Intellectual Property 2008 P. 34 Dr. Khater Lutfi believes that the legislator took into account in the determination of these procedures the need to put a swift end to the infringement of copyright in order to avoid the damage that the perpetrator may continue to be assaulted until the court determines the origin of the dispute that may be protracted. - Dr. Khater Lotfi , Law of Copyright and Control of Works, First Edition of 1988, p. 120
  - (6) . See Nawaf Kanaan - Copyrights –ibid p.454 . Abdul Sindh Yamama Copyright In Accordance With The Convention On The Commercial Issues Relating To Intellectual Property Rights (Trips) And The Egyptian Legislation, the first edition 1998 .p 99
  - (7) Article 46 of the Jordanian Copyright Law and the corresponding Article 25 of the Implementing Regulations of the Saudi Arabia Copyright provide that : the court at the request of the owner of the right or any of his heirs or successors to take any of the actions described below with respect to any Violation of the rights contained in Articles 8, 9 and 23 of this Law, provided that the request includes a detailed and comprehensive description of the work, performance, sound recording or program that has been attacked.
  - (8) Khater Lutfi. Law on the Protection of Copyright and Control of Works', Ibid p.119
  - (9) Ahmed Sidqi Mahmoud, Temporary Protection of Intellectual Property Rights in Accordance with the Provisions of the Law. No. 82 of 2002 Dar Al-Nahda Al Arabiya, First Edition 2004 . P. 123 See: Kanaan Al-Ahmar, Selected Issues in Copyright, WIPO National Seminar on Copyright and Related Rights of Lawyers and Judges, organized by the World Intellectual Property Organization (WIPO) in cooperation with the Ministry of Culture, Damascus, 27 and 28 April 2005, p. 8
  - (10) Article (13/3) of the Berne Convention (registrations made in accordance with paragraphs (1) and (2) of this Article , which are imported, without permission from the parties concerned, in a country it considers a violation of the law of recordings, are subject to confiscation .
  - (11) Suhail Al-Fatlawi, Moral Rights in Iraqi Law, Comparative Study. Ministry of Culture and Arts, Baghdad: 1978 p. 302
  - (12) Article (47 / d) of the copyright protection of Jordan " In any case, the buildings, drawings, decorations, and geometric shapes shall not be subject to seizure, nor shall they be ruled against, altered or confiscated in order to preserve the rights of the architectural author who used his designs for construction and his drawings therein Without prejudice to his rights to just compensation for that "
  - (13) Article (47 / f) of the Jordanian Copyright Law, and corresponding to the text of Article 27 / D of the Executive Regulations of the Saudi Copyright Law, "The defendant's request to cancel the precautionary measures taken before filing the case in accordance with the provisions of paragraphs (c) and ) Of this Article if an action is not filed within eight days of the date of the Court order to take action.
  - (14) .Khater Lutfi, the laws of copyright and censorship, ibid p . 120
  - (15) See Nawaf Kanaan, Copyright ibid. P. 463. Suhail Al-Fatlawi, Moral Copyrights, p. 79 and beyond
  - (16) Suhail Fatlawi, Legal Means For Copyright Protection (Civil Part) ibid . previously referred to p . 2
  - (17) Suhail Al-Fatlawi, Research previously referred to p. 2

(18) Article 47 - Of the Jordanian Copyright Law (a. The Court may, at the request of the author or any of his heirs or successors, control the reproduction of the work or image taken illegally and the material used in its publication. , Provided that if the court finds that the copyright in the work expires after two years from the date of acquisition of the award, it may instead decide to fix the attachment in fulfillment of the author's damages).

(19) Nawaf Kanaan - The Right Of The Author - the previous reference p .468 . Suhail Al-Fatlawi - Legal Means To Protect Copyright –Civil asylum ibid p. 6

(20) Suhail Al-Fatlawi - Legal Means To Protect Copyright - civil asylum - ibid

(21) Nawaf Kanaan - Copyright - ibid. P. 468

(22) Nawaf Kanaan - Copyright - ibid. P. 471

Dr.. Osama Ahmed Shawki Meligi, Procedural Protection In The Field Of Copyright And Related Rights In The Light of Law No. 82 of 2002, publisher Dar Al Nahdeh Al Arabia 2008 , 83

Dr.. Abdul Wahab Arafa, The Mediator In The Protection Of Intellectual Property Rights, House University Publications - Alexandria 2004 .p. 299

(23) Ibid. Nawaf Kanaan - Copyright - ibid., P. 6

(24) . Suhail Al-Fatlawi - Civil Means for the Protection of Copyright - Civil Part - ibid

(25) Nawaf Kanaan - Copyrights –ibid p.469 . Suhail Al-Fatlawi - Legal Means for the Protection of Copyright - Civil Punishment - Research previously referred to p. 7

(26) Article (2) of the Jordanian Copyright Law: The following words, wherever stated in this Law, shall have the meanings assigned to them hereunder, unless the context indicates otherwise: court : The competent court of first instance

(27) Article (46) of the Jordanian Copyright Law and corresponding to the text of Article 28 / D of the Executive Regulations of the Saudi Copyright Law.

(28) Ahmed Sidqi Mahmoud, ibid.

(29) See Ahmed Meliji, Orders For Petitions And Orders Of Performance In Accordance With The Provisions Of The Law Of Pleadings Commenting On The Opinions Of Jurisprudence, Legal Formulas And Provisions Of Cassation, First Edition 2005-2006 , p. 97

(30) Mohamed Sidqi Mahmoud, Temporary Protection of Intellectual Property Rights, Osama Ahmed Shawki El Meligi, Procedural Protection in the Field of Copyright and Rights, Ibid., P. 89 . Dr. Khater El Lotfi, Law on Copyright and Control of Works, ibid p.119

(31) Article (46 / a) of the Copyright Law.

(32) Article 46 of the Jordanian Copyright Law "of the Court at the request of the owner of the right ... to take any of the actions described below 1. order to stop infringement 2. illegal copies and any materials and tools used in cloning. 3- Confiscation of proceeds from illegal exploitation.

(33) Article (46) of the Jordanian Copyright Law and corresponding to the text of Article 28 / D of the Executive Regulations of the Saudi Copyright Law. D- In cases where the delay is likely to cause damage to the rightful owner of the right which can not be compensated or in cases where there is a danger that can be proved by the loss of evidence related to the act of infringement, the court may take any of the procedures stipulated in paragraph a of this article in a reservation without the plaintiff and The affected parties shall be informed of the measures taken by the court immediately after the execution of the procedure. The defendant may request a hearing to be heard within a reasonable period of time after notification of the action. The court shall decide at this hearing whether the precautionary measure should be confirmed, amended or canceled..

(34).Article (46) of the Jordanian copyright law.

(35) See Suhail Al-Fatlawi - The Legal Means Of The Copyright Of The Civil Penalty - the research referred to above p.16

However, the parties to the dispute may agree to resort to arbitration in order to obtain every right to their rights. This is stated by the Egyptian legislator in article (182) of the Law for the Protection of Intellectual Property Rights of Egypt. "In the case of the parties to the dispute, And Commercial Law promulgated by Law No. 27 of 1994 unless otherwise agreed and there is no corresponding text for this provision in Jordanian legislation.

(36) Suhail Al-Fatlawi, Moral Copyright in Iraqi Law ,ibid p306

(37) - Ibid . In the same position

(38) ibid p . 207

(39) ibid p . 206

(40) ibid ., P 207

(41) Civil Law No. 43 of 1976, published on page 2 of the Official Gazette No. 2645 dated 1/8/1976, became a permanent law for the year 1996 published on page 829 of the Official Gazette No. 4106 of 16/3/1996

(42) See Abdul Rashid Mamoun. Moral Right Of The Author - The General Theory And Its Applications' Dar

- Al –Nahdeh Al Arabiah 1995 p. 447 see . Suhail Al-Fatlawi, Moral Copyrights, *ibid* p.305
- (43) Abdul Rashid Mamoun - Literary Right of the Author, *ibid*. P. 447
- (44) Abdul Rashid Maamoun - Mohamed Sami Abdel Sadiq - Copyright and Neighboring Rights - *ibid.*, P. 504
- Dr.. Suhail Al-Fatlawi - Moral Copyrights - *ibid*
- See Mohamed Kamel Morsi Pasha, Explanation of Civil Law, Obligations vol.2 Rev. Counselor Mohamed Ali Skaker, Moataz Kamel Morsi, Knowledge Establishment, Alexandria, 2005 p.114
- (45) Mahmoud Abdel Rahman Mohamed, The General Theory of Obligations, Part One, Sources of Obligation, Publisher Dar Al - Nahda Al Arabiya, 2006, p327
- (46) See Said Saad Abdel Salam - Legal Protection of Copyright and Related Rights - *ibid*
- (47) Sahil Al-Fatlawi - *ibid* p. 309
- See Dr. Said Saad Abdulsalam - Legal Protection of Copyright - *ibid*. P. 219
- (48) Sahil Al-Fatlawi - Moral Copyrights – *ibid* p.309
- (49) See Abdul Rashid Mamoun - The Literary Right Of The Author - *ibid*. P. 456 item 445
- (50) *Ibid* . In the same topic
- Dr.. Abdul Rashid Mamoun d. Mohamed Sami Abdel-Sadiq - Copyright and Neighboring Rights - *ibid.*, P. 507
- (51) See Dr. Abdul Rashid Mamoun .*ibid* p 456. Item 445
- Dr.. Abdul Rashid Mamoun d. Mohamed Sami Abdel-Sadiq - Copyright and Neighboring Rights - *ibid.*, P. 506
- (52) Anwar Sultan - Sources of Obligation in Jordanian Civil Law (Comparative Study in Islamic Jurisprudence), Amman, 1987, p. 333
- (53) Article 256 of the Jordanian Civil Code states that: "Every harm to others is required even if the perpetrator is not unique to ensure the damage."
- (54) Dr. Abdul Rashid Dr. Mamoun. Mohamed Sami Abdel-Sadiq - Copyrights and Neighboring Rights - *ibid*. P. 508
- Dr.. Shehata Ghareeb Shalqami, The Literary Right of the Author of Computer Programs, *ibid* p.144.
- (55) Dr. Abdul Rashid Dr. Mamoun. Mohamed Sami Abdel Sadiq - Copyrights and Neighboring Rights – *ibid*
- Dr.. Esmat Abdel Meguid Bakr, and Dr. Sabri Hamad Khater - Legal Protection of Intellectual Property - House of Wisdom Baghdad - First Edition 1989
- (56) Mohamed Hossam Mahmoud Lotfi, Introduction To The Study Of Law In The Light Of The Views Of Jurisprudence And Jurisprudence, The Theory Of Law, And The Theory Of Right sixth edition Cairo 2007 .
- (57) Suhail Al-Fatlawi - The moral rights of the author - *ibid*. P. 311
- Dr.. Nawaf Kanaan - Copyright - *ibid*. P. 475
- Dr.. Abdul Rashid Mamoun d. Mohamed Sami Abdel-Sadiq - Copyright and Neighboring Rights - *ibid.*, P. 509
- (58) Dr. Abdul Rashid Dr. Mamoun. Mohamed Sami Abdel-Sadiq - Copyrights and Neighboring Rights - reference paragraph 230 p. 509
- (59) Article 47 - Of the Jordanian Copyright Law,
- (60) Abdul-Razzaq Al-Sanhoury - Mediator In Explaining The Civil Law – vol. 8 p 429
- (61) Nawaf Kanaan - Copyright - *ibid.*, P457
- (62) *ibid* p . 457
- (63) *ibid* p . 457
- (64) Sahil Al-Fatlawi - Moral Copyrights - *ibid*. P. 312
- (65) Abdul Rashid Mamoun d. Mohamed Sami Abdel-Sadiq - Copyrights and Neighboring Rights – *ibid* paragraph 230 p. 509
- (66) Suhail Al-Fatlawi - Moral Copyrights - *ibid*. Nawaf Kanaan - Copyright - *ibid*. P. 477
- (67) Nawaf Knaa N - copyright - the previous reference p. 4 d. Abdul Rashid Mamoun and d. Mohamed Sami Abdel-Sadiq - Copyright and Neighboring Rights - op. Suhail Al-Fatlawi - Moral Copyrights - *ibid*. P. 92
- (68) *ibid* p . 312
- (69) Demonstration of Civil Law Jordanian memorandum c (1) , p . The Jordanian legislator, in article 269/2 of the Jordanian Civil Code, took the principle of compensation in return for a non-monetary consideration. The article states: "The guarantee is estimated by cash that the court may, at the request of the aggrieved, order the reinstatement of the case, To perform a specific order already connected to the harmful, as an implied
- (70) Suhail Al-Fatlawi - The moral rights of the author - *ibid*. P. 314
- (71) *Ibid* . In the same topic
- (72) *Ibid* . In the same topic
- (73) see . Jamal Harun – *ibid* . P. 330
- (74) Anwar Sultan - Sources of Commitment in Jordanian Civil Law - *ibid.*, P. 353
- (75) Mustafa Zarqa - The Harmful Act And Liability In It - Dar al-Fikr - Damascus in 1988 p. 428.

(76) Demonstration of Civil Law p . 300 Jordanian memorandum, as well as in the Jordanian Civil Code in Article (269/2): "The estimated cash liability ..."

(77) See Article 266 of the Jordanian Civil Code - estimated liability in all cases , as far as the right of the injured damage and death from earning a condition that is a natural result of harmful action.

(78) See Article 267-1 of the Jordanian Civil Code 1. deals with the right of moral damage as well as liability. Each is counted on others in his freedom or in his presentation or in his honor or in his reputation or in his social status or in the financial consideration makes the infringer responsible for the guarantee.

2 - He may provide the guarantee to the spouses and to the relatives of the family for the literary damage caused by the death of the injured.

(79) See Suhail Al-Fatlawi - The moral rights of the author - ibid. P. 317

(80) See ibid p . 318.

(81) See Suhail Al-Fatlawi, Moral Copyrights, ibid. P. 318.

(82) Said Saad Abdel Salam, Legal Protection of Copyright and Related Rights, ibid p.323

(83) Nawaf Kanaan, Copyright, ibid . P. 483

(84) See Said Saad Abdel Salam - Legal Protection of Copyright and Related Rights – ibid p229

(85) Article 56: "a. The provisions of this Law shall apply to the works of Jordanian and foreign authors published or unpublished, and expressed by any of the means set forth in paragraph (b) of Article (3) outside The kingdom.

b. B. Subject to the provisions of the International Convention on the Protection of Copyrights, and in case of non-applicability, the principle of reciprocity shall be observed. The provisions of this law shall apply to the works of foreign authors published or unpublished, expressed by any of the means stipulated in paragraph (b) of Article (3) The kingdom.

C. For the purpose of applying the provisions of this Article, the resident author shall be treated as habitual in one of the Member States of the conventions relating to the protection of copyrights to which Jordan has acceded, even though they are not citizens of the Kingdom, and shall apply to the holders of rights provided for in Article 23 of this Law.

(86) quoting Suhail Alvlawy- - ibid ., P 321

(87) Nawaf Kanaan - Copyright - ibid. P. 484

(88) Suhail Al-Fatlawi - The rights of moral author - ibid. P. 321

(89) 'quoting Suhail Alvlawy- Copyright Almanoah- ibid ., P 321

(90) See Abu Al-Yazid Ali Al-Matait - Rights on works - ibid. P. 486 . Abdul Rashid Maamoun - The Literary Right Of The Author - ibid. P. 495 . Nawaf Kanaan, Copyright, ibid P. 486

(91) Abdul Rashid Dr. Mamoun. Mohamed Sami Abdel Sadiq - Copyright and Neighboring Rights - ibid., P. 518

(92) See Abdul Rashid Mamoun - The Literary Right Of The Author - ibid. P. 498

Nawaf Kanaan Copyright, ibid. P. 492.

(93) Abdul Rashid Mamoun - the literary right of the author - ibid. P. 498

Nawaf Kanaan Copyright, ibid P. 492

(94) See Mahmoud Naguib Hosni, The General Theory of Criminal Intent, A Comparative Study of Moral Structures in Intentional Crimes, Dar Al-Nahda Al-Arabiya, Cairo Fourth Edition 2004, p.60 paragraph 23

Dr. Ahmed Fathi Sorour, the mediator in the Penal Code, General Section, 1981, paragraph 32, p. 526

(95) See D.hhath Mohammed Gharib Sholkamy, the literary right of the author of computer programs, a study in the Protection of Intellectual Property Rights Act No. 82 of 2002, Dar Al-Nahda Al-Arabiya, 'Cairo 2004 p . 152.

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