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Conflict of laws in the infringement of copyright in the digital environment

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Summary

The infringement of copyright in the digital environment is one of the attacks that require tort, considering that these rights are one of the rights resulting from the intellectual and intellectual rights reached by the author, as well as the fact that this attack is in the digital space; knowing that the latter does not belong to a particular state or governmental institution of a state, which entails conflict between the laws of States to govern the special international legal relationship, This entails looking to determine which of those conflicting laws is applicable**.**

Abstract

The infringement of copyright in the digital environment is one of the attacks that entails tort liability. Considering that these rights are among the rights resulting from the intellectual and intellectual rights reached by the author, in addition to the fact that this attack takes place in the digital space, bearing in mind that the latter does not belong to a specific country or a governmental institution affiliated with a country, which results in a conflict of the laws of countries to rule The special international legal relationship, which entails the search for determining which of those conflicting laws is applicable.

Introduction

The development of human life has created a type of right that belongs to private rights, but carries the financial and non-financial aspect of them, rights that respond to the product of mind and thinking, including in general intellectual property rights and copyright in the digital environment in particular.

Intellectual property has become one of the most important exports of the major countries in this century, an instrument of development and part of the economy of the major countries, and has become the most important cause of conflicts and international trade disputes that may lead to the tension and blockage of relations between countries; therefore, there is no way to imagine rights without protecting them from any aggression, and the protection of intellectual creativity, especially with the risks and challenges carried by technology, has become the concern of all countries.

Copyright in the digital environment (the Internet) has not been spared from being infringed upon because the World Wide Web has made these rights within reach, as under this network it has become a small village where geographical boundaries are lacking and where all the traditional barriers between its countries have collapsed.

However, this development has been reflected in various aspects of life and has sometimes led to deviation in the use of the network, infringement on the rights of others, and from the infringement of copyright in this digital environment. Since the harmful act of the Internet is often international in view of the entry of the foreign element into the legal relationship, whether in its personality, subject matter or place, it is necessary to determine the applicable law in the event that copyright is infringed upon through the Internet.

Importance of Research:

Given the importance of copyright in the digital environment and its findings of thought and creativity, whether these rights are computer programs, digital works or topographic circuits that require protection as the rights of their

owner, but the infringement of it through the World Wide Web leads to conflict of laws that want to apply to the international relationship involving a foreign element.

Search Problem:

The main problem is the topic of research on determining the applicable law in the event of an infringement of copyright, especially since we are faced with several laws that want to apply because the attack is carried out through the use of the World Wide Web (Internet).

Is the applicable law the law of the State to which the author belongs by nationality? Or the law of the State from which the harmful act was issued? Or the law of the State in which the damage was achieved? Does the Electronic Substantive Law have a role in determining this law? What is the position of international conventions on intellectual property in determining the applicable law?

Research Methodology:

In our research, we will adopt this analytical approach to legal texts, including the Iraqi Copyright Law No. 3 of 1971 and the Iraqi Civil Code No. 40 of 1951 as amended, as well as the texts contained in international conventions and the position of jurisprudence on this.

Research Plan:

To achieve the objectives of this research, we decided to divide it into two sections, as shown as follows:

First Demand: Copyright in the Digital Environment and Images of Infringement on it.First Requirement: Copyright in the Digital Environment.Second Requirement: Images of Infringement of Copyright in the Digital Environment.Third Requirement: The Extent of Distance or Link between Infringement of Copyright in the Digital Environment and Private International Law.

The second section: Legislative competence in the infringement of copyright in the digital environment.The first requirement: the law applicable according to

the traditional principles of conflict of laws.The second requirement: the trend towards the application of electronic substantive law.The third requirement: the position of international conventions on the infringement of copyright in the digital environment.

First SectionCopyright in the Digital Environment and Images of Abuse

The development of the scientific renaissance movement in recent circumstances led to the emergence of literary and artistic works that were not characteristic of this genre in ancient times, and contributed to the spread of these works and writings by the use of modern technical means in their dissemination that were not previously used in this field, such as the use of computers, information network, fax, satellites and other means of transmitting space information[1].

The commercial use of these means has resulted in rights called literary and artistic intellectual property rights, which prevent others from exploiting those rights except with the permission of the person who produced them and not to attack them without authorization in the global digital information space[2].

Therefore, in this section, we will clarify the rights of the author in the digital environment in the first requirement, while in the second requirement it is the most important form of infringement of copyright in the digital environment, and finally we will clarify the extent to which these rights are related to private international law, as follows:

The first requirementCopyright in the digital environment

Digital copyright is defined as those rights arising from a person's intellectual creations and innovations in the digital space, and includes the

(1) Dr. Amara Masouda, The Impact of Digital on Intellectual Property, New University House, Alexandria 2017, p. 47.

(2) Dr. Mohamed El-Said Rushdi, Protection of Intellectual Property Rights on the International Information Network (Internet), Publishing Contract and the Nature of the Relationship between Author and Publisher (Authentic Analytical Study), Dar Al-Fikr University, Alexandria 2015, p. 7.

literary right and the financial right of the author, the moral right includes two aspects, one of which is focused on respect for and protection of the personality of the [author] himself, and the 1second is focused on the protection of the work, i.e. the fruit of the author's creativity, and that literary rights do not expire over time, while the financial right consists of monopoly and exclusive monopoly to exploit his work within a period of time specified by law.2

Copyright gives protection to the expression of the idea and not the idea itself, unlike a patent that protected the invention or idea itself from the fulfilment of certain conditions for the work to be considered a work, innovation is the objective condition, while the formal condition is that the work is prepared for publication, and it should be noted that the practical application of the idea is not protected by copyright and that its use is not an infringement of copyright, for example the author of a book on cooking cannot prevent the use of His recipes mentioned in the book by contestants to cook food, but he can prevent others from copying his book or workbook[3].

One of the copyrights in the digital environment protected by positive laws are digital works, which are computer programs, databases and the topography of integrated circuits, each of which we will indicate as follows:

Section IComputer Software

The computer in the language is derived from the verb (calculate, calculate, calculate), meaning counting and counting, and the term computer is the closest and most common translation of the English word (*Computer*), as the translation of this word into Arabic has multiplied, so it is called the computer, the electronic mind and the computer[4].

(1) Mohamed Amin Al-Roumi, Copyright and Related Rights, Dar Al-Fikr Al-Jami'a, Alexandria 2009, p. 36.
(2) Dr. Amara Masouda, op. cit., p. 50.
(3) Muhammad Amin al-Rumi, op. cit., pp. 13 ff.
(4) Dr. Mohamed Ahmed Fikrin, The Basics of Computer, Dar Al-Ratib Al-Jami'a, Beirut 1993, p. 8.

A computer is a device or system for carrying out a set of operations defined in a previously prepared sequence, and this process includes logical calculations or data transfers, storage and retrieval after performing appropriate processors.[1]

The Arab Convention against Cyber Technology Crimes is defined as: "A set of instructions and orders that are enforceable using information technology and are designed to accomplish a task[2]." Thus, we find that the definition of a computer program is nothing more than a set of commands or instructions that are processed electronically with the aim of accomplishing a certain work inside the computer.

Therefore, computer programs are one of the most important and broadest digital works and have received great attention in terms of granting legal protection to them, because they represent the moral entity of the computer, because the computer alone as a sophisticated automated device can not perform the desired purpose, and there must be programs prepared by man to manage it, which represents a set of sequential instructions written in a certain programming language for the purpose of executing a certain command and without them the physical components of the computer are useless and no longer has any Value, therefore, computer programs are a literary innovative work protected by the law of the right of the patron, whether these rights are material or intangible, which requires the provision of the conditions of the work such as innovation and originality in order to give them legal protection[3].

(1) Dr. Mohamed Saber Al-Demiri, The Role of Computer in Facilitating Litigation Procedures, Knowledge Facility, Alexandria 2014, p. 12.

(2) Iraq ratified the Arab Convention for the Suppression of Information Technology Crimes under Law No. 31 of 2013 and published in the Iraqi Chronicle No. 4292 on 30/9/2013.

(3) Alaa Abu al-Hassan Ismail al-Alaq, Basic Principles of Intellectual Property, Dar al-Maamoun Translation and Publishing, Baghdad 2014, p. 27.

In the 1976 Copyright Act as amended in 1980, the U.S. legislator defined computer programs as: "A set of sequential operations performed for the purpose of direct and indirect use of a computer in order to reach certain [1]results."

The French legislator also defined the 1981 ministerial decree as: "A set of steps and procedures to be employed in accordance with the purpose for which the system of this programme was developed[2]".

Finally, it should be noted that the Iraqi legislator, specifically in the Copyright Protection Law No. 3 of 1971, did not provide any definition of computer programs and merely mentioned them as a type of protected work, to name but a few in article 2/2، [3]as you know the Iraqi Electronic Signature and Electronic Transactions Law No. 78 of 2012 defines the definition of computer programs.

Section IIDatabases

As a result of the development of computer work and the expansion of the scope of use, there was a need to find more sophisticated means of processing, preserving and retrieving information, so databases (*Data Bases*) arose.

The design of the database is not without effort by the designer of the base as long as the design is characterized by innovation and creativity, and innovation is supposed to be present in the design of the database as long as the designer has made the effort in creating it.

The content of databases consists in the collection of data in an innovative way, reflecting the personal effort of the creator and in any form of collection where it can be stored and retrieved by computer [or other] cardboard medium[4], and protected by copyright law.

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(1) Mohamed Mohamed El-Sheta, The Idea of Criminal Protection of Computer Programs, New University Publishing House, Alexandria 2001, p. 38.

(2) Dr. Khaled Mustafa Fahmy, Legal Protection of Computer Programs under the Law on the Protection of Intellectual Property, New University House, Alexandria 2005, p. 13.

(3) See the text of Article 2/2 of the Iraqi Copyright Protection Law No. 3 of 1971.

(4) European Directive promulgated by Decree No. 11 of 1996 on the Legal Protection of Databases.

As directed by the World Intellectual Property Organization (*WIPO)* and the Council of Europe Guidelines of 1996 and under the second paragraph of Article 10 of the Trips Convention[1].

The definition of the concept of a database in the European Decree on the Protection of Databases defines it as a term denoting each set of independent works, data or any other material arranged in a systematic or methodological manner that can be accessed individually by electronic or other means. Its common designation may be referred to as a database (*Data Base*), especially after the adoption of [2]the European Directive for it. and the Iraqi legislator[3].

Section III Topography of Integrated Circuits

Topographies of Integrated Circuits are also called the topography of aggregated circuits or schematic designs, and represent an important pillar and foundation in the electronic industries[4].

Electronic circuits are products dedicated to the performance of a certain electronic function, and their great role has emerged in the field of electronics industry and thus abounds innovation and creativity in this field, and in order to confer legal protection on integrated circuits, the conditions of novelty and originality must be available, as the design must be innovative and new[5].

Integrated circuits are an electronic circuit designed with precision technology capable of making them in a very miniature form installed on micro-silicon strips with paths that are digital and very precise metal parts that act as wires, as they allow the transformation of commands and instructions entering

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(1) where it stated that: "The collected data or other materials, whether in machine-readable form or any other form of food, which constitute an intellectual creation as a result of the utilization and arrangement of their contents, shall be protected." Ahmed Abdullah Mustafa, Intellectual Property and Copyright in the Online Environment, No. 21, December 2009, p. 5. Available on the website: http://ww.journal.cybraians.org.

(2) See the text of Article 140 of the Egyptian Intellectual Property Protection Law in force No. 82 of 2012.

(3) See the text of Article 2/13 of the Iraqi Copyright Protection Law No. 3 of 1971.

(4) Dr. Akram Fadel Saeed and Dr. Taleb Muhammad Jawad Abbas, appointed to study the responsibility arising from computer applications and use, Dar al-Sanhouri, Beirut 2015, p. 64.

(5) Dr. Amara Masouda, op. cit., p. 34.

the computer into a programming language that the machine can easily understand and plays an important role in the operation, improvement and development of the work and features of the computer system[1].

Integrated circuits are protected on the basis that they are electronic products that perform an important technical function involving a great intellectual effort involving a creative step beyond the existing art related to the design or function of [these digital works2].

Second RequirementImages of Copyright Infringement in the Digital Environment

The Internet has become an open means of absorbing information and the starting point for freedom of expression, education and culture, and this wonderful machine contains a treasure trove of services and information, and if the ideas flowing through a network are a result in their entirety to satisfy the legitimate needs of information, but part of them can involve some deviations, and thus represent a serious development in the field of infringement on the rights of others, the user can hear and watch many of the materials broadcast through it and constitute an infringement on the rights of others, and so the Internet has become a theater To commit many violations and violations that affect the rights of others.

The Internet is not a lawless region as some imagine, but many of the legal rules governing electronic activity are combined, and we find their source in the Criminal and Civil Code, the Consumer Protection Law and special legislation on freedom of the press, publication and electronic commerce.[3]

The images of infringement of software via the Internet are represented by several images, of which we deal in the first section with theft and copying,

(1) Dr. Mohammed Al-Saeed Rushdi, op. cit., p. 21.

(2) Dr. Mohamed Moussa, Patents in the Field of Pharmaceuticals, New University Press, Alexandria 2006, p. 19.

(3) Dr. Ahmed Abu Al-Magd Mohamed Elsayed Afifi, Tort Liability for Private Practices and Misuse of the Internet in the Light of Electronic Private International Law, New University House, Alexandria 2016, p. 45.

and in the second section imitation and alteration of the origins of the program, as follows:

Section ITheft and Copying of the Program

First, this image is one of the most common and widespread forms of assault on software, so the aggressor here steals the program itself by seizing the program's storage pillar (floppy or CD-ROMs), and this type of assault is easy because stealing the brace is easy when compared to stealing files full of information1.

Theft means the theft of the original programme by removing its identity and changing its shape2.

This form of assault is dominated by the fact that the aggressor is a worker within the institution dealing with the program so that he has the opportunity to obtain the program easily, but this does not negate the possibility that the aggressor is from outside the owner of the program using it, and the goal of theft may not be to obtain the program itself, but the most important purpose is to obtain data about the institution using the program, which may be commercial and industrial secrets, and from judicial applications to the judiciary The facts of the case boil down to the fact that a programmer left his job in one company to take over another job in another company and then went to the company where he initially worked to visit it, and of course entered without objection from its owner, during which time he copied the information and kept it to himself, and the court considered him a thief3.

(1) Dr. Rasha Ali El-Din, The Legal System for the Protection of Software, New University House, Alexandria 2007, p. 36.
(2) Dr. Gamal Mahmoud al-Kurdi, Conflict of Laws on Liability for Internet Misuse, vol. 1, Arab Renaissance House, Cairo 2007, p. 87.
(3) Dr. Ahmed Abu Al-Majd Muhammad Al-Sayed Afifi, op. cit., pp. 117-118.

Second: Copying the program: Copying the program is not in all images an illegal act, we must differentiate between two types of copying: the first of them is the backup carried out by the designer of the program or copying by the user, where the latter makes several backups of the program and the information recorded in it to be used when a scan or deletion occurs with the original program loaded on the computer, which is expected to happen while dealing with the program[1].

Copying software may be direct copying, with other non-software producing companies copying and selling it without obtaining a licence from the producing company, and this method is common for assistive service and translation software, as well as for the operation of microcomputers2.

The particular danger of illicit copying is that the process of copying or converting copied material from its moral or digital form via the Internet to its traditional or physical form and selling it consequently in the physical world, for example, major works in the history of humanity such as the entire Library of Congress can be copied into a hard drive and then monitor what can be reproduced and distributed in violation of copyright. One of the applications of the foregoing is that an American company has put on the market a program capable of copying all other programs, whatever the technical means used to protect them, but it is ironic that the owners of these programs did not receive any financial wealth from it because the first version of their program was copied immediately after it was put into circulation and the entire profit went to the hackers3.

Section IIIMITATION

This image of intellectual piracy is one of the most important and prominent problems facing software producers because of the huge profits that are derived from it and its low risks, as well as being one of the most prominent areas of activities that enter the field of piracy, suffice it to prove that there are

(1) Dr. Rasha Ali Al-Din, op. cit., p. 37.
(2) Dr. Jamal Mahmoud al-Kurdi, op. cit., p. 87.
(3) Dr. Ahmed Abu al-Majd Muhammad Sayyid Afifi, op. cit., p. 119.

more than 100 companies around the world that copy the software and operating systems of *Apple*, which is one of the largest software companies that are exposed to piracy by copying their programs and operating systems[1].

The French judiciary has recognized the imitation that constitutes an attack on intellectual and literary property concerning those who placed the words and music of the songs of the French singer Jacques Brill on his website in contravention of the provisions of article 331/2 of the French Property Code, although the defence had maintained that the copying of the words and music was for personal use and that their digital storage was for the same purpose, since their placement on the Internet favoured from the judge's point of view the collective use of them. The judge refused to compare the defendant in this case to his website, claiming that he was aimed at storing the business on his computer for personal use on the grounds that the use of information stored by third parties was not due to employees other than those who had viewed the defendant's private web page[2].

The third requirement is the extent to which the infringement of copyright in the digital environment is excluded or linked to private international law

The views of jurists differed, some of whom denied that relations conducted through the network were subject to private international law, i.e. not a special international relationship, which is called traditional jurisprudence, and modern jurisprudence went on to enter this type of relationship within the framework of what governs private international law3.

But the question arises: which of the two parties should be legally weighted? This is what we will try to answer during our presentation of the point of view of traditional jurisprudence in the first section, and then to know the point of view of modern jurisprudence in the second section, as follows:

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(1) Imitation means (simulating a program by making copies of it so that when marketed it looks like the original), seen by Dr. Jamal Mahmoud al-Kurdi, op. cit., p. 86.
(2) Dr. Jamal Mahmoud al-Kurdi, op. cit., pp. 86-87.
(3Ahmed Abu al-Majd Muhammad al-Sayyid Afifi, op. cit., p. 31

Section ILack of subjection of copyright in the digital environment to private international law

It is said that the relationship is national or internal, if it is national in all its elements so that the foreign element does not relate to one of its elements, it is known that each relationship has three main elements, namely the parties, the place and the cause, if these elements are all national, the relationship remains national, and on the contrary, the entry of the foreign element into at least one of the elements of the relationship, makes it a relationship of a foreign or international nature because it goes beyond the borders of one State, and therefore raises the questions referred to.

Given the specificity of the Internet, it is clear that it is deliberately incompatible with the idea of being subject to the rules of private international law as a global network in its activity that is not dominated by a governmental or non-governmental institution and there is no central administration of that network[1].

It is therefore said that the international information network transcends the geographical and spatial boundaries of all States and appears to have faded away without the boundaries or at least incompatible with their existence, as the Internet has resulted in a society different from the usual physical society, that is, a virtual society divided into networks or electronic zones rather than into States or regions of a world that is not based on physical or geographical space but on computers, computers and networks[2].

Therefore, the rules and provisions of private international law of conflict of laws and jurisdiction, which is based on the idea of geographical boundaries and ordinary place, have become impossible for business in front of the virtual Internet community[3].

(1) Dr. Jamal Mahmoud Al-Kurdi, op. cit., pp. 20-21
(2) Dr. Ahmed Abu al-Majd Muhammad al-Sayyid Afifi, op. cit., p. 32.
(3) Ibid., p. 33.

It is clear from this that private international law is based on one basis, namely the idea of geographical or physical boundaries that fade in front of the Internet and that are based on a purely hypothetical basis and are incompatible with the rules and provisions of private international law.

Section II: The inevitability of copyright in the digital environment being subject to private international law

In fact, a closer look at electronic relations in general or via the Internet in particular shows other facts that completely differ from the previous view, as relations across networks really do not know political or geographical boundaries, they are, in the words of an aspect of Egyptian jurisprudence (cross-border), as we pointed out that the Internet is a global network that is not bound by place and does not know the borders between countries, and as long as the relationship as such is not specific, it raises the problem of conflict of laws and requires the determination of the law It is applicable to disputes arising therefrom and therefore entails the intervention of international law with its various organizations thereof[1].

Another important feature of the Internet is the universality of the fact that it connects States beyond all political and natural boundaries and allows their users to travel digitally and morally between those States, thus allowing for the possibility of conflicts between the nationals of those States, which calls for the use of conflict rules to determine the applicable law and the competent court within the perimeter of the digital environment[2].

Thus, the international character covers all other operations carried out through the international information network (Internet), including not only contracts concluded through it, but also many other processes through which they are broadcast, such as publicity, promotion of goods and services and exploitation of intellectual property rights; The tides or exoduses or entry of

(1) Dr. Jamal Mahmoud al-Kurdi, op. cit., pp. 22-23.

(2) Dr. Ahmed Abdel Karim Salama, Electronic Private International Law (Qualitative, Environmental), Arab Renaissance House, Cairo, without a year of printing, pp. 32 ff.

values and wealth among States, in short, relate to relations through the network of interests of international trade[1].

The international nature of online transactions is not limited to contracts but extends to non-contractual transactions such as publicity, promotion of goods and services, exploitation of intellectual property rights, etc., as these processes are not related to a single State, and therefore the modern trend tends to favor relations over the Internet and consider it a special international relationship2. It therefore raises problems with private international law, including the infringement of copyright in the digital environment (the Internet).

Section IIlegislative jurisdiction in the infringement of copyright in the digital environment

We have already dealt with some of the images and forms of infringement of copyright in the digital environment, and now came the role of presenting the practical aspect once the lawsuit was filed to determine liability and compensation for damages to infringe or infringe on copyright through the international information network.

There is no doubt that the International Information Network as a modern means of communication has advantages and positives that neither legislators nor judges at the international or domestic level imagined in establishing conflict rules the existence of the supernatural and wondrous Internet;[3]

There are many jurisprudential tendencies, as traditionalists argue that it is not necessary to create a law for the digital virtual world, based on the idea that if the global information infrastructure has abolished political or

(1) Dr. Jamal Mahmoud al-Kurdi, op. cit., p. 25.
(2) Dr. Abu Al-Majd Muhammad Sayyid Afifi, op. cit., p. 41
(3) Dr. Jamal Mahmoud al-Kurdi, op. cit., p. 95.

geographical boundaries, the persons dealing in the information field belong to territories in accordance with the material sense1;

Contrary to the previous view, modernists argue that the characteristics of the virtual world in abolishing the idea of geographical boundaries are incompatible with the conflict-of-laws approach, which is based on the assumption that the international community is divided into independent regional units;[2]

Therefore, we will divide this section into three demands, as follows:

The second requirement: the trend towards the application of electronic substantive law.The third requirement: the trend towards the application of electronic substantive law.

The first requirement is the law applicable according to traditional conflict-of-laws grounds.

Some theories have been put forward in determining the applicable law about disputes in intellectual property rights, including: the first theory, which is called the personal theory because of its reliance on a personal criterion, as its owners go to apply the personal law of the author to disputes of intellectual property rights because it is closer and more related to the person of the author, which was adopted by the Iraqi legislator in article 49 of the Copyright Protection Law No. 3 of 1971 by saying: The provisions of this Law shall apply to works of Iraqi and foreign authors that are published, represented or displayed for the first time in the Republic of Iraq, as well as to works of Iraqi and foreign authors that are published, represented or displayed for the first time in a foreign country.)).

The second theory is the regional theory because of its reliance on a regional criterion, where its owners go to apply the law of the country of the first publication of the intellectual right on the grounds that these rights fall within the funds, which necessitates the search for an attribution rule linking the

(1) Dr. Ahmed Abdel Karim Salama, op. cit., pp. 48 ff.
(2) Dr. Ahmed Abu al-Majd al-Sayyid Afifi, op. cit., p. 152.

intellectual right to the State of the signatory, which leads us to apply the law of the country of origin in which the work first appeared through publication, presentation, representation or any other means of circulation[1].

Although the previous theories prevailed in the governance of legal relations relating to intellectual rights, their applicability remains limited to the framework of the normal traditional environment, and if the author's property rights are combined in the digital environment, it is necessary to seek new and innovative solutions as alternative attribution rules that suit the specificity of digital trading2.

Thus, in most States, it has been established to subject attacks against fine works outside the contractual framework (tort) to the law of the place of occurrence of the act giving rise to the obligation as a result of the close link between the harmful act of a State and the interest of the security of the society and system of that State. The State requesting the protection of the right under its own law or the law of the judge's State, since congruence is not a requirement between them, but requires that the applicable law be the law of the place of occurrence of the injurious act, regardless of whether it is the law of the State in which protection is sought, the law of the sending State or the receiving State, although scientifically it does not derogate from one of these three laws[3].

However, determining the applicable law according to the advanced attribution officer does not seem so easy because we are in the context of a digital environment in which the act giving rise to the obligation is concentrated in the territory of the sending State while the injury occurs in the territory of one or several other States known as the receiving States, which necessitates distinguishing between the location of the occurrence of the harmful act and the

(1) Dr. Abdul Karim Mohsen Abu Dalu, Conflict of Laws in Intellectual Property (Comparative Study), Wael Printing and Publishing House, Jordan, vol. 1, 2004, p. 35.
(2) Dr. Abdel Fattah Mahmoud Kilani, Civil Liability Arising from Electronic Transactions over the Internet, New University Press, Alexandria 2011, pp. 136-137.
(3) . Ibrahim Qasim Al-Sayed Mohamed Taha, The Law Applicable to Intellectual Property Disputes in the Light of the Technical Development in the Means of Communication, is available on the Internet at the website: http://ibrahimtaha.blogspot.com .

location of the injury, and that the combination of such acts is that the damage caused by them can spread to several States at once as well as that their commission can be made. Be in more than one State at [the same time1].

Article 27 of the amended Iraqi Civil Code No. 40 of 1951 stipulates that: "1. Non-contractual obligations shall be governed by the law of the State in which the incident giving rise to the obligation occurred..."). This article corresponds to the text of article 21 of the Egyptian Civil Code.

Since the obligation arises from the availability of elements of tort (fault, damage, causation), the views of jurisprudence differed in determining the law applicable to intellectual property disputes in general and copyright in the digital environment in particular, part of the jurisprudence went so far as to apply the law of the State of origin (country of origin) on the grounds that intellectual rights fall within the realm of funds and necessitate the search for law consistent with this nature[2].

Another trend is the application of the law of the sending State on the basis that the wrongful act is completed as soon as the transmission is issued, regardless of its reception, which facilitates the process of proving fault since the sender can be identified, while a third view is that the solution lies in the application of the law of the receiving State on the basis that the wrongful act is not complete with the elements of liability unless the damage is achieved by receiving the digital broadcast[3].

According to the foregoing, it must be pointed out that the position of French jurisprudence and jurisprudence seems more appropriate to protect the disputed intellectual rights in the vicinity of the digital environment, because liability does not arise and its elements are not completed until the damage occurs, and although it is necessary that this damage is the result of an error, it itself is a fact that does not give rise to the obligation, as well as the aggrieved

(1) Dr. Jamal Mahmoud Al-Kurdi, op. cit., pp. 102 ff.
(2) Dr. Abdul Karim Mohsen Abu Dalu, op. cit., pp. 285 ff.
(3) Dr. Jamal Mahmoud al-Kurdi, op. cit., p. 104.

person who seeks to be responsible for the alleged damage and often the location of this other is the site of the damage, Attempting to concentrate the legal relationship spatially would also result in the fact that the place of gravity of the legal relationship was the place of gravity of the legal relationship because it was the place where the material elements of the legal relationship were completed and where the balance between the interests protected by the law was achieved[1].

The second requirement is the trend towards the application of electronic substantive law

In this requirement relating to the law applicable to the infringement of copyright in the digital environment, we examine the compatibility of electronic substantive law as the applicable law as well as the evaluation of electronic substantive law, in two sections, as follows:

Section I: Suitability of Electronic Substantive Law for Tort Liability in Infringement of Copyright in the Digital Environment.Section II: Evaluation of Electronic Substantive Law.

Section I: Appropriateness of Electronic Substantive Law for Tort Liability in Infringement of Copyright in the Digital Environment

The application of substantive material rules is directly applied to private international relations in order to be compatible with the nature and subjective specificity of relations' to resolve problems of conflict of [2] laws so as to allow for application and to gradually replace the rules of attribution or conflict with the application of these rules because of the latter's lack of international character and the failure to give them a direct solution to the dispute.

Electronic substantive law is defined as a subjective substantive legal entity for operations carried out over the digital Internet, which is the counterpart of the substantive law of international trade and consists of the set of accepted customs and practices that have arisen and settled in the virtual society

(1Ibid., p. 105.
(2) See the text of Article 29 of the Copyright Protection Law No. 3 of 1971.

of the Internet and developed by courts, users of the network and Governments of States in the field of communication and information technology[1].

Objective electronic law is a situation that is compatible with the virtual world of the Internet, which consists of numbers and data, and gives a direct solution to the transactions and transactions that arise through the international information network that may harm others because of its compatibility with the nature of electronic relations and their virtual privacy, which gradually leads to the replacement of this law with the controls of attribution known in private international law for these electronic relations as internal rules, and their nature differs from the nature of electronic relations with a foreign element and the latter's lack of international character2.

The most important sources of international law are:

1- Contractual practices: These practices are concluded between those wishing to use the network and the subscription service providers, as these practices for the virtual world are undoubtedly in establishing many rules and principles of electronic substantive law, including: the obligation not to offend others and respect the law, values and tradition, as these practices have established some rights and obligations for the service providers of the site, including these rights to correct and examine the content of documents, and the duties include: The obligation to respect the minimum confidentiality of the site and to provide the necessary technical means for the technology of materials uploaded to the network[3].

2. Techniques of conduct: The Code of Conduct is an important source of the rules of the international substantive law of electronic transactions because the diversity of types of customers with the network contradicts the existence of a code of conduct that guarantees a minimum of common principles

(1) Dr. Ahmed Abdel Karim Salama, op. cit., p. 48.
(2) Dr. Ahmed Abu al-Majd Muhammad al-Sayyid Afifi, op. cit., pp. 259-260.
(3) Dr. Jamal Mahmoud al-Kurdi, op. cit., pp. 137 ff.

and provisions that must be observed by all customers and beneficiaries of dealing in this virtual world[1].

One of the forms of behavioural techniques in the Netherlands was established in 1996 as an institution that brings together Internet service providers and whose task is to manage a hotline that allows each citizen to report on the site where there are indecent acts with young people and children or any form of homosexuality with children[2].

France has also drawn up a charter establishing a body or institution that receives complaints from Internet users and whose main task is to take all necessary measures to mediate in order to stop the broadcasting of illegal advertisements, provided that joining that institution is voluntary[3].

One of the most important characteristics of electronic substantive law is that it is based on taking into account the specificity of the international relationship as well as the objective or direct character of these legal rules, as well as they are rules that are automatic in the electronic digital space, as well as sectarian and qualitative objective rules that address a certain category of persons (Internet users).4

Section IIEvaluation of Electronic Substantive Law

We have seen from the previous presentation that the most important features attributed to the substantive rules are represented in the electronic substantive law, which is its clarity and ease, but some doubt the existence of this type of rule on Internet relations and its ability to resolve the dispute that arises in this area, and some even believe that the implementation of the substantive rules gives the judge the unspecified discretion as the method must

(1) Dr. Khaled Mamdouh Ibrahim, Electronic Arbitration in International Trade Contracts, Dar Al-Fikr University, Alexandria 2008, p. 208.
(2) Dr. Ahmed Abu al-Majd Muhammad al-Sayyid Afifi, op. cit., p. 208.
(3) Dr. Ahmed Abdel Karim Salama, op. cit., p. 52.
(4) Dr. Ahmed Abu al-Majd al-Sayyid Afifi, op. cit., pp. 262 ff.; Dr. Jamal Mahmoud al-Kurdi, op. cit., pp. 139 ff.

approach that the future of the execution of sentences is not guaranteed under those rules.

Some of the criticisms of the objective rules approach to electronic substantive law are:

First, (electronic objective rules do not constitute a complete legal system): Some have defined the legal system as a harmonious set of rules that come from progressively linked sources and whose vision of life and relationships is inspired by the social unity that must govern them[1].

Thus, electronic substantive rules do not constitute a legal system, since the legal system is based on jus cogens norms that may not be violated, while it is noted that all substantive or material rules are complementary rules that may be violated and their actions are left to the parties to an international or international special relationship.[2]

Second, the objective rules approach gives the judge an indefinite discretion: Some believe that the acts of substantive or material rules give the judge before him the possibility of providing solutions consistent with his personal inclinations, beliefs and convictions that may not be compatible with the validity of the law, as well as give the judge an indefinite and broad discretion in the dispute before him, unlike the legal rules issued by the legislator, so that the legislator guarantees security to resolve the course of the dispute and the functioning of the relations and ties of individuals among them, as well as to confront the public authorities themselves[3].

This critique responds to the fact that the judicial source of substantive rules ratifies the rules of attribution, where some States take more of a source of jurisdiction than legislation, and substantive rules of judicial origin have become

(1) Dr. Ahmed Abdel Karim Salama, op. cit., pp. 59-62.
(2) Dr. Ahmed Abu al-Majd al-Sayyid Afifi, op. cit., pp. 265-266.
(3) Dr. Jamal Mahmoud al-Kurdi, op. cit., p. 144.

frequently applied and, together with substantive rules of legislative and international origin, form the entity of the substantive or material rules approach[1].

Thirdly, the idea of electronic substantive law ignoring the diversity of territorial justice: substantive rules are seen as rules specific to the States that have promulgated them and reflect the point of view of the internal national legislator in each individual State, and there is no doubt that building the rules in this way would not help to promote the unification of the rules of private international law among the various States and the coordination of solutions[2].

This criticism is diminished by the fact that substantive or material rules are not only provided for in national laws, but may be determined by the texts of international treaties.[3]

Fourthly, (jeopardizing the future execution of sentences): Some point to the risk of endangering the future execution of judgements rendered on the basis of substantive or material rules to be enforced in a different State, especially if the State of enforcement of such judgements requires that the judge who rendered them be necessary, and even that control over the applicable law in this case would be difficult, if not impossible[4].

From the foregoing, it is clear that the criticisms of the electronic substantive law do not undermine the integrity and validity of this law, to the rule of the relationship via the Internet, so it is clear that the law is suitable for the practice of the virtual world.

Third RequirementPosition of international conventions on electronic substantive law

Copyright is one of the rights that have been determined and recognized in recent times, considering that literary works are immaterial works, they are

(1) Dr. Ahmed Abu al-Majd Muhammad al-Sayyid Afifi, op. cit., p. 267.
(2) Ibid.
(3) Dr. Khaled Mamdouh Ibrahim, Electronic Arbitration in International Trade Contracts, Dar Al-Fikr University, Alexandria 2000, pp. 200-201.
(4) Dr. Ahmed Abu al-Majd Muhammad al-Sayyid Afifi, op. cit., p. 268.

rights that are the product of the thought and mind of their owner and freedom of thought and literary and artistic innovation of freedoms and rights that various legal systems are keen to protect, including international conventions and charters for the protection of copyright, whether national or foreign, which are entrusted with the protection of innovative works in literature and arts, whatever the type of works or the way they are expressed, as long as they are legitimate. It did not violate public order1.

International conventions are the most important sources of international rules and States tend to conclude international conventions as an optimal means of solving the problems of private international law.

Therefore, in this requirement, we will address the study of the most important conventions related to digital intellectual property rights in general and copyright in the digital environment in particular, namely the Berne Convention for the Protection of Literary and Artistic Rights of 1971 and the TRIPS Convention of 1996.

First, (the law applicable in the light of the amended Berne Convention of 1886): The Berne Convention is the first convention concluded for the protection of literary and artistic property rights and its rules are characterized by clarity and comprehensiveness of most intellectual property rights relating to literary, artistic and scientific aspects, and what concerns us are the texts on attribution rules that define the law applicable to international disputes concerning digital works[2].

This Convention established a regional and personal standard in determining the applicable law, for the regional standard this Convention relied on the place of publication of the work and made the place of the first publication of the work a control for determining the country of origin for works first published in one of the States Parties to the Convention, while for works

(1Ibid., p. 280.

(2) Dr. Nawaf Kanaan, Copyright (Contemporary Models of Copyright and Means of Protection), Dar Al Thaqafa, Amman 2009, p. 50.

published simultaneously in several States, each of which is granted a certain period of protection, with the country of origin being the State granted shorter protection[1].

As for the personal criterion, the Convention relied on this criterion alongside the regional criterion in determining the applicable law in order to avoid the defects that it may face as a result of the adoption of the regional standard, as if the State of origin is not one of the member States, so during this criterion it seeks to expand the scope of the Convention to the largest number of States; therefore, the State to which the author belongs by nationality is considered to be the State of origin for unpublished works or for publications for the first time in a State outside the Union without Published simultaneously by any of the States of the Union[2].

The Berne Convention was amended in 1908 to make the applicable law the law of the country of application for protection, as stipulated in article 5/2 thereof: "(... The scope of protection as well as the means of appeal prescribed to the author for the protection of his rights shall be governed solely by the legislation of the State in which protection is sought, irrespective of the provisions of this Convention. However, this does not mean that the country of origin is completely excluded from its texts, as evidenced by the text of article 7/8 of the Convention as it is based on the law of the country of origin as an exception with respect to the duration of protection[3].

Despite the many amendments to the Convention, the unprecedented scientific progress in the field of communications and informatics and the resulting huge technological breakthroughs, the most prominent of which was

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(1) Dr. Jamal Mahmoud Al-Kurdi, Copyright in Private International Relations, New University Press, Alexandria 2003, pp. 93 ff.

(2) See the text of Article 5/4/C of the Berne Convention for the Protection of Literary and Artistic Works.

(3Article 7/8 of the Convention provides that: "In any event, the period shall be governed by the legislation of the State in which protection is sought, however, unless the legislation of that State decides otherwise, the period shall not exceed the period specified in the State of origin of the classified."

the Internet, and the accompanying emergence of new types of digital generators and the boom in the electronic publishing movement are all reasons why the amendments to the Berne Convention are deficient treatments that do not guarantee solutions to regulate all legal relations that may occur on intellectual rights in the digital environment[1].

It is noted that the rules contained in this Convention do not preclude the invocation of the application of better protection rules contained in the legislation of a member State, which means that the rules of the Convention are not the maximum protection, if there is the law of the State in which protection is sought and better rules of protection than the Convention, in which case the rules of the latter State apply[2].

Second, the law applicable in the light of the TRIPS Convention: The Intellectual Property Convention relating to Trade Aspects, known as the TRIPS Convention, was established within the framework of the GATT Convention, and its main distinguishing feature, as well as being comprehensive of most intellectual rights and complementary to the relevant international conventions, dealt with some provisions that had been overlooked by previous international conventions, such as raising the period of protection in the field of protection of integrated circuits to ten years3.

As for the fundamental point of research in this regard, concerning the determination of the law applicable to digital intellectual rights in accordance with that Convention, it governs the application of the law of the country of protection, whether expressly or through the principle of national treatment, since it has been referred to the substantive rules of the Berne Convention (articles 1 to 21) that introduce the law of the country of application for protection, as in the case of the Paris Convention on Industrial Property Rights and the Washington Convention on Integrated Circuits, which apply the law of

(1) Dr. Hassan Abdel Basset Jamaie, A Brief Study on the WIPO Treaties on Copyright and Related Rights, Cairo 2008, p. 5.
(2) Dr. Ahmed Abu al-Majd Muhammad al-Sayyid Afifi, op. cit., p. 287.
(3) See the text of Article 31 of the TRIPS Convention.

the country of request for protection. to this Convention and oblige Member States to give effect to it1.

It should be noted that the TRIPS Convention is not self-executing and therefore nationals of member States do not acquire direct rights from the provisions of the Convention once acceded to it, and therefore may not invoke its provisions and exclude the provisions of national laws, thus differing from the Paris Convention and the Berne Convention, which contain in their texts subjective provisions and whose provisions are part of the national law of nationals of a State once ratified and disseminated if domestic law so requires.

Therefore, accession alone is not sufficient to give effect to the protection and regulation established by its provisions on intellectual rights in States that have ratified them, but requires the latter to provide a level of protection that exceeds the minimum level of protection established in the TRIPS Convention, and therefore States seeking to accede to this Convention must make amendments to their national legislation in line with the level and degree of protection established in the TRIPS Convention on Intellectual Rights2.

Finally, in the context of the concern for copyright in the digital environment, the World Intellectual Property Organization (OMP) held a conference in December 1996 on a study complementary to the Berne Convention for the Protection of Software as a Literary Workbook in whatever form of expression as well as on information banks, but it was not approved and a proposal by the European Union regarding the signing of a treaty containing the principle of protecting the content of databases was rejected for the lack of consent of developing countries for fear of control by developed countries over the content of the databases. Information Programs[3].

(1) Dr. Abdul Karim Mohsen Abu Dalu, op. cit., pp. 159 ff.
(2) Dr. Samiha Qalyubi, Commercial Law, Arab Renaissance House, Cairo 1976, pp. 35-36.
(3) Dr. Ahmed Abu al-Majd al-Sayyid Afifi, op. cit., pp. 294-295.

Thus, and despite the fact that the laws of the protection of the author can guarantee creators a degree of protection for artistic works, but with modern technologies such as the Internet, it is in fact necessary to face the treatment of these garden systems new legal rules that are outside the framework of traditional principles of copyright protection, so we propose to support the proposal made by the European Union to sign a new treaty for the protection of intellectual property in general and the rights of the author in the digital environment in particular.

Conclusion

Through our study of the topic "Conflict of laws in the **infringement of copyright in the digital environment**", which is an attempt to highlight the most important legal aspects surrounding this topic, as the conclusion of the research is not a repetition of what the study dealt with, but rather the embodiment of the most important findings reached and the statement of some of the proposals that we saw recommended.

First results:

1- Copyright in the digital environment is all the innovations produced by thought in the field of computers such as digital works, databases and computer software.

2- The attack on digital works, databases and computer software as copyright in the digital environment by third parties entails tort if its elements (error, damage, causation) are realized, thus awarding compensation to the injured aggressor.

3- The traditional physical conflict rules are insufficient since the attack is in a virtual world that is intangible and non-geographic, so Article 49 of the Iraqi Copyright Protection Law No. 3 of 1971 is inappropriate for determining the applicable law regarding attacks on copyright in the virtual digital environment.

4- Insufficient general rules in determining the applicable law on tort (Article 27.1 of the Iraqi civilian) as it is incompatible with tort in the digital environment.

Recommendations:

1- Amend the Electronic Signature Law No. 78 of 2012 as it concerns matters related to the Internet and the topics included in this legislation, including

copyright in the digital environment, and determine the applicable law in the event of infringement of these rights.

2- We propose to the competent authorities to support the European Union and its proposal for a treaty for the protection of digital intellectual property, including databases and computer programs, as Iraq is an observer member of the World Trade Organization.

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