



Protection of intellectual Property rights in Algeria Medjdoub Abderrahmane¹

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Abstract:

This study aims to clarify the legal means to protect intellectual property rights, in the context of e-commerce, where technological development and the emergence of e-commerce led to the development of new forms of intellectual property. It has evolved from written and printed traditional works to digital works in an electronic form, available on the global web, such as e-books and computer programs, which facilitated the process of obtaining and violating them, through piracy or penetration.

The study results confirm the existence of what is known as the infringement of intellectual property rights in e-commerce. This prompted the Algerian legislator to protect her both criminally and civilly, as he gave the crimes contained therein a description of the misdemeanor of imitation, and then arranged harsh penalties and civil compensation for her.

Keywords: Intellectual property; counterfeit crime; Copyright Law.

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1. INTRODUCTION

After the emergence of the era of globalization and technological progress, and the trend towards digitization, a radical change occurred in the context of several fields, economy, justice, education... and

most of them became dependent on the electronic field, and among the sectors affected by these changes was traded, which evolved from the traditional form to the electronic form. With the advent of the World Wide Web, the promotion of trade has become enormous, and the trade exchange through the Internet has become more flexible than it used to be.

The technological development also touched the fields of information, which are no longer confined to the paper book but have multiplied to advanced types such as the digital book and sites selling electronic books or computer programs via the Internet. In the field of electronic commerce, as positive as this development was, both in terms of facilitating trade for the owner of intellectual property on the one hand, or in the consumer's access to it on the other hand. This led to an increase in the risks of crimes contained therein, and the emergence of many forms of imitation of literary and artistic works by hacking. And other information crimes.

This is what made most countries amend their laws and intensify the punishment for perpetrators of intellectual property crimes in the e-commerce environment, including Algeria, which has put legal protection on these rights, in order to protect intellectual property rights from attacks by any means.

The importance of the study: The importance of the study lies in the presence of several problems and ambiguities about intellectual property protection, so the study aimed to shed light on the legal nature of intellectual property in the context of electronic commerce, and the protection established for it by the Algerian legislator.

The problem of the study: It is represented in the following question is there legal protection for intellectual works contained in the legal trade environment in Algerian legislation?

Structure of the study: We divided the study into two sections to answer this problem and analyze the research particles. The first topic is the penal protection of intellectual property rights contained in the e-commerce environment, and the second is the civil protection of intellectual property rights contained in the e-commerce environment, following the analytical approach in the study.

2. Criminal protection of intellectual property in the context of electronic commerce in Algerian legislation:

The Algerian legislator organized criminal protection for crimes against intellectual property in the context of electronic commerce, as it decided repressive punitive measures against anyone who infringes on the copyright or neighboring rights, and organized them in

Ordinance 03-05 related to copyright and related rights. (ordinance 05/03, 2003) In addition, consider the crime committed as a misdemeanor of imitation, and from this point of view, we will address the crimes contained in intellectual property acts within the framework of electronic commerce, and the penalties prescribed for them in the following two demands:

2.1 Intellectual property works presented in the context of electronic commerce and the crimes contained therein:

Many works are presented on the Internet within the framework of electronic commerce and electronic marketing so attacking them is an attack on legally protected intellectual property. From this point of view, we will first mention some intellectual property works in the framework of electronic commerce and then the crimes mentioned in the following:

A. Intellectual property business models in the context of electronic commerce:

With the advent of the Internet and the emergence of electronic commerce, many people have tended to market their physical or intellectual products electronically, including authors, program owners, and other works. Among the most common works in the field of electronic commerce, we mention:

1. Digital Works:

Digital works mean that they are the mental creative work that belongs to information technology, which is dealt with in digital form, including. (ordinance 05/03, 2003)

Computer programs: a set of human-to-machine instructions that allow the execution of a task-specific, divided into drivers that perform the computing function and application programs to handle special problems for computer users such as applications to organize the work of a company. (Baknish, Henchor, 2015, p 362)

Databases: They are data that have been collected and arranged in digital form, by doing intellectual and physical efforts, including text, images, and sounds digitally preserved. (Baknish, Henchor, 2015, p 362)

2. Electronic publishing contract:

Electronic publishing is a modern mechanism for the exploitation of literary and artistic works. According to legal scholars, it is defined as: "The use of modern technologies in all processes of synthesis and numbering of works, and making them available or broadcast through electronic media, especially the Internet or any other emerging technology directly or indirectly to the public and after the authors'

permission Or the right holder". And it is defined as: "distributing information over a computer network or uploading information to one of the electronic media operated by the computer". (Ajja, 2015, p 248)

According to Article 84 of Ordinance 05-03 relating to copyright and related rights, the Algerian legislator defines that: **"The publishing contract is the contract under which the author assigns to the publisher the right to reproduce several copies of the work according to agreed terms. And in return for a reward for publishing and distributing them to the public on behalf of the publisher.**

The publishing contract includes the literary or artistic work in the form of written, audio, or audio-visual printing". (ordinance 05/03, 2003)

The electronic publishing contract is among the electronic commerce contracts as stipulated in the International Convention on the Model Law of Electronic Commerce of 1969. (Ajja, 2015, p 248)

B. Crimes against intellectual property acts within the framework of electronic commerce

The crimes contained in intellectual property acts within the framework of electronic commerce are described as an assault on the right, the literary work of the author, and among the works that are attacked in the context of electronic commerce, we find programs and literary works, and the crime is committed as follows: (Amar, 2015, p 80)

1. Unlawful disclosure of software:

Unlawful disclosure of software by disclosing it publicly without the permission of its owner is by jailbreaking by hacking the program and obtaining the secret code of the program, or by hacking the serial number of the version of the program.

2. Modification of the program without the author's permission:

And compromising its integrity Sometimes copyright infringement may be by modifying the program and compromising its integrity, whether By modifying the program procedures, deleting or adding to the program by another person without the permission of its owner.

3. Reproduction of the program without the author's permission:

It is considered an infringement on the author's rights if the program is reproduced without the permission of its owner, and it is in the form of copying more than what is agreed with the author. Or by quoting or distorting by deleting parts of the program, or by copying in the name of the real author or the name of another person, either

The perpetrator's name or a pseudonym. And the copying process is allowed, one copy in two cases: the first is to use the computer program for the purpose for which it was obtained, and according to the conditions that existed. And the second is in the case of copying to replace a legally owned copy of the programs, with the intention of repairing it or fearing its loss or damage. (ordinance 05/03, 2003)

2.2 The legal description of crimes committed against intellectual property acts in the context of e-commerce:

The Algerian legislator considers acts of copyright infringement a misdemeanor, hence the “misdemeanor of imitation” stipulated in Ordinance 05-03 related to copyright, the Algerian legislator. He criminalized these acts and decided penalties for everyone who commits them. This is what we will discuss below:

A. Legal adaptation of crimes contained in intellectual property acts in the e-commerce environment:

The Algerian legislator described the offenses against intellectual property rights as a misdemeanor of counterfeiting according to the text of Article 151 of Ordinance No. 05-03: (ordinance 05/03, 2003)

Unlawful disclosure of the work or compromising the integrity of the work or the performance of the artist or musician.

Reproduction of a work or performance in a style in the form of imitation copies.

Importing or exporting imitation copies of a work or performance.

Selling imitation copies of a work or performance.

Leasing or putting in circulation imitation copies of a work or performance.

According to the above-mentioned article, these acts affect intellectual property in the light of electronic commerce, we find they bear the description of a misdemeanor of imitation. From this point of view, we will define this misdemeanor and its conditions and elements as follows:

1. Defining the misdemeanor of imitation:

The Algerian legislator did not define the misdemeanor of imitation, but rather identified the criminal acts that were mentioned above, while jurisprudence gave several definitions of the crime, among which we mention: The jurist Abdul Razzaq Al-Sanhouri defined it as: "every direct or indirect violation of the copyright in works that must be protected". (Al-Sanhouri, 1986, p 381)

The misdemeanor of imitation is defined as: "Any direct or indirect violation of the copyright in the works to be protected,

whatever the method or form of the attack". (Ben Halima, 2017, p 122)

It is also defined as: "violating copyright and related rights by publishing, exploiting, displaying or selling a work without the author's permission". (Zawani, 2002, p 127)

2. Elements of the crime of imitation:

This misdemeanor has two parts, material and moral:

a. The material element of counterfeit crime:

The material element of the counterfeiting crime is any material activity carried out by the offender to illegally exploit the protected work, so it is considered a crime if the work protection deadlines have expired, such as if they belong to the public domain or become licensed for public use. 1 Such as reproducing a work or performance in the form of counterfeit copies, importing or exporting counterfeit copies of a work or performance, selling counterfeit copies of a work or performance, or renting or putting in circulation counterfeit copies of the work.

b. The moral element of counterfeit crime:

The moral element in the crime of imitation is the criminal intent, i.e. the availability of the elements of knowledge and will, so that the offender must be aware that works or programs are protected and his will is directed to imitation in its various forms, whether through copying or modification.

This element is what is considered a challenge for intellectual property protection in the e-commerce environment, as it is difficult to prove the elements of knowledge and will in the offender. Whereas Article 155 of the same order states: "**Anyone who intentionally refuses to pay the remuneration due to the author or to any owner of related rights, in violation of the rights recognized under the rights provided for in this order. Shall be deemed to have committed a misdemeanor of counterfeiting, and shall incur the same penalty required in Article 153 above**". (ordinance 05/03, 2003)

B. The criminal penalties prescribed for the crimes contained in the intellectual property work within the framework of electronic commerce:

The Algerian legislator imposed one penalty on all forms of assault subject to the misdemeanor of counterfeiting and organized them by Articles 153 to 160 of the Copyright Law. (ordinance 05/03, 2003) These penalties consist of original penalties and complementary penalties as follows:

1. Original penalties:

Article 151 stipulates the original penalties for the misdemeanor of counterfeiting, which is imprisonment from six months to three years and a fine of five hundred thousand dinars (500,000 dinars) to one million Algerian dinars (1,000,000 dinars), whether the publication takes place in Algeria or abroad. (ordinance 05/03, 2003)

2. Supplementary penalties:

Articles 157 and 158 of Ordinance 05-03 provide for complementary penalties for the misdemeanor of counterfeiting, namely closing the shop, confiscation, and publishing the conviction. (ordinance 05/03, 2003)

- **The Confiscation:** The competent judicial authority decides in a verdict in a misdemeanor of counterfeiting to confiscate sums equal to the sum of revenues or premiums for revenue resulting from the legitimate exploitation of a protected work or performance. Confiscation and destruction of all equipment specifically set up to carry out the illegal activity, and all counterfeit copies. (Benatia, 2007, p 61)

- **Closure of the establishment:** The competent judicial authority can close down the establishment exploited by the counterfeiter or his collaborators, for a temporary period do not exceed 06 months, or decide the final closure when necessary. (Okasha, 2001, p 48)

- **Publication of the conviction verdict:** Conviction verdicts can be published by the competent authority or at the request of the civil party In whole or in part, in the newspapers that you designate, and hanging these judges in the places you specify, including the door of the convict and every institution or party hall owned by him. (Abouhiba, 2002, p 45)

Just as the Algerian legislator organized the penal protection of intellectual property in the e-commerce environment, it is a civil protection system for copyright in order to protect its assets and request compensation for damages resulting from the infringement of its property, and we will address this type of protection in the following topic.

3. Civil protection of intellectual property rights in the context of electronic commerce:

The nature of intangible mental rights necessitates that jurisprudence takes a special stance regarding them, and since these rights were like that, it was natural that the owner of them would not calm down unless he felt that there was effective protection for his rights, as long as he could not possess them in his hands, or other

actions. That responds to tangible movables, so the legal protection of mental rights appears to be of paramount importance.

The civil protection approved by the legislation for works represents an important form of legal protection that it enjoys, and its importance appears more when we know that it focuses on two important issues of protection, the first is related to the implementation in kind, and the second is compensation. (Benatia, 2007, p 61)

3.1 Provisional seizure:

The author may sue whoever copies, publishes, amend, or translates the work without obtaining a license from its author, and he is also entitled to request a set of precautionary measures under the law. On the right protected by law, and if the precautionary measure is valid, it leads to the settlement of the dispute later in the interest of the applicant. (Benatia, 2007, p 62) From here we will discuss the definition of precautionary seizure as well as its procedures.

A. Definition of precautionary seizure of works:

Several definitions of precautionary seizure of counterfeit works were provided, among which we mention that: “A precautionary measure by which the author of the protected work or the holders of rights can claim to obtain the seizure of documents and copies resulting from illegal reproduction or imitation, in the absence of prior judicial authorization”. (Benatia, 2007, p 63)

Precautionary seizure of works is also defined as: “Stopping any operation aimed at illegal reproduction of works and artistic performances”. (Benatia, 2007, p 63)

The importance of precautionary seizure lies in placing the debtor’s money, described as being transferred under the control of the judiciary so that he does not dispose of it, and thus prevents the creditor from obtaining his rights from it. And what is necessarily intended here is the bad intention of the debtor to resort to fraud, and smuggle his money in any way.

From this, the seizure of counterfeit works is one of the general means that guarantee the protection of the author’s right to his work. The seizure of counterfeit copies of the work that is being attacked achieves the most important benefits, the most important of which, is not publishing counterfeit works, and preventing their circulation among the public, This leads to stopping the assault on the author, from the date of executing the seizure of the counterfeit copies, while preserving them from damage. (Belhadj, 1995, p 63)

B. Procedures for Precautionary Seizure of Works:

The author resorts to confiscation to stop the attack on his work, and this procedure is regulated by legal rules contained in copyright law. The protected person shall prevent the infringer from disposing of the copying of the work, that has been imitated, or circulated among the public. Because of the material or moral damages resulting from such behavior and illegal circulation of the author.

It shall be executed on the counterfeit work and the tools used in its production, in the event that a judgment is issued to compensate the damage caused to the author from selling these materials, and to collect the amount of the damage from their price.

Therefore, Articles 145 and 146 (ordinance 05/03, 2003) of Ordinance No. 03-05 stipulate the competencies of the Police officer and local agents in the field of copyright protection as follows:

Article 145 stipulates that: **"the Police officer or the sworn agents of the National Bureau of Copyrights and Immigrant Rights shall inspect crimes of infringement of copyright or legal rights"**. (ordinance 05/03, 2003)

Article 1/146 of the order also indicated that: **"In addition to the judicial police officers, sworn agents of the National Bureau of Copyright and Related Rights are qualified to seize copies of the props of counterfeit works or performances, provided that they are placed under the custody of the Bureau"**. (ordinance 05/03, 2003) Through the foregoing, we find that proof of the infringement of protected rights for the majority of works is done by records of judicial officers and policemen or records of seizure submitted by representatives of author's organizations who have the right to intervene in case of copyright infringement according to the conditions and procedures specified by law. Scientific experiments show that such delegates perform the role attributed to them in the best way, which contributes to the effectiveness of the procedures for seizing counterfeit copies.

The seizure procedures are always before the competent judicial authority, which is the courts in which the equipment, the counterfeit copies, the props of the counterfeit works, the places of sale, the places of distribution, and the places of reproduction are located so that court is competent to seize and other precautionary measures.

Article 144/1 of the same order states that: **"The owner of the affected rights may request the competent judicial authority to take measures without imminent prejudice to his rights, or put an**

end to this visible infringement and compensate for the damages incurred by him". (ordinance 05/03, 2003):

The legislator took precautionary measures before deciding on the case and granted the author wide powers to prove abuse of the work, which closes the door for the infringer to get rid of his crime, or hide the traces of his crime. Which is an effective measure to protect copyrights of all kinds. It aims to exclude fraud, fraud methods, and illegal profit. (Belhadj, 1995, p 63)

Talking the process of precautionary seizure in software materials led to the emergence of practical problems represented in the difficulty of signing reservations on software, especially if the imitation process in progress did not go out tangibly, and remained embodied in the computer frame where it was installed.

3.2 The claim for compensation:

The civil action brought by the aggrieved party is a natural way to compensate him, and about copyright, the right holder can apply before the court and claim compensation for the harm that has befallen his financial rights. Therefore, compensation constitutes a response to this financial liability by compensating and redressing it, Especially if we know that the damage does not end with the material aspect only, but also the moral aspect of the author's reputation, respect, or honor. (Baknish, Henchor, 2015, p 363)

Compensation for damages is based on the general rules for the financial losses suffered by the author and his lost earnings, while moral compensation is based mainly on the satisfaction of the aggrieved author.

To file a claim for compensation for damage, the elements of tort liability must be met, which is next:

A. The error:

Error is the first pillar of tort responsibility, and at the same time, the jurists differed in their definition of an error in the theories contained in this regard.

However, it is established by jurisprudence that the error in tort liability is a person's breach of a legal obligation, that is, a deviation from the usual behavior of an ordinary person.

For example, software simulation error, behavior, deviation from the usual course of humans, illegal copying or distribution of software, behavior that is considered a violation of the financial and moral rights of the author, and causes damage. The latter demand compensation through a civil lawsuit in accordance with the provisions of the Civil Code. (Okasha, 2001, p 49)

B. The damage:

It is what affects a person in one of his rights or a legitimate interest for him, whether that right or that interest is related to the safety of his body, his money, his affection, his freedom, his honor, or otherwise.

Since the infringement of the author's financial right to intellectual rights constitutes material damage, it is highly conceivable that material and moral damage will also occur to the author or programmer, as a result of the illegal infringement of his intellectual property rights. And in relation to the material aspect of copyright, which is greatly affected as a result of physical crimes with software, such as piracy and counterfeiting. By marketing his software, the author aspires to spread the benefit as much as he desires to obtain incomes that are relatively equivalent to his intellectual work, whose real intellectual value is greater than its market price. The reality shows us that the software of international companies is sold at a price that is perhaps 90% less than its real price, which causes real harm to the producing companies.

C. The causal relationship:

It is not sufficient for civil liability to result in harm to one person and the occurrence of a mistake on the part of another person. Rather, this error must be the direct cause of the damage; otherwise, the responsibility will be non-existent.

Article 124 of the Algerian Civil Code stipulates the necessity of a causal element between damage and error in order to establish tort liability. (ordinance 05/10, 2005)

The issue of determining the causal relationship between error and damage is of great importance at the present time due to the complexity and multiplicity of means of communication, which in turn affect the methods of imitation and intellectual piracy. Error, and then prove the damage to achieve a causal link between them. (Belhadj, 1995, p 63)

According to the most likely opinion, the consequences of the author's moral right are presumed, since it is unreasonable to ask this author to prove the harm is done to him. (Baknish, Henchor, 2015, p 363)

Due to the establishment of the elements of tort liability, the author or the rights owner may exercise a civil lawsuit, requesting compensation for damage resulting from the unauthorized exploitation, of the intellectual work, or artistic performance. As confirmed in Article 143 of the same order, related to copyright and

related rights, also confirmed the author or owner has the right to file a damage compensation claim, according to the rules of public liability in civil liability contained in Article 124 of the Civil Code.

In addition, Article 144 stated that: "The owner of the aggrieved rights may request the competent judicial authority to take measures to prevent the imminent infringement of his rights or to put an end to this visible infringement and to compensate for the damages incurred by him". (ordinance 05/03, 2003)

4. CONCLUSION

There has been international interest in the need to protect property rights within the framework of electronic commerce, by agreeing on general rules that apply at all levels in order to achieve broader protection of these rights at the international level. The World Intellectual Property Organization, and the Berne Treaty, had a role in strengthening and embodying this protection and translating it realistically, so international efforts joined forces to find a more comprehensive legal regulation that guarantees the protection of these rights and adapts to the various developments in the world. This idea was adopted by many of these agreements and international organizations, and thus the international interest in the protection of intellectual property appeared, especially those arising from the information revolution, and from here information trade constitutes the largest aspect of international trade, and for this reason, electronic commerce cannot succeed without the support and protection of intellectual property rights.

Legislation emphasized the need to grant the individual the right to protect what he invented and to enable him to dispose of it and prevent others from disposing of this innovation without his permission, as information became controlling the balance of power. The crime witnessed a great development that led to the violation of the sanctity of information and endangering its security.

For this reason, most countries' legislations have tried to put in place laws to limit the infringement of intellectual property in the field of the Internet, by placing penalties for this infringement, which has many and varied forms. Rather, it went beyond that to imitation and piracy of these ideas. (Piotraut, 2007, p 87)

Accordingly, the most important basic principles that the legislator must observe is not to ban electronic commerce, as it is dominated by development and change, as well as observance of commercial habits, and the global nature of electronic commerce, as legislative intervention is required in the field of E-commerce so that

it does not negatively affect commercial activity. (Vivaut, 2019, p 457)

It can be said that the legislation currently in force in Algeria provides a legislative structure for e-commerce. In the long run, it is necessary to find the necessary legislative solutions, either by creating new legal texts or by transforming existing legal texts to cover the existing legislative gap.

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