

Compensation for Literary Damages to the Author

By

Saddam Badn Rahima Al-Saadi
Al-Rafidain University College/Iraq
Email: Saddam.badn.78@ruc.edu.iq

Abstract

Copyright at its core has two components; one element related to the literary aspect and another translated into the financial aspect, meaning that if the original in copyright was dealt with by the intellectual aspect, but this aspect can be exploited and reap its yield, it can be said that the financial aspect of copyright is a right subordinated to the moral right in its existence, followed by existence and non-existence, validity and invalidity, thus it is The copyright is racist, distinct from both the real and personal right. The author, while exercising his moral right, has the full right to publish his intellectual work or not, and if he decides to publish it, he has the right to evaluate it financially. And if this work was attacked, he would have the right to compensation for the damage he sustained, as the priorities of legal protection for the copyright were limited to the financial aspect of this right, which allowed for the infliction of many transgressions on the literary side under many names and excuses such as distribution, publication, publicity and the victim in all of that The owner of the intellectual work, for this and in order to complete this legal protection for all the elements of copyright, it is necessary to pay attention to it and activate the legislative texts regulating this right and ways to protect it from any damage that may be caused to it. Perhaps the most significant of these damages is the literary damage that may result from a violation of this right, as it is an intellectual right valued with money; Assaulting him means violating a right and not merely the interest of the injured party, although it is difficult to estimate compensation for him as a fair and appropriate compensation, but it is not impossible, since the control for assessing this type of damage is related to every violation that may affect the author's feelings and emotions and compensating this psychological harm and removing it from difficulty. place ; However, it is possible to work on reforming it by compensating for the purpose of alleviating the severity of his stress, in order to achieve his reforming function.

Keywords: Moral element, financial element, author, compensation, intellectual work

1. Introduction

First: The Importance of Research

Given the importance and necessity of intellectual products in all aspects of our daily life, the opinions and jurisprudence and legal judgments calling for the protection of these mental products in order to prevent any possible attack may occur on them. Perhaps these products are among the most prominent rights attached to the person of their owner. Which requires maximizing the provision of what helps it before it is attacked, especially in light of a digital technological development in which it is easy to exchange information and ideas and their transmission from one person to another. There is no doubt that protecting these intellectual works and other written, visual and manufactured products of the mind, which contributes to encouraging creativity and innovation and providing what is better; The author presents his most prominent innovations while he is safe from what is being presented and is not afraid of infringement. This requires the protection of copyright not only at the local level, but also internationally. The provision of such copyright protection is not limited to the moral aspect of copyright, but also deals with the financial aspect. It must also be a preventive protection that prevents the attack on intellectual works and at the same

time works on redressing the damage caused to the author as a result of this attack as a remedial protection, as if the author was published or used without the consent of the owner. Its various aspects represent the importance of this research in a way that shows the feasibility of the legislative texts dealing with this right.

Second: The Research Problem

Scientific honesty and the necessity of observing it and not violating it is the essence of the research problem. Despite the available legislative treatments, however, exposure to the author's rights and betrayal of this trust remains subject to violation, as the author in all his intellectual productions has become subject to violation, whether in the literary aspect of them by quoting or publishing his products without his consent or by exploiting those productions, so the attack will befall the financial side of the intellectual work. In all of this, the literary damaged person is the author, which raises the problem of compensating the author for literary damage in the nodal and tort field. Any addition, deletion or modification that occurs to the work without the consent of the owner of the work exposes it to literary damage that may affect his feelings, especially if this results in this Attacking the work, insulting the author's reputation or exposure to his social status, and as a result of the fragility of legal copyright protection and the weakness of the deterrent, violations continued from the plaintiffs of science and traffickers, so they worked to undermine all creativity and mental innovation and work to exploit it unlawfully through research work and graduation projects extracted from letters And university theses and selling them cheaply without an accountant, which requires addressing all the problems of copyright infringement and working to reduce them.

Third: Scope of Research

The research is exposed to legal protection of copyright, especially compensation for literary damage resulting from exposure to these rights in particular, in the event of contractual breach with the author or when illegal acts occur on the intellectual work, in order to note the legislative gaps in both the Iraqi Civil Code No. 40 of 1951 and the Law of Right Author No. 3 of 1971, amended, and reviewing the legal texts that aid copyright that allow him to be compensated for every violation he may be exposed to, causing him literary damage.

Fourth: Research Methodology

The study of this research depends on the descriptive analytical approach by addressing the legislative system that aids copyright and the position of legal jurisprudence in that, as we show through it the ways to treat copyright infringement and compensate for its literary damage; In addition to the researcher giving preference to everything that is in agreement with the legal logic that deals with these attacks, not with what he sees personally; From all of the foregoing, it can be reached to set a standard for the beginning of the study in order to bring relief to the aggrieved author to reach a sound legal opinion.

Fifth: Research Plan

The behavior of this methodology requires that we divide the research into two sections, we deal in the first topic with the nature of copyright and literary damage, and we will explain the concept of copyright and literary damage in order to stand after that on the legal nature of copyright, and then we explain in the second topic the civil protection of copyright, and we will deal with it Repairing the literary damage to the author, and then discussing the methods of compensating the author.

The First Topic

The Nature of Copyright and Literary damage

Recognizing the existence of the author's intellectual property means acknowledging a right that belongs to him alone and not others. It is a right that prevents others from using,

exploiting or disposing of this right; As the right holder has these powers unchallenged, and if the right holder has the right to concede to others some of these powers by his own will, the author may be the owner of artistic or literary property as in the poet, writer, playwright, composer, engineering designer, painter and many others, and such intellectual products require legal protection for all. Whoever abuses it because it causes harm to the owner of the mental right, whether this harm is material, as in the exploitation of books and paintings without the author's permission; and such harm is not included in the field of our research, and the harm may be literary or moral, which is achieved at every harm that causes psychological pain to the owner of the mental right, in view of the foregoing and knowing what is required we discuss in This topic is the concept of both copyright and literary damage (a first requirement), to clarify then the legal qualification of copyright (a second requirement).

The First Requirement

The Concept of Copyright and Literary damage

The legal protection of copyright through compensation requires that we first clarify what is meant by this right; Secondly, let us stand and clarify the meaning of literary damage and its conditions, since protection can only be achieved by the availability of the elements of copyright in its products and ideas, as well as the elements of compensating its literary damage. However, compensation can be considered as a remedial and preventive means at the same time, that is, it treats the damage of copyright infringement on the one hand and deters others from repeating this abuse on the other.

First Branch

Definition of Copyright

The damage is not limited to the material property of the injured person, but the damage can occur on his mental property. The author has threatened to violate his intellectual rights and exceed the limits set by the law not to harm him, especially after making intellectual products available on the Internet and the speed and ease of access to them by the recipient. The transgression is not limited to the theft of the author's ideas only, but can be achieved by deleting some parts of these intellectual rights or in addition to them; The truth is one of the most sacred things that human has instinct, the right in general revolves around existence and non-existence with societal and international peace, a matter in which the right has gained the attention of researchers and the investigation of its defenders because of its impact on human presence. The human right to education and to the protection of its scientific outputs has gained the attention of most of the emphasizing international principles of human rights; which gave every human being the right to participate in the aspects of cultural and scientific life, to enjoy the benefits of their artistic production, and to work to protect them, regardless of whether these productions are material or moral⁽¹⁾. The UNESCO Charter on Science, Education and Culture also stresses the necessity of reviving, developing, and freeing science to protect the right, pointing to the need for international cooperation in that⁽²⁾. The Constitution of the Republic of Iraq for the year 2005 also indicated the need to encourage scientific research and take into account creativity and innovation⁽³⁾, hence the Iraqi legislator's protection of the intellectual product of the author as one of the most closely related scientific rights to the person who produced it, and therefore there is no room for infringement upon it without legal justification. Whoever creates a literary or artistic production on his own and then enjoys what this innovation gives him without anyone challenging him in that⁽⁴⁾, and in the same sense the author was known by the World Intellectual Property Organization (WIPO); It is "every person

⁽¹⁾ See: Article (27) of the Universal Declaration of Human Rights

⁽²⁾ See: Article (15) of the Charter of the United Nations Educational, Scientific and Cultural Organization (UNESCO).

⁽³⁾ See: Paragraph Three of Article (34) of the Constitution of the Republic of Iraq for the year 2005

⁽⁴⁾ See: Dr. Muhammad Labib Shanab - Principles of Law – Dar Al-Nahda Al-Arabiya, Beirut, 1970, p. 149

who creates an author.” Hence, we find that the term innovation by which the author is known is different from the term idea; The last term is one of the absolute data and concepts that are available and available to the general public, which may not be acquired in particular, and then protecting ideas means stopping excellence and brilliance. As for the term innovation, it is the intellectual product that defines and distinguishes a particular author from others.

Some fiqh defines the author as anyone who creates a literary or artistic product that is subject to truth. While another defined it as anyone who disseminates the product of his innovative thought by putting his name on it or taking another path to show this affiliation ⁽⁵⁾, one of the drawbacks to these definitions is that they make innovation a description of intellectual production, while intellectual property may not be innovative.

As for the position of comparative legislation on defining the author, we find that the Egyptian legislator defines him as “the person who creates the work and is considered the author of the work, whoever mentions his name or is attributed to him when it is published as his author unless there is evidence to the contrary”⁽⁶⁾, as for the Jordanian legislator, the author is defined as “the person who publishes the work attributed to him is considered the author, whether by mentioning his name on the work or by any other method, unless there is evidence to the contrary”⁽⁷⁾, as for the Iraqi legislator, the author is defined as “the person who published a work attributed to him, whether his name is mentioned on the work or in any other way, unless there is evidence to the contrary”⁽⁸⁾. It is clear from the previous legislative definitions that it established a legal presumption to determine the author’s person, but it is a presumption that accepts proof of the opposite, and therefore the author is not required to perform the mental production, but it is sufficient according to the legal presumption that the law gives him the powers that confer on him this right, and therefore the identification of the author’s person According to the foregoing, it is done in accordance with the law, of course, until there is evidence to the contrary.

As for the definition of copyright, it is known that it is one of the intellectual rights that relate to a moral thing that is not material that is available for use by all, and therefore it includes a financial and other intangible element ⁽⁹⁾, others also defined it as one of the rights enjoyed by innovators in order to protect the artistic or literary productions attributed to them, regardless of whether their images are written or drawn or have sound or movement. The owner is obligated to him, which is the use, exploitation and disposal of the intellectual product. As it is the legally imposed right for the benefit of the person who invents an intellectual product, which alone gives him the power to use it in accordance with its nature and to take any procedure that guarantees his safety in order not to infringe on the person of the author or any of his personal considerations⁽¹⁰⁾, from the above it is clear that the last definition is the most likely to be He referred to the law in determining the manner of its emergence and determining its scope and protection.

Second Branch

Literary Damage Concept

Anyone who infringes on his author and his intellectual production has the right to take several legal means to protect that production from any harm; With the aim that these

⁽⁵⁾ See: Abdel Hamid Al-Minshawi - Intellectual Property Protection - Dar Al-Fikr Al-Jamii, Alexandria, without a year of publication, p. 21

⁽¹⁾ See: Article (138) of the Egyptian Intellectual Property Rights Protection Law No. 82 of 2002

⁽²⁾ See: Article (4) of the Jordanian Copyright Law

⁽³⁾ See: Paragraph (2) of Article (1) of the Iraqi Copyright Protection Law No. (3) of the year

⁽⁴⁾ See: Dr. Ghani Hassoun Taha and Muhammad Taha Al-Bashir - Rights in kind - Part 1, original rights in kind, Legal Library, Baghdad, 2018, p.

See: Ashraf Wafa Muhammad - Conflict of laws in the field of intellectual rights of the author -Dar Al-Nahda Al-Arabiya, Cairo, 1, 1992, p. 27

⁽⁵⁾ See: Dr. Hassan Kera - Introduction to Law - Mansha'at al-Maaref, Alexandria, 3rd Edition, 1993, pg. 481

compositions are free from any denial of the author's effort, and consequently, literary damage may be caused to him. As literary damage is defined as "that harm that does not affect any of the elements of the financial liability of the aggrieved party, but rather affects the latter's feeling, affection, dignity or social position" ⁽¹¹⁾, or it is "the harm that does not inflict the financial rights of the aggrieved person, but rather causes literary pain" ⁽¹²⁾, as we note that each of the above definitions differs from the other; The first definition enumerates exclusively the cases in which literary damage is achieved, while the second definition expands the definition of literary damage without limiting it to specific forms. However, this expansion removes financial rights from the circle of compensation, as the personal right may result in literary damage that requires compensation, the right to compensation for literary damage is not limited to non-financial rights, as in destroying the last copy of a particular author or his rare drawing, so some went ⁽¹³⁾, to define literary damage as exposure to the legitimate interests and rights of a person, causing him harm even if no financial harm is achieved. We find that this definition and that it extends to include all rights that may be inflicted with literary damage, not to limit it to the harm that inflicts these rights and interests without the other pains. As the literary damage can be represented as a violation of the rights of the author and the creator without being harmed, as if the innovative thing was imitated. As for the legislative position on the definition of literary damage, we find that the Iraqi legislator expressed literary damage in several ways without addressing its definition; he pointed out that literary damage can occur with every infringement of a person's reputation or honor, as well as his freedom, social status, and others ⁽¹⁴⁾, it is a similar legislative position similar in its conduct to that of the Egyptian legislator ⁽¹⁵⁾, we find that such legislative positions do not differ much from what the narrow jurisprudence has defined in terms of literary damage, as it does not include all the psychological and literary pain that is achieved when the author's literary and material rights are violated.

As for the judicial position on the concept of literary damage, although the definition is not within the jurisdiction of the legislator and the judge, however, the latter may resort to clarifying the concept of a particular term that is the subject of a dispute in order to remove what is tainted by multiple interpretations and interpretations. As we find that the French judiciary defines it as "violating the non-financial interests and rights of the aggrieved party" ⁽¹⁶⁾, this is the judicial position and excludes financial rights from the scope of compensation, but it includes all forms of moral damage without limitation, as for the Egyptian judiciary, it defined literary damage as "everything that causes harm to a person in his emotions, honor or feelings" ⁽¹⁷⁾, he criticizes such a judicial position as limiting literary damage to harm in some images without the other intangible images that relate to depriving the enjoyment of intellectual productions, as in the imitation of a specific cinematic, television or literary work that was imitated or displayed after its loss or theft from its owner, or the Iraqi judiciary, it defined literary damage as "everything that affects a person's feelings, dignity, affection, or any of the meanings that people are keen on" ⁽¹⁸⁾, accordingly, we find that the last phrase (or any of the meanings that people are keen on), allows the entry of various moral images within the scope of literary damage, provided that it is one of the meanings familiar to people and not to a specific

⁽¹⁾ See: Ghani Hassoun Taha - Al-Wajeez in the General Theory of Obligation - Legal Library, Baghdad, 1970, pg. 461

⁽²⁾ See: Dr. Abdul Majeed Al-Hakim, Brief Explanation of the Iraqi Civil Law - National Publishing Company, Baghdad, 1971, p. 530.

⁽³⁾ See: Dr. Suleiman Marks - Civil Responsibility in the Legalizations of Arab Countries - Institute of Higher Arab Studies, Cairo, 1960, p. 136.

⁽⁴⁾ See: the first paragraph of Article (205) of the Iraqi Civil Code No. 40 of 1951.

⁽⁵⁾ See: Article (222) of the Egyptian Civil Code

⁽⁶⁾ French civil decision, French Court of Cassation, 1917; Dallows in 1920; p. 119.

⁽⁷⁾ Resolution No. 332 of 73 session 06/14/1973; according to ; Saeed Ahmed Shoala - Civil Cassation Court in Liability and Compensation - Mansha'at Al-Maaref, Alexandria, 2003, p. 80.

⁽⁸⁾ Decision of the Iraqi Court of Cassation No. 485/First Expanded/988 on 10/30/1988, Journal of the Judiciary, No. 3 and 4 of 1989, Iraqi Bar Association, p. 35

person any of the meanings that are customary to be respected by people and the criterion for determining it is an objective and not a personal criterion, respecting intellectual productions in all their forms is the focus of attention and respect for every creator of a scientific or literary work and infringement upon it by publication, imitation or destruction; There is no doubt that it caused literary damage to its owner.

From the foregoing, it is clear that the literary damage does not affect the non-financial rights and interests of the author, but may extend the literary damage to the rights and financial interests, as in the exposure of the painter and the amputation of his hand or in the destruction of literary intellectual works while they are in the process of writing. Therefore, we find that literary damage is every prejudice to a person's right or financial or non-financial interest, or any of the meanings that people are keen on.

The Second Requirement

Legal Adaptation of Copyright

Giving the description and legal adaptation of the copyright clarifies the legal provisions and procedures protecting this right, especially since this right is related to the intellectual and mental production of the author, which was a matter of dispute between legal jurisprudence because this right contains two essential elements represented by a financial element, which is the financial disposition of mental production and how to exploit it; And a moral element related to the necessity of attributing this intellectual product to its author, so it is necessary to clarify the views of the jurist that dealt with it in two independent branches, as follows:

First Branch

Copyright is A Personal Right or in Rem

Some jurisprudence finds that copyright does not go beyond being among the property rights that are received on material things, while others see it as a personal right attached to the person of its owner, as follows:

First: Copyright is a Personal Right

This view holds that every intellectual work appears from the author's person and which means its relation to its intellectual product is indivisible after it is presented to the public, and such rights outweigh the moral content, so it is best for him. That is why the owners of this opinion criticized the view of the other opinion, regarding copyright as a right in kind, arguing that every intellectual product is not a material thing; Rather, it is the outcome of the human mind and its thoughts, which are finally translated in the form that its owner sees. Since the product of the mind is attached to the person of its owner and is not separated from him; What protection is given to the owner of the mental product, as well as the protection of his mental product. However, this view has been severely criticized because they have given most of their attention to the value of the moral element in contrast to the material element. The author has a financial right as well, so he has the right to copy his production in various forms. or to translate it into a specific language or into several languages, and he has the right to rent or lend his intellectual product, as well as the right to market it; These rights, in their entirety, have a material and financial element that has an importance that cannot be neglected in the aspect of the moral element. Therefore, from the foregoing, considering copyright as a moral right does not mean that it has a material and financial aspect the fact that the rights, whether they are personal, moral or financial material, in the end, are attributed to the owner of what was invented intellectually, in the face of the criticisms that emerged, a second opinion emerged, counting the mental product of the author from the rights in kind.

Second: Copyright is a Right in Kind

Those who hold this view and the criticisms leveled against the previous opinion see it as: Copyright does not differ from the right of ownership in that the last right grants to its owner the powers of use, exploitation and disposal. Likewise, copyright may be used by the author himself. It may also be exploited by renting the mental right or lending it to others for a consideration or free of charge. It can also be sold and disposed of to others with all kinds of ownership transfers. Therefore, this view considers that copyright, although it includes both financial and moral elements, is considered a type of property right. Hence, it is permissible to give it and sell it, and to carry out all the actions of the king on it, as it is within the financial responsibility of the owner of the right. This opinion was also not immune from criticism, since trying to apply a theory or a particular opinion does not mean that we take it on one side and neglect the reference to the other side, in order to convince the opposing opinion of what I am trying to prove. Looking at the content of the property right, including its powers and maintaining it over copyright, is correct on the one hand, since all rights can be used, exploited and disposed of. However, on the other hand, the subject matter of the property right is a purely material thing and not moral; while the subject of copyright in terms of its financial component, yes, it may be considered as a real right, but in terms of its moral component it does not fall within the scope of the real right, in view of the above criticism of both opinions, the Iraqi legislator considered copyright in the Iraqi civil law as money. Moralities are subject to the provisions of special laws ⁽¹⁹⁾.

Second Branch

Copyright is of a Private Nature

Copyright is a right in two parts; The first part is moral, and it has the most likely weight, as it is a mental and intellectual product. It can be evaluated with money, which is its second part, and perhaps the Iraqi legislator's designation of this right as moral money stems from its being a product of the mind and its ideas; the owner of the idea has the full right to express this idea or not. Therefore, several forms of this moral right are derived from this moral right, and its owner has the right to attribute this right to him to mention his name on him and to market his intellectual product and choose the method for that. Any infringement on his intellectual production, as he has the right to withdraw from publishing his productions after he had published them. Such images of the author's moral right give him the quality of a moral element; that right that the author brought into existence and revealed his intellectual product, which is the outcome of his mental thinking, and we find it characterized by several characteristics that the legislator protected, regardless of the formality of these literary, artistic, or scientific productions.

On the other hand, copyright is not purely moral; the holder of the mental right can obtain a return for his product, and this return is also branching and takes many forms; as branched from this material right is his right to sell his intellectual product in paper or convert it into a movie or any other television work, in addition to his right to publish it electronically. He also has the right to rent his intellectual product, as well as renting the painter's paintings to display them in a private exhibition for a limited period. One of the forms of this right is to allow some of his works to be presented to the public for a fee. As in reciting the poet's verses, however, these moral and financial rights can be transferred to others during the author's life by relinquishing his work in full, and then the author's right will disappear by

⁽¹⁾ See: Article (70) of the Iraqi Civil Code No. 40 of 1951

taking any action on it, whether positive or negative, and this transfer of rights can be achieved after the author's death as If you make a waiver of it to others in the will.

What confirms that the financial right of the author is not the same as his moral right, when the work is not waived, his material and financial right can be transferred to others without assigning it; which means that it is not materially eternal, but rather is restricted to a specific period, which is removed by the death of its owner, and then it is transferred to the general successor. This is in contrast to his moral right. If he does not waive it, this right will continue until after the death of the owner of the mental product. This moral right is distinguished by the non-prescription, that is, it does not disappear due to lack of use, and therefore no one has the right to attribute this product to him without a legitimate reason. For this reason, part of the jurisprudence considers that the copyright of the author over his work is of a dual nature. Since the literary rights of the intellectual work have a moral element that is attached to the person of its owner, it is a personal right, while the financial rights of this work have a material element, it is a kind of rights ⁽²⁰⁾, however, such a doctrinal approach brings us to a problematic situation that was presented in connection with a new opinion that considers copyright as an intellectual property right; This view considers that copyright is not a personal right, nor is it a traditional property right, but rather is an intellectual property right that combines thought and matter ⁽²¹⁾, this view has been criticized for merging the material and moral components of copyright into one right under the name of intellectual property right, as well as the previous trend that went to duplication between the two components of copyright; Does this duality give the same idea of the previous merger, or does he consider them as two independent elements?

In response, some argue that the exploitation of the copyright grants the author the right to use his work in order to obtain a financial return, and such a right makes it independent of the author's moral right to be attributed to him ⁽²²⁾. While another aspect considered that the duplication of the two rights in one right is consistent with the nature of copyright that is difficult to divide ⁽²³⁾, From our side, we believe that there is no duplication between the financial and moral elements in one right. As the author's right is originally a moral right related to his mental production, but the issue of benefiting from this right financially may or may not be realized according to the desire of the owner of the right. Also, the introduction of the dual nature and the recognition of the existence of two elements requires that we apply to the material element of copyright the provisions of rights in kind, and to the moral element that we work the rules of personal rights, and such a matter is not possible and even far from logical legal thought for this and from the foregoing, we find that copyright, and what it contains of intellectual and material elements, is a right of a special nature regulated by special provisions and rules. The Iraqi legislator took the special nature of copyright and organized it with special provisions, recognizing that copyright has two aspects, a material aspect and a moral one,

in the Author's Protection Law No. (3) of 1971 ⁽²⁴⁾, as the texts of this law came with special provisions for copyright that adopted both elements that we find in agreement The nature of this right is that there are two aspects to it, one literary and the other financial.

⁽¹⁾ See: Dr. Abdul Razzaq Al-Sanhouri - Mediator in Explanation of Civil Law - p. 350- For more on presenting this opinion, see: Dr. Hassan Jamei - Introduction to Copyright and Related Rights

⁽²⁾ World Intellectual Property Organization (WIPO) in 2004, pg. 4

⁽³⁾ See: Dr. Husam El-Din Al-Ahwany - Theory of Right in Civil Law - Dar Al-Nahda Al-Arabiya, Cairo, 1977, p. 305.

⁽⁴⁾ See: Dr. Nazih Muhammad Sadiq al-Mahdi - Introduction to the Study of Law - Dar al-Nahda al-Arabiya, Cairo, 1977, p. 68, Dr. Shehata Gharib - Literary Rights of the Author in Bahraini Law - Research published in the Journal of Law, College of Law, University of Bahrain, Volume 6, Number 2, 2009, p. 204

⁽⁵⁾ Article (8) of the Copyright Law No. 3 of 1971 states that it includes the author's right to benefit from his work:

The Second Topic

Civil Protection of Copyright

There is no doubt that any infringement of the moral element or the financial element of the copyright in his work is considered according to the rules of the Iraqi civil law. A breach of a contractual obligation or a breach of a legal obligation, as the case may be, and the liability of the offender shall entail civil liability. The rules of compensation as a whole aim at the aggressor's obligation to compensate the aggrieved party for the harmful act he committed. The same applies to the principles of justice and morals that refuse to allow the victim to remain without compensation and require that no harm be caused to others. Hence, the personal tendency based on the severity of the error is negated from compensation, so what provokes compensation and the necessity of redressing it is repairing the damage, and from that we can seek the objective tendency in every compensation, which is the reform of the damage. As for the error, its role ends with the statement of the person who caused the damage, and therefore there is no room for him to be involved in estimating any compensation that the victim deserves. The author who is morally harmed as a result of the infringement of his moral or financial rights is undoubtedly entitled to the appropriate compensation that repairs the infringement suffered by him. The corrective function is not limited to material damages, although there is a difficulty in estimating the appropriate compensation, but it is not impossible, and therefore there is nothing to prevent the realization of this corrective function to compensate for the literary damage.

In view of the foregoing, it is necessary that we first clarify the repair of the literary damage to the author, so that we can then clarify the methods of compensation.

The First Requirement

Repair The Literary Damage to The Author

Repairing the literary damage to the author does not mean removing it completely, if that is possible with regard to the material damage because its elements become clear with a loss suffered by the creditor and the profit that he missed; however, literary damage is an abstract, subjective harm that does not involve any elements, and therefore its repair is limited to relieving the author who has intellectual production to the necessary extent that forces him and removes part of his suffering. Perhaps this falls into the core of the judge's work, taking advantage of the legal texts that dealt with this type of damage. Which requires a statement of the role of the law in achieving the corrective function of compensation for literary damage (first section), to clarify then the range of beneficiaries of this compensation (second section).

First Branch

The Role of the Law in Repairing Literary Damage

The purpose of compensation for literary damage is to alleviate the suffering of the owner of the infringed work. Stealing the author's mental output, whether it is in poems, an innovative book idea, a master's thesis, or a thesis, there is no doubt that it caused psychological pain to the author and requires sympathy for its author, and this sympathy is achieved by repairing it. If the judge is bound by his assessment to compensate for the material damage for the loss suffered by the aggrieved party and the profit that he missed, however, he enjoys a degree of authority and freedom in estimating the appropriate compensation that may be

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- 1- To print it, broadcast it and produce it, and to allow it to others
 - 2- To permit (within the special conditions that he sets) to use one or several copies of his work for persons who use them in the works of leasing, lending and other works related to displaying the work to the public if the purpose of this presentation is profit or a project subsidy.
 - 3- To allow his acting or musical work to be publicly displayed or transmitted to the public by any medium
 - 4- To deliver his literary or theatrical work to the audience and to allow its recitation

inflicted on the author for the literary damage he has suffered. As Article (205) of the Iraqi Civil Code states that "1- The right to compensation deals with literary damage as well. Every infringement on a person's freedom, honor, reputation, social status, or financial consideration makes the infringer liable for compensation." , there is no doubt that working to publish books whose owner did not want that publication is considered an infringement of the author's right to his freedom, just as misrepresenting some of the publisher's books and attributing them to him may affect his reputation or his social position, or may affect his financial consideration by people's sizes of his mental products. , all of this is a reason for a request for compensation, and therefore requires that this compensation exercise its corrective function, which alleviates the severity of these images of literary damage. Whereas Article 8 of the amended Copyright Law clarifies the actions that an author may undertake alone with the intention of benefiting from his work and that no one else may perform; of course, unless a written permission is issued by the author or by his public successor; authorizes others to perform the agreed-upon actions ⁽²⁵⁾, otherwise, this is considered a transgression of his right, and accordingly, the author's damage to his work is achieved. Nevertheless, the law permitted at the same time some actions that may occur from third parties and the violation of copyright is not realized. Where the legislator has permitted the work to be thrown out or used if this was done in a private meeting that does not aim to make a profit, whether directly or indirectly; as this includes the personal and social considerations that are often present in the author's presence and with his consent, and they do not achieve any literary damage, but rather the opposite of the literary meanings that enhance the author's position and praise for what he has presented. And to encourage him in the future to be more creative in his writings, just as the Iraqi legislator did not stop at this point, the work allowed each person to make one copy of it if it was done for personal use, as in the case of students of knowledge who benefit from literature and sources that enrich their writings with opinions and jurisprudence that enable them to give preference to some of them over others and express their views on them; As well as other personal uses such as possession for the purpose of general culture, browsing, and others, as long as all of this occurs with reference to the name of the author or source in recognition of his effort.

As for other serial works, such as stories and novels, which may be published in local newspapers or in international publications ⁽²⁶⁾; its author has the exclusive right to it, and it may not be quoted or published elsewhere without the consent of its owner. Otherwise, the latter may have the right to request compensation for every literary damage resulting from that, but the question that arises here is whether it is permissible for the author to claim compensation for literary damage arising under a contract?

To answer, we point out that the Iraqi legislator mentioned compensation for literary damage in the field of illegal acts, that is, within the scope of tort responsibility, thus, we find that the Iraqi civil legislator intended to remove the literary damage in accordance with the concept of violation from the scope of contractual liability, meaning that the legislator required that compensation be for a material thing that was lost or damaged, so the compensation then works to exercise its corrective function by removing or reducing this damage. However, the basis for compensation for all damages is the text of the Messenger, peace and blessings be upon him (No harm and no harm) and such a text came absolutely, did not specify or exclude harm without the other, however, there are those who believe that

⁽¹⁾ See: Youssef Ahmed Al-Nawafleh - Legal Protection of Copyright – Dar Al-Thaqafa for Publishing and Distribution, Amman, 2004, p. 151

⁽²⁾ See: Dr. Suhail Hussein Al-Fatlawi – literary Rights of the Author in Iraqi Law - A Comparative Study, Publications of the Ministry of Culture, Baghdad, 1978, p. 215

Islamic jurisprudence did not define literary damage in its current form, so Islamic jurisprudence worked to punish the perpetrator of the harm by means of reprimand, and therefore there is no compensation except for material harm in terms of contract. However, when following the amended copyright law, we find that Article (44) permits the author, whose rights have been violated, to claim appropriate compensation and to take into account the cultural status, literary, scientific and artistic value of the work and the extent to which the infringer benefits from this attack on the work. , from this text, we find that compensation for literary damage to the author contractually is permissible if the assault occurred by a person contracted with the author and who violated the agreement by publishing, modifying or using the author in violation of the agreement concluded between them ⁽²⁷⁾, we note, according to this text, that compensation for copyright infringement is estimated; That it be done in accordance with the amended Copyright Law No. 3 of 1971, and thus this text is related to the literary damage resulting from the infringement of the author's rights, and there is no room for its implementation in other cases, such a text is considered a special text that limits and restricts the general text provided by Article (205) of the Iraqi Civil Code, whose implementation applies to other cases not related to copyright.

Second Branch

Beneficiaries of Compensation for Literary Damage

Undoubtedly, the person personally affected by the literary damage is the owner of the work who can claim compensation for it. However, the harm may result from the death of the author of the work, so it is necessary to differentiate between the harm inflicted on the author himself from the harm inflicted on the author's relatives.

As the literary damage suffered by the author himself cannot be transferred as his legacy by inheritance unless it can be determined by virtue of an agreement or a final court ruling.

However, paragraph 2/205 does not clarify what is meant by the term relatives and to what degree they are entitled to compensation, and whether what is meant by the husband includes both the husband and the wife; If it is left to the judiciary to determine the relatives of the deceased author; Do they mean the most closely related, or the one who is most saddened by the fact of death?

For these questions, we find that leaving the matter of declaring the beneficiaries of compensation for literary damage to the discretionary authority of the court is a matter under consideration, as it required the Iraqi legislator to clearly clarify the degree of that kinship, and the specific beneficiaries, so as not to leave this matter to multiple jurisprudence, and many claims for compensation It may confuse the work of the judiciary ⁽²⁸⁾. It should be noted that the damages caused to the relatives of the author are different from those caused to the author himself. Such a statement may raise the question of the eligibility of these relatives to claim compensation for all the damages that befell them and their relative, the author; to answer, we find that the Iraqi legislator emphasized the possibility of claiming compensation for the harm that has befallen the author's relatives, such as psychological pain and feeling sorry for the loss of their inheritance, as it came in paragraph 2/205 that "It is permissible to award compensation to spouses and those close to the family for the literary damage they suffer due to death." the injured"

⁽¹⁾ See: Article (44) of the amended Copyright Law No. 3 of 1971.

⁽²⁾ See: Dr. Esmat Abdel Majid - Intellectual Creativity and the Law's Position on It - Research published in the Journal of Comparative Law, No. 33, 2003, 29

It is clear from the text of this paragraph that compensation for relatives falls within the scope of liability arising from the illegal act without extending to contractual liability. Where it is difficult to think of the death of the contracting author due to a breach of an obligation resulting from the contract, even if it is likely to occur, even if it is rare. As in the case of the author who dies as an excuse to publish works that he did not agree to publish, or some of them were published, or because of illegal modifications that occurred to his work that harmed his reputation, for this reason, they have the right to file a claim for compensation for all the damage they have suffered ⁽²⁹⁾, since the harm that they have suffered is a personal injury to them that has all the elements of responsibility, in addition to their entitlement to compensation if it is determined by agreement or by court. The right of relatives to be compensated for the literary damage determined for the author is realized in every matter in which the event of death occurs.

No compensation is decided for the relatives in compensation except upon the death of the author due to a direct cause naturally resulting from the wrong act represented in the infringement of the work. As for the apostate from literary damage ⁽³⁰⁾; but if the author suffers a damage without leading to his death, regardless of the extent of those damages that befall the relatives, no compensation will be made for them. This is what the above article expressly indicated. However, this is one of the drawbacks of the Iraqi legislator and one of the negatives that necessitate its amendment, since the literary damages averted to the relatives of the author in what may be inflicted on the latter in every injury that is not fatal; may cause more damage than fatal injury; As the author's injury may require care, accompaniment and treatment for the author, which may extend to the life of the author, as well as the expenses of treatment and the subsequent pain and harm to the relatives' feelings, which befell them and their relative the author.

However, what diminishes the impact of the second paragraph of Article (205) of the Iraqi Civil Code; What was stated in the third paragraph of the same article, stating that:

Compensation for literary damage shall not be transferred to third parties unless its value is determined by virtue of a final agreement or judgment. Meaning, if the author, prior to his death, claims the person doing the damage for his right to be compensated for the literary damage, then his death is confirmed; So the compensation decided for him is included in the author's financial responsibility, and therefore his leaving will benefit his relatives according to their legal shares by receiving it directly from the estate, and such a case is a fortiori if the author obtains a final court ruling deciding his right to compensation for literary damage before his death is achieved. But if this paragraph does not help those affected by the death of their relative ⁽³¹⁾, who is formed on one side, but on the other hand, it is free from any aid and from any investigation for the benefit of the aggrieved relatives; that is, when the death of the author is verified and before he initiates a claim for his right to compensation for literary damage, or before he obtains a court ruling proving his entitlement to compensation; Relatives have no right to request compensation for literary damage. From the foregoing, we find that Article (205) of the Iraqi Civil Code was not concerned with solving all the problems of compensation for literary damage, especially with regard to the relatives of the deceased author, who may not have time to claim compensation or obtain a court ruling for his right. This is a clear violation of the rules of justice, which refuse to allow the aggrieved to remain without compensation. In serious injuries that do not lead to the death of the author, and also upon the

⁽²⁾ See: Dr. Adam Wahib Al-Nadawi - Civil Procedures - University of Baghdad, College of Law, 1988, p. 321

⁽¹⁾ See: Muhammad Ahmad Abdeen - Compensation for material and literary damage inherited - Mansha'at al-Maaref, Alexandria, 1995, p. 193

⁽²⁾ See: Ashraf Wafa Muhammad –op.cit-at- pg 49.

death of the latter without obtaining a court ruling or before claiming compensation, in both cases, there will be harmed persons without compensation, and this will outweigh the cost of the doer of harm over the aggrieved, which requires urgent intervention from the Iraqi legislator to avoid this. Especially as we are entering the era of electronic digital openness, which made every work and creativity available on virtual reality, which may be taken as a means by weak-minded people to exploit it before the rights of the victim and his affected relatives.

The Second Requirement

Methods of Compensation for Literary Damage

The most severe damage to the author is the literary damage that may affect the most prominent rights attached to his person, causing him pain and a feeling of hurt due to the infringement of one of his moral rights. As each legislator worked on putting in place a set of procedures that would guarantee him to recover his right or at least mitigate the infringement committed against him, as it was stated in the Iraqi Civil Code that "...every infringement on others in their freedom, honor, reputation, social status, or financial consideration makes the infringer responsible for compensation." we find that the compensation guaranteed by the legislator to the aggrieved author may be in kind or it may be in-kind, which necessitates the statement of each of them in a separate section, as follows:

First Branch

In-Kind Implementation

Every person is legally obligated not to do any act that may harm others, and it is not permissible for any person to invoke ignorance of the law by assuming that they are aware of the laws and their impediments as far as they are concerned from the date of their entry into force and their publication in the Official Gazette; when the author publishes or presents his work, everyone is required to abide by this legal obligation not to interfere with him in his work; As long as all people do not object to the author in his rights; They have fulfilled their obligation in kind, but if any of the people insults the author in any of his works, they have violated the obligation not to harm others. The best compensation for the aggrieved party is to demand specific implementation, i.e. the removal of the abuse that occurred. This is if the violation of the aggressor against the work is acceptable for removal; As if the infringer made modifications to the author's work or published his works without his consent, as long as the violation is acceptable to be removed, the author may demand specific implementation, which is one of the forms of non-monetary compensation⁽³²⁾. For example, the court obliges the aggressor to remove the modifications made by the infringer to the work, or to retrieve the published work and delete it from the place of its publication, and in this the court's ruling will be to restore the situation to what it was⁽³³⁾; and this was confirmed by the Iraqi legislator in Article (209) with its text "... According to the circumstances, and at the request of the injured party, it may order that the case be returned to the way it was...", but if the copyright infringement leads to the destruction of a number of his books that he had printed, then the court may order to restore the situation to the way it was. The court may decide to publish an apology or a judgment condemning the aggressor as compensation in one of the official newspapers and at the expense of the convict aggressor.

Second Branch

Execution for a Fee

Cash compensation is the most prominent solution after in-kind compensation⁽³⁴⁾; Especially if the violation issued by the infringer on the author's intellectual work is not

⁽¹⁾ See: Abdul Hamid Al-Minshawi – op.cit-at - p. 103

⁽²⁾ See: Dr. Suleiman Morcos - Civil Responsibility - Lectures in Private Law, University of Baghdad, Cairo, 1955, p. 138

⁽³⁾ See: Dr. Muhammad Labib Shanab –op.cit-at- p. 187

acceptable for removal or deletion. Then the court has no choice but to rule a monetary amount. Execution for a consideration is intended for the infringer to pay the owner of the work an appropriate compensation commensurate with the literary damage suffered by the latter. The claimed compensation may be non-cash, as if all the supplies that the author spent in order to produce his work in the final form are taken into account, and the same is requested as compensation. For the owner of the work to use them to return his work to the rest of his possession, or to sell these supplies and use their price, in the event that the assault on intellectual works generates money, as in the case of selling or trading intellectual works without the author's consent, compensation in this case is determined in the case of whether the infringement of the intellectual work was in good faith or in bad faith ⁽³⁵⁾, what is meant here by bad faith is that the aggressor was aware that he was trading and selling works not affiliated with him, that is, he knew that he had seized what he had no right to. As for what is meant by the good faith that the aggressor was trading in copies of the work, ignorant that he was using what he had no right to, the user of the rights of others is in good faith and deals with the author's intellectual works; He could enjoy all the benefits that he gained from this use. But if the infringer is in bad faith, then he is obligated to the author to return to him all the interests that have entered into his financial liability due to the exploitation of the work. For example, if the attack on the work is in the form of publishing and distributing books without the consent of its owner, i.e. in bad faith, and the beneficiary benefited from that by entering civil fruits and yields from it, the infringer has to return the amount that he benefited as well as return all printed copies with compensation, and such compensation finds its basis in the theory of gain without reason, as well as in Article (44) of the Iraqi Copyright Law No. (3) of 1971, as amended, which states that:

Every author who has infringed one of his rights established under the provisions of this law has the right to an appropriate compensation. When estimating compensation, the cultural status of the author, the literary, scientific and artistic value of the work and the extent of the benefit obtained by the infringer from exploiting the work shall be taken into consideration.

2. Conclusion

From this brief research, I wanted to shed light on the true maximum value of the copyright in the field of compensating for the moral damage that may be incurred as a result of the attack on any of his intellectual works; at a time when everyone is obligated to refrain from doing any act harmful to others, hence, the responsibility rests with everyone to bear this common duty and not to neglect it and to confront any kind of infringement on copyrights. So, from the foregoing, I end by presenting the most important findings and recommendations in this research, which can be summarized as follows:

3. Results

- 1- Compensation for literary damages is a necessity, especially in our time, after the spread of modern means of communication and the ease of transmission and exploitation of information. Which requires that the legislative protection of the literature be on a level of development that keeps pace with technological development.

⁽⁴⁾ See: Dr. Ghani Hassoun Taha – op.cit-at - p. 450

- 2- Copyright includes two components, a financial and a moral one. This is why it is difficult to determine the material compensation and implement its appropriate reform function in relation to optimal literary values for its owner.
- 3- That the Islamic Sharia did not refer to compensation for literary damages and took the method of reprimand to deter the aggressor; However, it did not also prevent such compensation. Perhaps it is development and modernity that necessitated the existence of such compensation, and it does not mean that Islamic Sharia prohibits it.
- 4- Although the Iraqi Civil Code limited compensation for literary damage within the framework of tort liability, the Iraqi copyright law did not limit the contractual absorption of compensation for literary damage.

4. Recommendations

- 1- The literary damage to the copyright is the most prominent type of damage that may be inflicted on the author in the nodal or tortious field, so we call on the Iraqi judiciary to adopt compensation for literary damages in the nodal field. Damage exists, even if it is not agreed upon. Rather, it is considered one of the requirements of the contract in accordance with the rules of justice that refuse to keep damages without compensation.
- 2- We call on the Iraqi legislator to amend the text of Article (205) of the Iraqi Civil Code to be as follows: "1- The right to compensation also deals with literary damage; for example, every infringement on others' freedom, honor, reputation, social status, or In its financial consideration it makes the infringer liable for compensation. He may order compensation for one of the spouses and relatives up to the fourth degree of the family for the literary damage they suffer because of the death of the injured or because of his injury. The purpose of the amendment is to extend compensation for literary damage to every literary concept that may affect the aggrieved, so that images of literary compensation are included, for example, but not limited to, and also the other purpose of abandoning the contradictory jurisprudence on the right of any of the spouses to compensation, as well as identifying the relatives who benefit from compensation to abandon the claims that may be multiple from each of those who claim to be close to the aggrieved, the final goal is to delete the third paragraph so that compensation is available to those affected by apostasy without the need for an agreement or a final court ruling.
- 3- We call on the Iraqi legislator to enact a law regulating the publication of books and the necessity of registering them in the names of their owners, in a way that contributes to establishing the responsibility of anyone who works on misuse of authors' works or part of them without the consent of their owner.

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