

# The Elements of the Crime of Copyright Infringement on the Internet

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## Abstract

With the creation of the human mind, the intellectual production of such machine created by the Creator began to appear in various forms starting from drawing and engraving on stones, the manufacture of clothing from plants leaves and animal skins, and making fishing rods and eventually to all cognitive sciences known by the world today and the evolution reached in all fields and aspects. Intellectual property rights are among the most important forms of human rights related to his intellectual production in the scientific, literary, artistic, and all forms of intellectual production in the different aspects of human life. It is clear to all that this production has its material and moral fruits. The intellectual property rights have become one of the most important forms of material rights that entitles its holder to dispose them, give them up and invest them. This right can be defined from the researcher point of view as a set of ideas that are written and issued by the human mind, and that can be accessed and identified just as tangible material objects. It includes all rights resulting from the intellectual activities of man in the literary, artistic, scientific, industrial, commercial and similar fields.

**Keywords:** *Crime, Elements, internet*

## Introduction

Through this research, we address a number of points by study and interpretation: What works are covered by criminal protection<sup>1</sup>, in terms of definition, conditions to be provided, and the elements of the work. The corpus delicti of the Crime of copyright infringement on the internet. Criminal Punishment for such crime in the Light of Iraqi Legislation<sup>2</sup>. The research was conducted on four themes, in the first of which the researcher addressed the works covered by the legal protection in three sections. Section one introduces the definition of works, section two addresses conditions to be provided in the work covered by legal protection and section three provides the elements of the works subject to the crime in question. The second theme handles the physical corpus delicti of the crime of copyright infringement on the internet. It is introduced in three sections: the first of which is concerned with the criminal activity, the second of which deals with the criminal result, the third of which provides for the causal relationship<sup>3</sup>. The third theme handles the moral corpus delicti of the crime of copyright infringement on the internet. It is introduced in two sections: the first of which is concerned with

premeditation in the crime of copyright infringement on the internet, the second of which deals with the motive of the crime of copyright infringement on the internet<sup>4-6</sup>.

## Methodology

### Conditions to be provided in the work subject to such crime

The author copyright related to his work, due to all of the above mentioned reasons, may fall as a victim of counterfeiting and illegal imitation, so the right holder (the author) incurs physical and moral damage. Thus, the legislator must intervene to the extent necessary for providing the legal protection sufficient for the author and guarantee his rights with regard to his work in order to give him reassurance and thus give more room for creativity and intellectual production.

The elements of the works subject to the crime

Neither jurisprudence nor law, nor even the judiciary system, interferes in the development of certain elements that are required to establish the literary, social, scientific, artistic or cultural value of the digital work, so that it can be considered a subject of crime. In other words,

the purpose of the work is not significant in determining whether or not legal protection should be available.

The elements to be available in the work so as to be covered by legal protection are two elements that are:

1. Creation: The legal jurisprudence considers innovation to be an essential element for the protection of intellectual property. The French jurisprudence considers innovation the essence of originality and seriousness, so that the work reflects the personal nature of the work author, which appears in the stage of creation and expression during the creation and production of the electronic work. This is evident by its definition of innovation as (The personal imprint placed by the author on his work). The Egyptian jurisprudence defines innovation as (the work being characterized by originality in terms of construction or expression). The Iraqi jurisprudence defines innovation as “the emergence of the personal effort of the author of the idea, regardless of its literary or material value <sup>6</sup>. This does not differ if work is created by the author, in whole or in part, through different elements being collected and arranged in a particular form that reflects the character of the author through the production of the work covered by legal protection)

2. Material physical form: An abstract idea is not enough for providing legal protection, even if it is innovative and new, since this idea must have a tangible physical existence. Therefore, the digital works covered by legal protection should have a tangible physical existence that commensurate with the prevailing trend in jurisprudence and legal legislation of the expression of material physical existence. The latter limits range of the legal protection of digital works to a large extent, especially those that take the form of public performance such as Quranic recitation, musical melody or poetic poems

### **Section (1): Criminal Activity**

The most prominent element of the crime corpus delicti in general is the first material notice of the crime existence to the outside tangible world, and as far as the crime of copyright infringement on the internet is concerned, the criminal activity here means the act of infringement of the author literary and financial copyright, either by the imitation of the work wholly (total reproduction) or in part as when some of the ideas contained in the work that belong to the author are attributed to another person, who is usually the

perpetrator of the imitation crime.

Imitation within the framework of intellectual property rights is all the forms of action against these rights, and since the criminal legislator <sup>7</sup> has avoided setting the definition of imitation along with mentioning the acts that are considered, the legal jurisprudence defined it as making something new less valuable than the original one or similar there to with the aim to benefit from the value of the difference between the two things.

### **Results and Discussion**

It is the second element of the crime corpus delicti, since the criminal conduct entails consequential effect, and this effect is the criminal result. There is no doubt that such an effect is required for the legal establishment of the crime, since a crime can never be established unless there is a criminal conduct and consequences arising there from. Therefore, the extent of such legal effect conformity to that effect specified in the legal model of crime shall be considered. The effect of the criminal conduct in the infringement of copyright on the Internet crime represents an infringement of the interests and rights protected by law. This is the conventional legal concept of the criminal result as an element of the crime corpus delicti. The right of the legal author related to his work falls within the intellectual property rights. It is also the general right of the human right to preserve his intellectual life away from the intervention of others and grant him the right to lead this life as he pleases within the limits of the law. The criminal result in accordance with this concept is a legal idea based on the moral damage affecting the interest or right protected by the law in its text. According to this legal idea, the crime may have occurred even if the criminal conduct did not lead to material damage at the time of such conduct occurrence because the normal course of events foresees that such damage will inevitably occur in the future, and this possibility of the damage incurred by the interest protected by law is the criminal result. The legal provision that criminalizes certain conduct has been established only for the wisdom of the legislator <sup>8</sup>, and the latter has not established the legal provision merely to avoid tangible material damage, but rather to seek punishment for the same criminal conduct. The mere fact that the criminal conduct leads to the criminal result, even if it does not occur, is sufficient to punish those whoever commits such conduct. This applies to the crime of infringement of the author legal rights on the Internet, since the perpetrator violates the intellectual

property right of the victim, protected by the law, without the need to investigate the external material effects resulting from such conduct. Such crime is a risk crime that are sometimes called formal offences. The causal relationship means the association that links the criminal conduct to the criminal result is one of the elements of the crime corpus delicti and is considered the link between the two other elements (the criminal activity and the criminal result). The issue of causation and its significance is clearly manifested when other factors interfere with the criminal activity of the perpetrator, contributing to the criminal result. The latter have already been given a general description as the violation of the victim rights through unlawful means. The question how is this convenient as far as the crime of copyright<sup>9-12</sup> infringement on the internet is concerned? If other factors interfere with the criminal activity of the perpetrator, contributing to the criminal result, does this negate the causal relationship, and therefore one of the elements of the crime corpus delicti is missing or this does not affect the existence of the causal relationship, which is proved along with the rest of the crime elements to form together the corpus delicti of the crime? The establishment of a criterion for proving the causal relationship between the criminal conduct and the criminal result is subject to the discretion of the competent court and its experience and precedents that enable it to give precedence to one of the criteria of proving the causal relationship and to judge its availability as an element of the crime corpus delicti or not. This did not prevent the criminal legislator in other criminal legislation from establishing a specific criterion for determining the availability of the causal relationship or<sup>11</sup> not. The Iraqi judiciary has different positions in the cases considered between the period between the old Baghdadi penal code and until after the issuance of the Penal Code in force no. 111 of the year 1969, since before the issuance of the current Penal Code and because the Baghdadi Penal Code lacks any text that determines a criterion for establishing the causal relationship, the judiciary went to follow the theory of direct cause, influenced by the trend of the French judiciary and jurisprudence and some of the Egyptian judiciary decisions<sup>12</sup>. However, the Iraqi judiciary has committed itself to apply the causal relationship criterion adopted by the theory of equivalence of conditions as stipulated in article (29) of the Iraqi Penal Code after its promulgation. One of the decisions issued by the Court of Cassation in Iraq, clearly demonstrate such trend in its this decision, stating that: the kidnap attempt, apart from assault, is a crime in itself and is indeed an act that comes

in contravention of law, which caused the victim extreme agitation, and since she was suffering from heart disease, this has resulted in her death<sup>13</sup>. The penal code held the perpetrator accountable for the crime, offence that did not result from his criminal conduct but he is responsible for that offence if, together with his criminal conduct, some other prior, contemporaneous or subsequent cause, even though he was unaware of it, played a part in its commission. Whereas the expert doctor mandated in the case has stated that the psychological agitation or irritability makes the patient heart unable to carry out its task and leads to the acceleration of death<sup>14</sup>, so the court decided to confirm the decision issued in the case, convicting the defendants and sentencing them according to such conclusion.

### **The mental element of the Crime of copyright infringement on the internet**

The mental element is the second pillar of the crime, and it means that the intention of the perpetrator goes to committing the criminal activity and the violation of the law either intentionally or inadvertently. The mental element of the crime has two forms: the first of which<sup>15</sup> is the so-called criminal intent (the vicious will) in which the perpetrator has directed his or her will to committing the criminal conduct aiming to reach the criminal result consequent to such conduct<sup>16-20</sup>. The second form thereof is the so-called error, in which the perpetrator has the intention to commit the criminal conduct without aiming to reach the criminal result consequent thereto. The mental element of the crime cornerstone on which the criminal legislator and the judiciary rely in ensuring legal justice and achieving the social purposes of the penalty, since the legal nature of the criminal liability and the penalty sufficient there for are determined based on such element.

### **Conclusions**

The author shall be given two types of rights on his electronic work that are the literary and financial rights, and one of them is likely to over weigh the other considering the different nature of the beneficiary whether the author during his life or his heirs or successors after his death. The crime of infringing legal copyright as other crimes has its corpus delicti and mental element. Committing such crime entails the imposition of original and consequential penalties, and the crime of the author copyright infringement on the internet is deemed as a misdemeanour. Most of the

comparative legislations included controls that clearly describe the outstanding work of the author in the field of arts, literature or other cognitive sciences so that it can be considered as a work covered by legal protection. The author's copyright is not subject to prescription, but this does not necessarily mean accepting the notion of permanence or eternity. If we accept that the permanent right is not subject to prescription, which means that the right holder or his successor has the right to defend his right before the infringer at any time, and the infringer may not use prescription as a basis for pleading the lapse of the copyright of the author or his successor. However, this idea is different from the permanence, which is intended to protect the right of the author related to his work that applies on an eternal basis and is not limited to any period of time, even if such period lasts for long.

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