

PalArch's Journal of Archaeology
of Egypt / Egyptology

THE LEGAL FRAMEWORK FOR PROTECTING TECHNICAL MEASURES IN THE DIGITAL ENVIRONMENT

Jehad Saleh Bani Younis ¹

¹Department American University in the Emirates COOLG OF LAW Director of the Master's

Jehad Saleh Bani Younis: The legal framework for protecting technical measures in the digital environment-- Palarch's Journal Of Archaeology Of Egypt/Egyptology 17 (5), 1262-1277. ISSN 1567-214x

Keywords: WIPO, Internet, UAE

Abstract

The tremendous development in the field of information revolution -in the modern world-has led to have new copyright infringement through the digital environment. Therefore, there had to be a revolution in law to standing against the information revolution to put a limit for the copyright infringement in the digital environment. Also, it has become necessary to resort to new protection techniques which are presented in more effective technology arrangements by the writers to form a strong deterrent for any kind of copyright infringement. This will enable them to have control over their workbooks and prevent others to reach them, unless they are authorized. The technology development has led to have new technical means that revoke the arrangements set by the writers, and as a result having free of charge workbooks. Thus, this study manifests the extent of confrontation of the Federal Law No. 7 of 2002 of copyrighting against the cases of evading the technical protection used by the copywriters, and the extent of its harmony with the provisions of the international conventions, specially the first internet treaty (WIPO Copyright Treaty-1996) and the second internet treaty (WIPO Performance and Phonograms Treaty-1996) The great development in the field of information technology has had a tremendous impact in all walks of life, but it has created challenges that differ in nature from those that existed before the invention of the Internet. Issues arising

from copyright and associated with modern technology, including the Internet. Through this research, the researcher will deal with the legal protection of technical measures in the digital environment in accordance with the UAE law in the first topic, and the international protection framework in the second topic.

Research importance :

The importance of this study lies in the fact that it deals with the issue of making copyright available in the digital environment in accordance with the UAE law. The emergence of digital works has led to the necessity of establishing controls to protect copyright and neighboring rights from various aspects of infringement, and then this study came to present a perception of the violations and to reveal ways Providing protection for these rights, whether in the UAE law or international conventions, as the ease of piracy acts in the digital environment has led to the loss of the rights of authors, whether literary or financial, and the author faces great difficulties in protecting his right.

Research problematic:

There is no doubt that information is a commodity of the current era and that the security of this information is the concern of every author or owner of a neighboring right, and the use of the Internet has revealed legal problems related to how to protect works through the digital environment due to the widespread phenomenon of abuse against these works, and therefore the United Arab Emirates has turned Like other technologically advanced countries, it led to the creation of legal texts that criminalize infringement of copyright. Nevertheless, circumventing the technical protection used by rights holders has become easier to circumvent and attack and access the work, and therefore the problem of the study revolves around what are the legal protections guaranteed by the legislator Emirati rights holders to protect their adequacy and keep pace with technological development.

Research Methodology :

The researcher will rely on the descriptive approach that is based on explaining the legal texts contained in the UAE Copyright Law and international agreements, especially those related to circumventing the

technical protection that rights holders use to protect their works, and the comparative legal approach by focusing on texts contained in international agreements and relevant legislation.

Research division:

The researcher will deal with this study through two topics, as follows:

The first topic: the legal protection of technical measures in the digital environment in accordance with UAE law.

The first requirement: procedural civil protection for technical measures through the digital environment.

The second requirement: the civil penalty resulting from the assault on technical protection through the digital environment.

The third requirement: criminal protection for technical measures through the digital environment.

The second topic: the international framework for legal protection for technical measures through the digital environment.

The first topic: the legal protection of technical measures in the digital environment in accordance with UAE law.

Emphasizing the interest in copyright and related rights, the Emirati legislator, in Law No. 7 of 2002, surrounded the author and succeeded him with a cordon of protection to preserve his rights. This protection is represented by means of procedural civil protection on a temporary basis, objective and criminal protection.

The first requirement: procedural civil protection for technical measures through the digital environment.

The spread of modern means has made it easy to record and transmit information, and that is why the UAE legislator has put in place a set of conservative measures that will stop any infringement of copyright in order to prevent any harm to the rights of authors.

The UAE legislator addressed these procedures in Articles 34 and 35 of Law No. 7 of 2002.¹

According to the legal text, the Emirati legislator gave the author and his successor a set of precautionary measures aimed at stopping the damage whenever the assault occurred, by submitting a request to the President of the First Instance Court in his capacity as a judge of urgent matters pursuant to an order on a petition and by taking these procedures in a sound legal manner, the author has preserved the evidence of assault On whom he will depend in resolving the dispute, and these procedures are:

1- Conducting a detailed description of the work and the technical measure that was circumvented.

That is, specifying the description of the work in a way that ensures its accurate knowledge and a description of the technical measure used, and of course the description of the work differs according to its type, it may be a book, a radio program, a singing performance or a recording, and therefore the description of the work must be done in a way that distinguishes it from others

2- To stop publishing, displaying or making the work.²

Under this procedure, publication of the work of any kind is suspended. If the work is a book, then its publication is suspended, and if it is a cinematic film, the temporary procedure is to stop showing the film.

3- Signing the seizure of the original work or copying it (books, pictures, drawings, performances, photographs, sound recordings, radio programs, etc.) as well as on materials that are used to republish this work or extract copies of it, provided that these materials are not It is valid for republication of the work, such as the printed paper from the work subject of the attack, without seizing the printing press or the machines that are used for printing, provided that these materials are not valid except for republication of the work according to the text of the

¹ Article 34 of Law No. 7 of 2002 stipulates the following: "The President of the First Instance Court upon the request of the author or his successor, and according to an order issued on a petition, may order the following procedures in relation to each work published or displayed without written permission from the author or his successor:

² Osama Al-Meligy, Procedural Protection in the Field of Copyright, Dar Al-Nahda Al-Arabiya, 1996, p.96

legal text. The precautionary measure also includes proving the public performance, whether to inflict, represent, or present and prove the act of assault, and this is done by filing an urgent lawsuit (proving his condition) with the aim of preserving the features of the incident for fear of losing its features until the original claim is submitted..³

4- Counting the revenue resulting from the publication or display of the work and signing of this revenue withheld.

This procedure aims to seize the aggressor's hand and not enable him to dispose of the proceeds of exploitation (financial returns) of the right violated.

It is clear from the text of Article 34 of the aforementioned Emirati law that the Emirati legislator made the matter permissible for the president of the court to take temporary or conservative measures because the judge undertakes these procedures without his opponents, considering them as state and not judicial acts, and the means of which are orders in petitions.⁴

Under Article 35, everyone against whom any measure was issued under Article 24 of the aforementioned law may appeal against the order issued in front of the same authority that issued the order if his grievance was justified within the twenty days following the date of its issuance or announcement, as the case may be, and the president of the court who issued the order may support the order or Its cancellation or the appointment of a guardian whose task is to republish the work or display it and deposit the exploitation product in the court's box. The Emirati legislator has placed a restriction on the validity of the precautionary measures. And in the event that this is not observed, the action taken is considered as if it did not exist, and the head of the court of first instance in terms of disability Article 34 must impose on the applicant of the provisional or preventive measure to deposit an appropriate guarantee

³ Osama Al-Meligy, previous reference, p. 97.2-.

⁴ Saeed Saad Abdel Salam, Legal Protection of Copyright and Neighboring Rights, Dar Al-Nahda Al-Arabiya, 2004, p. 190

until his request is approved, in order to ensure the harm that may befall the person against whom the measures were taken.⁵

The second requirement: the civil penalty resulting from the assault on technical protection in the digital environment.

According to Article 40 of the UAE Copyright and Related Rights Law, the court may order the confiscation of the counterfeit copies, the subject of the crime or obtained from it, and the confiscation of the equipment and tools used in its commission that are only suitable for this purpose, and the closure of the facility in which the crime of counterfeiting was committed for a period not exceeding six months and the publication of a summary The judgment issued for the conviction in one or more daily newspapers, at the expense of the convicted person. Accordingly, any materials or tools used to violate any technical measures used by the author are confiscated according to the law.

The UAE Copyright and Neighboring Rights Law did not include an explicit text that includes criteria for assessing compensation for damage resulting from an assault on the work, unlike what some other laws came, such as the Jordanian Copyright Law, where this last set out the criteria for determining the material and moral harms, while the text was clear and explicit with regard to procedural protection The time, which we referred to in the first requirement of this topic.

Therefore, the author whose rights are violated in accordance with the UAE law can resort to the precautionary measures contained in the UAE copyright law and then file a lawsuit claiming compensation so that the criteria for estimating compensation contained in the UAE Civil Transactions Law are observed.

In order for civil liability to be established, whether contractual or default, there must be its elements of error, damage and a causal relationship, and the error leading to liability is either contractual when the obligation arising from the contract is not executed or negligent when a breach of a legal duty is achieved.

The contractual error appears in the field of copyright and related rights and published in the digital environment when the publisher does not implement his obligations arising from the exploitation contract, and the negligent error appears clearly when the available work is printed electronically and sold without the author's permission.

As for the second pillar, which is the harm, whereby the author inflicts material damage by depriving him of the proceeds of exploiting his work, and morally touching his name as if it represents an assault on the right of paternity established for the author.⁶

Moral harm is compensable for it pursuant to the provisions of Article 293/1 of the UAE Civil Transactions Law, which states that "the right to guarantee deals with moral damage. It is considered as moral harm to infringement on others in his freedom, honor, honor, reputation, social position, or In its financial regard, noting that compensation for moral injury is not transferred to others unless its value is determined by virtue of an agreement or a court ruling.

For civil liability, there is also a need for a causal relationship between the error and the damage, meaning that the damage results from the error.

The truth of the matter is that we will not face any problem in compensating the author if his traditional works are attacked, but the problem arises in the case of the assault on published works in the digital environment where it is difficult to determine the aggressor and the extent of the damage caused to the author as a result of the assault.

The third branch: criminal protection for works published through the digital environment.

The UAE legislator has been keen to provide criminal protection that is complementary to civil protection, and this protection is represented by the penalties decided by the legislator for everyone who infringes on the rights of the author, and the UAE legislator has explained cases that

⁶ - Ahmed Anwar Badr, Electronic Publishing and Its Contemporary Problems, a working paper within the activities of the Research and Studies of the Second Scientific Conference of the Information Systems and Services Research Center, October 1999.

constitute an infringement of copyright and neighboring rights in a number of legal texts in Federal Law No. 7 of the year 2002 Criminal protection has a strong effect in deterring aggressors, including the punishments that are detrimental to the human being, whether in his life, liberty, or money. On copyright and related rights.⁷

In this section, we will review the most important punitive legal texts contained in the UAE Copyright and Related Rights Protection Law, which outline the penalties imposed by the legislator on any offender who commits a copyright infringement crime.

First: - Article 37 of Federal Law No. 7 of 2002 regarding copyrights and related rights of the UAE states that “Without prejudice to any more severe penalty mentioned in any other law, he shall be punished with imprisonment for a period of not less than a month and a fine of not less than ten thousand dirhams. In excess of fifty thousand dirhams, or either of these two penalties, whoever commits any of the following acts without written permission from the author or owner of the neighboring right or their successors.⁸

1- Attacking one of the literary or financial rights of the author or the owner of the neighboring right stipulated in this law, including the placement of any work, performance, sound recording, or radio program that is covered by the protection established in this law available to the public, whether through computers, internet networks, or Information networks, communication networks, or other methods or other means

2- Selling, renting, or offering for circulation in any form of a work, sound recording, or radio program protected in accordance with the provisions of this law

The punishment stipulated in this Article shall be multiplied by the multiplicity of the works, performances, program, or recordings subject of the crime, and the penalty of imprisonment for a period of no less than six months and a fine of not less than fifty thousand dirhams in the case of committing the crime again.

⁷ Ahmed Sidqi Mahmoud, Legal Protection of Intellectual Property Rights, Arab Renaissance House, 2004

⁸ Usama Al-Meligy, Procedural Protection in the Field of Copyright, Arab Renaissance House, 1996.

Second: Article 38 of the same law states that “Without prejudice to any more severe punishment mentioned in any other law, whoever commits any of the acts shall be punished with imprisonment for a period of no less than three months and a fine of no less than fifty thousand dirhams and not more than five hundred thousand dirhams. The following⁹

1- Unlawfully manufacturing or importing for the purpose of selling, renting, or trading any work or counterfeit copies or any devices, means or tools specially designed or prepared to circumvent the protection or technology used by the author or the owner of the neighboring right to broadcast or offer for circulation or to organize or manage these Rights or maintenance of a specified quality of reproduction.

According to the previous text, any tool that violates the means of protection that the author uses to protect his work is subject to criminalization as well.

2- Unlawfully blocking or defecting any technical protection or electronic information aimed at organizing and managing the rights stipulated in this law.

In any case, the material element of this crime in the aforementioned images is achieved by disrupting or defecting the material content of the technical protection system used by the author, and in all cases the result is the same, which is the inability of the device or machine to protect according to what the author has allocated¹⁰

The moral element of this crime is the perpetrator's knowledge of the elements of this crime and his will to harm the author.

3- Downloading or storing the computer with any copy of the computer programs, applications or databases without a license from the author or the right holder or their successors.

In the event that the crime is committed again, the penalty shall be imprisonment for a period of no less than nine months and a fine of not less than two hundred thousand dirhams. "

⁹ Hanan Talaat Ahmed Abu Al-Ezz, Criminal Protection of Copyright, MA Thesis, Faculty of Law, Cairo University.

¹⁰ Hanan Talaat Ahmed Abu El-Ezz, Criminal Protection of Copyright, MA Thesis, Faculty of Law, Cairo University.

Third: Article 39 of the UAE law states that, “As an exception to the provision of Article (37) of this law, every person who uses a computer program, its applications, or databases without prior authorization from the author or his successor shall be punished with a fine of not less than ten thousand dirhams and not more than Thirty thousand dirhams for each program, application or database, and a fine of not less than thirty thousand dirhams in the event that the crime is committed again, and if it is committed in the name of or for the account of a legal person or a commercial or professional establishment, the court may order the closure for a period not exceeding three months. ”¹¹

Fourth: Article 40 of the UAE law stipulates that “Without prejudice to the penalties stipulated in Articles 37, 38, and 39 of this law, the court shall order the confiscation of the counterfeit copies of the crime or those obtained from it and destroy them. For this purpose, and closing the facility in which the counterfeiting crime was committed for a period not exceeding six months, and by publishing a summary of the conviction ruling in one or more daily newspapers at the expense of the convicted person.

Fifthly: Article 41 of the UAE law stipulates that “Without prejudice to the penalties stipulated in this law, a penalty of imprisonment not exceeding six months and a fine or either of these two penalties shall be imposed on anyone who violates any other provision of this law or the regulations or orders issued in implementation for him ”¹²

Sixth: Article 10 of Decree-Law No. 5 of 2012 in the matter of combating information technology crimes states that “he shall be punished by imprisonment for a period of no less than five years and a fine of not less than five hundred thousand dirhams or one of these two penalties whoever deliberately and without authorization introduces a computer program to An information network, an electronic information system, or an information technology means, and this led to its

¹¹ - Walid Abdel-Hay, The Problem of Electronic Justice in Intellectual Property Rights, a study presented within the works of the first scientific conference on intellectual property organized by Yarmouk University in Jordan in July 2000 AD, Yarmouk University Publications, Irbid, Jordan, 2001.

¹² Ahmad Nafeh Madadha, Electronic Publishing and Protection of Works, Safaa Publishing and Distribution House, Amman, First Edition, 2011

suspension, disruption, destruction, deletion, deletion, destruction or alteration of the program, system, website, data or information, The penalty for imprisonment and a fine not exceeding five hundred thousand dirhams or one of these two penalties if the result is not achieved, and the penalty will be ¹³imprisonment and a fine or either of these two penalties for any intentional act intended to flood the e-mail with messages, suspend it from work, disable it, or destroy its contents.

Accordingly, it appears that the UAE legislator has taken the highest levels of technical protection, as it prohibits acts that constitute fraud of technical protection, and at the same time the offense of manufacturing or importing and disrupting or defaming any technical protection used by the author.

The second topic: the international framework for the protection of published works in the digital environment

Previously, issues of copyright and related rights protection were concerned with protecting the ownership of intellectual works in its traditional form, such as publications, recordings, or lectures. As for issues of digital intellectual property rights, they are a new pattern that has its own nature.

By reviewing international agreements, we find that the (Berne) agreement dealt with ownership in its traditional form, whether in the basic treaty or in the amendments that have occurred to it. With the emergence of the Internet, it became easy to exchange information and works such as books, songs and other things, which called the World Intellectual Property Organization to sponsor the two Internet agreements, namely.

- The First Internet Treaty (the 1996 WIPO Copyright Treaty)¹⁴

The WIPO Copyright Convention of 1996, which is called the First Internet Treaty, came as a special agreement with the meaning defined by Article 20 of the Berne Convention, which allows member states of

¹³ Lotfi Khater, Encyclopedia of Intellectual Property Rights, an original study of Law No. 82 of 2002 regarding the protection of intellectual property rights, p. 596.

¹⁴ Article L331-5 En savoir plus sur cet article

the Berne Union to conclude special agreements if the latter grant more rights than the rights stipulated in The (Berne) Agreement, of course, this treaty has no connection with other treaties other than the (Berne) Convention and does not prejudice any right and obligations arising from other treaties, and it does not detract from any of the rights and obligations contained in other agreements such as the TRIPS Agreement and the Global Convention on Rights The author.

What concerns us in this study is what is related to the subject of technical measures, as the agreement required the contracting parties to stipulate in their laws appropriate penalties to be imposed on any person who knowingly undertakes any of the following acts or has sufficient reasons to know that these acts lead to committing an infringement on any Among the rights covered by this treaty or the Berne Convention, or enable, facilitate or conceal this, and these actions are:¹⁵

1- To delete or change without permission any information contained in electronic form that is necessary for managing rights.

2- To distribute or import for the purposes of distribution or to broadcast or transmit to the public without permission works or copies of works with the knowledge that they have been deleted from or altered from them without permission information contained in electronic form that is necessary for the management of rights

This agreement also required the contracting parties to stipulate in their laws effective protection against the circumvention of technological measures used by authors when exercising their rights based on this treaty, which prevent them from engaging in actions that the authors concerned did not authorize or were not permitted by law in relation to their works.

- The Second Internet Treaty (the 1996 WIPO Performances and Phonograms Treaty)¹⁶

In response to the needs arising from technical developments, the desire to develop the protection of the rights of performers and producers of

¹⁵ Osama Abul-Hasan Mujahid, Protection of Works on the Internet, Arab Renaissance House, 2010, p.57.

¹⁶ AD 13 of the First Internet Treaty.

phonograms, and the need to apply international rules to develop solutions to issues arising from these developments, the WIPO Performances and Phonograms Treaty 1996 came to be concluded on 12/20/1996 (the Second Internet Treaty).¹⁷

This treaty is without prejudice to any rights or obligations arising from it, nor does it limit any obligations incurred by the contracting parties under the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations concluded in Rome on 10/26/1961.

Under Article 18, the contracting parties must stipulate in their laws effective protection against the circumvention of technological measures used by performers or producers of phonograms, and the contracting parties must stipulate in their laws that deterrent penalties be imposed on any person who knowingly undertakes any of the acts. He knows or could have known that these acts lead to the commission of an infringement of any of the rights covered by this treaty, or he enables, facilitates, or conceals it:

1- To delete or change without permission any information contained in electronic form that is necessary for managing rights.

2-To distribute or import for the purposes of distribution, broadcast or transmit to the public, or make available to the public without permission performances or copies of proven performances or phonograms with the knowledge that they have been deleted from or changed therein without permission information contained in electronic form that is necessary for rights management.

Accordingly, the two WIPO treaties imposed an obligation that constitutes in itself the minimum level of protection - the first level of protection - which is the prohibition of acts that nullify or circumvent technical measures with the aim of obtaining a protected work that was

¹⁷ The information necessary for the administration of rights as mentioned in the treaty in Article 19 means "information that allows the identification of the performer, his performance, the producer of the phonogram and his phonogram, the owner of any right in the performance or phonogram, and any numbers or codes symbolizing that information in conjunction with a copy of a fixed performance or phonogram. Or apparent when a fixed performance or sound recording is transmitted to the public or made available to it.

not authorized by the author or not permitted by law in accordance with the provisions of Article 13 of the treaty. The first and Article 18 of the second treaty.

Conclusion :

Now that we have completed the research subject of the study, we can pause at the most important findings and recommendations that the researcher has reached.

First: the results.

1- The WIPO convention took over the technical development and included its provisions that would provide protection for technical measures for digital works in response to the foregoing technology. It also urged states to join and ratify its texts even though it imposed an obligation that constitutes a minimum level of protection.

2- The texts on the technical measures contained in the UAE Copyright Protection Law of the year 2002 AD were devoid of clarifying the meaning of some legal terms. The author or the owner of the neighboring right in order to enjoy legal protection as stated in international conventions

3- Article 38 of the UAE law does not include among its paragraphs what criminalizes any deletion of any information that is necessary for the management of rights, which is information that allows the definition of the work and its author, the conditions for using the work, and any codes that symbolize this information when this information was apparent when the work was transferred to all.

4- The UAE Copyright Law did not include an explicit provision criminalizing the removal of the technical system, that is, the cancellation of the technical protection system used by the author completely, and the perpetrator removed or canceled the technical system used by the author with the intent to harm him.

Second: Recommendations

1- Re-review the texts of Articles 38,37 in the UAE Copyright Law, so that the technical measures used by the author or the owner of the

neighboring right must be effective as stated in the first and second Internet agreements referred to, and at the same time adding a paragraph that explicitly includes criminalizing any deletion For any information that is necessary to manage rights, since the beginning of the second paragraph of Article 38 includes cases of defamation and suspension without deletion.

2- Include a special text specifying criteria for estimating compensation for damage resulting from the assault on technical measures and electronically published works in the UAE Copyright and Neighboring Rights Law, similar to Article 49 of the Jordanian Copyright Law.

3- The necessity to include a text in the Copyright Law regarding the consideration of the compensation awarded to the author in the event of an assault on his works, an excellent debt on the net price of the things that were used in the violation of his right and any sums withheld in the lawsuit.

4- Creation of specialized administrative organs equipped with the latest technical means to follow up on cases of attacks on technical measures as well as works published electronically.

5- Adopting the idea of establishing a (digital court) within the civil court circuits that would have jurisdiction over criminal and civil cases brought by authors or owners of neighboring rights as a result of the assault on their published works electronically.

6- The necessity of adopting a legal protection system with regard to technical measures, taking into account the achievement of a balance between the rights of the author on the one hand and the rights of everyone to have access to the works published electronically.

7- Modern technical means are in constant development, and this also entailed the development of methods of violating the technology used to protect rights, and therefore this calls for the necessity of holding sessions and conferences in order to qualify lawmen and specialists to keep up with everything new, which leads to an increase in their knowledge and their ability to deal with any emerging issues in Scope of violation of technical measures.

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Third: websites.

1-[http://www.wipo.int/wipolex/en/profile.jsp? Code = AE # a15](http://www.wipo.int/wipolex/en/profile.jsp?Code=AE#a15)