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**INOVATION AND MANIFESTATION (EXISTENCE): THE
SUBJECT-MATTERS OF LEGAL PROTECTION OF
INTELLECTUAL PROPERTY
CONCEPTUALIZING INTELLECTUAL PROPERTY IN THE
CONTEXT OF LEGAL PROTECTION
THE CONCEPT OF INTELLECTUAL PROPERTY AS A
SUBJECTOF LEGAL PROTECTION**

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Dr. Jehad Saleh Qwaider Baniyniss, INOVATION AND MANIFESTATION (EXISTENCE): THE SUBJECT-MATTERS OF LEGAL PROTECTION OF INTELLECTUAL PROPERTY CONCEPTUALIZING INTELLECTUAL PROPERTY IN THE CONTEXT OF LEGAL PROTECTION THE CONCEPT OF INTELLECTUAL PROPERTY AS A SUBJECTOF LEGAL PROTECTION-Palarch's Journal Of Archaeology Of Egypt/Egyptology 18(4), ISSN 1567-214x

Abstract:

The concept of Legal Protection of intellectual property in the context of this paper is to find the means of preserving its existence and to prevent its abuse, whether the matter is related to the owner or the author of the work, regarding the personal qualities such as the productive imagination, or innovative idea or intellect that may actually be put into existence in the form of a book or lecture, or theater arts or drawing or painting works, or through the creation of a futuristic image full of wide range of perceptions and expressions dissimilar to the prevailing one. That kind of a talented individual is protected by the law in appreciation of his efforts and productive epitomes. The law, in addition to that, ambience him with a protectoral fence that preserves what he has been able to produce for either the benefit of the present or future generations of his country. This, in no doubt, will encourage others who may be possessing similar ideas to trailsuch an example. Therefore, the law streamlines an adequate protective regulations for these kinds of innovative ideas through the means of a Legal protection, as the possession of

innovative idea may not be enough alone without it being protected by the law. Therefore, in addition to that, and if necessary, these noble ideas of innovation and creation should be made to be visible, exist and perceptible physically, regardless of its type or method or expression or importance or purpose.

Keywords: Authored work, Innovation, Manifestation, Intellectual property, Legal protection.

1. Introduction:

The legal protection within the scope of this paper inclines to two directions; the first one being the physical protection of the intellectually produced material, which includes the innovative ideas and thoughts, regardless of the way or purpose or color or type or means by which it is produced.

The second one is the protection of the owner of the intellectually produced substance or material; that is, the author who is safeguarded by the law through the appreciation and preservation of his efforts and productive ideas.

The Jurisprudence, judiciary and modern laws recognize the rights of the author, and have therefore, decided to protect him not only as the author of the intellectually produced material but at the same time protect the work he had produced in order to ensure the preservation of this product wherever it may be found in the society. In that wise, the focus of attention of this paper is to examine the legal protection of these innovative works and their authors.

2. Importance and motives of the Research:

There is no doubt that the progress of the modern societies in science, literature and art came into being from the fruitful ideas and efforts of distinguished men of talents who are genius in every aspect of knowledge and lively endeavor. With their inventiveness and proprietorship, they were able to change the course of history for the benefit of humanity. Thanks should be given to their achievements that sealed the curtain on the backward past and paved the way for a better future that all the humanities could be able to adore. They are the people with creative minds and owners of innovative works in the various fields of human endeavors. It is, therefore, imperative at this juncture to give them the necessary attention by providing them and their works with the essential legal protection, as the advanced and developed societies rely solely on the dynamics and works of these scientists, writers, thinkers and other prominent intellectuals.

Despite the interest of some of the legislators at the present time in copyright and innovation rights' laws, the Emirati legislator is able to come up with a brief provision in her Copyright Protection Law No. 7 of 2002. However, that

law is not able to cover the protection of these works and their authors, and this specifically is the reason for choosing the topic at hand.

3. Research Overview:

The study in this paper is divided into two sections. The first one is devoted to the concept of authorship works or creative works, and it is divided into two sub-sections. The Concept of protection of intellectual property or innovative work is dealt with, while the second sub-section focuses on the kinds of intellectual properties that could be protected.

As for the second section, it is devoted to classification of the authors that could be protected by law. The areas to be discussed in this section is also divided into two sub-sections. The concept of Authorship is the focus of attention of the first sub-section, while the second sub-section examines the means by which an author; the bona fide owner of intellectual property could be identified in collaborative works. The findings and suggestions for further studies form the concluding part of the research.

Despite the germaneness of the copyright protection laws and the emphasis on the need to protect the intellectual works, it is found that most of these laws do not have specific definition for the word: "Copyright protection". Rather, it is observed that its definition is deliberately left for the writings on jurisprudence and judicial rulings to determine. Accordingly, in this section, the concept of the property or work to be protected is dealt with, while the conditions for the property or work to be protected will be examined in the second section.

4. (i) The concept of the property or authored work meant to be legally protected:

Linguistically, an authored work refers to something that is authored, or something that is replicated in varieties so as to be distinguishable from others¹. Technically, some jurisprudences² are of the view that the meaning of an authored work covers all the intellectually produced items, materials or things, regardless of whether it is in form of a book or writing or sound or drawing, or photography or play, and in whatever area or subject, such as literature or art or science. In another vein, it is defined as any creative work in form of literature or scientific or artistic or any method of expression for a certain purpose or importance by which it is authored³.

¹See Majd al-Din Ibn Yaqub al-fayruzAbadi, Al-Qamus al-Muhit Vol. 3, Al-Matbat al-Asriyyah, Egypt, 3rd edition, 1933, P. 163.

²Dr. Ismail Ghanim, Muhadarat fi al-Nazariyat al-Ammah li al-Haqqi, 3rd edition, Maktab Abdullah Wahbah, 1966, P.54, and Dr. Muhammad Kamal Abdul Azeez, Al-Wajiz fi Nazariyyat al-Haqq. MaktabatWahbat, nd., P.49.

³See Dr. Abdul Rashid Ma'munand Dr. Muhammad Sami Abdul Sadiq, Huquq al-Muallifwa al-Huquq al-Mujawirah (fi Daw' QanunHimayat al-Huquq al-Milkiyyah al-Fiqriyyah al-JadidRaqm 82 li Sanat 2002), Dar al-Nahdah al-Arabiyyah, 2004, P. 111.

It is also defined as any kind of intellectually produced material or item or any innovative ideas that is made to exist either in form of coloring or drawing, and irrespective of whether it is physically or orally or literally expressed⁴.

A deep look at the last definition, shows that an authored work is defined in terms of the conditions required by the law. It is, therefore, imperative that the intellectually or the mentally produced items or product must be innovatively created in order to be worthy of protection, and the innovation must emerge in form of expression either orally or literally or materially because a copyright will not be protected by the law if it is not in existence. Therefore, the writer is of the opinion that the last definition is the most suitable one, because the first definition neglected the most important aspect of the conditions required by the law for a copyright item; that of which is that it must be a product of an intellectual efforts in order to be worthy of protection. Also, that definition did not indicate that the innovation should exist through any means of expression. Needed to be added, is the fact that conceiving an innovative idea alone is not enough to make it entitled to a legal protection, but rather it is essential that this innovative idea must be tangibly put into existence in a physical form, and actually, this fact is what some of the intellectual property legislations have adopted in various parts of the world⁵.

The foregoing analyses show that whenever an innovatively created work appears in physical form, it should be entitled to legal protection, irrespective of its mode or type or method or importance or purpose. The position is not different as to whether the item or the idea is in form of literary works, such as poetry books, fiction, computer programs or games or databases ... etc., or in form of artistic works, like drawings, sculptures, photography, musical melodies, cinematic films and radio programs ... etc., or in form of scientific works (such as literary works, academic research or engineering or technical designs⁶. Other forms of authored work that may be entitled to legal protection are any form of expression, whether by writing, drawing, casting, molding, photography, sound, light, movement, or even scientific symbols that could only be understood by the specialist in the field⁷. The law or the judiciary does not interfere in assessing the cost of any literary, social, cultural, scientific, or artistic work, because a certain book may be considered an innovation even if the book is an educational reading material or only

⁴Suhail Husain al-Fatlawi, *Huquq al-Muallif al-Manawiyah fi al-Qanun al-Iraqi*, Dar al-Huriyyah li al-Tiba'ah, Baghdad, 1978, P.158.

⁵ Section (138), sub-section (82) of the Egyptian Intellectual Property Law of 2002 defined an "Authored work" as any kind of intellectually produced material or item or any innovative ideas that is made to exist either in the form of coloring or drawing, and irrespective of whether it is physically or orally or literally expressed.

⁶See Dr. Abdul Rashid Ma'mun and Dr. Muhammad Sami Abdul Sadiq, *Op. Cit.*, p. 102.

⁷ Rajab Karim Abdul Ilah, *Al-Madkhal li al-Ulum al-Qanuniyyah*, vol. 2, Nazariyyat al-Haqq, no printing press, 2003, p.146.

meant for public consumption. Also, a musical melody may be regarded as an innovation even if it is only meant for a certain group. Therefore, the purpose by which an authored work is meant for is not as such important to be able to be legally protected, as an object or material or items or idea may be eligible to legal protection whether the objective to which it is innovated is for educational or moral or political or cultural purpose, and as long as it meets the requirements for which it could be legally protected. This is what is going to be discussed in the next section.

(ii). Conditionalities:

The jurisprudences are of divergent opinions in explaining the conditions that must be met by an authored work before it could be considered for legal protection. These opinions are two, and they are as follow:

Firstly: The opinion that attached two major conditions: The first of which is the emergence of a newly creative material or thought or idea. That, which may connote that the innovation in itself is enough to be considered for a legal protection. The second is the emergence of this creative material or thought or idea into the realm of existence by becoming a tangible reality in which it could be legally protected by the law through preservation and prevention from it being abused⁸.

Secondly: The opinion that an authored work must have three features before it could be legally protected. These are (i) the innovative idea, (ii) the design, and (iii) being in existence. This opinion is of the view that the innovative idea must be materially converted, and that the design is the conversion of the innovative idea into the realm of existence, while its existence in reality and finality warrants it being legally protected. An example of this could be deduced from the case of an author who has designed and developed a tale in his mind and then revealed it to one of his acquaintances who then displayed it or brought it to the knowledge of the people. There is the need, therefore, in this context, that the owner of the innovative idea must be legally protected⁹. This opinion, however, does not go uncriticized, because the innovative idea is still in the realm of imagination. Therefore, such an idea is not covered by legal protection, not until it becomes a reality. In addition to that, the design does not deserve to be legally protected before it is manifested into reality. This is due to the fact that it is not yet possible to identify or determine it. In addition to that, the design, before its manifestation,

⁸See Dr. Abadul Muni'im al-Badrawi, *Al-Huquq al-Ayniyyah al-Asliyyah*, 2nd edition, no printing press, 1956, p. 240, and Abdul Malik Yas, *Usul al-Qanun: Nazariyyataa al-Qanunwa al-Haqq*. Matba'at Salman, Baghdad, 1968, p. 285. See also Dr. Mahmud Jamal al-Din Zaki, *Durus fi Muqaddimat al-Dirasat al-Qanuniyyah*, Matba't al-Sha'b, 1964, p. 339.

⁹See Dr. Muhammad Kamil Mursi, *Sharh al-Qanun al-Madani, Al-Huquq al-Ayniyyah al-Asliyyah*, vol. 2, al-Matba't al-Alamiyyah, Cairo, 1949, p. 322. See also Dr. Mukhtar al-Qadi, *al-Nazariyyah al-Ammah: Haqq al-Mu'allif*, Egypt, 1958, p. 35.

could be changed, and mind you, there may be circumstances or hindrances that may not facilitate its manifestation at all¹⁰.

A closer review of these opinions shows that the first opinion is more suitable and acceptable in this context, because the conditions that must be met in an authored work before it could be worthy of legal protection are not more than two; vis-à-vis innovation and existence in reality as demonstrated below:

A. That the authored work embraces innovation:

Despite the fact that the element of innovation is a requisite for legal protection of intellectual property, it is observed in most of the laws, including the Iraqi Law that the word “innovation” is not defined, and this has led to jurisprudential disputes emanating from the conceptual meaning of “innovation”. However, a piece of jurisprudence in France argued that “innovation” must comprise of, or embrace originality, or a significance displaying the distinguished nature of the work either in terms of its composition or its expression¹¹. Another French jurisprudence side is of the opinion that an authored work could be regarded as a personal genes which an author is able to insert into his work¹². However, the Egyptian jurisprudence has a differing opinion on what is meant by innovative work. Some jurists among them argued that it is an intellectual effort exerted or imprinted by an author in his work through his personal genes that led to the creation of a specially characterized idea¹³. Another School of Egyptian jurisprudence defined it as an intellectual production by a gifted author characterized by a specific degree of novelty and originality in the method by which it is presented or expressed¹⁴. In a nutshell, the majority opinion in the Egyptian jurisprudence is that an innovative work is the one that is distinct in originality or character, either by composition or expression¹⁵.

However, the Emirati jurisprudence defined an innovation as the manifestation of the personal effort of an owner of idea regardless of its literary value and material significance, and whether the entire production is created by the author or is based on various elements that he specifically

¹⁰Suhail Husain al-Fatlawi, Op.Cit., p. 160.

¹¹ See Chand B Grannis, *What happen in Book Publishing, Press, 1957, p.264.*

¹²Bernard Ede'Iman, *Lapropriete' Litteraire et artistique*, Paris, 1989, p.15. See also Andre' Francon, *Course Depropie'teLitte'raire ,artistique et industeielle*, e'd. cd (Les cours de droit), 1996, p.30.

¹³KhatirLutfi, *Al-Mawsuah al-Shamilah fi al-Qawanin: HimayatHaqq al-Mu'allifwa al-Raqabat ala al-Musannafat al-Fanniyyah-DirasatFiqiyyahwallmiyyah*, Cairo, 1994, p. 22.

¹⁴Husam al-Ahwani, *Usul al-Qanun*, Cairo, 1988, p. 648. See also the Egyptian Law for Protection of Intellectual Property Rights No. 82 of 2002, where the Article 138 defined the concept of “innovation” as “a creative mentality that produces a work of originality”.

¹⁵ Dr. Abdul Muni'imFaraj al-Saddah, *Haqq al-Mu'allif fi al-Qanun al-Misri, Ma'ad al-Buhuthwa al-Dirasat al-Arabiyyah*, Cairo, 1967, p. 304. See also Dr. TawfiqHasan Faraj, *Muzakkirat fi al-Madkhal li al-Ulum al-Qanuniyyah*, Munshiat al-Maarif, Alexandria, 1960, p. 98.

collected and arranged¹⁶. In examining that definition, a closer look at it shows that the author's personal efforts that result in creation of an innovative idea indicates that the author should have been able to exert a mental or intellectual strength that distinguishes his work, and that which eventually results in originality, creativity, and reality either by means of expression or construction or composition. Therefore, his creativity is the fruit of his thoughtful ideas without it being copied or adopted from another work¹⁷. In the same vein, the legal protection under the Emirati (UAE) Copyright Law covers other variety of works, even if they look similar, regardless of the method by which they are expressed. For example, if an author published a book on a certain topic, and after some time another author published a book on the same topic, the similarity between the two books does not mean that the second book is stripped of its originality, or that the second author has violated the rights of the first author, because the UAE Copyright law, like any other law, recognized that an author is free to address any idea that has been previously dealt with by another author. Therefore, the copyright to his work shall be provided for him as long as his production is innovative despite the similarity in the subject-matter of the two works, and irrespective of the way or method by which it is expressed. Furthermore, Article 2 of the UAE Copyright Law clarifies the traits or aspects of the works that could be legally protected. They are works like writing or sound or drawing or photography or cartoons or animations, regardless of the idea it may contain. It is, thus, made clear in the foregoing, the extent to which the clarification of the conceptual meaning of "innovation" is important in the subject-matter of legal protection of intellectual property.

***We, therefore, suggest that the Emirati and Iraqi legislators should adopt the direction of the modern legislation, such as the Egyptian Law for the Protection of Intellectual Property Rights No. 82 of 2002 due to the fact that Article 138 of the provisions of this law is able to give the conceptual meaning of "innovation" as "a creative mentality that produces a work of originality"¹⁸.**

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للانسجام.**

B. That the Authored or innovative work must exist:

Innovative idea alone is not enough to earn a legal protection on an authored or innovative work. In addition to that, it is necessary for the ideas formulated

¹⁶Shakir Nasir Haydar, Al-Wasit fi Sharh al-Qanun al-Madani al-Jadid: Al-Huquq al-Ayniyah al-Asliyyah, vol. 1, Matba'at al-Maarif, 1959, p.59.

¹⁷Suhail Husain al-Fatlawi, Op.Cit., p. 164.

¹⁸Fathi al-Durayti, Haqq al-Ibtikar fi al-Fiqh al-Islami al-Muqaran, Mu'assasat al-Risalah, Beirut, 3rd edition, 1984, p.14.

to manifest tangibly and materially. It, therefore, follows that entitlement to legal protection covers only the works that exist, regardless of type or method or importance or purpose by which it is expressed¹⁹. What is meant by tangible or physical existence, as set out under this condition, is that it must be identified by sensible organs in form of hearing or seeing or touching²⁰. In another vein, the notion that an authored work must exist tangibly and physically narrows the scope of legal protection on certain innovative works, like the performing arts or poems, or even the recitation of the Glorious Qur'an, to mention but a few²¹. In addition to that, the expression of physical and tangible existence is consistent with what is established at the international level through the definition given by the World Intellectual Property Organization (WIPO) when it says that a physical existence is a method that allows the perception of any work, sensitively or mentally, such as the performing arts or play or recitation or physical attraction or any other suitable method²². Some of the intellectual property legislations are not so satisfied with the expression of innovative ideas in a tangible or physical form in order for an authored or innovative work to be legally protected. Rather, they require, on top of that, certain formal procedures to be followed, which is the registration of the work. Some countries have adopted the 'registration of intellectual property' as a prerequisite for a legal protection. It is, therefore, compulsory that all the data related to the authored or invented work should be registered in the official diary or record provided for that purpose²³. However, there is the need to mention here that the registration of an authored or innovated work in the official catalogue or the diary provided for that is completely different from a legal depository of work. Depository is a system that is not considered as a prerequisite for legal protection of an intellectual work. It is, rather, a merely preventive measure to avoid abuse of the rights of authors. It is a procedure whereby the authors or publishers or printers and producers of works are bound to hand over a specific number of copies of their works to a government agency or a national library. This kind of a legal depository system is found to be in operation in most of the countries of the world²⁴. An example of that could be found in Article 48 of the Iraqi Copyright Protection Law, where it says that: 'The Authors of works prepared for publication must deposit five copies of the work at the National Library

¹⁹ Dr. Muhammad Ali Arafah, Haqq al-Mu'allif aw al-Milkiyyah al-Adabiyyah wa al-Fanniyyah. An Article published in Majallat al-Tashri' wa al-Qada', al-Adad 10, al-Sanah al-Rabiah, 1952, p. 74.

²⁰ See Dr. Abdul Rashid Ma'mun and Dr. Muhammad Sami Abdul Sadiq, Op. Cit., p. 103.

²¹ See Al-Mahami Khatir Lutfi, Mawsu'at Huquq al-Milkiyyah al-Fikriyyah, Sharkat Rushdi Abideen li al-Tiba'ah, Egypt, 2003, p. 561.

²² See al-Munazzamah al-Alamiyyah li al-Milkiyyah al-Fikriyyah (WIPO), Mu'jam al-Mustalahat Haqq al-Mu'allif wa al-Huquq al-Mushabihat, Article 109, p. 111.

²³ Nawaf Kan'an, Haqq al-Mu'allif (al-Namazij al-Mu'asirah li Haqq al-Mu'allif wa Wasa'il Ihimayatihi), Maktabat Dar al-Thaqafah li al-Nashr wa al-Tawzi'I, 3rd edition, 2000, p. 206.

²⁴ ?????????????????? ?????????????????? ??????????????????

within one month from the date of publication. Failure to deposit it is liable to punishment of a fine not exceeding Twenty Five Dinars. However, the failure to deposit the work shall not result in the breach of the rights of the Author, as stipulated by the law. These provisions do not apply to works published in newspapers and periodicals unless the works are personal.

Conclusion:

From the foregoing analyses, it is demonstrated that the main motive behind the Legal protection of innovative or authored work or intellectual property is to preserve its existence and prevent it from being abused. It is, therefore, an established fact that the law grants the author the right to protect his work from abuse, but he could not, however, be able to exercise this right until his intellectually produced material or product or item or fiction acquires the status of an authored or innovative work. In addition to that, it is also established that works that are due to be legally protected are of two categories: First one are the literary and scientific works, while the Second one are Artistic works. Thus, our findings and recommendations are as demonstrated below:

- (i) The conditions specified for an authored or innovative work before it could be legally protected encompass all other innovative works that could be physically adjusted either by subtraction or inclusion, such as works that are refurbished or re-edited or reproduced, especially if it fall within the category of works that are beneficial to the public or work that could be publicly accessed. Such a kind of work could be in form of translation of the work of an author into another language or modification of literary or arts or scientific works.
- (ii) The authorship right is not the same as publisher's right. It is not necessarily means, therefore, that a publisher of a work should be the author. An author might create a work and commissioned someone else to publish it. Just as he may also assign the copyright of his work to another person.
- (iii) Publication of a work means the exposure of the intellectually produced work to the public, and this could lead to such a work being repeated in another form or reproduced in another image, due to the fact that the work is accessible to the public. This is an area where the Emirati legislation on copyright ownership is commended, when it emphasize the need to protect both the bona fide owner and the work.

Finally, the writer would like to draw the attention of the UAE legislator to the copyright ownership law by setting a precise definition for an "authored or innovative work", and to reorganize the provisions of the law in a detailed manner, and in accordance to what is obtainable in other countries like Egypt and Iraq, so as to put an end to the confusion that often occurs between the work of a particular author and other similar several works of other authors.

Lastly, the writer would like to add that there is the need for the UAE regulation on the legal protection of the copyright ownership to make a law compelling the authors to choose the producer or publisher of the work as their proxy for any period they may be found to be anonymous.

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