

A Critical Analysis of the UAE Federal Decree-Law No.: (38) of 2021 on the Protection of Copyrights and Neighboring Rights

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Abstract

Recently, by virtue of Federal Decree-Law No.: (38) of 2021, the United Arab Emirates has passed a new legislation for the protection of copyrights and neighboring rights; a legislation that is meant to replace the prior Copyrights and Neighboring Rights Law No.: (7) of 2002. In this regard, this new Decree-Law is consisted of Fifty-Three (53) Articles; hence, it is somewhat similar to the prior law, except for the addition of some new amendments for certain details as mentioned herein in this paper (e.g. Smart Applications are added to the list of Digital Works). For instance, pursuant to this new Decree-Law, it is now impermissible for the author to request cessation of the circulation of his digital works; and that is as an exception to his moral right to withdraw his work from circulation after its publication. In addition, this new Decree-Law has granted people with special needs the right to alter the published work, without prior permission of the author or his successor, so that those people may be capable of using those works in a way that is suitable to their conditions. Furthermore, the new Decree-Law has permitted the formation of a Grievances Committee at the Ministry of Economy, presided by a competent judge; and that is in order to hear all appeals submitted against decrees of the Ministry of Economy, concerning the rejection of works registration, the rejection of works' transcription or translation for scientific purposes, or any other decrees issued by the ministry concerning copyrights and neighboring rights. In this sense, the executive regulation of this new Decree-Law has been issued under No.: (47) of 2022, including Twenty (20) Articles, duly covering the following aspects and procedures: a) the regulation of works' collective management; b) the stated procedures for works registration; c) the legal actions concerning the financial rights of works; d) the stated procedures of mandatory licensing from the Ministry of Economy for the works' transcription or translation for scientific purposes; and e) the stated procedures of appeal against decrees of the Ministry of Economy before the Grievances Committee. The object of research is to critically examine the similarity between the Federal Decree-Law No.: (38) of 2021 on the Copyrights and Neighboring Rights and the previous Law No.: (7) of 2002 on the Copyrights and Neighboring Rights, and to identify the new changes brought by the new legislation. The study reveals that the new law limits the right of the author, granted certain rights to the people with special needs, and provision for formation of the Grievance Committee. The study recommends for the unification of all legislations that relate to intellectual property, and create a separate provision for each type of intellectual property.

Keywords: Intellectual Property, Copyright, Neighboring Rights, Literary Work, Artistic Work.

Introduction

In the past few years, the United Arab Emirates has adopted a new general policy for the renewal of most of their legislations, especially legislations concerning the economic sector; and that is in order to speed up the development of society, so that they could keep pace with the requirements of advanced international standards. In this sense, all legislations of Intellectual Property are considered to be amongst the most important legislations concerning society advancement, taking into account their major role in encouraging innovation and attracting foreign investments in the State. Therefore, the United Arab Emirates has rightfully decided to renew those legislations, hence passing the following new three legislations concerning Intellectual Property: **a)** Federal Decree-Law No.: (38) of 2021 on the Protection of Copyrights and Neighboring Rights; **b)** Federal Decree-Law No.: (11) of 2021 on the Regulation and Protection of Industrial Property Rights; and **c)** Federal Decree-Law No.: (36) of 2021 on the Regulation of Trademarks.

Furthermore, those three legislations were followed by the passing of their executive regulations, hence completing the abolishment of the following three prior laws: **a)** Law No.: (7) of 2002 on the Protection of Copyrights and Neighboring Rights, and its amendments; **b)** Law No.: (17) of 2002 on the Regulation and Protection of Industrial Property Rights for Industrial Models, Drawings and Patents, and its amendments; and **c)** Law No.: (37) of 1992 on the Regulation of Trademarks and its amendments. In this context, the new Copyrights and Neighboring Rights Protection Decree-Law includes Fifty-Three (53) Articles; in

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addition to its Executive Regulation No.: (47) of 2022, duly issued by the Ministers Council, which includes Twenty (20) Articles.

On this basis, we believe that this new Decree-Law and its executive regulation shall be subject to a process of balanced critical review, as provided hereinafter in this current research paper which will be divided into five major sections as follows:

First: Types of Works and Terms of their Protection;

Second: Legal Capacity of Author and Holders of Neighboring Rights;

Third: Copyrights and Neighboring Rights;

Fourth: Registration of Copyrights and Neighboring Rights in the Ministry's Register; and

Fifth: Means of Copyrights & Neighboring Rights Protection against Imitation and Infringement.

Research Methods

The present research followed the doctrinal research method and critically analyzed the legislative provisions of the old and new laws that relate to copyrights and neighboring Rights. The reference is made to primary and secondary sources. The study also adopted a comparative approach to examine the scope of copy rights and neighboring rights in other jurisdictions.

Results and Discussion

Types Of Works and Terms of Their Protection

In Article (1) of the new Federal Decree-Law, the term "work" is defined as follows: "It is any creative product in the field of letters, arts or science, of whatever type, expression method, significance or purpose". Hence, this new Decree-Law has maintained the same definition stated in the prior abolished Law No.: (7) of 2002; which is also the same definition stated in other comparative legislations, for example Article 1 of the Egyptian Intellectual Property Law no. (82) of 2002, concerning the protection of copyrights and neighboring rights.

In this regard, we believe that this definition is quite general and indefinite; as it has failed to determine the terms of protection accurately, and to provide the main outlines for the author's legal capacity concerning his intellectual production as well as related neighboring rights. Therefore, we believe that this definition should have included the following statement: "It is any original expression addressed to the public (recipients) in a way which is perceivable to them". In other words, any work is generally introduced with a certain "Expression"; and that is whether it is presented to the audience directly (where a performer may contribute to its presentation), or indirectly (through some sort of a supporting medium).

Consequently, the terms of works protection shall be stated specifically, with the inclusion of all types of works acknowledged by this new UAE Decree-Law as clear examples.

Terms of Works Protection

A work may not be duly protected by virtue of law, unless this work has introduced a distinctive "Expression" that is perceived by the audience, and unless this work is an "Original Work".

Expression as a Requirement for Protection

Arguably, "**Expression**" is not merely considered as the essence of any work, but it is the work itself; therefore, we believe that the new Decree-Law shall include the term "Expression" in its basic definitions. That is to say, the protection of works shall be mainly concerned with the expression addressed to the audience, through which they may perceive and realize the content of this work (i.e. the ideas and meanings that shall be conveyed to the audience through the medium of expression). In other words, we believe that the new Copyrights Protection Law does not provide the desired protection to any of the following: ideas, mathematical equations, economic theories, practical methods and procedures, or functions of the work (i.e. the work's purpose, significance or scientific, literary or artistic value); consequently, all those aspects are vaguely left without protection under this law, hence encouraging their free circulation without consequences, this position can be inferred from Article 3 (1) of UAE Federal Decree Law No. 38 of 2021 (Nouri H, Khater, 2022).

In this context, in order to acknowledge the work's expression as directed to the audience, this expression shall be actually perceivable by this audience; i.e. the expression shall convey the work's thoughts and ideas to the audience. For example, a perfume does not address the audience, but the beautiful scent is what attracts human attention and approval. Cooking consists of some methods and steps that are not meant for public knowledge, but for the preparation of a delicious meal for others. Invention itself cannot be considered as a work, but rather an industrial innovation that is prepared for the purpose of making industrial applications. In addition, a work's expression may address the audience through speaking, listening or watching some material.

Furthermore, most works could be installed on a medium for the purpose of view or possession (e.g. on paper, digital chips or video tapes); or they could be broadcasted directly by a performer or by the author himself. In addition, the work's expression could be introduced, for example, through paintings drawn on sand, ice sculptures, murals or clay paintings. However, the new Decree-Law has failed to specifically identify the work's supporting medium, which may take any form whatsoever as long as it introduces this work to the audience.

Moreover, in spite of providing a definition for the Work, the new Decree-Law has not classified works into certain fields. In other words, in Article (1), when specifying that a work could be (any creative product in the field of letters, arts or science), the legislator did not stop at this limit, as he added the phrase (of whatever type), so that the definition may include all other types of works which could be expressed through the use of unknown methods (e.g. Computer Software and Databases), provided that the work's expression shall fulfill the term of originality.

Threshold of Originality

To guarantee a work's coverage by the required legal protection by virtue of law, it is not good enough to fulfill the requirement of a perceivable expression addressed to the audience; however, this expression shall be original. This **Threshold of Originality** is expressed in the new Decree-Law by the term "**Innovation**", which is defined in Article (1) as follows: "It is an innovative attribute that grants the work a sense of authenticity and distinctiveness". Obviously, this legal provision tends more towards the School of Objectivity which defines originality superficially; i.e. the work may not be protected, unless it is clearly distinct from other similar previous works. Moreover, in its essence, this definition has actually failed to provide anything of significance. When the work could be considered as authentic and distinctive? Dose the word "distinctiveness" refer to the literary, artistic or scientific value of the work? In fact, this specification has been dismissed by this same Decree-Law, which has failed to attribute protection to the work's literary, artistic, scientific or material value, or even to the work's purpose. Hence, how could we evaluate a work's Threshold of Originality?

First of all, we believe that the Standard of Subjectivity (i.e. the work's personality) is the only means that could be used to define and identify "**Originality**". In other words, the work's expression is simply an extension of the author's personality; hence, the author's subjectivity (i.e. method of expression) is what

distinguishes his expression from that of other works. In this sense, the distinctive character shall not be attributed to the work, but rather to the expression of this work; for instance, it is quite common to attribute some work to a known style of certain author.

In fact, the work itself shall not be considered as an innovation, since the author has not created a new matter, but rather formulated some ideas (which could be attributed to the author himself or any other third parties) into an expression that is attributed to the author. For example, numerous movies and plays have depicted Victor Hugo's masterpiece "*Les Misérables*"; however, each display of the work has provided a different expression, whether this difference is attributed to the actors' performance and costumes, to the sequence of dramatic scenes, to the selected soundtrack, or to any other elements of expression that convey the author's personality in his work. Hence, it would be incorrect to say that a work or a work's originality is innovation, which implies the creation of something new, which could apply only to inventions (Hans S, 1991).

Furthermore, the Standard of Subjectivity guarantees another significant feature; as a work may not be considered as original, unless it fulfills the following two requirements: a) it is not duplicated from another work; and b) it reflects the author's personality. On the other hand, the Standard of Objectivity stipulates that the work shall be innovative (i.e. without any prior similar counterparts, or at least clearly distinctive from other works), hence protecting the work's value, purpose, significance and functions.

However, it is safe to say that some works actually require the Standard of Objectivity, due to the ambiguity of their expression (Nouri H. Khater, 2022). For example, those works may include any of the following: a) the limited title of a work consisted of a few words; b) some visual, audio or printed advertisements; or c) a computer software addressed to computer devices only rather than the audience who only gets to see its functions. In addition, the same applies to Databases and Derivative Works (e.g. encyclopedias containing pre-prepared works, indexes, etc.). Therefore, some jurists believe that the evaluation of **Originality** shall be based on multiple standards, in order to be consistent with the nature of expression in a multi-field work (Benabou V.L., 2014); not to mention the ability to evaluate new types of works, which have not been included in prior legislations on copyrights and neighboring rights protection, but are now included in the new UAE Federal Decree-Law.

Types Of Works as Approved by The New Federal Decree-Law

Pursuant to Article (2) of Federal Decree-Law No.: (38) of 2021 on the Protection of Copyrights and Neighboring Rights, there are Twelve (12) types of works, all of which could be limited to two major categories as follows: a) **Literary Works**: i.e. works relying on verbal expression; and b) **Artistic Works**: i.e. works that are received by the audience through hearing, watching or both expressions together. Sometimes, those visual works might be animated (e.g. videos and films), or unanimated (e.g. designs, paintings or maps). In addition, literary works and artistic works could be intertwined together; which is the case with Joint Works, Collective Works and Derivative Works (e.g. cinematic movies and singing music).

In this sense, it is safe to say that the new Decree-Law is considerably consistent with the general policies of copyrights and neighboring rights protection legislations at other countries, especially with regard to the specification of protected works. However, the UAE Federal Decree-Law has added Smart Applications, which is based on computer software and databases (Lucas, A, 1998). That is to say, Article (2/2) states that protected works shall include: Smart Applications, Computer Software, Databases and other similar works which shall be specified particularly by virtue of the relevant Ministerial Decree; i.e. further clarification will be required in brief.

Computer Software

In 1980, adding Computer Software to the list of works protected by virtue of the USA Copyrights Protection Law for the first time has caused quite a stir. At that time, Computer Software did not fulfill the characteristics of traditional works; however, it was adopted by the US Law as a literary work. Afterwards,

several other countries have followed in their footsteps by adding Computer Software to their copyright's protection laws. Eventually, in 2002, the United Arab Emirates has passed Law No. 7 of 2002 in this regard.

In this respect, **Computer Software** is a series of logical orders (algorithms), written in a software language and specified for a computer device or any other digital devices that operate with electronic circuits (i.e. topographical lines for integrated circuits); and that is for the purpose of operating this device or operating an application as required by the user. In other words, Computer Software is used by the computer device, in order to operate the device or to provide information processing functions; i.e. the user has no direct communication or interaction with this software, but rather with its functions.

On this basis, the new Federal Decree-Law has provided protection to the functions of Computer Software. That is to say, the user shall acquire a license permitting his use of the software with its licensed application. For instance, if the software is designed to draw paintings, the user may not use it to draw maps, unless it is after acquiring the relevant license; otherwise, it would be considered as a violation.

In this regard, we believe that this stipulation in the new Decree-Law is highly exaggerated; as other legislations have ignored the issue of functions and applications, excluding the user's obligation to refrain from copying the software to another device other than the licensed device. Other than that, the user may have total freedom to use the software for any functions as required. In other words, the new Decree-Law has focused on the software functions (i.e. not on the work itself, but on the work's purposes and ideas which are not protected by virtue of law); hence, the concept of expression is extended here to include the work's functions and applications, which in turn include databases.

Databases

As the case is with Computer Software, the new Decree-Law on Copyrights and Neighboring Rights Protection has not provided a specific definition for Databases, hence leaving the issue to discretion of jurisprudence and judiciary. Interestingly, we believe that it is better this way, as those types of works are rapidly changing. In this sense, it is safe to say that **Databases** could be defined as follows: "It is a digital tool used for the purpose of digital information management, installation and coordination; and that is through the use of a computer software prepared specifically for certain applied functions". For example, if some university wants to organize the enrollment of their students digitally, the university shall develop digital bases (databases) organizing the students' access to register their names, academic numbers and courses.

In this context, the database designer uses computer software to create all required sheets, fields and files, on which the user may submit his information. In addition, the software author himself may design and create the databases of his software. Hence, the functions of databases are similar to that of encyclopedias and derivative works; i.e. the author's role is limited to formatting and installing works that have been prepared previously by other authors, or to formatting and installing general information.

On this basis, works installed on a digital medium (e.g. digital networks or digital magnetic tapes) may not be considered as databases. However, the method of their formatting, storage, arrangement and indexing shall represent the databases protected by virtue of law, provided their originality pursuant to the Standard of Objectivity. In other words, those protected databases shall provide functions that are distinctive and that have never been introduced previously by other similar databases (Mohamed H. Abdallah, 2018).

Smart Applications

For the first time, the new UAE Federal Decree-Law has added **Smart Applications** along with other digital works (Computer Software and Databases) (Article 2 (2) of the Law No. 38 of 2021); and that is as a distinct different type of works. In this regard, Smart Applications are in fact databases receiving all forms of information, whether they are animated or unanimated images, written texts, or audio files attached or unattached to images; as those applications enable the user to control, select, share or save this information on his digital file on the internet, on a computer device, on a mobile phone or on any other digital devices.

Interestingly, numerous companies, corporations, organizations and official authorities have been keen on creating applications that grant their users easy access to the required information at each entity. For example, at most banks nowadays, the client may use the bank application to complete most of his banking transactions directly (e.g. opening accounts, paying bills or paying cost of purchases); as the specified amounts could be debited directly from the client's bank account through this application. Likewise, most official authorities have their own applications, through which the user may acquire official permits (e.g. Driving License or Vehicle Registration).

In this sense, Smart Applications could be considered as advanced forms of databases whose function is to manage, format and provide information to the user (Lefrance, 2017). In addition, a smart application might have a trade name or a reference name, which will be legally protected pursuant to the rules of commercial transactions or the rules of trademarks protection. Hence, the separation of this type of works from other types of databases may not change its concept and functions in information management. Consequently, Smart Applications shall have legal protection as original works (i.e. databases) in all cases; and that is whether they have managed to provide distinctive functions, or they have been registered under trade names or trademarks pursuant to the rules of industrial property rights.

Legal Capacity of Author and Holders of Neighboring Rights

As a principle, the author of any work may only be identified as a Natural Person, as innovation may only be the outcome of human rationality. However, the author's financial rights or related neighboring rights could be owned by some Legal Entity.

Author

By virtue of Article (1) of the new Decree-Law, the **Author** is defined as follows: "A person who creates a Work, whose name is mentioned on a Work, or to whom a Work is ascribed for being its owner, unless otherwise established. In addition, an Author of a Work could also include any person who publishes a Work without a name or under a penname or in any other way, provided that the Author's true identity is not a matter of doubt. However, should a doubt exist, he shall be considered as the Work's publisher or producer; and that is whether this publisher is a natural person or legal entity; and this publisher shall be deemed as a representative of the Author in exercising his rights, until the Author's true identity is recognized".

Obviously, the new Decree-Law has provided this extended definition in order to guarantee the work's ascription to its true author, even in cases where the author's name is not mentioned on the work, in cases where the work bears the name of another person, or in cases where the work bears the name of a virtual person (pseudonym). Hence, if the author's name is not identified or is kept hidden, then, a publisher or producer shall undertake the management procedures, until the real author is revealed.

Nonetheless, the above definition has started with the word (Person), instead of (Natural Person). Therefore, we believe that it is highly important to add the word (Natural) at the beginning; and that is in order to exclude any works produced by nature, and to exclude the work's ascription to a legal entity; even if this work is a joint work, a collective work, a work prepared for a certain party (e.g. employer or corporate management), or a work submitted to some association in order to undertake the management of this work as well as all other relevant rights.

Joint Works

Only a natural person is capable of preparing and producing a work with distinctive expression. For instance, a natural person may write a novel, design a painting or a statue, compose a tune (whether it is by composing notes or playing a musical instrument directly), or participate in a competition for the designing of a building, a trademark or a slogan; hence, the resulting work could be ascribed to this natural person, with the right to practice all relevant rights in this regard.

Nonetheless, this does not exclude the possibility of participating with another natural person to prepare their work together; as each author may express his own style and method of expression to produce a **Joint Work** that could be either an inseparable work (e.g. novel or painting), or a separable work (i.e. where the expression of each author is separately distinct). In both cases, the end product will be a Joint Work with the same theme; hence, the work shall be attributed to all authors jointly and equally. In other words, the authors of such type of work shall have equal rights, regardless to the ratio of participation by each author in the work's expression; taking into account that the distinction of each author's participation falls within the domain of value protection; as it is not acknowledged by legislations of copyrights protection. (Mohamed S. Abdelsadek, 2000).

In this regard, there could be other types of participants who may not be considered as co-authors. For example, those participants could fall within the following categories: people providing means of expression (i.e. providing help in preparing the required means of expression), or people in charge of printing the work, preparing the scientific material, collecting references, proofreading the texts or providing objective review (e.g. a thesis supervisor whose role is to guide the author for the correction of some flaws).

In addition, in case of using a software application to prepare or design a work, this software may not be considered as a co-author (e.g. specialized software for the preparation of maps or architectural designing). Even artificial intelligence may not be considered as a co-author. On the other hand, if any participation has contributed to expression, then, the resulting work shall be considered as a Derivative Work (i.e. a Compound Work); as the author has based his work on another existing work, hence, the work's expression involves a simultaneous participation.

In this sense, the new Decree-Law on Copyrights Protection has acknowledged and defined the **Joint Work** in Article (1) as follows: "It is a Work created by several Persons, whether each Person's own work is separable or inseparable, and which does not fall under Collective Works", this is pursuant to Article (29) of the new Decree-Law, a cinematic work shall be considered as a Joint Work, since it is consisted of the work's writer, scenarist, performers, music composer and director (Articles 26 & 29 of the Law No. 38 of 2021). In this regard, we believe that this definition should have stressed that a Joint Work is a work that involves the participation of two or more natural persons in the preparation of the same work at the same time; and that is through a joint expression addressing the same topic (e.g. composing a joint tune, preparing a joint history book, or preparing a number of joint articles about Climate Change); i.e. each author makes his own contribution to the work through an expression that shall reflect his distinctive personality in the work, pursuant to Article 29 of the new Decree-Law, a cinematic work shall be considered as a Joint Work, since it is consisted of the work's writer, scenarist, performers, music composer and director. However, in some cases, a third party who is not involved in the preparation process, could be assigned to undertake the tasks of coordination and financing; in which case, the resulting work shall be considered as a Collective Work.

Collective Works

It is possible that more than one author participates in the preparation of a work upon the initiative of another person who is not a participant in the preparation process, but rather assuming the tasks of management, coordination and financing. For instance, such case may include any of the following: the preparation of encyclopedias by official or unofficial legal entities; the preparation of scientific, artistic or literary magazines; or the preparation of a cinematic movie financed and supervised by a producer. Interestingly, most legislations of Copyrights Protection have classified cinematic works as Joint Works; however, we believe that they should have been classified as Collective Works; taking into account that the producer's tasks of financing the movie, paying all costs and expenses, and coordinating between all participants (e.g. the movie director, music composer, photographer, performers and scenarist) shall qualify him to be a focal point for the work, which shall be ascribed to its supervisor along with other participants who have all contributed to this Collective Work.

In light of the above, we believe that the new Decree-Law's definition for the collective works has deviated from its accurate concept; as it is defined as follows: "It is a Work created by a group of Authors under the

direction and supervision of a Person that undertakes the publication thereof it in its name, where the work of Authors is assembled, and the separation or distinction of each author's work is impossible".

Evidently, this definition has stated a stipulation that could not be fulfilled with all collective works (i.e. the separation of each author's work is impossible). This specification is inaccurate; it is not impossible to separate the work of each author, not to mention that such separation will compromise the work's classification as a Collective Work. For instance, if the collective work is a scientific magazine concerned with Applied Sciences or the Arabic Language, the author's researches published in this magazine could be separated and republished via other mediums, after obtaining the editorial board's approval in this regard.

Hence, Collective Works shall be considered as exceptional cases which require special financial capabilities and coordination efforts between all involved authors. Therefore, a Collective Work shall be ascribed as well to that natural person or legal entity who is not an author of the work, but his efforts are directed towards the work's management, coordination, financing and supervision i.e. the required material activities (Abdelrashid Mamoun, 1999). On the other hand, the latter may not refrain from ascribing the work to all participant authors; as all authors shall be mentioned duly out of respect for rules of the authors' non-negotiable moral rights.

Compound Works

In the new Decree-Law, Compound Works are expressed by the term "**Derivative Works**", which is defined as follows: "It is a work derived from an already existing Work, such as translations, collections of literary and artistic works, and collections of folkloric expressions, as long as being innovative in terms of the arrangement or selection of their content". However, we believe that the term "**Compound Work**" is more accurate, taking into account that derivation has a much narrower scope.

For example, if a writer adapts a novel into a theatrical work, in this case, such derivation is truly based on a former work. On the other hand, in case of collecting a number of previously published works in one new work, whether this new work provides a commentary or not, the author's efforts here are limited to coordination and modification, in order to present those works collectively in one work. In addition, the same applies with information collection (e.g. news); as the process of formatting this data in a way that reflects the author's personality shall label the new product as a Compound Work. In all cases, the author of a Compound Work shall always respect all copyrights of the works involved in the new Compound Work. Hence, it is safe to say that the latter term (Compound Work) is much broader than the used term of (Derivative Work).

Naturally, a Compound (Derivative) Work would be published on a time following the publication of other previous works involved in this new Compound Work. That is to say, if both works are published simultaneously, the resulting Compound Work could be classified as a Joint Work or a Collective Work. Therefore, in order to classify a work as a Compound Work, the publication of all involved works on prior dates is considered as an essential requirement.

Moreover, in Article (2/29) of the new Decree-Law, the legislator has referred to "Joint Works" as follows: "If a Work is derived or elicited from another previous Work, the author of this previous Work shall be considered as a co-author in the new Work". In fact, we believe that this previous author may not be considered as a co-author; however, the new work shall be considered as a work that is derivative from that previous work (i.e. a Compound Work). In other words, the author of a new work cannot use any previous works in his new work, without permission and approval of all previous authors; therefore, the latter may not be considered as co-authors of this new work; taking into consideration that a new work, established on a previous work, may not be described as a Joint Work.

Works of Authors Prepared for Third Parties

An author may enter into contract with some independent party for the purpose of preparing a work for this third party. For instance, the Ministry of Environment may commission a competent person inside or

outside the State to prepare a work concerning the issue of Climate Change. In this case, such relation will be subject to the agreed contractual bond, including all details and terms of the work's utilization and financial rights. However, if the agreed contract does not include those details specifically, then, all financial rights shall be granted to the work's author who shall be entitled to use his work however he may want, whether it is through the work's publication or presentation in any form. In all cases, as a basic rule, the moral rights shall always be reserved to the author, as they may not be assigned to other third parties (Article 28 (1) of the Law No. 38 of 2021).

On the other hand, if the author is employed by a government authority or some private employer that has commissioned him to prepare a work for his employer specifically (e.g. preparing a computer software), then, all rights shall be granted to those employers automatically. In addition, if an author who is not assigned to prepare a work at his workplace, has used his employer's tools and means to prepare his work, then, the employers shall be entitled to all rights as well (if they so desire).

In this regard, we believe that the author shall have a margin of freedom, even if it is not permitted by virtue of the new Decree-Law that has stressed the automatic transfer of all financial rights to the public authority or private employer. However, if the latter does not want such rights, the author shall be entitled to use his work. In addition, pursuant to the Second Clause of Article (28), the intellectual efforts of someone shall always be taken into consideration. Therefore, if neither the public authority nor the private employer has expressed their desire to use the work, the author shall be free to use his work.

Nonetheless, if the author has prepared his work without an assignment by his employer, and without the use of the employer's tools and equipment, then, the author shall be completely free to use his work without any rights for the employer; and that is even if the work is related to the author's field of specialization at the public authority or the private employer's facility (Article 28 of the Law No. 38 of 2021). In this sense, most academics usually prepare their works at their educational institutions, without formal permission of the institution; as they may use the institution's tools and means sometimes, since it is customary to forfeit any rights in favor of the author, in order to encourage him to use his work freely however he may want.

Holders of Neighboring Rights

The idea of Neighboring Rights Protection was adopted for the first time by the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations. In addition, the World Intellectual Property Organization (WIPO) Convention was issued in 1996 for Performers and Producers of Phonograms (i.e. Holders of Neighboring Rights), not to mention that Article 14 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) has also acknowledged neighboring rights. In this regard, the new UAE Federal Decree-Law has acknowledged those rights; as it has defined the "**Holders of Neighboring Rights**" as follows: "They are performers, producers of phonograms and broadcasting organizations, pursuant to the provisions of this present Decree-Law". That is to say, those rights are meant to protect the performers of works; i.e. those who present the work to the audience in a distinctive way different from any other similar performances. For example, those performers may be any of the following: musical bands that play international musical works, singers who sing lyrics and tunes, as well as actors and dancers who deliver distinctive performances; and that is subject to the producers of works, especially artistic works (e.g. cinematic movies, musical works, as well as audio and visual broadcasts).

In this sense, several legislations have acknowledged the protection of those people in order to encourage their production in the cultural and artistic fields, although their work does not add to the work's expression; as their main role is to help in the work's spread and distribution. In addition, this protection has also included the producers of phonograms wherever they may be; for instance, if a person has recorded the sounds of birds, water or rains in nature, the resulted recording shall be legally protected as a production of recorded sounds.

In light of the above, we believe that the Neighboring Rights Protection shall be limited to producers of works concerning the musical field and programs broadcasted by audio and visual broadcasting

organizations. However, the broadcasting of a sports game (e.g. a football game) shall not be subject to such protection, taking into account that their broadcasting does not actually constitute a protected work. On the other hand, non-news broadcasts could involve several protected works, including the program's method of presentation, the site decorations and the background soundtracks. In all cases, we believe that those holders of neighboring rights shall not compete with the financial rights of authors; as they could misuse the works financially in a way that affects the authors' moral rights.

Copyrights And Neighboring Rights

By virtue of the new UAE Federal Decree-Law, both authors and performers shall be entitled to their inherent moral rights, which may not be assigned or forfeited for any reasons whatsoever. Moreover, the new Decree-Law has broadened all associated financial rights to include all holders of neighboring rights. Therefore, the new Decree-Law has stipulated several restrictions on those financial rights in order to protect the common good; and that is without ignoring the legal rules of all relevant actions and transactions.

The Moral Rights of Authors and Performers

Pursuant to the new Decree-Law, the work's author has four moral rights; while the performer has two moral rights only.

The Moral Rights of Authors

First of all, the author shall without a doubt be entitled to the work's ascription to his person (Paternity Right) as duly acknowledged by virtue of law. In this regard, Article 5 of the new Decree-Law has acknowledged four moral rights as follows: a) the right to ascribe the work to its author; b) the author's right to respect his work; c) the author's right to decide on the publication of his work; and d) the author's right to withdraw his work from circulation (Abdelrashi Mamoun, 1978). The name of the author shall be put on the medium of his work, or shall be mentioned in case of broadcasting his work directly to the audience. In addition, the author shall be entitled to use a pseudonym; and he or his legitimate heirs shall be entitled to disclose the author's real name at any time, unless the author has forbidden his heirs from such action before his demise. Moreover, in case of ascribing a work to the name of a real person who is not actually its author, the author and his heirs shall be entitled to claim the author's correct name on his work at any time; taking into account that any forfeiture of the work's ascription to someone other than its author shall be considered as null and void.

The second moral right granted to the author pursuant to the new Decree-Law is his right to decide on the work's publication. That is to say, no authority whatsoever may be entitled to force the author to publish his work, even if the author is under contract or employed by this authority; i.e. the author solely may use this right, without any coercion. However, as an exception to this right, if the work in question is an invention that fulfills the general benefit of society, then, the public authorities shall be entitled to force the inventor to use such invention (Articles 25-33 of the UAE Federal Law No. 11 of 2021 on Industrial Property).

In this regard, the author's decision to publish his work shall be explicit; thus, if the author has submitted his work to the publisher for review and consideration, the publisher may not publish this work without obtaining the author's prior explicit written approval. In addition, if the author has left his work somewhere by mistake (e.g. the waste bin), no one may publish this work other than the author who may solely choose the method of his work's publication or presentation to the audience. For instance, if an author has recited his poem before live audience, and someone else has recorded and broadcasted this poem, such action shall be considered as an infringement of the author's right to choose the method of his work's use and publication.

As for the third moral right, the author shall be entitled to defend the copyrights of his work. That is to say, by virtue of this right, the author may sue any person or entity that distort or alter his work; hence, if a

publisher has published the work distortedly, the author can claim compensation or the republication of his work properly. For example, if a producer has broadcasted a black-and-white movie in colors without obtaining the director's prior approval, the latter shall be entitled to objection. Even if the work has been translated poorly, the original author shall may object and reject such translation. In this regard, the new Decree-Law has permitted the building owner who possesses an architectural design to modify, improve or change his building, without prior permission of the architectural designer (i.e. the author), provided that the architectural design itself is not compromised or distorted (Article 31 of the Law No. 38 of 2021).

Finally, the new Decree-Law has granted the author the right to withdraw his work from circulation, which is known as the (Right of Repentance). Sometimes, the author might find out that his work is not suitable for the public, or might change some of his views and ideas. In this case, by virtue of law, the author shall be entitled to withdraw his work from circulation in exchange for a fair compensation for the work's publisher or producer.

Nonetheless, the new Decree-Law has made it rather difficult for the author to practice this right; as it has stipulated that the author shall submit such request before a court of law that shall decide on the matter as per their discretion. Therefore, we believe that this stipulation could be considered as a violation to the author's personal right. That is to say, such decision shall be left to the author solely; while the court's jurisdiction shall be limited to the compensation estimation, in case of any disputes that might arise with any persons in relation to withdrawing the work.

In this context, it is worth mentioning that the right to withdraw a work from circulation is entirely different from the work's censorship ban from circulation in the State; as the latter is a matter of public order. However, such ban may not affect the author's moral or financial rights, if he wants to publish his work elsewhere; taking into account that any ban shall come to an end by time, hence permitting the work's public circulation over time.

On the other hand, the new Decree-Law has prohibited the author of Computer Software or Smart Applications from withdrawing such works from circulation; which is a commendable approach that has been adopted by several legislations (Article 5 (2)) of the Law No. 38 of 2021) (e.g. the French Intellectual Property Legislation) (Article L.121.7 of the French Intellectual Property). Practically speaking, it is highly difficult to withdraw computer software and applications from circulation, since it has been already transferred to numerous computer devices and digital systems, not to mention that this type of works requires massive financial expenses for their preparation and marketing. In addition, the function of software is most likely related to technical and industrial application, where the author's Right of Repentance is inconceivable; i.e. if a programmer is permitted to withdraw his software from circulation, he could be seduced to practice such right for his own gains in order to have more financial benefits.

The Moral Rights of Performers

By virtue of the new UAE Federal Decree-Law, the performer is granted two moral rights only; **a)** the performer's right to the ascription of his performance to his person; and **b)** the performer's right to respect his performance, without any distortion or modification in a way that might distort the protected performance or damage the performer's reputation (Article 16 of the Law No. 38 of 2021). For instance, a performance could be imitated by another person, hence distorting the original performance in a way that damages both the work itself and the performance method performed by the original performer. However, the new Decree-Law has not granted the performer the rights to withdraw his completed performance, to decide on its publication, or to withdraw it from circulation; as those rights are rather granted to the music composer or text writer as the authors of their Joint Work.

The Financial Rights of Authors and Holders of Neighboring Rights

Upon the work's publication, any author shall be entitled to use his work financially in any way whatsoever. In addition, the holders of neighboring rights shall also be entitled to their financial benefits in exchange for their efforts in the work's production. However, the new Decree-Law has stipulated some restrictions

on the right to utilize a work financially; and that is for the purpose of protecting the public good as illustrated in detail in the following section.

The Financial Rights of Authors

The new Federal Decree-Law has stated several methods for the utilization of works upon publication to the audience. In this regard, Article 1 has defined the different methods stated for the work's utilization as follows: publication, public performance before a live audience, audio and visual installation & transcription, and audio recording). which could be summarized into two major methods. The first method is installing the work on a medium, including all types of media, whether it is a paper-based medium or digital media (e.g. digital networks, social media networks, etc.), so that the user may have access to the work at any time. On the other hand, the second method is to present the work to the audience directly, which is known as "Public Performance"; as the author may present his work to the audience directly (e.g. reciting a poem or playing a tune before live audience).

On this basis, it is possible for the author to present his work to life audience, but through a medium at the same time. For example, a work could be presented via live audio or visual broadcast or via social media networks to a live audience in a café or a hotel, or the passengers on a plane, bus or train. However, the user's access to the author's work via social media networks in this way may not be considered as a Public Performance, but rather an individual use of the work (just like the individual use of a paper-based book); as an individual alone does not constitute a full audience, so that the presentation could be considered as a Public Performance.

In this regard, the new Decree-Law has granted the author another independent right separate from the work's production and performance rights, which is the author's right to lease his work to other third parties. That is to say, the publisher who has the right to install the work on a medium and to distribute it, may not lease copies of the work, unless it is by virtue of prior written permission of the author; for instance, their relevant contract could include a specific stipulation permitting the author's successor (i.e. publisher) to lease the work.

The Financial Rights of Holders of Neighboring Rights

The new Federal Decree-Law has specified certain financial rights to the performer, which may not be used by any other third parties without the performer's written approval. For example, those rights include the performer's right to broadcast his performance to the audience directly, to install his performance on some medium, to copy and distribute his performance, or to lease his performance to other third parties (whether this performance is vocal, auditory or motor); and that is for all possible commercial purposes. In addition, if the performance's transcription or installation on a medium is meant for personal purposes, it is not impermissible for others to use this medium, as long as they have fulfilled the required stipulation concerning their legal possession of this performance medium (Article 17 of the Law No. 38 of 2021).

Moreover, the same rights shall apply to the producers of phonograms, whether those phonograms are classified as works or not (e.g. the sound of ripple). Hence, no other third parties may produce, distribute or broadcast those recordings to the audience; and no other third parties are permitted to make any commercial copies or lease those recordings, without prior written approval of the producer or his successor (Article 18 of the Law No. 38 of 2021) (Mohamed E. Rashidi, 1998). On the other hand, broadcasting organizations may have the same rights for their audio recordings only, but not the visual recordings; as they may distribute those recordings without the need for prior approval by the competent broadcasting authority that may have exclusive rights for their audio production only (Article 19 of the Law No. 38 of 2021). However, the new Decree-Law did not address the production of visual works by broadcasting organizations; as the matter is left to the applicable general rules, taking into account that those works could be classified as joint or collective works.

Restrictions of Financial Rights

Pursuant to the general rules of property right in the Civil Transactions Act, the property right shall grant its holder the right to dispose and use his property in any way whatsoever within the limits permitted by virtue of law (Article 1133 of the UAE Civil Transaction Law No. 5 of 1985). In other words, the property right shall prevail over any claims; as it is a sentient power that is reserved the proprietor solely.

In this sense, the same shall apply with the author's utilization of his work. However, pursuant to the new Copyrights and Neighboring Rights Protection Decree-Law, both the author and holders of neighboring rights (the new law stated as all restrictions stated for the author's financial rights as set forth in this Decree-Law shall be considered as applicable for holders of neighboring rights as well), are not absolutely free in this regard without restrictions; and that is in order to preserve the audience right to have access to published works, or to use those works for any private non-profit purposes, whether they are artistic or educational purposes (e.g. learning and training at all stages). Therefore, pursuant to the new Decree-Law, other third parties may make copies of the work for personal purposes, for educational purposes, or for public libraries whose copies might have been damaged, since it is not always possible to acquire an original copy of the work from its original place of issue.

In addition, the new Decree-Law has permitted media authorities to practice some rights concerning works without the need for prior approval by the author or his successor, such as providing an introduction about the work, using the work in the explanation of some news and facts, or presenting fine artistic works that are displayed at public places (Articles 22 & 24 of the Law No. 38 of 2021). In this way, an individual may perform a work publicly before a family gathering; and education institutions may display some work directly to their students at their facilities.

Moreover, pursuant to the new Decree-Law, a mandatory permit issued by the Ministry of Economy is required in order to transcript or translate some work for academic and scientific purposes; and that is without the need for prior approval of the author, since it is not always possible to acquire an approval by the author or his successor, and it is not always possible to acquire some works at the market; taking into account that this right shall take effect after Three Years from the work's first publication for translation purposes, and after Five Years for the transcription purposes (Articles 7 to 14 of the Law No. 38 of 2021). In this case, after acquiring the said mandatory licensing, a fair reimbursement shall be decided for the author or his successor (Article 21 of the Law No. 38 of 2021).

On the other hand, if the ministry has reject an application submitted for the translation or transcription of some work, the applicant may appeal against such decision before the ministry's Grievances Committee presided by the competent judge; and if the committee's response is not favorable, the applicant may submit a claim of appeal before judiciary within the period of Thirty Days as of the date of receiving the committee's notice of rejection (Article 19 of the Law No. 37 of 2021).

Furthermore, an exception is permitted by virtue of law for people with special needs; as they are permitted to modify the work in any way that enables them to have access to this work or to read it (e.g. blind people are permitted to create a transcript in braille language). Therefore, Article (1) of the new Decree-Law has included a definition for the term "**Accessible Format Copy**" (Article 23 of the Law No. 38 of 2021 and Article 16 of the Executive Regulations), which is defined as follows: "It is a copy of a Work in an alternative manner or format that enables a beneficiary to easily and smoothly access the Work, such as a person with visual impairment or any other disability preventing access to Works, without prejudice to moral rights of the original Work".

On the other hand, the new Decree-Law did not permit transcription for private purposes, with regard to some works whose transcription under any pretext may affect the work's copyrights; taking into consideration that such action may motivate the audience to stop seeking the legal possession of any original copies. For example, those works may include the following: computer software, smart applications, databases, architectural works and fine art works that are not displayed at public places. However, by virtue of law, the legal possessor of computer software or databases may make copies for the purpose of safekeeping or backup, in case of the original copy's damage, and may take quotations for the purpose of making similar software or different databases (Article 22 of the Law No. 38 of 2021).

Finally, the new Decree-Law has permitted the work's utilization in any way whatsoever, once it is considered as a public property (pursuant to Article 1 of the new Decree-Law, the term "Public Property" is defined as follows: it includes all types of works excluded from the stated legal protection, or all works whose financial rights are no longer protected due to the expiry of their protection period); i.e. upon expiry of the period stated for its copyrights and neighboring rights protection, provided the preservation of all moral rights of the author, performers or producers of phonograms. For instance, this duration is specified in the period of Fifty Years as of the year following the author's decease, or as of the date of publication or installation on a medium for some types of works; while this period could be limited to Twenty-Five Years only with other types of works e.g. applied art decorating products and merchandise (Article 20 of the Law No. 38 of 2021).

Governing Principles of Actions concerning Copyrights and Neighboring Rights

By virtue of the new Federal Decree-Law, there are several restrictions on all actions concerning copyrights and neighboring rights; as those restrictions are meant to protect the author and holders of neighboring rights. For example, the author solely may enter into contracts that could be about the assignment of his right to the work's utilization to other third parties, or about the method of providing his work to the audience after approving its publication. In this regard, it is imperative that such actions shall be taken and completed in writing upon their conclusion, otherwise, those contracts will be considered as null and void; and that is pursuant to the following provision of Article (9): "In order for such action to take effect, it shall be made in writing and specifying the right in question, along with indicating the purpose as well as the utilization duration and place". The executive regulation has stated that all actions shall be duly registered in the approved Register of Work Rights at the ministry. In this regard, we believe that those actions refer to the author's right to assign his work's utilization inside the United Arab Emirates for the first time to other third parties; and that through the agreed means (e.g. publication, transcription, lease or all of the aforementioned). On the other hand, the executive regulation has not provided any legal consequences concerning the action's validity, if it is not registered in the Register of Work Rights; the details are provided in Article 2 (1) of the executive regulation.

On the other hand, if the author's contract of assignment is concerning Computer Software or Smart Applications, such licensing shall be considered as valid once the user has opened the received package of the work, or has downloaded the work on some digital medium; hence, this contract of assignment shall be considered as legally binding (Article 12 of the Law No. 38 of 2021). However, if the author's contract of assignment is concerning his entire future intellectual production, such contract shall be considered as null and void due to deception and ignorance; taking into consideration that the completion of this type of production is a matter of probability, not to mention that such assignment could be considered as a restriction on the author's intellectual freedom. Therefore, the new Decree-Law has permitted the maximum assignment of Ten (10) future works only, provided the specification of their titles, subjects and timelines (Article 15 of the Law No. 38 of 2021 and Article 18 of the Executive Regulation No. 47 of 2022, issued by the Ministers Council on the Federal Decree-Law No. 38 of 2021 on the Protection of Copyrights and Neighboring Rights).

In this sense, the owner of a building shall automatically own the financial rights of the architectural designer's work, once the designer has assigned his work to this owner. In this regard, Article (3/1) of the new Decree-Law states the following: "All copyrights concerning architectural designs shall be considered as property of the building's owner or his equivalent, unless otherwise is agreed explicitly"; as the word (copyrights) here refers to the financial rights only.

In addition, the new Decree-Law has permitted the author to assign his financial rights to any licensed associations, hence managing the work's financial copyrights and neighboring rights or copyrights only. In this regard, Article (1) of Executive Regulation No.: (47) of 2021 on the new Copyrights and Neighboring Rights Protection Decree-Law has defined the term "**Associations**" as follows: "They are professional specialized organizations or other entities, to whom the holders of copyrights and neighboring rights may assign their financial rights, or may depute those entities to manage those rights, and to collect and

distribute all financial dues"; taking into account that as a rule, those associations shall be officially licensed by the Ministry of Economy.

In fact, it is highly appreciated that law has permitted those associations to manage the author's financial rights; as authors are usually incapable of handling all details and transactions professionally with publishers and production companies, especially with regard to vocal and auditory artistic works. Hence, this provision provides the author with the option to resort to a competent independent entity that shall undertake the management of his financial rights on his behalf, as well as defending the author's moral and financial rights before all concerned judicial authorities in case of any infringements. In this regard, Clause 5 (c) of Article 15 of the executive regulation has stated that it is indeed the Association's duty to take all necessary legal and administrative procedures to protect the rights of all contracting parties.

In addition, we believe that performers may benefit highly from this option as well; as their performances are usually subject to infringements, especially after the wide spread of the numerous types of social media networks. On this basis, those associations shall practice their activities after acquiring the necessary license from the Ministry of Economy. Moreover, those associations may not reject the management of any copyrights or neighboring rights that fall within their field of specialization without clear justification. Finally, those associations shall be entitled to a percentage of no more than (25%) from the returns of the works' copyrights and neighboring rights (Article 15 of the executive regulation, regarding the regulation of associations work).

Registration Of Copyrights and Neighboring Rights in Register of Work Rights at The Ministry

The new Decree-Law has referred the regulation of works registration (deposit) to the executive regulation; however, the Decree-Law has stressed at the same time that any failure of registration does not mean forfeiting the work's protection (Article 4 of the Law No. 38 of 2021). In this regard, Article (1) of the executive regulation has defined the "**Register of Work Rights**" as follows: "It is a record where all data of the work shall be duly registered, including the complete data of authors, holders of rights or holders of neighboring rights, as well as the complete data of any relevant rights or transactions".

In this context, all registration applications shall be submitted electronically via the ministry's official website, including the required accurate details of the author's identity, nationality and particulars of his work. However, it is not necessary that such application shall be submitted by the author himself; as it could be submitted by his representative or successor (e.g. the work's publisher or producer) as the case may be.

On the other hand, the ministry shall practice their full authority concerning their approval or disapproval on registering the submitted work; thus, if it is found that the submitted work does not fulfill the stated requirements of recognition, i.e. the work's expression could be incomplete in the form of a draft, outline, idea or initiative; then, the ministry shall be entitled to reject the registration application. In this case, the applicant may appeal against the ministry's decision of rejection before a Grievances Committee, formed at the ministry of a presiding judge with the membership of two competent members, who shall all be nominated by the Minister of Justice for the Ministry of Economy. In addition, if the Grievances Committee has rejected the applicant's appeal (Article 2 of the executive regulation, regarding the details and procedures of registration), then, the applicant may resort to judiciary.

On this basis, the executive regulation has stated that it is imperative for all holders of financial rights, holders of neighboring rights, and importers of works or neighboring rights to register their rights in the Register of Work Rights, so that they could be duly licensed to produce and distribute their works inside the United Arab Emirates (Articles 2 & 5 of the executive regulation). In addition, the author as well as all of the aforementioned parties shall register any actions or transactions concerning the utilization of their works in the Register of Work Rights. However, the executive regulation did not stipulate the work's nullity as a result of any failure of registration. Consequently, any written deed, concerning the author's assignment of the work's financial rights to other third parties, shall be duly registered in the Register of Work Rights only (Articles 2 (1) & Article 4 of the executive regulation); and that is for the purpose of regulating the

circulation of works and neighboring rights inside the State, and facilitating the verification of any rights for the author or any other third parties.

Means Of Copyrights and Neighboring Rights Protection

In light of the above, it could be said that the new Decree-Law is characterized by some strictness, when it comes to the protection of copyrights and neighboring rights. In this regard, we believe that the purpose of such strictness is to enable authors to protect their rights, and to attract and encourage investors to produce the various types of works and neighboring rights in the United Arab Emirates, without fear of any infringement of their investments in the fields of culture, science and innovation. Therefore, the new Decree-Law has stipulated several precautionary measures, in order to prevent any infringement of works, such as illegal transcription, unlicensed public performances, or unauthorized phonograms production without permission of holders of neighboring rights. Consequently, several penalties have been stated from fine to imprisonment, in addition to the author's right to claim compensation pursuant to the general rules of the Civil Transactions Act.

Precautionary Measures

The author or his successor are entitled to resort to summary justice in order to stop any forms of infringement whatsoever of his moral rights or financial rights. For instance, if there is a public performance of the work before an audience without permission of the author or his successor, the author may resort to summary justice to stop such broadcast, or to demand the confiscation of the used original work, as well as any illegal copies or items used in the transcription or preparation processes. In this case, i.e. in the event of having a court order by the competent judge of summary justice, the respondent may appeal such decision before the court president who has issued this summary decision; and that is within the period of Twenty Days as of the day following the court order (Articles 35 & 36 of the Law No. 38 of 2021).

Furthermore, the right holder may also resort to judicial enforcement authorities in order to affirm the incident of infringement, before resorting to summary justice. Pursuant to Article 48 of the new Decree-Law, employees of the Intellectual Property Department at the Ministry of Economy shall be granted the Judicial Enforcement Authority by virtue of a Ministerial Decree, issued by the Minister of Justice in coordination with the Minister of Economy and the local judicial authority. That is to say, the judicial enforcement authority (i.e. Judicial Enforcement Officer at the Ministry of Economy - Intellectual Property Department) shall take action and seizure any infringement, upon reporting by any concerned party or through their regular inspection of broadcasting, publishing and distribution organizations. In addition, the customs authority shall have the same jurisdiction; hence, upon request of the rights holder, the customs department shall seizure any copied works installed on unlicensed media upon their arrival to the State (Article (38) of the new Decree-Law, and Article 17) of Executive Regulation).

Penalties

The new Decree-Law has increased the penalties for any infringements of copyrights and neighboring rights; as it has specified the initial penalty in imprisonment for Two Months, and paying a fine that ranges between 10,000.00 to 100,000.00 AED (Ten Thousand to One Hundred Thousand Emirati Dirhams). In addition, in case of recidivism, the penalty shall be doubled to be imprisonment for Six Months, and paying a fine that ranges between 100,000.00 to 500,000.00 AED (One Hundred Thousand to Five Hundred Thousand Emirati Dirhams), or one of those two penalties (Article 39 of the Law No. 38 of 2021).

Moreover, this penalty may also be subject to further increase, if the infringement is concerning the manufacturing, import for sale, lease or circulation of counterfeit and copied works in any way that might constitute a clear infringement. In addition, this increased penalty may also include other violations such as disabling or breaching any stated technical protection for the works, as well as loading and saving computer software, smart applications or databases without proper licensing by the author or holders of neighboring rights. In those cases, the penalty increases to imprisonment for a period of no less than Six Months, and paying a fine that ranges between 100,000.00 to 700,000.00 AED (One Hundred Thousand to Seven

Hundred Thousand Emirati Dirhams); and the penalty shall be doubled in case of recidivism (Article 40 of the Law No. 38 of 2021).

In this context, the new Decree-Law has specified a separate penalty for unlicensed users who use computer software, smart applications or databases without license, even if this user has in his possession the original copy, which he used without license. That is to say, pursuant to Article (41), the unlicensed user of those digital works shall be pay a fine that ranges between 30,000.00 to 100,000.00 AED (Thirty Thousand to One Hundred Thousand Emirati Dirhams); and this penalty shall be doubled in case of recidivism. In addition, the competent court may order the closure of a private sector facility that has used a digital work illegally for a period of more than Three Months.

Furthermore, in case of the assailant's conviction of infringement of copyrights and neighboring rights, the court shall confiscate and destroy all counterfeit works, as well as the tools used in this illegal transcription. In addition, the court may order the closure of any private facility, in which the counterfeit crime has been committed for a period of more than Six Months; taking into consideration that a summary of the issued court ruling shall be published in one or more local newspapers (Article 42 of the Law No. 38 of 2021).

Compensation

As a basic rule, compensation shall not be linked to specific crime; as the author or his successor may ask the court for compensation as well as the confiscation of all copied works and used tools, as long as it is proven that the rights of the author, his successor (e.g. the publisher), or holders of neighboring rights have been damaged. In this sense, the awarded compensation shall be determined for both subsequent losses and lost gains pursuant to the general rules of the Civil Transactions Act (Article 292). Hence, the provision of Article (43) states the following: "The author or right holder may claim compensation, in case of any infringement of his moral and financial rights, pursuant to the general rules".

The comparison between the previous legislation and the present legislation relates to copy rights and neighboring rights reveals that the new law is consistent with the general principles that are prevailing in other countries. Additionally, the UAE Law contains special provisions with regard to smart applications, which are based on computer software and database. The new law clearly identifies the natural person as an author of any work, however, the financial rights created by such work may be owned by a legal person.

The new law also deals with joint works, collective works, compound works and works of authors prepared for the third parties. The law clearly defined that who is a holder of neighboring rights, and recognized the moral and financial rights of the authors.

Conclusion

In conclusion, it is safe to say that the new Decree-Law and its executive regulation have provided several legal provisions for the protection of copyrights and neighboring rights in a way that shall enable the right holder to resort to the competent judiciary and non-judiciary authorities, so that he could claim the protection of his moral and financial rights. That is to say, the new Decree-Law has permitted the submission of appeals at the ministry's Grievances Committee against the ministry's decisions concerning the right holders. In this regard, the Grievances Committee, concerned with copyrights and neighboring rights, shall be convened at the Ministry of Economy, presided by a judge with the membership of two competent members, all of whom shall be nominated by the Minister of Justice; as the Minister of Economy shall approve the formation of this committee as well as their internal work system (Article 37 of the Law No. 38 of 2021). In addition, the executive regulation has specified certain controls for the registration of works in the State, as well as the import and distribution of works. Evidently, the purpose of those rules is to encourage innovation, production and investment in both the cultural and scientific fields.

On the foregoing, we believe that all legislations on intellectual property shall be unified and collected in one comprehensive piece of legislation that shall cover all general rules governing the entire elements of intellectual property. Then, the detailed provisions of each element may be stated in specific; as they may

include the following legal provisions: a) special provisions for the protection of copyrights and neighboring rights; b) special provisions for the protection of industrial models, drawings and patents; c) special provisions for the protection of topographical lines for integrated circuits (i.e. electronic chips); d) special provisions for the protection of plant varieties; and e) special provisions for the protection of any other moral aspects concerning intellectual property (e.g. trademarks, trade names, country of origin, and digital websites); and that is instead of the scattering of many provisions in different legislations (Federal Decree Law No. 11 of 2021; and Regulations & Protection of Trade Marks; & Federal Law No. 17 of 2009 on the Protection of Plant Varieties).

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- The UAE Federal Decree-Law No. 11 of 2021 on the Regulation and Protection of Industrial Property Rights
- The UAE Federal Decree-Law No. 36 of 2021 on the Regulation of Trademarks.
- The UAE Federal Law No. 17 of 2009 on the Protection of Plant Varieties.
- The UAE Federal Decree-Law No. 38 of 2021 on the Protection of Copyrights and Neighboring Rights.