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The Solutions for the Conflict of Laws Relating to Copyright and its Exploitation" A Comparative Study"

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Abstract

Determining the applicable law for copyright is a complex issue in the jurisprudence of private international law. This is because it is an intangible moral property, meaning that the nature of the subject to which the right is attributed differs from other material rights. In addition, most legislations have not established specific attribution rules for moral rights, making it difficult to determine the applicable law for copyright. Hence, the research problem is embodied in the absence of explicit and clear texts that address the issue of conflict of laws if it relates to the author's topics moving between the scope of more than one law, which leads to an overlap in the scope of the applications of the law that related to those rights, raising the issue of which law should apply and which one is more accurate in achieving justice. The importance of this research is evident in raising the awareness among rights holders of the existence of a legal organization that protects the copyright, which may ease their minds due to their prior knowledge of the existence of a law that protects the product of their mind on the one hand and deters the aggressor on the other hand. Moreover, this study aimed to demonstrate the validity of the laws referred to by the traditional attribution rules to resolve conflicts of laws in matters related to copyright. It must be noted that the study adopted the analytical and descriptive comparative approach between Jordanian law and Iraqi law and the role of each in resolving problems arising from conflicts of laws.The study found that the Jordanian legislator specifically addressed unpublished works in Article 57 of the Copyright Protection Law, clarifying whether they fall under the law's provisions. However, we did not find an explicit provision in the Iraqi Copyright Protection Law regulating the issue of unpublished works. However, the researcher recommended that the Jordanian legislator conclude new bilateral or regional agreements in addition to joining international agreements due to the inadequacy or inappropriateness of traditional agreements related to judicial cooperation to rule on what arises from a conflict of legislative jurisdiction regarding copyright.

Keywords: *Copyright, Berne Convention, Dispute of Laws, Legal Security, Personality Principle.*

Introduction

The classifier represents the intellectual product of the author and is considered an intellectual property right that requires legal protection besides moral rights. Because of this, copyright is unique in that its subject matter crosses the boundaries of multiple legal domains, which causes overlap in the application of related laws about the author's legal status, rights, and obligations along with the legislative authority to safeguard his financial exploitation in the event of infringement. Some laws are governed by the principle of personality, such as the personal law of the author (nationality law). Other laws are governed by the principle of territoriality, such as the law of the country of origin and the law of the state where the infringement on the author's rights occurred. Additionally, there are laws related to the will and laws related to the judge of the dispute. Each of these laws has its justification for application, but to varying degrees, and it is up to the judge to reconcile them. This topic is of national and international interest because the author presents their intellectual work to humanity, not limited to a specific geographical area. The impact of their work extends practically to all countries around the world, which is why the author and their rights are afforded legal protection.

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Methodology

The researcher relied on the analytical and comparative descriptive method between Jordanian law and Iraqi law, examining their roles in resolving problems arising from conflicts of law. Additionally, the researcher highlighted the position of international agreements, including the Berne Convention of 1886.

The Nature of Copyright

Researching the issue of jurisdictional conflicts in copyright necessitates explaining the meaning of copyright, the existence of the right, and the legal nature of copyright. This will be addressed in the following sections:

The Concept of Copyright

Through examining successive international agreements in the field of copyright, we observe that they have not provided a specific definition of the author. Instead, they have focused solely on delineating the moral and economic rights of the author. However, the World Intellectual Property Organization (WIPO) has provided a brief definition of the author as "The person who creates a work, with the emphasis on innovation to determine the meaning of the author. In other words, the author is the creator of the original intellectual output" (Ismail et al., 2014).

In the case, of Jordanian legislation, Article (4) of the Copyright Protection Law No. (23) of 2014, as amended, defines the author as "The person who publishes the work attributed to him, whether by mentioning his name on the work or in any other way, is considered an author unless evidence is provided to the contrary".

While in Iraqi legislation, the Copyright Protection Law No. (3) of 1971, as amended, was defined in Article (1/2) as "The author is considered the person to whom the work is published attributed, whether by mentioning his name on the work or in any other way, and this provision applies to the pseudonym".

Thus, the advanced definitions show that the author is a legal concept applicable to the owner's right even if he was not involved in the work since according to this trend, he does not need to be the author of the intellectual work but is the author of the rights and privileges arising from the author's right (Abu Dlu,2004).

Moreover, the difference in the legal description of the author leads to a conflict between the laws in the world's States, as some statutes consider him an author and others do not, affecting the required protection. Individual works do not raise a problem because the author is one person. Still, the problem is in the works involving two or more persons under the supervision of a natural or moral person who publishes the works and we will clarify these problems in the following two points:

Determining the Author in Joint Works

Participation requires the presence of a group of people who cooperate in producing the work. The problem is who has the copyright in joint works, given the material and literary privileges enjoyed by the class holder that guarantee him the exercise of all powers over the work. The question arises as to whether the authorship is established for everyone who contributed to its production or not?

Accordingly, joint work is created by two or more authors in direct cooperation or after Considering each other's mutual contributions, which are difficult to separate and view as independent innovations (Jordanian Copyright Protection Law, Article 35 & Iraqi Copyright Protection Law, Article 25).

The involvement that combines the work of one partner with the work of the other partners is a complete partnership and all partners are equal in moral and financial rights, thus no one can use the work in his name or for his account. However, in some cases, some partners' interests prevail over the interests of the other partners, and thus there are disputes raised before the competent courts that decide the dispute.

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However, if it is possible to separate the work of each partner, he can exploit it on condition that it does not harm others and that there is no written commitment to the contrary (Jordanian Copyright Protection Law, 35/b & Iraqi Copyright Protection Law, Article 25/26).

Determining the author in collective works (the problem of describing the legal person as the author):

Article (35/C) of the Jordanian Copyright Protection Law defines collective work as "If a group of the author participates in composing a work under the direction of a natural or moral person, it is called the collective work" (Iraqi Copyright Protection Law, Article 27). Based on the information above, it can be asserted that the author's status is granted to the individual or entity that created the work, whether it is a natural person or a legal entity.

The Jordanian legislator did not stipulate that the author can be a legal person, although it is a legal assumption. However, the Iraqi legislator explicitly stipulates in Article (27) of the Copyright Protection Law that it is possible for a legal person to be an author and to be given all financial rights to the work. Furthermore, this issue then raises a dispute over legislative jurisdiction due to the difference in legislation regarding whether a natural person is considered an author or not author (Hasan, 2016). As stated previously, we can conclude that authorship can be applied to both natural and legal persons in joint works, and it can apply to the person who supervised a group of people to produce something under his supervision.

Hence, it was defined as "a right owned by everyone who wrote, inspired by his thoughts, in the fields of science and arts, a composition marked by the character of the personality, whether it was written, published, drawn, photographed, spoken, or made in the work of shapes or signs" (jamiei, 2014). It is also defined as the right established by law in favor of the person who created a mental work, which gives him the sole right to exploit it and to take all measures that guarantee its safety, to prevent an attack on a person or his reputation and consideration (Jamal Al-Din, 2004).

Based on the above, it became clear that copyright includes two types of rights "moral and financial. Moral right is the author's right to create and to present his creation to the public in any form and to be respected by all people in the world (Mamoun & Sami, 2008)."

Moreover, the importance of moral rights varies according to the intellectual property legislation in the Latin trend compared to the Anglo-Saxon trend. After, the former emphasizes that moral rights are superior to financial rights in that they are not subject to prescription cannot be waived, and are closely linked to the author's personality, thus granting him the right to publish the work, and the author's right was attributed to him alone. Others do not have the right to infringe upon the work or change it by others. As for the latter, financial rights prevail over the author's rights (Mamoun & Sami, 2008). Therefore, this creates a difference in the recognition or non-recognition of the author's moral right and a conflict of jurisdiction of laws on this subject.

However, the financial right entails receiving a fair portion of the revenue produced by the public's use of the work." It is the author's authority to exploit his work to benefit financially from it, whether he exploits it himself or assigns it to others in exchange for a sum of money, such as the right to reproduce, the right to represent, etc. Article (9) of the Jordanian Copyright Protection Law states that "The author or his successor shall enjoy the financial rights, and others may not take any action without written permission" (Iraqi Copyright Protection Law Article 7 & the Jordanian Copyright Protection Law Article 8). Nevertheless, legislation differed in the duration of protection for financial rights. The Jordanian legislator adopted a protection period of (50) years, as did the Iraqi legislator (1), but some countries made the protection period (70) years, such as English law and German law. So, this difference raises a conflict of laws between the applicable laws.

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The Legal Nature of Copyright

The legal nature of copyright is one of the most controversial topics at the local and international levels because copyright includes two conflicting elements: financial and moral rights. In addition to the characteristics of personal rights and property rights, a dispute arose in legal jurisprudence about determining the legal nature, and this is what we will explain:

The Copyright is a Property Right

According to this opinion, the provisions of ordinary ownership can be extended to copyright as an intellectual property right. The supporters of this opinion went to the point that it is, with its literary and financial aspects, a property right. It is a right that cannot be waived, cannot be timed, can be seized, and is considered an element of financial liability (Al-Sharqawi, 1986). However, this opinion has been criticized because moral rights relate to something intangible, and copyright differs from property rights, which allow the owner to monopolize the benefits of his property so that no one else shares them. As for copyright, it can't be instrumentalized or benefited from except by publishing it and making it available to people. Financial rights also contain moral rights that represent a close connection to the author's person.

Also, the financial author's right is temporary for a specific period determined by law, and the right becomes public property for the benefit of the community, unlike property rights, which are permanent rights that cannot be temporary (Al-Haddawi, 1997). Hence, a jurisprudential opinion holds that copyright is the creation and innovation of the mind, and there is a vast difference between ownership, which only bears fruit by acquiring and monopolizing it, and an idea, which only bears fruit by becoming widespread (Al-Sanhouri, 1967).

The Author's Right in Personal Rights

According to this opinion, the author's right is closely related, complementary, and inseparable from his personality. The legal nature of this right is determined by looking at the subject of this right, which is the intellectual and mental production of the creator of the work (Muhammad, 1999). As for the material aspect, it is the use of this right, and this does not affect the moral nature of this right, as it is a purely moral right according to the supporters of this theory, and thus the personal nature prevails.

Nonetheless, this opinion has faced criticism because it does not rely on a balance between the literary aspect and the material aspect of copyright, leading to monopolistic tendencies that lead to harm to users, in addition to bringing profits to authors and leads to harm to the state, as it cannot seize it. Further, individual rights fall outside the scope of commercial transactions, as individual rights such as the right to one's name cannot be sold or exploited. Moreover, it is unrealistic because there is no legal denial of the author's economic rights in the legislation; rather, the laws protect both the moral and economic rights of the author.

The Copyright is a Dual Formula

As a result of the criticisms that faced the previous theories, a trend emerged to call copyrights dual formulas, i.e. they have a special nature that is independent of existing theories, i.e. the author's right to his work is two rights, one of which is literary and the other is financial. Therefore, the supporters of this theory suggested calling these rights "intellectual rights" (Muhammad, 1999). In contrast, some of them called them "a group of customer rights" (Muhammad, 1999), and this is because determining the legal nature of such a type of rights is done by referring to their intrinsic characteristics and looking at the characteristics of innovation in particular, as without innovation it is not possible to say that there is an intellectual work.

While moral rights pertain to the author's personality, financial rights are related to the author's personality derived from the exploitation of the work. However, are these two types of rights independent of each other, or are they separate components of a single right? A jurisprudential opinion has stated that the financial aspect is independent and self-sufficient and has a particular nature. It is considered an original

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real right and movable property that includes the right of ownership with its unique components attributed to its occurrence in an intangible thing (Al-Sanhouri, 1967). The other opinion of the jurisprudence was that the nature of the author's rights varied depending on their place. If exploitation affected abstract moral production, this aspect of financial rights was particular because it responded to something immaterial and could not be considered a fundamental right of its nature. However, if the exploitation is in the physical form of the work or intellectual production, we are dealing with movable property ownership. The author also has the right to directly perform all actions related to the right of ownership, such as sale and mortgage.

Accordingly, the researcher believes that the theory is marked by clarity and practicality, as the proprietary rights can benefit from their creative and mental effort, along with the significance of the moral aspect. In other words, copyright has a distinctive nature.

International agreements and national legislation upheld the theory of the dual nature of copyright. Also, The Berne Convention demonstrated the dual nature of copyright, as it explicitly stated in Article (6/2) that "Independently of the financial rights and after the waiver of these rights, the author retains the right to indicate his paternity of the work" (Berne Convention for the Protection of Literary and Artistic Property, 1886). It is clear from this text that the Convention recognizes two rights for the author: a moral right and a financial right. The Jordanian Copyright Law similarly adopts the dual nature of copyright, encompassing economic and moral rights. This is evident from Article (10), which states "The author alone has the right to decide to publish their works".

Besides, Article (18) of the law mentions the moral right, stating: "The author alone has the right to claim authorship of their work, this means that Jordanian law recognizes the dual nature of copyright. Consequently, conflicts of laws are limited regarding the legal nature of copyright, as international agreements have settled the matter (Iraqi Copyright Protection Law, Articles 7/10).

The Solutions to The Conflict of Legislative Jurisdiction of Copyright

The mechanisms of conflict differ according to the diversity of countries' views of copyright and its nature. It is well known that intellectual rights are among the fundamental human rights and that establishing protection is indispensable to protect the state. In addition, protecting the literary works of foreigners will increase the circulation of these works across the nation's contribution to the state's development and prosperity. As is well known, intellectual rights apply to intangible things and contain both material and moral aspects, which makes it difficult to include them in one category of the commonly known categories of attribution. The legislative conflict in copyright is the result of the difference between legislations. Some laws recognize the author's material rights, while others acknowledge the author's material and moral rights. In addition, there are international agreements that address the issue of copyright and are therefore binding and constitute domestic law in countries that have joined those agreements. However, several nations have either not approved or joined those agreements.

The National Conflict of Laws Approach

Copyright is one of the rights that raises many legal problems due to the difference in the way this right is regulated by national laws based on the principle of territoriality, which is the application of national law in the territory of the state to citizens and foreigners alike, based on the principle of the state's sovereignty over its territory (Ibrahim, 1992). But the problem lies in the developments taking place at the global level and the Internet revolution and what results from it in terms of the widespread publication of works, such that the scope of copyright does not stop within the borders of the territory of the original country, but rather it can be exploited and published in other countries.

Some have called (Salama, 1997) for resorting to controls related to the state's territory and the availability of one of those controls, which is the place of publication in the legal relationship related to copyright. While neighboring rights and copyright are linked to the creator and the place of publication—specifically, the country where the work was first published—if the work remains unpublished, the relevant country is either the author's country of citizenship or residence (Ibrahim, 1992).

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The determination of authorship status is governed by the law of the country of origin, which aims to uphold acquired rights and ensure legal security. According to this law, the individual who created the work should be recognized, regardless of whether they hold the status of author or not, non-compliance with these regulations can result in legal uncertainty and instability. Further, if the person who created the work does not hold the author's status according to the law of the origin's country, then it is not the appropriate country to seek protection from. This is because the country where protection is required does not have the authority to recognize the existence of the author's status according to its laws. Consequently, this would undermine the rights established by the law of the country of origin for intellectual work (Muhammad, 1999).

Accordingly, the criterion that is relied upon in determining the law of the country of origin is publication about copyright because publishing the author's work will lead to broadcasting and displaying the author's creativity before the public, so the law of the country of initial publication applied as the country of the original work according to the Berne Convention and not the law of other countries (Berne Convention for the Protection of Literary and Artistic Property, 1886).

Among the judicial applications that involve referring to the law of the country of origin regarding the existence of copyright is the ruling of the Paris Court of Appeals. This case is summarized as follows: A musical work was composed by four Russian authors and then incorporated into a film titled "The Iron Curtain," produced in the United States without obtaining prior permission from the real authors. The film was subsequently distributed and screened in France. As a result, these authors turned to the French judiciary.

Hence, the court ruled in this case and decided that it was necessary to refer to Soviet law (the law of the country of original work) to determine whether the literary work that was infringed upon was protected or not. The French Court of Cassation upheld this position, agreeing with the Paris Court, and decided that the determination of the applicable law for the intellectual work should be based on the law of the country where the work was published, which, in this case, was Soviet law (Kamal, 2005).

Also, the Jordanian legislator has adopted as a general rule the law of the country of origin and personal law as an exception, in Article (57) of the Jordanian Copyright Protection Law, which states that "The provisions of this law shall apply to the works of Jordanian and foreign authors, published or unpublished by any means" (Iraqi Copyright Protection Law, Article 49). As for the position of international agreements, the Berne Convention for the Protection of Literary and Artistic Property of 1886 indicated in Article (3) that: "The protection provided for in this Convention includes:

Authors who are nationals of one of the Union countries for their works, whether published or not.

Authors who are not nationals of the Union countries, for their works published for the first time in one of the Union countries or in a country outside the Union and one of the Union countries.

Besides, the Arab Copyright Convention of 1981 also adopted the rule of the country of publication. Still, it did not require that the country of publication be the first. But it could be the next in the country of publication. It also stipulated the principle of reciprocity. Article 26/7 of this convention states that "The provisions of this Convention shall apply to works published within the borders of the member states by non-resident authors, regardless of their nationality, on condition of reciprocity, and by the conventions to which the states are parties."

When a work is published internationally, several trends have emerged. The first trend requires the application of the law of the country whose law stipulates a shorter period of protection for copyright. However, this opinion has been criticized because adopting it is difficult for the judge to do, as it requires the judge to make a comparison between the laws of the countries in which the publication took place and to become familiar with their provisions to arrive at the chosen law that stipulates a shorter period of protection.

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The second trend calls for following the legal requirements of the countries where the primary or original publishing occurred. If the work was published concurrently in multiple countries, then the legislation of the countries where the publishing of the work was more significant than the others cited in this situation.

The law to be applied may be the law of the country where the publication occurred before other countries. Additionally, it might be the number of copies sold and the degree of popular reception of the piece. Should there be no option to select between the laws, the law of the country of the author will take precedence (Radi, 2015). Article (3/4) of the Berne Convention states that: "Any work that appears in two or more countries within (30) days of its first publication shall be deemed to have been published simultaneously in several countries." Accordingly, one of the most prominent reasons that can be relied upon in granting jurisdiction to the law of the first country of publication is as follows:

The Law's Application of The Country of Origin Would Provide Legal Security

Failure to resort to the law of the country of origin would lead to an attack on the sovereignty of the origin's country of work. And would lead to instability in the legal positions that arose and expired according to its law.

Adopting the theory of the law of the country of origin would lead to respect for acquired rights, as according to it, the author enjoys all the rights stipulated by the law of the country of origin in any foreign country.

The work can be regarded as valuable to the public as soon as it is published in the country of origin (Kamal, 2005).

The International Attribution Rules Approach

Some jurisprudence and international agreements believe that the legal rules of the country in which the work is sought to be protected should be applied, as this contributes to unifying both judicial and legislative jurisdiction. In addition, it allows the judge to apply the law that he knows well and feels comfortable dealing with.

Jurisprudence sees the possibility of excluding the application of the law of the country of publication and applying the local law by the idea of the defense of international public order. It also relies on the jurisdiction of this law over the country requesting protection, which is usually where the violation of copyright occurs, meaning the counterfeit or imitated copy (Al-Kurdi, 1992). Furthermore, it avoids the difficulty of determining the place of publication of the work, which is a complicated matter for the judge if the work has been published in more than one country, and protects authors other than the application of the law of the country of origin. The country's law of protection is the entity that applies in the event of a conflict between the application of the legal rules stipulated in the law of the country of first publication and the country's principles of protection (Al-Kurdi, 1992).

One opinion is that the nature of intellectual property, such as books and artwork, is compatible with the legal application of the protecting nation as a method of addressing this dispute. This is because the task is global and not specific to any country. It arises simultaneously in every country where it is exploited rather than starting in one and moving to another (Radi, 2015).

Regarding international agreements, the Geneva Convention of 1952, in Article (4/1), states that "The duration of protection of the author, by the provisions of Article 2 and the provisions contained therein, shall be subject to the law of the contracting state in which protection required." The Rome Convention of 1961 also referred to giving jurisdiction in some matters to the law of the country of protection, as it stated in Article (7/2/1) that "The jurisdiction of the law of the country requesting protection is to regulate the protection against the rebroadcasting, fixation, and reproduction of any performance for broadcasting, provided that the performer consents to the broadcasting of his performance."

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The connection between moral rights and personal law has drawn criticism from certain Jurisprudence, who argue that individual rights are not regarded as autonomous rights in and of themselves. Since the work itself is the subject of the right rather than the subject of the copyright, moral rights are likewise not regarded as personal rights.

Moreover, Article (13/d) of the same agreement stipulates that "Broadcasting organizations may have the right to permit or prohibit the transmission of their television programs to the public if this is done in places accessible to the public upon payment of an entrance fee. The national law of the countries in which protection of this right is sought shall determine the conditions for its exercise" (Abu Dlu,2004). Accordingly, in the event of a dispute arising and the law of the country of protection differing from the country's law of the first publication - according to the opinion of some jurisprudence - it is possible to exclude the country's law of publication and apply the country's law of protection in the application of the plea of international public order.

However, this view is criticized, as the application of the law of the protecting country neglects the principle of international respect for acquired rights. Copyright cannot be claimed in a country if the law of the country of origin does not recognize this right. In addition, the law of the protecting country may constantly change based on a change in the place of the events in dispute, unlike the law of the country of first publication, which remains constant and does not change even if the work is republished in another country (Al-Asbahi, 2007).

Despite the criticisms directed at this opinion, it achieves advantages that the law of the country of publication did not obtain. Since reliance on the country of publication may not express a real connection in the case where the publication was incidental or in the case of publication in more than one country, it is a logical matter dictated by considerations related to copyright. At the domestic level, the laws found in this law are the solution that is sought due to the nature of intellectual property rights because this law is based primarily on regionalism's idea.

Article (11/1) of the Jordanian Civil Code states that "The Civil Code is a reference for the classification of relationships when it is required to determine the type of this relationship in a case of conflict of laws to know the applicable law" (Iraqi Civil Code, Article 7/1). At the international level, various intellectual property agreements have adopted this view and considered the law of the country requesting protection to apply to the ruling of a right, including the Hague Convention for the Protection of Literary and Artistic Property Rights.

As for the position of the judiciary, the judiciary's rulings supported the law of the country requesting protection, as the Paris Court ruled on March 29, 1979, in the case related to "the forgery suit filed by the Artistic Property Rights Company against a French publishing house, and the Paris Court applied French law because the acts of forgery were committed on French territory and that its basis is in the place where the act of copyright infringement occurred, which is French territory" (Kamal, 2005).

It is necessary to highlight the conciliatory trend, which involves the dual application of the law of the country of first publication and the country's law of protection to copyright. This approach acknowledges the close relationship between the work and the country where it was published, as this relationship determines the existence of the right, its scope, and the duration of its protection. Consequently, it is logical that the law of the country of protection regulates the methods for achieving protection. Moreover, this dual application implies that the two laws must be harmonious and cannot conflict. Consequently, protection cannot be granted to the author if the protection period has expired under the law of the country of publication (Al-Asbahi, 2007). After reviewing the three opinions, we prefer the theory of dual application in copyright protection for the reasons mentioned above, in addition to the fact that it takes into account the positive aspects of each opinion and raises its negative aspects, and also aims to reject making the personality of law or the territoriality of laws a basis for resolving the dispute.

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The Approach to The Principle of Personality

Issues related to the author's status may sometimes be addressed in various ways, including the nationality officer, which is based on the personal character, as well as resolving the issue of the author's moral right due to the difference in legislation in this regard. In addition to the law of will, which is the chosen law, whether the will is explicit or implicit, the parties often agree on a specific law within the scope of the exploitation contract that would govern disputes between them. Further, the legal relationship is specifically related to one or more elements of one law, such as the law of the nationality of the parties to the relationship, the law of their domicile, the law of the place where the contract was concluded, the law of the location of the money, the law of the place of execution, and the law of the court before which the lawsuit is filed. This allows at least each of these laws to be applied exclusively to the legal relationship, whether in terms of its establishment or its termination. This results in a conflict of laws to govern this relationship (Kathim, 2017).

The Application of the Nationality Law

The Berne Convention made the publication of the work for the first time in any of the Union countries a criterion for protecting the author even if he is not a national of the member countries and added the criterion of nationality or habitual residence in Article (3/2) thereof to protect the rights of authors who are nationals of one of the Union countries. Article (5/2) of the same agreement adopted the principle of automatic protection, which stipulates that protection is granted to the author of the protected works as soon as they are attributed to him, without requiring any formal procedure to establish the enjoyment of the right or its protection, and establishing protection for authors under national legislation. Also, the agreement adopted a basic principle stipulating that the author in a member state of the Union other than the country of origin of the work be treated with the same rights that the laws of those countries currently or in the future grant to their citizens, in addition to the rights stipulated in the agreement, for the works based on which they enjoy protection under the agreement in Article 5/1 (Berne Convention, Article 5).

The Jordanian legislator has taken the law of the country of origin in Article (57) of the Jordanian Copyright Protection Law as a general rule (Iraqi Copyright Protection Law, Article 49) "As we mentioned previously" and the personal law as an exception, and if the work is not published, the Jordanian legislator has subjected published and unpublished works to the law of the country of origin (Jordanian Copyright Protection Law, Article 57/b). Accordingly, when there is scope for applying personal law, two related cases must be addressed, namely the applicable law regarding moral rights, and the case of non-publication, as follows:

The Moral Right of The Author

The moral right of the author remains an area where international agreements have not effectively addressed the conflict of laws separately from the financial right. This is because the moral right aims to protect individual rights and cannot be subjected to rules that primarily serve public interests. Moreover, personal rights need recognition, which facilitates their protection. In addition, adopting the method of conflict of laws, rather than relying on police laws, is necessary. This approach ensures that the laws of other countries are not disregarded (Muhammad, 1999). Further, the connection between moral rights and personal law has drawn criticism from certain Jurisprudence, who argue that individual rights are not regarded as autonomous rights in and of themselves. Since the work itself is the subject of the right rather than the subject of the copyright, moral rights are likewise not regarded as personal rights.

Case of Non-Publication of The Work

A jurisprudential opinion (Radi, 2015) went to determine the jurisdiction of personal law in the case of non-publication of the work on the basis that intellectual property and artistic creativity are the fruit of human thought and the man has a parental right to creativity (Abdul Rahim, 2015). This is what the Berne Convention adopted in Article (5/4/c), which states: "About unpublished works or about works published for the first time in a country outside the Union without being published at the same time in a country of the Union, of which the author is a national."

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This trend was criticized due to the possibility of the country of origin changing according to the change in the nationality of its authors, and the difficulty of determining the country due to the author's multiple or no nationality (Radi, 2015).

Application of the Law of Will

Most laws globally grant the parties the freedom to choose the applicable law. Thus, conflict-of-laws rules are only consulted when there is no original choice of law. Although any conflict rule presupposes a connection between the legal relationship and the applicable law, international law deviates from this principle by recognizing the parties' right to choose any national law to govern their contract, even in the absence of a connection between the legal relationship and the contract's subject (Al-Kurdi, 1992). So, it is possible to refer to what is stated in the general rules of civil law related to resolving conflicts of laws related to copyright, where Article (20) of the Jordanian Civil Law stipulates that "The law of the state in which the contracting parties have a common domicile shall apply to contractual obligations if the domicile is the same. If they differ, the law of the state in which the contract concluded shall apply" (Iraqi Civil Code, Article 25).

It is necessary to point out two forms of applying the law of will, which are:

Application of the chosen law: In the event of a dispute, the applicable law is selected either by express expression of will or by the parties explicitly agreeing in the contract to specify the law of a country, to resolve any disputes that may arise from the copyright exploitation contract. Or by implicit expression, in the event of a lack of agreement on the applicable law, we may infer that will from the texts of the contract and the facts of the case (Muhammad, 1999).

The applicable law in the absence of the chosen law: Some national legislations have tended to assign the contract if the parties are silent about specifying the relevant law, referred to as the prior assignment of the contractual process, as the contract is closely related to this criterion. It is implicitly understood that the parties wanted to apply the law of the common domicile in everything related to the contract. This is what the Jordanian and the Iraqi legislators adopted (Jordanian Civil Code, Article 20& Iraqi Civil Code, Article 25).

The Jordanian and Iraqi legislators, when the parties are silent about specifying the applicable law, have attributed it to the law of the place where the contract is concluded, as the applicable law in the event of the parties not having a common domicile, and in the event of the parties having a common domicile, the judge cannot apply the law of the place where the contract is concluded. Further, the Jordanian and Iraqi legislators did not consider the prior attribution to the law of the country of implementation in the event of the parties' silence about specifying the applicable law (Al-Anbari 2017). However, jurisprudence regards the law of the country of implementation, which is one of the most important indicators of the implied will in determining the applicable law that governs contractual disputes in the event of the parties' silence (Al-Anbari 2017).

Conclusion

Through researching the conflict of legislative jurisdiction over copyright, this study has reached several conclusions and recommendations, which can be summarized as follows:

Issues regulated by international agreements related to copyright experience less conflict for countries that are parties to those agreements. However, matters not regulated by these agreements tend to experience more widespread conflict.

A dual conflict rule applies to the law governing copyright, leading to the application of two different laws in a distributed manner, distinguishing between the exploitation and the existence of the right. Furthermore, the exploitation of copyright is subject to the law chosen by the parties in the copyright exploitation contract or the law of the country where the intellectual property infringement occurred in the absence of an

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agreement. Furthermore, the author has the option to select one of the countries if the infringement occurred in multiple locations. As for the existence of the right, the consensus is that it is determined by the nationality of the author in the case of unpublished works or by the laws of the nation in which the work was first published.

Personal laws take precedence in resolving conflicts of legislative jurisdiction concerning copyright, particularly regarding the exploitation contract between the publisher and the author, where the law chosen by the parties is applied. Regional laws take priority if the copyright is infringed.

4. The law of the country of origin prevails in solutions based on the principle of territoriality, followed by the law of the country where protection is requested. As for solutions based on the principle of personality, the law chosen by the parties takes precedence, and in its absence, the law of nationality is applied as a fallback to resolve the conflict.

The Jordanian legislator explicitly regulated in Article (57) of the Jordanian Copyright Protection Law unpublished works and the extent to which they are covered by the provisions of this law or not covered. So, the Iraqi legislator did not explicitly regulate the issue of unpublished works.

In the event of a conflict between the provisions of a treaty regulating copyright and the provision of national law of a member state in the treaty, the latter should prevail if the treaty after the legislation.

Recommendations

The researcher hopes that the Jordanian legislator will define copyright in a way that specifies its basis and nature and is consistent with the distinct features of intellectual property rights in general and copyright in particular.

Given the inadequacy or unsuitability of traditional agreements related to judicial cooperation to rule on what results from a conflict of legislative jurisdiction regarding copyright and its exploitation, and since copyright is a global right that crosses borders and is not restricted within the territorial scope of a specific country, we call on the Jordanian legislator to conclude new international, regional or bilateral agreements.

To ensure that the Jordanian law provides the necessary protection for foreign works. Therefore, we hope the legislator will amend Article (57/b) of the Jordanian Copyright Protection Law to read as follows: "Subject to the provisions of international agreements related to the protection of copyright, and if they do not apply, the principle of reciprocity shall be observed. Furthermore, the provisions of this law shall apply to works of foreign authors, whether published or unpublished, and expressed by any of the means stipulated in paragraph (b) of Article (3) of this law outside the Kingdom, provided that these works enjoy protection according to the law of the country of first publication.

References

Abd Al-Rashid, M., & Sami, M. (2008). Copyright and neighboring rights. Dar Al-Nahda Al-Arabia, Cairo.

Abd El-Razzak, S. (1967). The mediator in explaining the civil code / Property rights (Vol. 8). Cairo.

Abu Dalu, K. M. (2004). Conflict of laws in intellectual property. Dar Wael Publishing and Distribution, Amman, Jordan.

Ahmed, A. A. (1997). The science of conflict of laws and choice between legal systems: Fundamentals and methodology. Dar Al-Jala, Mansoura.

Al-Anbai, A. (2017). The silence of will regarding the determination of the applicable law on foreign contracts (Master's thesis). Faculty of Law, Middle East University, Jordan.

Ashraf, W. M. (1999). Conflict of laws in the field of authors' intellectual rights. Dar Al-Nahda Al-Arabia, Cairo.

Hassan, H. (1997). Private international law: Conflict of laws / General principles and solutions in Jordanian law: A comparative study. Dar Al-Thaqafa Publishing and Distribution, Amman.

Hassanein, J. (2014). International protection of copyright and neighboring rights: From the Berne Convention and TRIPS Agreement to the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. Kingdom of Bahrain.

Ibrahim, A. A. (1992). International protection of copyright. Dar Al-Nahda Al-Arabia, Cairo.

Ismail, A. A., et al. (2014). International agreements on intellectual property (Vol. 1). Dar Al-Mamon for Translation and Publishing, Baghdad.

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DOI: https://doi.org/10.62754/joe.v3i7.4421

Jamal, M. K. (1992). Conflict of laws. Dar Al-Nahda Al-Arabia, Cairo.
Jamil, A. (1986). *General theory of obligations / Sources of obligations*. Dar Al-Nahda Al-Arabia, Cairo.
Kamal, R. S. (2005). Conflict of laws in the field of copyright (Doctoral thesis). Arab University for Graduate Studies.
Kathim, H. (2017). Lectures on private international law: Conflict of laws, jurisdictional conflict, and enforcement of foreign judgments. College of Law, University of Karbala.
Mahmoud, A. R. (2015). Private law (Conflict of laws). Dar Al-Thaqafa Publishing and Distribution, Amman.
Naeem, I. N. H. (2016). Legal adaptation of copyright (1st ed.). Dar Al-Sabah.
Radi, R. N. (2015). The applicable law on property (Master's thesis). An-Najah National University.
Salahelddin, J. D. (2004). Copyright protection in light of satellite broadcasting of programs. Dar Al-Fikr Al-Jami'i, Alexandria.
Yassin, M. H. A. (2007). The right of foreigners to ownership in private international law. Al-Maktab Al-Jami'i Al-Hadith, Alexandria.
Jordanian Copyright Law No. (22) of 1992, amended by No. (23) of 2014.
Iraqi Copyright Law No. (3) of 1971.
Jordanian Civil Code No. (43) of 1976.
Iraqi Civil Code No. (40) of 1951.
Berne Convention for the Protection of Literary and Artistic Works (1886).
Arab Convention for the Protection of Copyright (1981).