

**RESEARCH ARTICLE**

# Criminal Protection Of Digital Intellectual Property Rights

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## Abstract

This research examines the criminal protection of electronic intellectual property rights, in light of the rapid expansion of technology and the digital environment and the resulting new forms of infringement on copyright and digital works. The study clarifies the nature of intellectual property and its industrial, literary, and artistic categories, while analyzing the most prominent forms of criminal infringement, such as unauthorized copying, the distribution of counterfeit works, and the importation of unlicensed software. It also assesses the adequacy of current Iraqi legislation, particularly Penal Code No. (111) of 1969 and the amended Copyright Protection Law No. (3) of 1971, in addition to discussing the 2019 draft law on combating cybercrimes, which has not yet been enacted. The study compares Iraqi legislation with international conventions such as the Budapest Treaty and the Arab Convention on Combating Cybercrime. The study concluded that current Iraqi laws do not provide comprehensive criminal protection for electronic intellectual property rights, and that there is an urgent need to develop an integrated legislative framework that accommodates technological developments and strikes a balance between protection and digital freedom.

## KEYWORDS

Criminal protection, property rights, electronic intellectual property rights.

## INTRODUCTION

Intellectual property rights unquestionably reign supreme among all rights and occupy a prominent position within property rights. Intellectual production is no less important than material production in the building and progress of nations, as the degree of progress of any people is measured by the level of education and culture they have attained, and by the level of protection afforded to national intellectual creativity. Intellectual property rights have gained significant and critical importance due to the tremendous developments in technology, information, and innovation, as well as the role they play in stimulating the global economy. Therefore, in

the first section, we will address "The Nature of Criminal Protection for Intellectual Property Rights," which has been divided into two subsections. The first subsection discusses (the definition of intellectual property, its types, and its conditions), and the second section addresses (crimes of infringement against intellectual property rights and their elements), while in the second chapter we address (the extent to which intellectual property rights crimes apply or the adequacy of existing laws in protecting intellectual property rights). This section was divided into two subsections: the first (Protection of Copyright—the Author—under Current Laws and the 2019 Draft Law on Combating Cybercrime), and the

second (Protection of Intellectual Property Rights under International Agreements and Organizations), as follows:

### **I. Research Problem:**

Despite the existence of Iraqi and international legal provisions aimed at protecting intellectual property rights, infringements of these rights (especially in the digital environment) are steadily increasing, raising questions about the adequacy of existing Iraqi legislation in providing full criminal protection for these rights, particularly in light of rapid technological advancements and the spread of cybercrime.

### **Second / Research Hypothesis:**

This study posits that current Iraqi legislation does not provide comprehensive and adequate criminal protection for electronic intellectual property rights, and that addressing this shortcoming requires finalizing the 2019 draft law on combating cybercrime and updating existing laws to align with modern technological and commercial developments.

Third / Significance of the Research:

The importance of this research stems from the fact that:

1. The fact that intellectual property rights are fundamental pillars for supporting innovation, creativity, and economic development.
2. The increasing incidence of cyberattacks on these rights due to the ease of unauthorized copying and distribution.
3. The need to assess the effectiveness of Iraqi laws in combating these crimes and to highlight their shortcomings.
4. The provision of a practical scientific vision for developing the Iraqi legal system to achieve effective protection of digital works.

### **IV. Research Objectives**

1. To define the nature and types of electronic intellectual property rights.
2. To identify the most prominent forms of criminal infringements on intellectual property rights and their elements.
3. To analyze the adequacy of current Iraqi laws (Penal Code No. 111 of 1969 and the amended Copyright Protection Law No. 3 of 1971) in protecting electronic intellectual property rights.

4. To study relevant international treaties (such as the Budapest Treaty) and assess the extent to which they can be utilized in Iraqi legislation.

5. Proposing legislative solutions to strengthen criminal protection of these rights in Iraq.

### **V. Research Methodology**

The research adopted a comparative descriptive-analytical methodology, through:

1. The descriptive approach: to present the theoretical framework of the concept of electronic intellectual property rights and their types.
2. Analytical Approach: Analyzing the current Iraqi legal texts related to the protection of these rights and identifying their strengths and weaknesses.
3. Comparative Approach: Comparing Iraqi legislation with relevant international legislation and conventions (such as the Budapest Treaty and the Arab Convention on Combating Cybercrime).

## **Chapter One**

### **The Nature of Criminal Protection for Intellectual Property Rights**

Given the development of information and communication technology and its impact on literary and artistic works and their use, which leads to the unlawful dissemination of such works at minimal cost and effort—facilitating unauthorized downloading and copying—this necessitates that experts and specialists establish comprehensive protection for intellectual property rights. Accordingly, this study will be divided into two sections: In the first section, we will address the definition of intellectual property and its types, while in the second section, we will discuss certain crimes of infringement against intellectual property rights and their elements, as follows:

#### **Section One**

##### **Definition of Intellectual Property and Its Types**

Views differ regarding the definition and terminology of intellectual property; some refer to it as "innovation rights," while others call it "intellectual, literary, intellectual, commercial, or industrial property rights." Accordingly, this section will be divided into two subsections. In the first section, we will address the definition of intellectual property, while in the second section, we will discuss its types.

## **Section One**

### **Definition of Intellectual Property**

Intellectual property refers to: a legal term referring to the innovative ideas produced by the human mind that are translated into tangible objects. It encompasses all rights resulting from human intellectual activity . It is also defined as "everything produced by the human mind, including inventions, artistic creations, and other products of the human intellect ." Some have defined it as "rights pertaining to something intangible" , while others have defined it as "a direct authority granted by law to a person over all products of their mind and thought, granting them the right to monopolize and benefit from the financial returns generated by these ideas for a period specified by law without dispute or objection from anyone." It has also been defined as "the legal rules established to protect intellectual creativity" .

## **Section Two**

### **Types of Intellectual Property**

Intellectual property encompasses various categories of moral rights, each of which is subject to rules distinct from those of other rights; therefore, we will limit ourselves here to dividing intellectual property into the following two types:

First: Industrial Property Rights: Some scholars have termed these "rights suitable for commercial and industrial investment" . They are also known as "rights pertaining to intellectual creations in the industrial field" . Industrial intellectual property is considered a significant category, encompassing several types as follows .

1. Inventions (Patents): These are any creative ideas conceived by an inventor in any technical field, relating to a product or a method of manufacture, or both, and which practically lead to the solution of a specific problem in any of these fields . A patent guarantees its owner protection of their invention and is granted for a fixed term of twenty years. The owner of the invention has the right to determine who may or may not use the invention covered by the patent during the term of protection. From a moral standpoint, this is considered a right inherent to the individual; from a financial standpoint, the owner may exploit it financially by using or disposing of it.

2- Trademark: These are distinctive signs used to distinguish between similar goods or services offered by different producers or suppliers; they are a type of industrial property

protected by intellectual property rights .

3. Industrial Designs and Models: Industrial designs (meaning any arrangement or coordination of lines in a specific and innovative way that gives goods and merchandise an attractive appearance that captures the consumer's attention, as is the case with designs for textiles, carpets, and ceramics) Industrial designs refer to "any shape, mold, or structure used in the manufacture of goods that gives them a distinctive appearance." In short, all of these represent the ornamentation and aesthetic appeal of goods and constitute a form of industrial property protected by intellectual property rights.

4. Geographical Indications: These are designations placed on goods with a specific geographical origin, characteristics, reputation, or specific attributes, and are protected under international treaties and national laws .

5. Trade Name and Trade Name: A trade name is defined as "the name belonging to the merchant himself, under which he conducts business on documents" , while a trade name is "the name given by the merchant to his store to distinguish it from other similar stores" .

Second - Intellectual and Artistic Property Rights: This refers to "the collection of ideas, opinions, and the products of the mind, intellect, imagination, and art, as well as all forms of intellectual or mental creativity" One of the most prominent intellectual and artistic property rights is copyright. The author may be a natural or legal person . Copyright differs from the right of authorship, which is defined as "any original literary, artistic, or scientific work, regardless of its type, method of expression, significance, or purpose" . As for the author's right: it is a legal right that describes the rights granted to creators in their literary and artistic works , It is also defined as the author's freedom to express their opinion within the limits of the law and the prohibition against imposing specific ideas upon them. The author has the right to claim authorship of their work and to affix their name and signature to it. Among the most important rights granted by law to the author are:

1. Economic rights: These are the rights the author holds over his work; he has the right to exploit his work and derive financial benefits from its publication, broadcast, promotion, reproduction, or authorization of its use . These rights are subject to all legal transactions , The author may assign these rights and has the right to exploit their work in any manner

they deem appropriate. The term of economic rights lasts for the author's lifetime and extends for 50 years after their death, in accordance with WIPO treaties. After this period expires, the work becomes part of the public domain, and anyone may use it in any form.

## **2. Moral Rights:**

This right allows the author to claim authorship of their works under their own name or a pseudonym—that is, the right to have their name appear on all copies produced for the public in any form. Therefore, the moral rights of authors, creators, and inventors are considered inalienable personal rights that are, at their core, non-pecuniary literary rights. The author has the right to publish or not publish his intellectual work, to make any amendments or deletions he deems appropriate, and to withdraw it from circulation after publication. Furthermore, these rights fall outside the scope of commercial transactions; they may not be disposed of or encumbered, and they are not subject to a statute of limitations. They also do not pass to heirs upon the author's death, as they are rights inalienably attached to the author's person .

By comparing economic rights and moral rights, we observe the following:

- a- Moral rights cannot be waived because they are inherent to the author's person, whereas economic rights may be waived in whole or in part to third parties, with or without financial compensation.
- b- Moral rights are perpetual, meaning they endure for as long as the work exists, whereas economic rights are subject to a statute of limitations, meaning they have a legally defined term of protection.
- c- Moral rights cannot be encumbered, unlike economic rights, which can be encumbered in exchange for a debt or as collateral.
- d- The exceptions and limitations to copyright are: the use of the work for purely educational purposes, and the making of a single copy of the work for personal, non-commercial use.

## **Section Two**

### **Crimes of Infringement on Intellectual Property Rights and Their Elements**

Intellectual property crimes are among the most complex and common offenses in the digital realm due to the ease of

financial gain through such crimes, as anyone can easily and quickly copy programs and files . Various laws strive to protect this right from a criminal perspective, as well as from a civil perspective by enacting laws that impose criminal penalties for infringing upon this right . Therefore, in this section, we will address some examples of intellectual property infringement crimes. In the first subsection, we will discuss the crime of piracy (digital copying), and in the second subsection, the crime of dealing in pirated software. and in the third section, the crime of importing protected software published abroad, as follows:

## **Section One**

### **The Crime of Piracy (Computer Copying)**

Copying a program for commercial purposes is considered a form of piracy that constitutes a crime of infringement of copyright through piracy, whereas copying computer programs for personal use entails only civil liability. Therefore, anyone who copies a computer program is liable criminally and civilly if the purpose is for sale and not for personal use. A buyer who agrees with the seller to have a copy made for them is liable as an accomplice to the crime by agreement, provided that the crime (copying) was committed based on that agreement. However, if the buyer purchases a ready-made copy from someone who copied it earlier, the crime does not occur based on the agreement; nevertheless, the buyer is liable as a receiver of proceeds from the crime ( ). The perpetrators may not resort to simply copying computer programs but may make certain modifications to the programs so that they appear different from the original programs, or delete parts of them, or add modifications, That is, it is considered unlawful because the perpetrator copies it to exploit it in bad faith in more than one way. The imitation or copying we refer to is in the digital realm rather than the traditional one and is achieved through the physical installation of computer programs—that is, making a copy of them by any electronic means that allows for their indirect transmission to the public, and this is done through (printing, drawing, engraving, photographing, casting in molds, recording, copying, or installing on discs, audio or video tapes, or by any other means) . Accordingly, for this crime to be established, two elements must be present: the material and the moral elements, as explained below:

First – The Material Element: The material element of every crime consists of criminal conduct, a criminal result, and a

causal link between the two. In the crime of forgery, the criminal conduct consists of the perpetrator committing one of the acts of forgery specified by law; The criminal result is established as soon as the punishable act is committed, and there must be a causal relationship between the criminal act and the criminal result. The subject matter of the criminal act in the crime of copyright infringement is (the protected work) . Protection of computer programs extends to all stages of program development, not just a specific stage, provided the condition of originality is met in any of them . The physical installation of computer programs —i.e., the act of copying it by any means—constitutes the material element of the crime, wherein the perpetrator installs the software either in computer memory, on compact discs, or on memory cards, or redistributes, broadcasts, or exploits it, whether for compensation or without compensation , Furthermore, the criminal activity consists of infringing upon a copyright without the author’s permission, and it is either (positive, i.e., the infringement itself) or (negative, i.e., the failure to obtain the author’s consent) The crime is established whether the program is copied under the name of its true author, under the name of another person who creates confusion regarding the true author, under the name of the offender himself, or under a fictitious name. The crime of counterfeiting occurs even if the perpetrator translates the program into other languages, provided that the program’s owner has not waived his rights or any part thereof regarding the program .

Second – The Mental Element: This consists of general criminal intent based on knowledge and will, i.e., knowledge of the elements of the crime and the will to commit the criminal act . Accordingly, the mental element of the crime of plagiarism is established solely by the general criminal intent of the perpetrator, without the need for specific criminal intent; it is sufficient that the perpetrator knows that their criminal activity pertains to a program attributed to another person, i.e., he knows what he is publishing, broadcasting, using, or quoting from, and that his intent is directed toward committing one of these acts for criminal intent to be established. The fair use of a work protected by copyright, such as the use of copies for purposes like criticism, commentary, news reporting, or teaching, is not considered an infringement.

## **Section Two**

The Crime of Offering a Counterfeit Work for Circulation and

Use

This offense is considered an accessory to the offense of counterfeiting and is established upon the fulfillment of its elements . The offering of a counterfeit work for circulation is established merely by making it available to the public, as the act of offering for sale is legally established even if the sale does not actually take place. Consequently, the mere seizure of counterfeit copies displayed in a bookstore is in itself sufficient to justify the imposition of punishment . This crime is established by the fulfillment of the following elements:

First: The material element: The material element of this crime is established by the commission of the material act, which is either (sale, rental, or offering for sale). Furthermore, criminal conduct in this context includes public display, such as through radio, television, or on stage, for example . A causal relationship between the act and the resulting consequence is required, and the object of the crime here is the “protected work.” The acts described above constitute forms of indirect infringement of copyright, The offender did not commit a physical act constituting the crime of piracy; but rather sold the work in the first instance, rented it in the second, and put it into circulation in the third. The infringement in this crime consists of dealing with the author’s legally protected works without the author’s permission. The criminal sale here refers to the transfer of the right to exploit the work in exchange for a specific price; therefore, a single sale is sufficient. As for rental, it means enabling the lessee of the work to use it for a specific period in exchange for a specific fee. As for distribution, it refers to disposing of the work with or without consideration, whether the disposal transfers ownership or not, or any other right such as the right of exploitation or enjoyment.

Second – The Mental Element: The mental element here refers to the general criminal intent, which consists of “knowledge and will.” It is sufficient that the offender knows that the act of selling, leasing, or offering for circulation constitutes an infringement of a protected work, and that his will is directed toward committing that infringement.

## **Section Three**

### **The Crime of Importing Counterfeit Works from Abroad**

This crime is considered one of the offenses related to the exploitation of information works in the digital world,

specifically the trade in such works and programs after they have been smuggled from abroad ( ), i.e., transported across the political borders of the state by any means whatsoever. The possessor of such works must have a statement clarifying the source of these works and the authorization or agreement that permits them to import, copy, distribute, sell, or publish them; doing so without such authorization or agreement constitutes a crime, except when the importation is for personal use, in which case it is not considered a crime . This offense is established when the following elements are present:

First – The Material Element of the Offense: The material element of this offense is established by the act of infringement, which consists of introducing non-pirated software without the permission of its owner or the rights holder, provided that the software is protected under the law of the country where it was released or the country in which it is distributed. Consequently, this constitutes an infringement of rights, and this act results in harm to the rights holder or the person authorized to exploit this computer program.

Second – The Mental Element: The mental element here refers to both its general and specific forms. The former (general criminal intent) consists of (knowledge and will); it is sufficient that the offender knows that they are importing counterfeit works or copies, or devices, means, or tools intended to circumvent the protection or technology used by the author, and that the offender's intent is directed toward that end. As for specific criminal intent, it consists of the intent to sell, rent, or distribute such imported materials .

## **Section Two**

### **The Adequacy of Existing Laws in Protecting Intellectual Property Rights**

Since the phenomenon of infringement upon others' scientific and literary rights has serious repercussions on legal, security, commercial, creative, and cultural rights in the context of massive production, this necessitates that experts and specialists place intellectual property rights under comprehensive protection, in accordance with laws, regulations, and legislation from the perspective of sound scientific and security work . Therefore, in the first section, we will address "The Protection of Intellectual Property Rights under Current Iraqi Legislation and the 2019 Draft Law," and in the second section, we will address "The Protection of Intellectual Property Rights under International Agreements

and Organizations," as follows:

## **Section One**

### **Protection of Intellectual Property Rights at the National Level**

Legal protection aims to preserve a specific status and prevent infringement thereof. The law has provided intellectual property provisions with means to protect them from infringement, including copyright; however, these rights can only be exercised once the intellectual creation has acquired the status of a work. Therefore, we will address the protection of intellectual property rights under the provisions of the current Iraqi Penal Code No. 111 of 1969, We will then address the protection of intellectual property rights under the amended Iraqi Law No. (3) of 1971, and subsequently discuss the 2019 draft law on combating cybercrimes.

## **Section One**

### **The Amended Iraqi Penal Code No. 111 of 1969**

The aforementioned law does not address the protection of intellectual property in any of its provisions, with the exception of Article 476, which states: "Without prejudice to any more severe penalty prescribed by law, a fine shall be imposed on anyone who infringes upon a moral right of another protected by law or by an international convention to which Iraq is a party, and the items produced in violation of said right shall be confiscated." The researcher notes that the Iraqi criminal legislator did not specify the types of works intended for criminal protection and that the text is concise, nor does it specify the limits of criminal protection for computer works, programs, and data. Does this provision extend protection to authors of creative works in literature, the arts, and science, regardless of the type of work, the method of expression , its significance, or the purpose of its creation? Therefore, the aforementioned text clearly fell short of providing full criminal protection for these rights, and it was necessary to remedy this shortcoming by enacting a law addressing the issue of comprehensive criminal protection for intellectual property rights, As for the Copyright Protection Law No. (3) of 1971, as amended, upon reviewing the text of the law, it was noted that the criminal legislator addressed the protection of intellectual property rights in this law under Articles (44, 45, and 46), where Article (44) provides for the author to be granted appropriate compensation commensurate with his or her cultural standing on the one hand and the literary and

scientific value of the work on the other, while Article 45 of the aforementioned law, in its four paragraphs, provides for penalties consisting of discretionary fines ranging from five million to ten million, considering acts of piracy—such as the sale, rental, or distribution of counterfeit works—if committed for the first time. However, the legislature increased the penalty to imprisonment for a term of not less than five years and not more than ten years, along with a fine of not less than one hundred million and not more than two hundred million in the event of a second conviction, with the court having the authority to close the establishment for a specified period or permanently. . In addition, the legislature granted the court the authority to confiscate and destroy all copies or audio recordings subject to infringement. Furthermore, Article 46 grants the owner of the work or one of their heirs the right to seek a court order requiring the court to cease the infringement and confiscate the infringing copies .

## **Section II**

### **Draft Law on Combating Cybercrimes of 2019**

It should be noted that the aforementioned bill addresses, in some of its provisions, the protection of intellectual property rights against infringements; However, it has not yet been enacted due to the existence of many conflicting viewpoints regarding its content, provisions, expected outcomes, and implications for social life and individual freedoms. Amendments have been made to most of its articles, including deletions of those related to the protection of intellectual property rights, as they were characterized by clear severity in most of the proposed penalties. If the provisions of this law were applied to users of the vast digital information environment, the majority of the Iraqi people would find themselves under indictment, foremost among them the ruling political class. This calls for caution in enacting the law, It should be subject to a thorough national dialogue, as it affects the lives of all Iraqis and is linked to their future and their ability to embrace information technology and utilize it for the public good. Furthermore, the draft law is limited to addressing the protection of intellectual property rights in Article 8 (1) and (2), which stipulates punishment by temporary imprisonment and a fine for crimes of infringement of intellectual property rights—such as forgery, imitation, counterfeiting, or unauthorized use—committed either by the perpetrator or through a third party, with the penalty increased to imprisonment for a term of not less than ten years

and the fine doubled if committed by an employee or a public servant while performing their duties, or if it relates to the rights of the state, the public sector, or private entities serving the public interest , Article (21, paragraphs 1 and 2), which stipulates the penalty for crimes involving “the publication or reproduction of intellectual or literary works, or accessing a company’s or institution’s website to alter, delete, or damage the site’s design, with imprisonment and a fine or one of these two penalties” .

From the foregoing, we conclude that Iraq still lacks legislation regulating the information environment, as it does not possess the appropriate foundation for the dissemination and use of electronic information technologies.

## **Second Requirement**

### **Protection of Intellectual Property Rights at the International Level**

International regulation of intellectual property matters began at the end of the 18th century, specifically in 1883, with the signing of the Paris Convention for the Protection of Industrial Property, followed by the Berne Convention for the Protection of Literary and Artistic Works, signed in 1886, and the Madrid Agreement and its Regulations Concerning the International Registration of Industrial and Commercial Marks, signed in 1891, and the TRIPS Agreement, signed in 1994, concerning the trade-related aspects of intellectual property. The Budapest Convention is also considered one of the modern agreements addressing various aspects of the information sector, and it is one of the most important international organizations in the field of intellectual property rights. Together, these form what can be called (International Intellectual Property Law ), which is an international body comprising the legal provisions adopted by the international community to regulate intellectual property matters pursuant to international treaties and agreements . In this study, we will address the role of the Budapest Treaty specifically in protecting intellectual property rights as a model for international organizations, as follows:

## **Section One**

### **The 2001 Budapest Convention on Cybercrime**

Since the Internet is not subject to any borders or the sovereignty of any particular state, cybercrime has emerged on an international scale, with perpetrators often located in a country different from the one where the crime is committed.

These crimes have become increasingly organized, prompting international lawmakers to seek an international legal framework in which cooperation among states is virtually mandatory to address these modern crimes. On November 20, 2000, the European Commission on Crime Problems and the Committee of Experts on Cybercrime presented a draft Convention on Cybercrime. The articles of the proposed convention were subject to discussion and exchange of views from the time of the release of its first draft until the preparation of its final draft, which was subsequently adopted in Budapest. It is worth noting that the draft convention was made available for public dialogue through numerous European and American websites on the Internet for the purpose of consultation, discussion, and the expression of opinions. There is no doubt that the Convention represents a significant and commendable effort by the European Union and the Council of Europe, particularly regarding issues related to computer crimes and their objectives since the late 20th century. This Convention has established a new classification system for various computer crimes and their provisions (substantive rules) and clearly includes four main categories of computer crimes, which are as follows: (crimes targeting information security elements, computer-related crimes, content-related crimes, crimes related to copyright and related rights). The debate over the classification and categorization of these categories continues, which led the drafters of the Convention to establish a preliminary list of crimes, taking into account the evolution of the technological landscape and the possibility of changes to these crimes in the future. The Convention stipulates in Articles (10/1) and (12/I, II, and III) and (23) concerning copyright offenses, that member states must adopt legislative measures criminalizing copyright infringement and violations in accordance with the national laws of member states, consistent with and other international conventions. It is required that these acts be committed intentionally, for commercial purposes, and using a computer system. The Convention requires member states or states wishing to accede to it to adopt legislative measures to criminalize and combat such offenses. These offenses generally encompass categories of computer crimes commonly described as economic technology crimes, as well as intellectual property crimes targeting digital works

## **Section Two**

### **The Arab Convention on Combating Cybercrime**

At the Arab level, the Council of the League of Arab States approved the 1945 Cultural Treaty, Article 8 of which stipulates that "the Arab League member states undertake to enact legislation to protect the literary, scientific, and artistic property of works published in each Arab League member state." The League's Permanent Legal Committee drafted a bill on copyright protection, which the Council approved in 1948, recommending that Arab states adopt legislation modeled on the approved draft. Arab states promptly enacted copyright laws, including Jordan with Law No. (22) of 1992, Iraq with Law No. (3) of 1971, Morocco with Law No. (29) of 1970, and Tunisia with Law No. (12) of 1966. As for Arab countries that have not enacted separate legislation on this matter, they provide protection for these rights through scattered provisions found in specific criminal or civil laws. Some legislation has explicitly designated computer programs as works subject to copyright, including Egyptian legislation in Article 2 of Law No. 29 of 1994, as amended. It should be noted that the first law enacted in Egypt to include provisions on copyright protection was Law No. 354 of 1954, as amended, which stipulates that "computer works, including software, databases, and similar works, shall be defined by a decision of the Minister of Culture." Furthermore, Arab legislation regarding copyright is similar in many of its provisions, as it is based on Egyptian legislation, which is considered the oldest in this field.

## **Conclusion**

The protection of intellectual property related to e-commerce plays a major role in the stability of this trade and its criminal protection. This is reflected in the protection of copyright against infringement in all its forms by third parties, as comparative legislation, laws, conventions, and international organizations have focused on providing the necessary protection for it. It should be noted that most Arab and international legislation has not addressed this issue with specific provisions but has instead included it within the provisions on copyright, despite the significant difference between computer programs and literary works, which fall under the umbrella of copyright. This is because these programs have become the foundation upon which developed nations are built, and they are the means through which developing and Third World countries can catch up with global civilization and keep pace with the tremendous technological developments the world is witnessing day by day at an unparalleled rate. Determining the appropriate legal means to

protect these programs is essential due to the increasing incidence of infringement and the qualitative and quantitative evolution of such violations to the point where even the most complex and advanced programs are no longer protected from unauthorized and illegal reproduction at low cost. This has necessitated the demand for the protection of these programs and their producers. Amidst this, Iraq continues to suffer from a legislative vacuum regarding cybercrimes and how to protect against them, Therefore, we hope that the Iraqi legislature will finalize the 2019 draft law on combating cybercrimes, ensuring that this draft covers both substantive and procedural aspects of internet crimes, and work to develop legislation related to intellectual property rights in a manner that accommodates modern forms of intellectual property and related matters, while also working to develop existing laws so that they align with e-commerce.

### **Conclusions**

1. Shortcomings in Iraqi legislation: Current provisions, particularly in the Penal Code, are vague and do not cover all forms of infringement of electronic intellectual property.
2. Weak legal deterrence: The penalties prescribed in some legislation are insufficient to address the significant rise in cybercrimes.
3. The 2019 Cybercrime Bill was not passed due to societal and political disputes over the severity of the penalties and their impact on civil liberties, leaving a legislative vacuum.
4. International legislation such as the Budapest Treaty provides an advanced framework that can be leveraged; however, Iraq has not fully fulfilled its international obligations in this area.
5. Iraq's digital environment still lacks comprehensive legal regulation, making infringements on digital works more widespread and less controlled.

### **Recommendations**

1. Finalize the legislation on combating cybercrime in a way that balances the protection of intellectual property with the guarantee of digital rights and freedoms.
2. Amend the Penal Code and the Copyright Law to include provisions specifically addressing the protection of digital works, software, and electronic intellectual property rights.
3. Strengthen international cooperation by actively acceding to global treaties, such as the Budapest Treaty and the TRIPS

Agreement, and aligning national laws with them.

4. Implementing electronic monitoring by establishing specialized agencies to detect intellectual property infringements in the digital space.
5. Raising public awareness of the importance of respecting intellectual property rights, particularly among educational, research, and media institutions.
6. Train specialized personnel in the fields of digital law and cybercrime to ensure the effective implementation of new legislation.

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