

Civil Liability for Violation of Intellectual Property Rights

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Abstracts

This research aims to investigate the legal foundations for recognising civil repercussions arising from the violation of intellectual property across its many categories: literary, artistic, industrial and any other kinds related to it. Copyright and all related rights belong to the inventor, which places a legal prohibition on anyone who wants to transgress this right. Literary rights are divided into material right that are reproduction right, distribution right, borrowing right, renting right, performance right, remuneration right and immaterial right that is the right of intellectual property.

Industrial rights, on the other hand, mean every protection of industrial, laboratory or creative produce, patents, industrial designs, trade secrets, layout designs of integrated circuits, plant breeders' rights, geographical indications and other creations. As such, these industrial property rights stem from created sources within businesses, technologies, and creative markets in industries and commerce industries, and specify that the holder of these industrial property rights controls full exclusive legal rights to own, transfer, or surrender the ownership rights implied. This is due to rights that are protected by both domestic and International laws.

The study focuses on defining the fundamental elements of civil liability and analyzing relevant legal texts. With the rapid pace of technological and economic advancements, violations of intellectual property rights have escalated, necessitating a robust legal framework to protect these rights both nationally and internationally. The research examines national laws, such as the Intellectual Property Protection Law, alongside international agreements, detailing the mechanisms of infringement, the resulting harm to creators, and the subsequent establishment of civil liability. Additionally, the study outlines effective strategies for compensating damages and curbing violations.

Keywords: Civil Liability, Intellectual Property, Copyright, Industrial Rights, Compensation, International Legislation.

1. Introduction

One of the most critical and consistently evolving aspects of contemporary legal and economic infrastructures, intellectual property comprises a vast array of parts that are characterized by their conceptual roots in intellectual and artistic processes. Nevertheless, these are grouped into two main parts with this depending on the degrees of versatility of these components Their

flexibility Earlier, the discussion was made based on the fact that there are certain aspects that have components of wide applicability and scope regardless of their differences They are classified into two main parts. The first is industrial property which consist of patents, industrial design, trademarks, and trade secrets which are all referred to as industrial and commercial property. The second group consists of ideas, opinions, artistic works, inventions and other products of mind and talent, known as literary and artistic property or Copyright.

Both categories are recognized to be intangible assets that are capable of being the subject of legal relations – contractual ones, in particular – and are protected within the framework of efficient national and international legislation. But due to their high utility, they remain sensitive to invasions and encroachment by third party users leading to infringement of the rights of the rightful claimants. Infringements of this nature require legal redress: refund, stopping of violations, and restoration to the lawful state by observing civil liability, regardless of contract law or tort law.

For civil liability to be established, key conditions must be satisfied: the legal claim for libertarian claim for the creator or innovator and the event of an infringement that results in measurable harm. This research proposes to undertake a comprehensive and systematic analysis of the principles of intellectual property rights, types of infringements that impact industrial and literary properties, and measures, national and comparative legal systems, that seek to protect such properties and the infringements.

1.1 Research Problem : The concern addressed in the sphere of this study is basically centered on how to arrest this increasing spate of infringements of intellectual property rights in literary work, art crafts and industrial products. This comprises assessment of the adequacy and effectiveness of legal provisions and especially for comparative legislations on the extent to which they afford effective protection against violations. Furthermore, the work examines the ways of avoiding such violations, reducing the losses resulting from these infringements, as well as securing sufficient reimbursement for harmed creators in order to safeguard their entitlements and reduce the impact of infringement.

1.2 Research Objectives

1. So as to draw focused violations inferring to IPRs that embraces literary, artistic, and industrial rights.
2. For the purpose of ascertaining and evaluating the legal precursory factors on the grounds of which civil liability can be stipulated consequent to such violations.
3. In order to examine across the board systems for compensation and damage control under national and international legal systems.

1.3 Research Importance : This study has significant relevance to the explanation of the antecedents to obtaining remedies in civil law for Intellectual Property Rights infringements particularly in literary or industrial interests. It gives an understanding of the type and kinds of these violations, which can stem from the breach of contract duties (contracting liability) or an encroachment on protected rights by third parties (tort liability). The paper also looks at the routes to compensation using the principles of civil liability and analyzes major national and

international legislations, treaties and policies in protection of IP rights. This research is useful in drawing attention to those legal instruments that may help protect creators and innovators and also in minimizing what infringements may be attempted on one side and non-compliance with the laws and agreements on the other.

1.4 Research Methodology

- Analytical Approach: To compare existing legal systems and finds out the shortcomings of the same in providing protection of intellectual property rights.
- Comparative Approach: Comparative analysis of national legislation with reference to international conventions and protocols as a measure in determining appropriateness of legal frameworks on protection of intellectual property rights and related violations.

2. Section: Violation of Intellectual Property Rights

The term “violation” is itself a precondition in formulating civil liability arising from harm to the subject of IP rights. The term “violation” is descriptive of breaking, destroying, or breaching of a covenant (1). A violation of the intellectual property rights is a situation whereby, one or some of the material or the intangible rights that emanate from the literary intellectual property right is used without the permission of the legal holder of such right (2).

Namely, it means the use of other people’s property in way that does not coincide with the owner’s expressed or implicit wish: violation of material or intellectual ownership right of the work’s creator. This also includes breaches of industrial property rights including patents, trademarks, trade secrets and designs, models. Such rights are regarded as belonging to an individual to the extent that they cannot be transferred or sold, are related to the creator or inventor of the work or invention, and entail an obligation on the part of others, whether under a contract or in tort, not to interfere with them.

In cases of infringement, one of the important conditions for proving civil liability is met because of such violations. This section shall describe the manner of infringing literary and artistic works first and then the manner of violating industrial property rights. Moreover, it will include descriptions of the most crucial enactments and statutes that restrain such violations since such rights are accorded to creators only. These aspects are as follows and will be discussed in detail in a section below:

2.1 The first requirement Violation of the rights of literary and artistic works

The violation of the intellectual right, regardless of the nature of this right, is a prerequisite for civil liability, and the existence of the literary intellectual right represented by copyright and related rights, which includes all works that are expressed in writing, sound, drawing, photography or movement, including books novels poems plays musical, film and radio works animation, photography, painting, sculpture and engraving, computer programs, maps and diagrams, and holographic works. (3) because the exclusive rights of the creator are subject to infringement, which leads to a violation of the obligations arising therefrom, and the material and non-material (intellectual) rights of the creator are usually violated, so national laws and

legislations have been legislated to limit the infringement and violation through their texts and legal materials on how to establish a liability claim and ways to compensate the injured, in Iraqi law, based on the copyright protection law No. 3 of 1971 in Article (38) of this law, where penalties for copyright violators are specified, which may include imprisonment, fine, or both, in addition to compensation for damage, which the owner of the workbook was injured. Article (7) of it also states that: (the author alone has the right to decide on the publication of his work and to determine the method of such publication, and he alone has the right to exploit his work financially in any way, and it is not permissible for others to exercise this right only after obtaining permission from the owner of the right of financial exploitation). Also, Article (10) of the above law indicates that (the author alone has the right to attribute his work to him and to pay any attack on this right, and he also has the right to prevent any deletion or change in his work) therefore, the creation of a new version of the work without the consent of the creator is a violation of reproduction. it is not necessary that it be the same copy, but it is sufficient that the copy consists of the same elements and it is sufficient to reflect the part in which the originality was mentioned.

On the other hand, according to the Iranian law 1348 in the article 23 the word “publication” and in other laws including the law of translation and copying of books, publications and audio works of 1352, any unauthorized work, infringement is achieved in the scope of literary and artistic works through the use of the work in a way that harms the author, as the infringement (4) The Iraqi legislator protected the right of (5) turning the liability of the copyright infringer into a civil one. We will prove how the distribution and copyright right, the copyright of attribution and the infringement of the inviolability or integrity of the work has been violated. Regarding the right of distribution and publication infringement which occurs where a third party without the author’s consent, puts the produced copies in the market to reach the public, then he has infringed the right of distribution and publication. Electronic copying of authors’ work has become easier for computer users on the internet, regardless of the author’s permission for the reproduction of written work. Therefore, any work to recreate the work and work in a manner different from the original is unlawful under the copyright Protection Law, and this is what the protection law No.3 of 1971 stylized in Article (38,10,7) as we expounded above; in contrast with what is provided for in Article 23 of the Iranian law 1348, it mentioned the broadcasting term, which means distribution and publication which is prohibited under As has been illustrated previously, copyright infringement happens mostly over the internet when one of the coveted rights physical or intellectual right of the creator is violated while communicating over the internet. Due to the provision of internet access services to customers on a payment basis (6).

Consequently, due to the infringement of the intellectual rights of the creator the owner of the work after proving that he suffered as a result of the violation of the work which is requirement of civil liability has right to file the suit and seek for the compensation. UNTIL IT IS VIOLATED: Violation of the right of attribution. Therefore, the right of attribution is one of the inalienable rights of the right holder, the right to which is one of the non-material non-proprietary intellectual rights associated with the personality of the creator of the intellectual work, According to this right, it is mandatory to indicate the name of But the right of his

attribution was violated. If a proper name is used in work where it does not belong, the owner can bring an action for violation of other direct right to resist unlawful appropriation.

To recall, there is only two spiritual rights accredited to the creator – the right of the stadium and the right to prevent false attribution. If a name of the creator is not stated in the work or if the name of other person is stated in the work as the creator he has violated the right of attribution and according to copyright protection law No. 3 of the year 1971 as stated in article 10 of law dated (the author alone has the This was stated by the Iranian law, which as mentioned earlier was in parallel to the Iraqi laws and legislations; the Article 18/1 of the law No1348 of the Islamic Republican of Iran States the right of attribution, and it an be violated by a printer when he prints a work under another name(7). The said law in articulating article 23 has instituted this act as a criminal offence. Thus, the violator of this right is under civil liability to meet the requirements and due to the damage to which he can lodge an action and stated the amount of compensation in the rules of tort civil liability by the actions of one individual for the infringement of rights of other individuals. Alongside, with violation of the right to inviolability or integrity of the work.

Which mean any spoliation, deletion, extra or even alteration of a work without the consent of the author is a violation of the right of inviolability and integrity of the work and this is provided in article 19 of the Iranian law 1348. In Article (10) of the author's Law No. 3 of 1971 (8). It should be said that misrepresentation means any change and transformation in the text of the work, its content and form, and also means a change in the personal identity of the creator . Also, there is another case to be paid attention to in case of violation of the right to dignity, which is that the Committed Act must cause the deviation of the work from its physical form and appearance, and this act must harm the reputation and credibility of the creator, and the insulting act must be harmful to the work and its creator, and thus the conditions of so the map designer, in the event of a change, causes a deviation in the work, which leads to damage that requires compensation According to the rules of civil liability to fulfill its conditions.

2.2 Second Requirement: Infringement of Industrial Property Rights

copyright offences, passing off, trademark counterfeiting, trade secrets misappropriation are samples of elements which might be infringed and they all belong to industrial property rights. As it have been mentioned before these rights are provided for the creator and are clearly connected with him as a person. The law frowns at anyone who would want to prejudice against these rights in any way. On the other hand, these rights are violated in several ways for instance, infringement, forgery imitation, and betrayal of trade secrets. This leads to harm as a consequence to the persons who own such rights and requires indemnification in connection with civil liability. In the subsequent discourse, this study will examine the strategies that are employed to infringe these rights.

These include among them the violation of the patent protection of rights. As pointed out earlier a patent is 'a written document proving ownership of an invention and its holder has authority to utilize the invention.' (9) The use of inventions entails creation of products that could not be created without the invention of the patent. A main rationale for the provision of patents is to stimulate and advance science and technology (10).

Patents are in a way vulnerable to violations and attacks because of the financial and moral value, that is attached to awards. Iraqi and comparative legislation has given some details concerning different types of patent infringement. The Iraqi patent law makes it propelled that to use a patent, a license from the owner of the patent is needed. This sometimes means that an unauthorized use of a patent is infringement of the inventor's exclusive right.

Based on section 44 (11) of the Iraqi Patent and Industrial Design Law No. 65 of 1970, where the uses of patent and interferes with the exclusive rights of the patentee under certain circumstances without permission of the owner constitutes a violation therefor making the condition for the creation of civil liability. This enables the patent holder to institute an action against the infringing party which these rights would be the preserve of the owner of the patent.

The violations can be in the following ways: manufacturing, using, selling, intending to sell and importing of patented products which are part of the patentees rights. Hence, to facilitate an infringement suit claim, the creator must demonstrate that the defendant performed actions that interfered with the patent's rights of exclusivity – rights that should only have been exercised through the contract of the patent owner or an individual acting on their behalf. If the infringement is proved, the violator shall bear civil liability for meeting all the conditions of the infringement or criminal liability, and pay for the damage.

The legislator of Iranian patent laws also defined the rights of the patent holders in the articles 26 and 33 of the 1310 Law and Article 15 of the 1386 Law, nevertheless, neither of the laws mention the examples of violations. However, Article 60 of the 1386 Law has broader meaning of infringement that also embraces patent rights. To a certain extent, it will make someone other than the patent owner liable for infringing on legally protected rights; in this case, the injured party must sue for damages for the infringement of such rights.

Patent infringement usually occurs in three ways:

- 1.Primary (Direct) Infringement: This is connected with direct infringement performed through production or utilization of a registered patent.
- 2.Secondary (Indirect) Infringement: This indirectly means its business transactions with products or processes that may violate the patent, by someone else.
- 3.Collaborative Infringement: Accessory liability concerns itself with the provision of tools or equipment to other people, with the knowledge that the intended use of such equipment is for infringement.

Therefore, the person that violates the rights is legally responsible, and the aggrieved party is entitled to compensation in case of violation of those rights.

Moreover, with regard to the infringement of trademark rights, let it be noted that a trademark is understood as anything that makes a product, either goods or service, different from the others. Hence it can be believe that any sign or combination of signs can be a trademark under which the differentiation of services and goods from others is possible (12). A trademark must be inherently distinctive else they cannot be said to be trademarks (13). It has also been described in different lights and a comprehensive definition given as “any symbol or group of

symbols which may develop into a trademark to distinguish between the goods of one project and the goods of other projects” (14).

The increasing relevance of trademarks has seen there emerge more forms of infringement and violation hence leading to the promulgation of special laws on trademarks that forbid such acts of infringement, forgery and imitation (15).

The following actions are considered to be breaches or infringements of a trademark, according to Article 35 of the Iraqi Trademarks and Commercial Data Law No. 21 of 1957, which was revised by Order No. 80 of 2004.

1. Buying a foreign registered trademark which one intends to represent as their own by way of deceive the public or engaging in using the fake or imitation trademark in serious capacity.
2. Injuring a trademark belonging to an entity by using a legally registered trademark of another entity.
3. Deceptively affixing a trademark belonging to another person or organization on merchandise.
4. Furnishing products which are imitations of trademarks or bearing trademarks which are infringed, and having them with intent to offer for sale.
5. Deliberately providing services under a sign which is identical with, or similar to, a registered trademark without the approval of its owner.

The Iraqi legislator has also granted the trademark owner compensation for losses suffered through infringement upon their trademark at the time of infringement (p. 16).). Generally, trademark infringement is using a similar or identical mark for different products, and the Iraqi legislator has enumerated those circumstances that constitutes infringement, namely forging and imitating a trademark. The legislator also established that using a legal trademark of another party is an infringement, the violator becomes civil liability for the caused by the infringement, damages for which must be compensated in accordance with national laws and comparative laws.

The Iranian Law of 1386 also recognizes this, where Article 31 grants the exclusive right to use a trademark to the person who registered it. Similarly, Article 2 of the 1310 Law recognizes the right to use a trademark exclusively for the owner, and unauthorized use by others is considered an infringement. Article 40 of the 1386 Law confirms this.

According to Paragraph A of this article, using any registered trademark by a person other than the owner requires the owner's consent. Paragraph B allows the owner of a registered trademark to take action against anyone using the trademark without their consent or committing any act that could infringe upon the rights resulting from trademark registration. This allows the trademark owner to demand compensation for damages resulting from the infringement (17).

As for trade secret violations, trade secrets are protected as confidential information containing commercial value, granting business owners an advantage over their competitors.

However, the unique nature of trade secrets has not been afforded as strong or effective legal protection as other intellectual property rights.

If a third party obtains or discloses trade secrets without authorization, the owner has the right to file a lawsuit and seek compensation for damages caused by the disclosure, as stipulated in Article 131 of the Iraqi Labor Law No. 37 of 2015 (20).

Thus, the conditions for civil liability require the existence of a right and the violation of that right, leading to the establishment of liability(21)..

3. Conclusion

3.1 Results

1. Technological implementations are continually infringed; following technological advancement and allow entry through online applications that assist in the infringement of those rights without permission from the author or creator, which are protected under national laws from violation.

2. Namely, stating his/her rights in civil liability regime and in accordance with the national legislation, to seek indemnification after establishing an infringement and a violation by someone else of his/her intellectual rights and to confirm a condition of recognition of civil liability in accordance with the rules, laws and national legislation.

3. The necessity for an integrated law which covers and coordinates the intellectual property rights in relation to technology and economy locally and internationally based on conventions and treaties.

3.2 Recommendations

1. The Iraqi legislator should hasten the pace to pass the law of protection of intellectual property since it is a collector of those rights and in line with the advanced international developments. The Iranian Legislature should also persist in joining more international conventions and passing effective general law that complies with the new development of the intellectual property rights. instances of an obligation not to infringe on intellectual property rights

2.the parties must respect the intellectual property rights of others and an obligation not to imitate or copy and the parties must refrain from imitating or copying intellectual works protected by law, whether patents, industrial designs, trademarks, literary and artistic works.

3. No communication prohibitions towards third parties in situations where exchange occurs in a contractual context and where confidential information or trade secrets are exchanged and such information is not to be disseminated to any third party without consent of the owner of such right.

4. No party shall misrepresent; no party shall bring its reputation or the reputation of the rightholder and the value of the work into disrepute

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Fahimeh Taghavi Mandi: Civil Liability for Intellectual Property Rights Violations: A Comparative Study, Ferdowsi University of Mashhad, 1392 (2013), p. 31.

Article (35) of the Iraqi Trademarks and Commercial Data Law states that anyone who commits any of the following acts shall be punished with imprisonment, a fine, or both: 1- Forging a legally registered trademark or imitating it in a way intended to deceive the public, or knowingly using a forged or imitated trademark. 2- Illegally using a legally registered trademark owned by another party. 3- Intentionally placing a legally registered trademark owned by another party on their products. 4- Selling, offering for sale, or possessing with the intent to sell products bearing a forged or imitated trademark, or a trademark illegally placed on products. 5- Intentionally offering services using forged, imitated, or illegally placed trademarks.

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