



Originality as a condition to Protect the intellectual property rights and the effect of information technology on them comparative study

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Abstract

The researcher in this paper had committed himself to investigate the originality as a condition to protect intellectual property rights and the effect of the information technology on them, through the analysis and scrutiny of the originality condition as the fundamental element of protecting intellectual property rights especially author's rights (copyrights). This was carried out through a comparative study in the light of doctrinal views and national legislations as well as clarifying Latin and Anglo-Saxon philosophy in the interpretation and definition of this condition in order to indicate whether or not the information technology affects the traditional concept of the originality condition.

Toward treating and analyzing this paper topic, it had been dealt with through three chapters. The first chapter was titled "originality in the light of doctrinal views"; the second was titled "originality in the light of comparative legislations"; and the third was titled "effect of the information technology on the traditional concept of originality condition". The researcher concluded the paper by a number of findings and recommendations that were made through scrutinizing, analyzing and criticizing the theme of the paper.

Keywords: intellectual property rights, information technology

Introduction

The thought is closely linked to the human, as the human is unique over other creatures by the mind, which makes him originate and initiate. Even though, the value of the thought is not in its mere existence, but in utilizing it. Thought is the "responsible party" for the mankind advancement and progress. None of us is entitled to deny the virtues of our predecessors who paved the way and put bright signs and landmarks everywhere to be our guides and directors in this life.

The effort put in by the thinkers and originators in the development and upgrading of communities is quite very clear at all levels, to the extent that thinkers and originators became the most prominent elements of the advanced communities' success. This resulted in broad care by the world countries to pay very great attention to these originators through protecting the IP rights of the works they originate.

No doubt, the author's rights (copyrights) are among the most important divisions of the intellectual property rights over ages, which are concerned with the innovated intellectual originalities in the literary, art and scientific areas. And whereas the originality is the most important component of the copyright to confer protection to the author's originality products, it is then worth attempts to probe the depths of the originality component, being the cornerstone of the work emerging from the author's originalities.

Through an overview on the legislations of the copyrights, we find them protecting the originated works in literary, arts and sciences of whatever kinds such works are, and of whatever expression manner, importance or objective they were made

in, as long as these originalities are legitimate and not in conflict with the public order.

As such, the work inclusion of originality and innovation is the most important requisite of the intellectual or mental work, which emanates from the inner potentials of the author. Then, originality is the cornerstone of the authored work. Thus, to protect the work, whatsoever its shape or method of expressions is, it is a must that such work should be original, so that it will look as if the author conferred it something of his personality. It is sufficient for the author to grant the idea, even though it was ancient, his character, and make this idea characterized by his style, to avail a work that would be protected by law.

The basis is that there must be an originated creation in all the areas and human, social, intellectual, cultural, art and literary sciences, and other sciences as well. In other words, to gain protection, there must be an innovation and intellectual or mental effort, represented in originating a new thing, which adds to what is existing before. Therefore, if the work of the individual was pure material or physical, does not involve creativity, then, talks about the copyright will be refrained.

Originality in the copyright domain, even if its features are clear in both the Latin and Anglo-Saxon systems, yet the invasion of the information technology to our world produces a digital revolution and emergence of the internet, which all casted shadows over many of the legislations and laws, namely the intellectual property rights. The implications of the effects of this IT revolution increased on the protection conditions imposed by the particulars of these laws, including the laws regulating the copyrights.

Accordingly, this article will explore and scrutinize the originality condition, being the fundamental element in the work protection. It will research this condition traditionally in the light of the comparative jurisprudence and regulatory legislations views, with an explanation of the Latin and Anglo-Saxon philosophy in the interpretation and definition of this condition. The aim is to find out whether, or not, IT affected this traditional concept of the originality condition, and explore the extent of the change of the originality condition in its traditional format to keep pace with the digital environment that resulted from the IT revolution.

In the light of the above, this research paper will be divided as follows:

The first topic: originality in the light of the doctrinal views;

The second topic: originality in the light of the comparative legislation; and

The third topic: effect of the information technology on the traditional concept of originality condition

The First Chapter

Originality in the Light of Doctrinal Views

Jurists take upon themselves the task of setting definitions of the legal terms and concepts included in the law provisions. Most often, the legislator leaves these definitions to the jurisdiction, perhaps the lesson of this is that the concept to be defined may be a relative concept, which may change by time and place.

This is quite clear through the definition of originality, as it is a relative definition that differs by time. In this concern, what may be deemed originality in a certain age, may not necessarily be so in a following age. In addition, originality may not always be in the same state that it looks, as the author's freedom in originality is most often affected by the nature of the work or its purpose. Therefore, originality may be creating the work and its composition (such as the work that deals in an unprecedented subject). Still, originality and innovation may be in the expressions about the work (such as the translated work which gains protection for the effort put in by the author, through highlighting his character and his own imprint in this work, by choosing the most suitable and accurate words that best express his thought^[1]. So, for the work to be included in the legal protection, and remain within this protection circle, it must be characterized by innovation^[2], or what is termed by a certain part of jurisdiction "originality", which requires defining this concept.

Linguistically^[3], innovation is defined as: taking initiative,

which is the beginning of the thing, and also means eating the fruits ripen first, i.e. eating the earliest fruits. And innovates something means doing a thing never known before (new). Similarly, the *intact deed* is the unprecedented (*idiomatic Arabic*). In this concern, there are multiple definitions of originality. Certain jurists see that innovation or originality is the expressive method that forms the work in a manner allowing its distinctiveness from other works, by distinguishing the character of the author and leaving his clear imprints on it^[4]. Meanwhile, other jurists see that originality, in terms of any work, is: "that the work should be originated by the same author, not copied, whether partially or totally from other work. In this concern, perhaps two persons-individually, come to the same result and enjoy the copyright of the work, if their work was not copied from a previous one covered by the copyright protection. Therefore, the origin work is defined by the product of the independent thought and effort of one person"^[5].

At the level of the Western jurists, the French jurists⁶ defined it as: "the personal imprint the author leaves on his work." Meanwhile, other defined it as "for it to express something of the author's character, for it to bear the mark of his personality^[7].

Some of their English counterparts^[8] defined the originality through defining the originated work as: "originality means that the work is not copied and has minimal moment of creativity.

The English jurisdiction^[9] comments on the innovation (originality) condition that originality, in terms of the copyright- does not hold the meaning of (novel), or the (unique) thing required to be found in the invention, so that the work will be protected by patent law. The originality in this concern means that the work should be produced based on the skill, effort and taste of the author, in a manner showing the effort of the author, even if it was simple or insignificant (*slavishly*). Other English jurists^[10] assert that the required degree of innovation or originality is a little or (low) degree; but it remains uniquely difficult to decide a general principle to be a standard or degree at which we can depend upon to consider the work "innovated" or "originated". Still other English jurists define it as a direct link between the author's intellectual concept and the work that emerges and arises

¹ Dr. Abdel Rashid Ma'amoun, Dr. Sami Abdel Sadeq: Copyrights and neighboring rights (in the light of the new Intellectual Property Copyrights Protection Act No. 82/2002; First Book, Copyright), Dar Al-Nahda Al-Arabia, Cairo, 2014, p. 111

² Some jurists see that Originality is the characteristic of the work that should be built into it. They do not consider it a condition or objective component to provide protection to the work. Rather they consider it a coherent trait of the work. In fact, there is no problem in this, as originality should avail whether or not we considered it condition or component. For this meaning, look: Consultant. Abdul HAMID Al-Minshawi: IP Protection and Censorship Rules on the works, Dar Al-Fikr Al-Jamei, Alexandria, 2007, p.18

³ (Intermediate Dictionary) Al-Mo'jam Al-Waseet, Arabic Language Complex, Part One, 5th Edition, Cairo, 2011, p. 87

⁴ Dr. Abdul Razzaq Al-Mashhour, Al-Waseet in interpreting the civil law, Copyright, Section Eight, Dar Al-Nahda Al-Arabia, 2nd Ed. 1991, p. 345 and beyond.

⁵ Primary principles of the copyright, Publications of UNESCO in Arabic, 1981, p. 19.

⁶ André Francon: cours De propriété littéraire et industrielle, éd.Cd. (les cours De Droit), 1996, n. 21, p. 30

⁷ Delia Lipszcy: Copyright and neighboring rights, Unesco Publishing, printed in France 1999, p. 73 No. 2.2.1"..... for it to express something of the author's own character, for it to bear the mark of his personality".

⁸ Graham J. H. Smith: Internet law and regulation, 3rd Ed. Sweet and Maxwell, London 2002, No. 2.3.2 p.22 "originality means that the work is not copied and has minimal moment of creativity".

⁹ Paul Dobson & Clive M. Schmitt of: Chalesworth's Business law, 15th ed. Sweet and Maxwell, London 1991. p.661.

¹⁰ F.E. Skone James: Copinger and Skone James on the law of Copyright, " Including international and colonial copyright, with the statutes thereto and forms and precedents", Sweet and Maxwell, London 8th ed, 1948. P.42.

within his hands. However, the American jurist ^[11] is not so far from the English in defining the concept by: "that the work is original if not taken or copied from others' sources." Here we note the American jurist's overlooking the personal imprint, character and nature of the author on his work.

Possibly, the best definition given to originality in general ^[12] was that "it is the personal character (personalization) the author gives to his work. The character that allows distinguishing the work from other works that belong to the same kind or category; and that this nature will highlight the author's character either in the components of the idea he presents or the way in which he presents it... In other words, by innovation or originality it is meant the personal author's imprint on the work produced by his intellectual effort, which makes the audience utter his name, immediately when they read his work, if the author was one of the famous, well known writers. Or else the readers or audience will tell that this work is of an author who possesses an "originality ability" to express his thoughts ^[13].

In other words, we must feel the author's "breaths" between the lines of the author so as to be a real expression of his visions and ideas that he wants to carry and convey to the people.

From the above definitions, we can tell that the originality of the work is based on a personal character, represented in the brainstorming that reflects the work author, so that it appears as if the author conferred it something of his character. Therefore, we cannot consider the mere effort put in gathering, such as gathering the laws, systems and regulations- an originated or innovated work that deserves protection, unless this process is coupled by an intellectual, distinctive effort that reflects the character of its owner. Therefore, the work is originated even if it was quoted or a translation of other work, as long as there is originality in the way it is presented or expressed, without prejudice to the right of the original author. But if the work lacks originality, then it will not be worth protection, as the work should add a novel thing to the world of thought through the spent effort ^[14].

In this concern, we ought to underline the basic difference underlying the originality concept in the various legal systems. Simply looking at the English and American jurist definition of the originality condition, makes us notice a difference in the base upon which the originality is built between the Latin and Anglo-Saxon systems, particularly, the fact that innovation or originality concept varies from one age to another. Subsequently, we find difference in interpreting and defining the concept of originality condition among the legislations of the states belonging to the Latin system, from those belonging to the Anglo-Saxon system ^[15].

¹¹ Jeremy Phillips & Alison Firth: Introduction to intellectual Property Law, 4th Ed. Butterworths, London 2002, 11, 2, 139.

¹² Paul Goldsten: Copyright, Little Brown and Company edition, vol. 1, 1989, p.35.

¹³ Dr. Mohammad Husam Lutfi: Copyright in the light of the Jurists' opinions and judiciary Judgments; Cairo 1999-2000, p.26

¹⁴ Dr. Jamal Al Kurdi: Copyright in the International Private Relations "and the Arab-Islamic View of the Intellectual Rights in the New World Economic System", Research published in "Spirit of Laws Journal", Tanta University, Part 1, 2011, P.126

¹⁵ For details, see: Dr. Farouq Al-Abasiri: Toward an Economic Concept of the Copyright, Dar Al-Nahda Al-Arabia, Cairo, 2004, pp.5-9.

As for the legislations of the Latin system countries, they define originality (L'originalite) concept through the subjective criterion that the work is deemed original if it bears the personal prints of the author, i.e. should be the product of the intellectual effort of the author. The Latin philosophy is built on considering the literary work an extension to its owner's character. The author selects his material, coordinates, classifies it and gives it the shape he accepts for his literary product, so as to come into existence. There is a spiritual relationship between the author's character, his intellectual products and the fruits of his talent ^[16].

As for the Anglo-Saxon countries legislations, they constitute a concept of (Originality) based on an objective criterion depending mainly on effort and work put in, even if of lower importance, notwithstanding the work cohesion extent to its author and what he conferred it of his talents. This concept is more prevalent in the Anglo-Saxon countries, such as England and the U.S.A.

In fact, to compare between these two systems, we have to indicate that the difference between them is limited to the varying degree of the innovative activity each attitude requires. Thus, research, in the absence of quoting from others' resources, represents a research of the lowest degree of the innovative activity. Quite the contrary is the research in the personal character that the author confers to his work, which represents a research of the higher degree of this activity.

Despite these differences between the two systems, it is worth mentioning that the enormous, successive technological revolutions called the attention of certain Latin system jurists to the necessity of developing the Latin concept of innovation (originality), particularly in terms of the informatics works (digital), which were produced by the information technology. The French Jurist, Croze, called to adopt an objective concept of originality instead of the personal concept. In this regard, he said, "the traditional concept of originality, though consistent with the traditional works (such as books and the like), yet it is not in line with the modern works resulting from the successive technological revolutions, such as the computer programs, data bank, and information aired through satellites ^[17].

In another related context, to grasp the originality concept comprehensively, it is inevitable to refer to the features that link the work and indicate the vocabularies of these aspects, and when they may be considered complementary to and integrated part of the work. We have also to indicate whether or not the originality concept includes them, so that it will enjoy the protection granted to the work, if it is originated. In fact, originality included many aspects that are attached to the work, such as innovation of the text system, drawing, computer drawn graphics, sound recordings, computer programs, data compilation, derivative works, as long as the work was done

¹⁶ For more details, see: Mohammad Hasan Abdullah Ali: Toward a Special Legal System to Protect the Computer Software "Comparative Study", Ph.D. thesis submitted to the Faculty of Law, Ain Shams University, 1428 AH- 2007 AD. P. 258

¹⁷ For more details, see: Farouq Al-Abasiri: Toward an Economic Concept of the Copyright, Op. Cit. p.p 148-152.

by who owns "doing it", namely, the author^[18] In the meantime, originality does not include absolute data or facts, which are also known by "facts" that live in the public memory, and characterized by the popular idea^[19]. Therefore, who makes a work where he includes the absolute ideas will be excluded from the protection law, such as the telephone directory, statistics, memos, reports, balance sheets and budgets prepared by the governmental officials^[20].

In addition, the work that is a mere repetition to a former work, without the trace of innovation or originality, and without holding authors character, will not be included under the law protection. The author should make an effort in creating and composing the work, which will highlight his character, even if this effort was meager and insignificant. Therefore, the author's personalization of an old idea and mixing it with his own character, are a guarantee to render this work original and covered by protection, Thus, it is not a requisite that the originality must be new, because "novelty" is not a prerequisite in the work so as to be considered "novel", as novelty is different from originality, an issue that requires more clarification.

(Originality) of the work is not subject to (Novelty), which means that the intellectual innovation will develop something "novel". It is also not subject to the artistic worthiness of the work, and different in its concept from originality. For instance, if two professional artists devote themselves for sculpting two wooden statues, which represent an elephant, each of them is creating an original work, even if the two statues were alike and did not bring new things; they, individually, practiced a creative activity^[21].

So, it is not necessary for the innovation (origination) to bring something new, as novelty is not a prerequisite for originality. But the matter will be different if one artist confined himself to "copy" the work of another artist, surely, the former (copier) will not have any innovation or creative activity in his work. His role was limited to repeat and copy the work of his colleague artist, and thus, the originality requisite is not fulfilled.

As such, we can say that there is a wide difference between novelty and originality^[22]. Novelty means beginning in creation and access to thoughts never known before by anybody else. But, originality means developing ideas without the requisite of being never done by others. The importance of novelty appears well in the industrial field, as it is a prerequisite to grant protection to the new inventions in the

industrial property aspect (patents, industrial drawings, diagrams and models). On the other hand, the issue in the scope of copyrights is around the originality element, whether or not the work is of novelty^[23]. Therefore, the work may enjoy novelty and innovation, then, it will be covered by the protection under the copyright law. Nonetheless, the basic condition is the presence of innovation (originality) in the work, as novelty is not a prerequisite to acquire the copyright protection. As such, if there is an innovated work where novelty does not exist in it, it is a work covered by protection too^[24].

It is worth mentioning that originality may be absolute or relative. By the absolute it is meant that an individual comes up with an unprecedented work. The original work is not "indebted" to any former work, and the absolute originality through this description comes close to the novelty concept. Meanwhile, the relative originality means the existence of a work in which the innovative touch is found, yet, such work inspired its components from a previous or older work. Whether the work includes the absolute or relative originality, it enjoys the legal protection of the copyright, with variation in the degree granted for every kind by the law^[25].

As a result, originality is deemed available in terms of a known idea before, not new, once the author addresses it in a distinguished method or re-coordinates it in a new shape that makes it easy to refer to. Thus, any intellectual effort that highlights the author's character is an originality that worth legal protection.

In the wake of the tremendous IT revolution, we might find "privacy" for the innovation or originality condition in some of the relatively recent works, such as databases^[26] and computer programs^[27]. In database work, the originality condition is focused on the direction way of the database, whether in terms of organization, coordination or selection, without focus on the content.

As such, originality in the database is concentrated on the data organization, retrieval, coordination and compilation, but the base content, such as the data, information, or pictures, is not per se innovated once it is confined to mere texts or figures. Originality does not exist unless the database holds the prints of the character who set them up; protection is not for compilation in itself, but for the effort in data building and coordination^[28].

¹⁸ Dr. Mohammad Abu Baker Bin Younes: Crimes resulting of the Internet Use (Subject Rulings and Procedural Aspects), Cairo, Dar Al-Nahdha Al-Arabia, 2004, 1st Ed. p.539.

¹⁹ Ibid.

²⁰ In one of the rulings passed by the American courts stated that, "the axiomatic idea in the IP Law/Copyright, is that no author can cover his ideas or facts he narrates under protection".

See: Harper & row, Publishers Inc. v. Nation Enterprises, 471 U.S. 539, 556, 105 S. Ct. 2218, 2228, 85L.Ed.2 d 588 (1985).

²¹ Dr. Nawwaf Kan'an: Copyright (Contemporary Patterns of Copyright and Protection Means Thereto). Dar Al-Thaqafa Library for Publication and Distribution, Amman 1st Ed. 4th Issue 2004, pp.198-199.

²² In spite of the wide difference between novelty and originality, yet, affinity may be between the inform not in content. Novelty is wider than Originality. We can say: every new is innovated but not vice versa.

For more details, see Dr. Mohammad Husam Lutfi: Copyright in the Light of the Jurists' opinions and judiciary Judgments, Op. Cit, pp.26-28.

²³ For details, see: Abdul Rashid Ma'amoun & Mohammad Sami Abdul Haqq: Copyright and neighboring rights, Op. Cit, pp.91-93.

²⁴ Delia Lipszye: Copyright and neighboring rights, Op. Cit, p. 70, No. 2.1.2.

²⁵ For details see: Khaled Hamdi Abdul Rahman: Legal protection of the logical entities (Information Programs), Ph.D. thesis submitted to the Faculty of Law, Ain Shams University, 1992, pp.217-220.

²⁶ For the definition of database see each of: Mohammed Faris Al-Zo'bi: Database legal protection according to the copyright (Comparative study between the Altin and Anglo-Saxon systems), Al-Am'arif Firm, Alexandria, 2003, p.89; and Graham P. Cornish: Copyright (Interpreting the law for libraries, archives and information services), London, Library Association Publishing, 2001, p.1.

²⁷ See in the definition of computer programs: Dr. Khalid Hamdi Abdel Rahman: Legal protection of the logical entities, Op. Cit, p.155.

²⁸ See: Dr. Husam El Deen Kamil Al-Ahwani: Protection of Intellectual Property Rights on the Internet, worksheet presented in the first scientific conference about the "IP", held in Al-Yarmouk University- Jordan, 10-11 July 2000, Faculty of Law, Al-Yarmouk University Publications, Irbid Jordan. P. 31.

Accordingly, originality in the databases work appears through the element of information composing, arranging and coordinating, not through the information and data contained in the databases. Thus, data selection and arrangement (works), the way they were processed, and access mechanism, form a mental effort producing an independent work, that is database work, which does not create in us a work different and independent from the works included in its formation²⁹. In this concern, the English jurists³⁰- because the English law provided that the originality or innovation in the database work should indicate the author's own intellectual creation- argue that the English law required a high degree of originality concerning the data base, higher than the known degree as per the traditional standard in the U.K., that the work is not copied or taken from others.

Considering the above statements, we find that database should include innovation or originality, even if it was private in form that focuses on the way the database was brought into existence, not its content. Yet databases originality is not required to be absolute whether in terms of time, place or subject; here it suffices to be relative. But, due to the enormous accelerations of the information revolution parameters, many databases formed an economic value due to the great financial cost of their creation. This led to the emergence of a new criterion in the copyright protection as a prerequisite for databases protection, which is represented in the essential investment condition^[31].

In a related issue, the availability of originality in the computer programs aroused wide controversy, particularly as they are works that belong to the technological environment strongly found in the digital mediums. This gave rise to the question "is the traditional concept of innovation (originality) as one of the work elements good enough (or not) to be taken in the legal protection area for the computer programs?"

At the outset, undoubtedly, the complicated technological and technical nature of each stage for the preparation of the computer programs, and the electronic or digital languages these programs are made through, push toward raising many questions related to the shape of the required innovation in the computer programs. And, is every computer program deemed originated as a permanent option? And, is it a must that all the program preparation stages and steps should be originated or innovated? Or else, does it suffice that originality is available in certain components of the program or in one of its preparation stages?

In fact, the jurist attitudes concerning the computer program protection were split under the provisions of the copyright laws into two trends: one is opposing and the other is supporting. The arguments of the opposing party are focused on that the computer programs have not the originality component. The reason is that the program setter practices his intellectual activity through already existing technologies, and strictly defined ways leaving no room for the presence of his

personal touch. In addition, computer programs lack the aesthetic nature and touch, and that they are directed to the machine not to the audience, being an informatics vehicle, the human does not receive directly; rather, the machine receives them. The human receives the information results, i.e. the product of the program's contact with the physical entity.

As for the other party, the supporters, their arguments versus the opponents are focused on that the computer programs do not eliminate the existence of the originality characteristic. These programs are originated if they express a clear intellectual effort of the person who developed them at any of the program preparation stages. As for the aesthetic requisite, the legislations of the copyright did not provide that the work should enjoy an aesthetic nature to be worth protection. The work aesthetic property, or its technique do not affect gaining the protection. The argument that these programs are directed to the machine, not to the audience directly, is not a problematic matter, as there are works such as movies and musical works, not perceived by the audience directly, but through systems. Even though, they gained protection according to the copyright laws without the objection of the jurist in this concern^[32].

In this regard, the actual problem raised in terms of the computer programs does not stop at the limits of providing the originality condition. Rather, it lies in the difficulty in searching about the availability and making sure of this condition "inside" the program. This issue remains a matter of time entrusted to the judge of the subject, as the judge is required, on a case-by-case basis, to find the program's fulfillment of the "originality" condition in any of its preparation stages, and in its other components, seeking the help of the expertise and professionals in computer and programming to have their opinions in this issue^[33].

We can conclude from the above, about the originality requisite in the computer programs, that the program is deemed an intellectual work resulting from the originality of the programmer, who spent a distinguished intellectual effort to approach the program design. In this concern, the programmer is not required to come up with new ideas for his program, but it is sufficient that he based his ideas in the program design on new components that indicate a personal, original and self-character. Legal protection extends notwithstanding its significance or the purpose of designing it, whether the program is scientific, accounting, technical, or even a program to run electronic games^[34].

Still, complication about the presence of originality may increase when talking about products of the information technology, the new developed products of sophisticated technical nature, such as the multimedia work. Again, this raised the controversy about the possibility of protecting them

²⁹ Delia Lipszyc: Copyright and neighboring rights, Op. Cit. p.19.

³⁰ See: Catherine Colston, Kirsty Middleton: Modern intellectual property law, 2nd edition, Cavendish publishing limited, London, 2004, p: 267, No. 8.5.2.

³¹ World Intellectual Property Organization (WIPO): Intellectual Property on the Internet: A Survey of Issues, 2000, p. 32. Available on line (on Sep-21st-2017) at: <http://www.wipo.int/copyright/commerce/en/doc/surry.doc>.

³² For more details about the supporting and opposing jurist trends on the computer programs protection by the copyright laws, see: Amin A'azan: Penal Protection of the E-Trade "Comparative Study", Ph.D. thesis submitted to the Faculty of Law, Ain Shams University, 2007. pp. 316-333.

³³ Dr. Fayiz Abdulla Al-Kandari: Limits of the Civil Protection of the Computer Programs according to the provisions of Act No. 64/1999 about the IP Rights, and in the light of TRIPS Agreement. Published research in the Law Journal, Kuwait University, No. 1, 28th year, 1425 AH, 2004 AD, p.51.

³⁴ Close to this: Dr. Rasha Alyyeden: The Legal System for Software Protection, Dar Al-Jame'ah Al-Jadeedah, Alexandria, 2007, p. 142

under the "umbrella" of the copyright laws, being works that worth protection, and about how to find the originality in this work, particularly concerning the technical, complicated content of the multimedia work^[35].

Possibly, one may tell that the problem in the multimedia product is represented in the originality condition- whether as per the Latin or Anglo-Saxon systems- which requires intellectual activity and effort by the author, even if in its minimum level. On the other hand, the modern techniques created new works such as multimedia, which appeared in the shape of products that invaded all the markets. Thereby, the apparent shape of these products made them look in a technical nature without innovative touch. But, in fact, the electronic or digital integration and blending among multiple elements, such as audio and video elements (and other elements) unveils an unmatched innovative style, resulting from an intellectual and mental effort, indirectly.

This made a part of the jurisdiction adopt the technical originality idea, especially because this innovation arises in the modern technology framework^[36].

In fact, the technical reality of the multimedia works compels us to consider it from different perspectives. It is a "service" for the internet users, and, at the same time, application in the form of a directed ray for a pool of various works, and is (by itself) a work^[37].

In sum, for the multimedia product to enjoy the author's copyright, it must include originality in its content, without denying the difficulty to track the innovative gleams in this product, because of the sophisticated, overlapping techniques in its composition, and involvement of the machine in "creating" such a product. The researcher suggests that, to remove the blur in discovering the originality element in the multimedia product, it is inevitable to look into the matter more flexibly when we look for the innovation element in the multimedia product. We are further required not to abide literally by the traditional standards to determine the extent of the originality component availability in the work to be granted the copyright protection.

To conclude the issue of the originality concept, we can make a summary that the works, whether found in digital, traditional way or in or outside the internet, are not protected without the presence of the originality condition. If this component is found in the works, in addition to other conditions required, then the copyright protection will cover the work, even if it was in a digital shape, or submitted within an internet environment^[38]. In this concern, encyclopedias and lexicons,

which require classification, arrangement, indexing and taxonomy, are deemed innovated works. If added to the computer programs and loaded through the internet, they gain protection and the copyright law protection applies to them^[39].

The Second Chapter Originality in the Comparative Legislation

Copyright protection laws emphasized the need for the presence of the innovation (originality) component as a requisite to include the works under protection. In spite of many attempts of certain legislations to coin a definition for this condition, most of them did not provide the definition.

Through the revision of the French Intellectual Property Law No. (597/92) in 1992 and its amendments, one can find that it adopted the originality standard as a legal base to protect the works. This is concluded from the provisions of Article (L111-1) which offered the author a comprehensive, valid copyright, if the work was the result of his innovation. Moreover, Article (L112-4) provided that the core of the intellectual work, which represents the originality characteristic, will be protected.

As for the English Copyright, Design and Patent Act 1988 (CDPA), issued on November 15, 1988, which came into force on August 01, 1989, we find that it did not define the originality condition^[40], but, in the first section paragraph (A), item (A), referred to the need for the originality condition, when it addressed listing the types of works and their conditions, as well as through listing the categories of descriptions. The abovementioned section provided, "the author's right (copyright) is a property right, applicable, and as specified in this section, to the following descriptions of the work: A- Originated works: literary, dramatic, musical, or artistic work..."

The American Copyright Law for 1976 emphasized in section 102, paragraph (A) that the copyright protection lies in the original authorship works, where it provided, "... Original works of authorship fixed in any tangible medium of expression..."

Similarly, the German Copyright and Neighboring Rights Act for 1965 (amended in 1998), also confined the works within the personal intellectual innovations (originations). Article (2/2) of this law provides, "only the personal intellectual innovations form works in the meaning intended by this law."

The Canadian Copyright Law for 1985, emphasized in article (Five) that work should enjoy the originality characteristic in every original literary, dramatic, musical and artistic work..."

In addition, the Japanese Copyright Law No. (48) for 1970 (amended in 2004), indicated to the originality requisite- when it addressed the definition of the work- that it is "the product of ideas and feelings expressed in an innovative manner in the literary, scientific, artistic or musical fields."

At the level of the Arab World legislations, we find that the Egyptian Intellectual Property Copyright Law No. 82 for 2002 provided an explicit definition of the originality condition. Article 138 of the said law provided, "it is the innovative

³⁵ In the definition of the Multimedia, see: Dr. Mohammad Al-Saeed Rushdi: Publishing Contract (Analytic, thorough study of the relation between the author and publisher, and how to protect the IP rights on the Internet), Copyright reserved, without publishing house, no edition, 2007, p.166. and Leon Woodcock: legal and ethical issues in multimedia: A technical perspective. School of multimedia and information technology- Southern Cross University, Australia 2000, P.1. Available on line (on Feb 26th 2018) at: <http://pdfcast.org/cache/legal-and-ethical-issues-in-multimedia-a-technical-perspective>.

³⁶ Dr. Osama Ahmad Bader: Multimedia between the reality of the electronic merger works and the IP rights protection, Dar Al-Nahdha Al-Arabia, Cairo, 2005, p. 232

³⁷ Ibid. p. 233.

³⁸ See: Dr. Husam El Deen Kamil Al-Ahwani, Protection of Intellectual Property Rights on the Internet, Op. Cit. p. 30.

³⁹ See in this meaning: Dr. Mohammad Abu Baker Bin Younes: Electronic Crimes resulting from the Internet Use, Op. Cit. pp. 535-539.

⁴⁰ Catherine Colston, Kirsty Middleton: Modern intellectual property law, Op. Cit. p: 261, No. 8.4.

character that confers originality to the work." Through this definition, we find that the Egyptian legislation laid out a definition for the originality concept according to the jurists' writings and Judgments of the judicature in this connection. The advantage in the originality definition set by the Egyptian legislator lies in defining this concept in a flexible manner that allows applying it to all types of originality, which can be produced in the future, particularly, in the wake of the developments created by the tremendous technological revolution, and the developments that may arise in future.

We can see that the Egyptian legislator's definition of the originality condition had made a difference- even though ostensibly- between the innovation and originality concepts, as if originality is a concept other than innovation. Meanwhile, the comparative legislations use the innovation term at times, and the originality term, at others, as a condition or requisite to protect the work, in a way that makes both terms look as synonyms, and two sides of one currency.

In a close proximity to its Egyptian counterpart, the United Arab Emirates (U.A.E.) law No. 7 for 2007 was enacted about the copyright and the neighboring rights. Article one of the law defined originality as, "the innovative character which gives the work originality and distinction."

The Saudi copyright protection law issued under the Royal Decree No. (M/11) on 19/05/1410 AH is deemed one of the Arab legislations that set up a legislative definition of originality. Article one of this law defined originality as, "the creation (composition) in which novelty elements are available or characterized by a special character that was not known before." The Saudi definition of originality adopted the absolute innovation (originality), so that the work is not worth copyright protection unless the author comes with something unprecedented or never known before, so that the work is not 'indebted' to any previous work. In adopting the absolute originality, the Saudi legislator came close to novelty concept through this description. This analysis may look "humble" before the explicit legislative text that provided that novelty requisite is a must. Taking this for granted will lead to exclude large amounts of works from the protection scope. By applying this concept, the work aspired from elements or components of previous or earlier works shall not enjoy the copyright protection, even if it included innovation in its content.

As far the Jordanian Copyright Act No. (22) for 1992 and its amendments, it did not provide an explicit definition of originality. Nonetheless, it emphasized the necessity of the presence of originality in the works, so as to be worth protection. In this concern, the first paragraph of the third article of the said act provided, "according to this law, originated works of literature, arts and science are protected, whatsoever the type and significance of these works, or the purpose of producing them."

In a related manner, many Arab legislations concerning the copyright- when they defined the works- provided that the presence of innovation or originality in the work is a must to consider the work worth protection. In this concern, the Moroccan, Omani, Qatari, Syrian and other Arab legislation adopted this condition.

Finally, it is worth mentioning that the national legislators in many of the world countries applied many amendments on the

IP rights legislations, particularly the copyright, so that the legal provisions will fit the information technology and the ever-changing technical surroundings, keeping a pace with many of the international agreements in this regard.

The Third Chapter

Effect of Information Technology on the Traditional Concept of Originality Condition.

Having known the originality as one of the important conditions for the work to be worth protection of the copyright legislations, we now stand in the face of an important question: had the information technology, with the digital revolution it brought, affected the innovation condition in its traditional shape?

At the outset, we may decide a general principle and provide many remarks about it. We can say that the general principle is that the conditions required- including originality- to deem the intellectual production or work worth protection did not change, neither in naming nor in essence under the digital environment of information technology. The mental work, whether inside or outside the digital environment is protected once it is innovated. Nevertheless, this condition may change to fit the digital environment.

Among the changes that emerged on the content of the protection conditions of the work, is the change in the content of the originality condition ^[41]. It is clear that the digital environment affected the content of the originality condition toward the Latin side, led by France. The information technology produced challenges that necessitated wider protection to the author, which resulted in adopting an expanded objective concept in lieu of the personal perspective of the work. Following the time when originality was the personal imprint and fruit of the author's effort (intellectual effort), we found ourselves before the "fetched intellectual" concept. As such, the personal imprint of the author, which represents the personal character of the originality concept, is no longer the base to determine whether or not the work is originated, and subsequently extending or preventing the protection.

We can also find an effect of the digital environment on the innovation condition in terms of the novelty and originality, as this aspect did not raise any difficulty in the past. But, with the tremendous digital revolution and the accompanying innovation and development of the computer programs, databases, multimedia and the like of the recent inventions, it became too difficult to consider the new technologies falling within the scope of the literary and artistic property, if we adopted the subjective standard of innovation. The reason is that the following question will be immediately raised: how could the instruction made by the machine hold or include personal imprint?", taking into consideration the technical nature in producing this type of works. Similarly, it could not be attached to the industrial property because there are impractical rules, especially at the level of the formalities that should be respected and observed.

The technological revolution and digital age we live in, with the new products they brought, necessitate extending the

⁴¹ David Johnston, Sunny Handa, Charles Morgan: Cyber law "what you need to know about doing business's online", Stoddart, New York, 1997, p.150

copyright to accommodate these modern productions. This, in turn, calls us to apply the objective standard of the originality concept already adopted by the Anglo-Saxon countries. In this concern, the supporters of the Latin system are not required to burden themselves seeking for the presence of the subjective and personal standard in the work, particularly in terms of the works produced by the digital environment. Nor are they required to "dive" in the core of the modern work to discover the personal imprint of the author, as we are now in an age that looks at originality as an "economic" concept. On the other hand, the Anglo-Saxon system and its objective philosophy it adopts do not ignore the personal trend of the author, even if it required the minimum levels of originality.

In fact, it could be said that the Latin system will, gradually, abandon adopting a narrow concept of originality based on the subjective and personal component. It will turn toward a wide field in explaining this condition, to start adopting the objective standard as the base to determine the originality concept, especially in the light of the digital age, beginning with the appearance of the computer programs and databases, and ending with the new shapes of the works produced by the digital environment. As a proof of this trend, we see that the French judiciary- pioneer of the Latin system- after hesitation and variations in its ruling, recently adopted the objective standard of originality. The first case in which the French Cassation Court passed a ruling based on an extended concept of the innovation condition, was (PACHOT) case, which discussed the innovation concept in the computer programs. The French Cassation Court declined, in this case, considering the prevalent, traditional standard for originality, expressed by the term (effort intellectual), and replaced it by an extended standard expressed by the term (apport intellectual). By the latter term, it is meant 'the personal contribution of the author of the computer programs'. The French Cassation Court ^[42] commented "that the computer programs even though characterized by sophistication, they are surly produced by personal contributions of their author, more than being a mere logical or mechanical application." It seems that the same Court ^[43] sees that the more complicated the computer program, the more expressive is it about the extent of the personal contributions and the "fetched intellectual" of its author. Others see that the French Cassation Court ^[44], in its decision, somehow attempted to adopt the novelty concept, and sought to find a link between the requisite of novelty and original activity.

Accordingly, we can judge that the French Cassation Court turned toward adopting the originality concept, coming closer to the objective standard for the innovation condition, which is prevalent in the Anglo-Saxon countries. It is gradually moving away from the personal concept of this condition, which resulted in the change of the content of originality condition in its traditional shape, as it no longer fits the informative

innovations in which the "fetched intellectual" predominates the "intellectual effort".

This approach had been criticized because every work that enjoys protection is presumed to have a personal and intellectual effort. Subsequently, taking into account the personal effort alone will lead to the expansion of the copyright to include works that could not be considered literary productions ^[45]. An aspect of jurisdiction ^[46] emphasized this providing that, "the intellectual effort is easily perceived due to its reasonable meaning. Yet it cannot be subject to literary or artistic property unless it enjoys the physical existence, despite of what this intangible product may represent to the human mind of moral value, which the law does not accept unless through expressions, regardless of the way through which such expressions occur."

This new situation received acceptance and support from the French Cassation Court because it fulfils the necessity of the originality concept development and change in line with the new innovations. Other reason is that tracking the effect of the author's character through the data directed to the "machines" was only an "artificial" thing.

This expanded standard for the originality concept may open the field wide for the judge to define the intended meaning of originality, thus, whether or not to include the work under the protection law. Although this orientation may be criticized, yet, on the other side, the enormous technical revolution that accelerates daily- to bring to us new products- may be a reason for developing a general concept of originality. A concept that will be capable to keep pace with this limitless development, still maintaining the minimum limit of creativity and originality in the work, which allows keeping in line with the legal concepts of the developments by the difference of place and time, without falling into the rigidity of the text.

To sum up- as some jurists truly said ^[47] – technology will continue providing us tools that help us in the innovative and origination process through new forms and instruments. For instance, ability to integrate and blend among many different kinds of works in the multimedia product; ability to amend the works in new ways through the digital modulation techniques; or ability to allow distribution through the internet among authors at spaced distances beyond the boundaries of the states.

Conclusion

In conclusion of this research paper, and after reviewing the originality condition, being the criterion for the copyright protection and the most important condition to grant the work the corresponding protection, we summarize the results and offer few recommendations.

First Results

1. Originality is the cornerstone for the intellectual work to

⁴² See: Ramon Casas Valles: The requirement of originality, An Essay at: Research handbook on the future of EU copyright, Edward Elgar publishing Limited, Cheltenham-UK, 2009, p 120

⁴³ See: Marjut salokannel, Ownership of rights in audiovisual production "a comparative study", Kluwer law international, Dordrecht- Netherlands, 1997, p 48

⁴⁴ See: Ibid, p 48.

⁴⁵ Dr. Madhat Mohammad Mahmoud Abdel Aal: The extent to which the computer programs to the protection prescribed for the literary works, in the light of the copyright law and the IP protection draft law "Comparative study", Dar Al-Nahdha Al-Arabia, 2002, p. 57.

⁴⁶ Dr. Osama Ahmad Bader: Multimedia between the reality of the electronic merger works and the IP rights protection, Op. Cit. p. 75.

⁴⁷ Allen N. Dixon & Laurie C. Self: Copyright protection for the information superhighway, London, Covinton & Burling, 1994, p. 157

- be considered a work worth protection, so that it forms the personal imprint the author gives to his work, which allows to distinguish his work from other works that belong to the same category or taxonomy. The work highlights the authors character so that the author's personal imprint is clear in the work, and we feel his "breaths" within the lines of the work, in a manner that would be an actual expression of his visions and thoughts he wants to "load" into the work and communicate to people.
2. We can see a difference in the base, upon which the originality concept is built, between the Latin and Anglo-Saxon systems. In this concern, the Latin philosophy is based on deeming the literary work an extension to the character of its owner, so that a spiritual relationship will be built between the author's character and his intellectual production. Meanwhile, the Anglo-Saxon philosophy provides a concept of "originality" based on an objective standard, basically built on the effort and work put in the work, notwithstanding how little it is, and taking no account of the extent of the work cohesion to the personality of its owner, or the "amount" of talents he conferred to his work. In spite of the differences between the two systems, it is worth mentioning that the successive, enormous technological revolutions urged some jurists of the Latin system to call for the need to develop the Latin concept of originality, especially concerning the informatics (digital) works produced by information technology.
 3. In the light of the enormous technology revolution, we may find a "privacy" of the originality or innovation condition in some relatively recent works, such as the databases, computer programs and multimedia. This privacy is related to the sophisticated technical content of such relatively recent works, or the works born by the technical environment. In these works, the originality condition must be present, taking into account the difficulty to track these innovative gleams in these products, especially in the multimedia work or product. The reasons are because the complicated, overlapping technical techniques are parts of its composition, and because of the machine's engagement in making this product. Nevertheless, this product carries in it an innovation that reflects an intellectual effort of its originator.
 4. The mental work, whether in or outside the digital environment is protected once it is originated or innovated. Still, this condition may change to suit the digital environment. For instance, among the changes occurred on the content of the work protection conditions is the change in the content of the originality condition. It became clear that the digital environment affected the content of the originality condition content toward the Latin attitude led by France. The digital environment created challenges that imposed wider protection to the author, which led to adopt an extended objective concept, in lieu of the personal perspective of the work. This caused the Latin system to begin, gradually, leaving out adopting the narrow concept of originality, which was built on the subjective and personal component, and moving toward a wider field in interpreting this condition. It began adopting the objective standard as a base to determine the originality concept, particularly, in the light of the digital age, beginning with the appearance of the computer programs and databases, and ending with what the digital produced of modern shapes of works, such as the multimedia.
 5. We saw that originality was affected by the parameters of the technological revolution, as shown in this research paper. Technology will continue providing us tools that help in the creative and innovative processes through new shapes and instruments, such as ability to integrate and blend among different types of works in the multimedia product. As well as ability to amend works in new ways through the digital modulation techniques, or ability to allow distribution through the internet among authors at spaced distances beyond the boundaries of the states.
 6. Despite the products of the information technology revolution and their reflections on the copyright, yet, it is still early to introduce amendments or texts to the copyright laws regarding the originality condition. Undoubtedly, the information technology and enormous informatics revolution with its ever developing and renewing "fashions" and products in all legal aspects, cast their shadows over the originality requirement in some works of technical nature, due to the complicated technological content of these works. As such, the accelerating and continues development in the digital environment made it very difficult to set a comprehensive, uncontested, standard for the originality condition or requirements.

Second Recommendations

1. Due to the information technology revolution and the digital age we live, with its new products, it becomes inevitable to extend the extent of the copyright to accommodate these modern products. Therefore, the researcher recommends that states that follow the Latin system, such as Jordan and Arab Countries, adopt the objective criterion for the originality concept applied by the Anglo-Saxon states, not even requiring the supporters of the Latin system take the trouble to search for the availability of the subjective and personal component in the work, especially regarding the works produced by the digital environment of the information technology. Nor are they required to probe deep in the core of the new work to reveal the personal imprint of the author. We are currently in an age that looks at originality and innovation as an "economic" concept, bearing in mind that the Anglo-Saxon system and its objective philosophy do not ignore the personal trend of the author, even if it requires the minimum levels of originality.
2. The researcher further recommends that the Jordanian legislator and the Arab countries legislators introduce new texts in the copyright laws. Texts that allow the judge of the subject search the availability of the originality condition in the works of the technical nature, enlightened by the general traditional frameworks -without cohesion to it literally- to determine the originality, and still not ignoring the technical sophistication of these works. Here,

there is also a room for seeking the help of the expertise and technology professionals in this connection.

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