

*Institutional Protection of Literary and Artistic Property in Algerian
Legislation*

الحماية المؤسسية للملكية الأدبية والفنية في التشريع الجزائري

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ملخص:

يقدم هذا البحث تحليلاً لحماية الملكية الأدبية والفنية في الجزائر، حيث تواجه حقوق المؤلف انتهاكات متزايدة رغم وجود تشريعات محلية ودولية مثل الأمر رقم 03-05 ومرسوم 05-365، التي تهدف إلى حماية حقوق المؤلفين والمبدعين. حيث تم التركيز على دور الديوان الوطني لحقوق المؤلف والحقوق المجاورة في تعزيز الوعي بحقوق المؤلف وتوفير بيئة قانونية مناسبة. بالإضافة إلى نشأته واختصاصاته، بما في ذلك حماية التراث الثقافي والابتكارات الفنية. علاوة على ذلك، تم تحليل آليات الحماية القضائية المتاحة، والتي تشمل الدعوى المدنية والدعوى الجزائية، لمواجهة مشكلات التقليد والقرصنة، التي تُعد ضرورية للتصدي للتحديات المرتبطة بالتطور التكنولوجي وانتشار المحتوى الرقمي. تطرح الدراسة تساؤلات حول فعالية هذه الحماية في ظل وجود فجوات قانونية وتحديات تعيق تطبيق القوانين بشكل فعال. كما تؤكد على أهمية تكثيف الجهود للتوعية بحقوق المؤلف بين المبدعين والجمهور، مما يستدعي البحث عن حلول لتعزيز حماية الملكية الأدبية والفنية وضمان استمرارية الإبداع في الجزائر.

حقوق المؤلف، التعدي على الحقوق الأدبية والفنية، التقليد، الديوان الوطني لحقوق المؤلف، الحماية المؤسسية

Abstract:

This study examines Algeria's legal framework for protecting literary and artistic property, noting a rise in copyright infringements despite the presence of national and international instruments such as Ordinance 03-05 and Decree 05-365. It analyses the establishment, organization, and competencies of the National Office for Copyright and Related Rights (ONDA), which is tasked with registering works, raising creators' awareness, and safeguarding cultural heritage.

The research reviews judicial mechanisms—civil and criminal actions—that address imitation and piracy, highlighting procedural tools such as precautionary seizure and destruction of infringing copies. The analysis identifies a significant gap between statutory provisions and practical enforcement, especially in confronting digital piracy and low legal awareness among creators. This paper contends that strengthening ONDA's technical capacity, improving inter-agency coordination, and updating the legal text to cover emerging digital formats are essential for effective protection. It concludes with short-term recommendations—both immediate steps like better training and simpler licensing—and a future goal of updating Algeria's copyright system to match the best in the country.

Keywords:

Copyright Protection; Infringement of Literary and Artistic Rights; Imitation; Onda.

Introduction

Literary and artistic property is a vital component of human rights associated with intellectual creativity, as it plays a significant role in strengthening a society's cultural identity and fostering intellectual and social development. However, rapid global technological advancements have introduced significant challenges to protecting these rights. Piracy is a major issue, particularly in many developing countries, including Algeria. Although national and international laws exist to safeguard intellectual property, their implementation faces numerous obstacles. This situation necessitates a study of the effectiveness of the institutions responsible for enforcing these laws.

The focus of this study is on the institutional protection offered by the Algerian legislature for copyright and artists' rights, particularly through the National Office for Copyright and Related Rights (ONDA). This office is the primary body tasked with enforcing laws related to the protection of literary and artistic works and plays a crucial role in defending the rights of creators in Algeria.

Research Aim:

The protection of literary and artistic property is crucial for fostering a vibrant cultural community, as it promotes artistic creativity and helps preserve national

Institutional Protection of Literary and Artistic Property in Algerian Legislation ***Chabane Nouha, Ben gouiya Mokhtar***

heritage. Therefore, safeguarding these rights from violations and infringements is essential for achieving sustainable development in the cultural sector. In Algeria, the National Office for Copyright and Related Rights plays a primary role in defending these rights, however, it faces numerous challenges in combating piracy and preventing the counterfeiting of works.

Reasons for choosing the topic:

This topic was chosen because of the critical role the National Office for Copyright and Related Rights plays in enforcing legal measures to protect the rights of authors and artists in Algeria. Although regulatory legal texts are in place, the effectiveness of these mechanisms is questionable given the increasing number of violations. This situation highlights the importance of evaluating the institution's role in safeguarding intellectual property.

Hypotheses:

- problematic 1: The protective mechanisms established by the National Office for Copyright and Related Rights (ONDA), while effective in certain contexts, are proving inadequate in addressing emerging challenges such as digital piracy.
- problematic 2: Judicial oversight of intellectual property rights violations may be weak due to a lack of legal awareness and weak coordination between the relevant bodies.

These hypotheses give rise to several essential questions that guide the research:

1. How has the Algerian legislature organized the institutional protection of literary and artistic property?
2. To what extent are the existing mechanisms sufficient to protect these works from infringement and violation?

Methodology:

This study will use an analytical approach to examine national legal texts related to copyright protection, with a focus on the role of the National Office for Copyright and Related Rights in this area. The descriptive approach will also be used to analyze and describe Algeria's approach to intellectual property protection, as well as to investigate the mechanisms available at the judicial level.

Study Plan:

First section: Introduction to the National Office for Copyright and Related Rights

Second section: The National Office Mechanism for Copyright and Related Rights to Protect Literary and Artistic Property

First section: Introduction to the National Office for Copyright and Related Rights

Since independence, the Algerian legislature has consistently sought to provide legal protection for literary and artistic property through legal texts and institutions established by the state to ensure the implementation of these texts. This development coincided with a rapid diversification in the methods for exploiting literary and artistic works, fueled by relentless technological progress and expanding publishing avenues both domestically and internationally. In this new landscape, individual enforcement of rights is largely ineffective and fails to ensure that creators receive their full legal entitlements. To ensure the implementation of the legal provisions contained in Order No. 03-05 relating to copyright and related rights, the National Office of Copyright and Related Rights was established as a public institution of an industrial and commercial nature, with legal personality and financial independence, and subject to the supervision of the minister in charge of culture. Its headquarters are located in the Algerian capital, and regional directorates have been established to bring its services closer to citizens in various regions. This study focuses on introducing the National Office for Copyright and Related Rights in two sections: the first addresses the establishment of the office, and the second addresses its specializations.

1. First: The National Office Establishment for Copyright and Related Rights

The technological development witnessed by the world has brought about a diversity of means for exploiting and publishing intellectual works in various locations within and outside national territories. To ensure effective respect for copyright (Bakay & farha , 2017-2018, p. 49) and related rights, the legislator has created a public body called the National Office of Copyright and Related Rights. This section will address the establishment of this institution and its administrative organization.

1.1 The National Office Establishment for Copyright and Related Rights:

In line with the Algerian state's commitment to protecting the intellectual and creative rights of authors and artists, the National Office for Copyright and Related Rights was established as a public institution of an industrial and commercial nature. It enjoys legal personality and financial independence, enabling it to ensure the effective legal protection of literary and artistic property.

First: Establishment by Order No. 73-46 (1973)

Established by Executive Order No. 73-46 on July 29, 1973, the National Copyright Office was created with the primary objectives of protecting authors' rights, preserving the intellectual property of creators in all literary and artistic fields, regulating the commercial exploitation of works, and preventing piracy and imitation. (decree no. 73-46 , 1973) During this initial period, the Office's role was restricted to two primary functions: registering works and providing legal protection to authors

Institutional Protection of Literary and Artistic Property in Algerian Legislation ***Chabane Nouha, Ben gouiya Mokhtar***

within Algeria, all conducted in accordance with relevant national and international legislation.

Second: Restructuring under Executive Decree No. 98-366 (1998)

On November 21, 1998, the office was restructured by Executive Decree No. 98-366, which introduced amendments to the office's structures and working methods to expand the scope of its powers and enhance its capacity to protect the rights of authors and artists. With the development of technology and the emergence of modern media, it has become necessary to update the mechanisms for protecting intellectual property rights and requiring the Office to adapt its role to include monitoring the commercial exploitation of works in the digital age. (Executive Decree No. 98-366, 1998)

In this context, greater organizational flexibility has been granted to the office to keep pace with the rapid development of technologies and publishing methods. The office is now responsible for protecting rights in various new areas, such as digital music and electronic publishing, in addition to expanding the network of regional directorates across Algeria to improve accessibility to services for citizens and creators (Executive Decree No. 98-366, 1998).

Third: Modification under Executive Decree No. 05-365 (2005)

With the development of the cultural and technical reality in Algeria, Executive Decree No. 05-365 was issued on September 21, 2005, introducing new amendments to the basic law of the office. This amendment expands the office specialties, including related rights (the rights of artists and performers, such as singers and musicians), in addition to copyright, reflecting the evolution of concepts related to intellectual property protection (Executive Decree No. 05-365, 2005).

The role of the office in regulating the commercial exploitation of works has also been strengthened, and oversight mechanisms have been developed to combat piracy, particularly in light of the spread of the internet and the expansion of digital publishing methods. This period was marked by a qualitative shift in administrative coordination, enhancing collaboration among the various government agencies and institutions concerned with intellectual rights protection. (Executive Decree No. 05-365, 2005).

Fourth: Modification under Executive Decree No. 11-356 (2011)

On October 17, 2011, the office's basic law was amended again by Executive Decree No. 11-356 to meet the new challenges posed by the digital revolution and the emergence of digital counterfeiting and cyber piracy technologies. The office has been equipped with legal and technical mechanisms to combat digital piracy more effectively, enabling it to take swift legal action against violations occurring in cyberspace (Executive Decree No. 11-356, 2011).

This amendment also included strengthening the office's role in raising awareness and legal education in the field of intellectual property rights, whether among

authors, artists, or the public, with the aim of spreading awareness about copyright and the importance of protecting it. Laws and procedures have been updated to keep pace with ongoing developments in technology and modern media.

1.2 Administrative and financial organization of the National Office for Copyright and Related Rights

The National Office of Copyright and Related Rights is a public institution with financial independence and a legal framework governing both its administrative and economic aspects.

Firstly\ Administrative organization:

The National Office of Copyright and Related Rights is administered by a Board of Directors, and it is led by a General Director, appointed by the relevant ministry. The following organizational and functional structures are essential to the office's operations:

1. Customers and Network Directorate
2. Members, Works Documentation, and Rights Distribution Directorate
3. Commercial Rights Directorate

It also relies on three support structures:

1. The Accounting and Finance Directorate
2. The Technicians and Information Technology Directorate
3. The Human Resources and Resources Directorate (Executive Decree No. 11-356, 2011)

Executive Structure Plan:

1. **The General Director:** According to Decree 05-356, the office is run by a general director appointed by decree upon the proposal of the Minister of Culture. However, he must not be an author, publisher, or owner of related rights (Executive Decree No. 05-356, 2005, p. art 18).

The following is a summary of its responsibilities:

- A. Representing the office before the judiciary and all civil life affairs.
- B. Preparing the internal organization of the office, proposing a program of activities related to the implementation of its mission, as well as its estimated budget, and stating the revenues and expenditures that enable its production.

Institutional Protection of Literary and Artistic Property in Algerian Legislation ***Chabane Nouha, Ben gouiya Mokhtar***

C. Attending all meetings of the Board of Directors and overseeing the implementation of its deliberations (Executive Decree No. 05-356, 2005, p. art 19).

2. **Board of Directors:** Chaired by a representative of the Minister of Culture, the Board consists of:

- A representative of the Minister of the Interior
- A representative of the Minister of Finance
- A representative of the Minister of Trade
- A representative of the Minister of Foreign Affairs
- Two authors or composers
- Two authors of literary works
- Two authors of audiovisual works
- An author of visual arts works
- An author of dramatic works
- Two performing artists
- Two workers' representatives

The General Director of the Office also attends meetings in an advisory capacity (Executive Decree No. 11-356, 2011, p. art 09).

Council members are elected for a three-year term, renewable only once. The Minister of Culture oversees the selection of elected members (Executive Decree No. 05-356, 2005, p. art 10).

The council's duties include deliberating on the acceptance of bodies and trustees, establishing the office's internal structure and rules, and determining the policy for supporting cultural work. (Executive Decree No. 05-356, 2005, pp. art 13,14,15,16,17)

Second: Financial Organization

According to Executive Decree No. 05-356, the office management appoints one or more auditors to audit the accounts.

The governor prepares an annual report on the office's accounts, which is sent to the Minister of Culture and the Board of Directors (Executive Decree No. 05-356, 2005, p. art 17).

Regarding revenue:

According to Algerian legislation, the office's revenue is derived from copyright rights collected for the use of Algerian cultural heritage or protected works. These revenues also include donations and bequests, collections from similar foreign institutions resulting from the exploitation of works and performances of Algerian authors and owners of related rights, as well as the office's loans subscribed for the benefit, in addition to civil compensation and, in general, all revenues generated by the office in the exercise of its powers (Executive Decree No. 05-356, 2005, p. art 21/1).

Regarding expenses:

In addition to the copyright and related rights amounts distributed to the owners of these rights and authors, the office incurs the majority of operational and equipment expenses, as well as the expenses necessary for the office to operate effectively (Executive Decree No. 05-356, 2005, p. art 21/2).

2. Second: The Powers of the National Office for Copyright and Related Rights (ONDA)

Executive Decree No. 05-356 sets out the core functions of the National Office of Copyright and Related Rights, which focus primarily on protecting the material and moral rights of authors and artists, as well as ensuring the protection of the country's cultural heritage and the related rights of creators in all literary and artistic fields. These functions also enable the Office to intervene effectively to preserve intellectual property and protect it from illicit exploitation, both within Algeria and internationally (Executive Decree No. 05-356, 2005, p. art 5/1).

2.1 Protecting the material and moral interests of authors and related rights holders.

Protecting the material and moral interests of authors and artists is one of the Office's core missions. It aims to secure their intellectual and economic rights in a context characterized by continuous technological developments and the emergence of new methods of exploitation and publication. This includes several aspects, including:

1. Protecting the material and moral rights of authors:

- Authors enjoy protection of their material rights, such as the rights to distribute works and public performance rights, as well as their moral rights, such as the right to attribute a work and the right to object to any modification that may affect their works (Executive Decree No. 05-356, 2005, pp. art 05/2-1).
- The office provides the necessary legal tools to protect these rights from infringement or illegal exploitation through various means, such as the internet and digital media (Executive Decree No. 05-356, 2005, pp. art 05/2-2).

2. Dealing with Foreign Works:

- The Office guarantees the protection of foreign authors' rights with respect to literary and artistic works exploited within Algeria. This protection is provided within the framework of bilateral and multilateral agreements concluded by Algeria with numerous countries and international organizations.
- For example, the office seeks to provide legal protection for foreign works in accordance with the principles of the Universal Copyright Convention, which provides similar rights to foreign authors as are provided to national authors. (Executive Decree No. 05-356, 2005, p. art 5)

3. Regulating the rights arising from the exploitation of works:

- The office is responsible for regulating the mechanism for collecting royalties from the use of literary and artistic works, whether through traditional means such as printing or public performance, or through digital means such as online publishing or the sale of digital music.
- The office issues the necessary legal licenses for the exploitation of works, and supervises the collection of royalties due for the commercial exploitation of these works. (Executive Decree No. 05-356, 2005, pp. art 5/2-4)

4. Defending authors' rights upon their request:

- Authors or related rights holders may request the office's intervention to defend their rights. The office shall take the necessary legal action against any infringement of their rights, whether in court or through other judicial means. (Executive Decree No. 11-356, 2011, p. art 7)

2.2 Protection of traditional cultural heritage and public heritage works

In addition to protecting the rights of contemporary authors and artists, the National Office of Copyright and Related Rights is also responsible for protecting traditional cultural heritage and works that constitute part of Algeria's cultural identity. This protection includes:

1. Protecting Traditional Cultural Heritage:

- The Office protects folkloric works that represent an integral part of Algeria's cultural heritage, such as traditional music, folk songs, dances, and handicrafts such as carpets and copper engraving. These works are considered the property of the Algerian people and hold great historical and cultural value.
- Because these works are often collective property with no single author identified, they are called "folklore," which is attributed to the communities or geographical regions that produced them. The Office is responsible for ensuring their rights and protecting them from unlawful exploitation or infringement (Executive Decree No. 11-356, 2011, p. annex art 02).

2. Protection of Public Heritage Works:

- Traditional cultural heritage includes works considered part of the "public heritage," such as folk tales, oral poetry, traditional theatrical performances, and music passed down from generation to generation. This heritage is considered the property of the entire community, not of a specific individual.
- The Office works to protect this heritage from unlawful appropriation or manipulation by non-Algerian parties, who may claim it for themselves or use it in a manner that harms Algeria's cultural values (Executive Decree No. 11-356, 2011, p. annex art 03).

3. Publishing heritage works and protecting them from distortion:

- The office's role also includes publishing traditional cultural works to document and protect them from extinction or distortion. These works are published through various media, such as books, CDs, and the internet, with the aim of preserving them for future generations. (Executive Decree No. 11-356, 2011, p. annex art 04)
- The office shall establish special mechanisms to protect these works from cultural piracy, especially via the Internet or through the media, where these works may be presented in a distorted manner or attributed to other cultures (presidential ordinance No. 03-05 , 2003, p. art 141).

4. Issuing licenses for the use of heritage works:

- According to Decree 03-05 on copyright, the Office is responsible for issuing licenses for the use of heritage works. This includes the use of these works in new artistic works, television programs, or films. The Office ensures that these works are used according to with laws that guarantee society's rights to cultural heritage (presidential ordinance No. 03-05 , 2003, p. art 140).

5. Activating the role of the Office in international protection:

- Given the global spread of cultural content on the Internet and media, the Office works to represent Algeria's interests in international organizations concerned with the protection of copyright and related rights. Through these organizations, the protection of Algerian cultural heritage is strengthened at the global level and ensures that it is not exploited illegally.

In light of the developments in the establishment and organization of the National Office of Copyright and Related Rights, as well as the tasks and powers assigned to it, it is clear that this body is important for the protection of literary and artistic property rights in Algeria. With the development of modern media and technologies, the role of this office in securing and protecting intellectual property rights has grown in importance, both locally and internationally.

However, the observations that can be drawn from this analysis point to some shortcomings in the practical application of these mechanisms, particularly in confronting contemporary challenges such as digital piracy, which has become a major threat to intellectual rights in Algeria and globally. There is also a lack of legal awareness among some target groups, such as creators and artists, regarding their rights and how to defend them.

Through research into this topic, it is concluded that it is necessary to strengthen the role of the National Office of Copyright and Related Rights in the areas of awareness and legal education. Awareness campaigns should be launched targeting creative groups, facilitating their access to information about their rights and how to protect them. In addition, the office should focus more on combating digital piracy by strengthening cooperation with technology companies and developing modern systems to monitor online violations.

Finally, Algerian legislation must keep pace with the global challenges posed by the digital revolution, with laws being periodically amended to include technological developments such as the digital rights of authors and artists. Among the proposed solutions is intensified coordination between the National Copyright Office and judicial authorities, as this will play a crucial role in expediting legal procedures and protecting intellectual property rights more effectively.

Second section: The Mechanisms of the National Office for Copyright and Related Rights to Protect Literary and Artistic Property

Literary and artistic products can now reach a global audience worldwide thanks to the rapid technological development in our contemporary world. Despite the numerous benefits of this development, this widespread dissemination has brought enormous challenges in preserving the rights of authors and artists. It requires effective legislation and mechanisms to protect their rights, which the Algerian legal system seeks to achieve through judicial and administrative mechanisms overseen by the National Office of Copyright and Related Rights.

In Algeria, intellectual property is a protected legal right that includes literary and artistic rights, which aim to protect intellectual works produced by authors and artists. This protection is not limited to local matters but extends widely within the framework of international agreements to which Algeria has committed, such as the Berne Convention for the Protection of Literary and Artistic Works and other agreements that promote copyright internationally.

However, despite significant legislative efforts, the protection of these rights faces serious challenges, particularly in light of technological advancements that have contributed to the rapid spread of artists' works, making them more vulnerable to piracy and counterfeiting. Accordingly, Algeria has adopted legal mechanisms to protect these rights, ranging from judicial proceedings to preventive measures taken by the National Office of Copyright and Related Rights.

These judicial and administrative mechanisms adopted by Algeria to protect intellectual property, particularly literary and artistic rights, represent the cornerstone of the legal system's efforts to protect creativity and guarantee the rights of authors and artists. However, these mechanisms are not limited to judicial protection alone; they also include a set of administrative procedures implemented by the National Office of Copyright and Related Rights, the official body responsible for ensuring the protection of literary and artistic rights in Algeria, which is the civil and criminal suit that will be addressed in this section.

1. First: Civil Action to Protect Literary and Artistic Property Rights

The basic principle of civil liability is that it prohibits harming others, whether this prohibition is explicit or implicit. If a person commits an unlawful act, he must

compensate for the harm he inflicted on others (Law No. 05-07 amending and supplementing Ordinance No. 75-58, 2007, p. art 124).

The infringement of literary and artistic property takes the form of civil liability, as the Algerian legislator provided the possibility and necessity of resorting to a civil lawsuit if civil liability arises as a result of someone's action, whoever it may be (presidential ordinance No. 03-05 , 2003, p. art 143). It also made all cases related to intellectual property among the cases for which the specialized commercial court is the competent judicial authority, with the latest amendment to the Civil and Administrative Procedures Law No. 22-13 (law 22-13, 2022, p. art 536bis). This was to ensure the principle of specialization, and the legislator added a procedural mechanism that contributes to this protection, represented by precautionary measures.

1.1 Precautionary measures to protect literary and artistic property rights:

In the event of an infringement of the work of the author, he has the right to demand precautionary procedures aimed at stopping such infringement after the infringement has occurred, and their aim must be to confront the infringement, limit and eliminate the damages, and take the necessary measures to redress the damage. The latter can be summarized in two points:

First: Seizure

Article 646 of the Code of Civil and Administrative Procedures stipulates it (Law No. 08-09 , 2008, p. art 646), as it is the placement of the debtor's movable and immovable assets under the control of the judiciary to prevent him from disposing of them to guarantee payment of the debt. The creditor carried it out, but the concept of the procedure differs when it is related to a literary or artistic work.

When an infringement occurs on a work in Algerian legislation, the National Office of Copyright and Related Rights intervenes through sworn agents who are employees whose duties include inspecting and considering any infringement or violation of literary and artistic property that is received directly or observed directly. Their mission is to seize counterfeit copies (presidential ordinance No. 03-05 , 2003, p. art 145) , copies that contain an infringement on a specific work or a forgery, and place them under the supervision of the court. Then, these sworn assistants notify the competent judicial authority with a request to implement the precautionary seizure within 3 days from the day of notification. (presidential ordinance No. 03-05 , 2003, p. art 146)

Thus, the Algerian legislator has granted the National Office of Copyright and Related Rights the privilege of applying seizure and claiming it directly before the judicial authority, which contributes to facilitating the process of proving forgery, imitation, or piracy, as intervention is swift and direct by sworn agents.

This authority serves as a guarantee for the protection of literary and artistic works, which gives the National Office for the Protection of Copyright and Related

Institutional Protection of Literary and Artistic Property in Algerian Legislation ***Chabane Nouha, Ben gouiya Mokhtar***

Rights the status of an effective oversight body whose goal is to detect imitation, forgery, and other attacks that may occur against literary and artistic works (presidential ordinance No. 03-05 , 2003, p. art 147).

The materials that may be subject to seizure are provided in Article 147, paragraphs 3 and 4 of Law 03-05:

- Copies of the counterfeit work
- Materials used in the counterfeiting
- Revenues generated by the infringement of the work.

Second: Destruction

It is the process of destroying the imitation of a work and the materials used in illegal transmission and publication.

However, to complete this process, the competent court must ensure that the work subject to the request for destruction is an imitation, an illegal transfer, or published without the consent of its owner. If this is proven, the request will be approved, and the judge before whom the dispute is presented will issue a destruction order. (presidential ordinance No. 03-05 , 2003, p. art 157/02)

The latter may also seek the assistance of an expert in the field related to the work and assign him the task of preparing an expert opinion to verify the existence or absence of imitation or forgery.

1.2 Civil liability suit

The general rules of civil law relating to civil liability prohibit the infliction of harm on others, whether express or implied. All civil law rules are based on the obligation to provide adequate care and insight when conducting business, whether natural or legal. Every unlawful act creates a right to compensation for the harm it causes to others. (Ben Dris, 2014, p. 127)

Intellectual property rights are generally considered rights subject to civil protection, as literary and artistic creativity, with the rights it carries for its author, is one of the most important things produced by the human mind (Ben Dris, 2014, p. 128).

This production may fall victim to an attack by counterfeiting, imitation, unauthorized transfer, forgery, illegal copying, etc. This in turn, causes non-material damage to the owner of the literary and artistic rights and may also cause material damage to the owner of the related rights to the literary and artistic work. Hence, civil liability is established according to the general rules, i.e., by fulfilling the three pillars, which are the harmful act, the damage, and the causal relationship (Boumaza, 2016, p. 156).

It should be noted that the conditions for establishing civil liability for the protection of literary and artistic property are the same as the general conditions for establishing traditional civil liability, namely:

1. The harmful act or error
2. The actual damage
3. The causal relationship between the act and the damage

Articles 143 to 150 of Decree 03-05 stipulate that a lawsuit for compensation for damages resulting from the unauthorized exploitation of an author's work shall be filed before the civil court on the basis of a civil liability lawsuit, whether contractual or tortious; the fulfillment of its three pillars is sufficient for the lawsuit to be filed to protect the author and all the literary and artistic rights contained therein that have been infringed upon (presidential ordinance No. 03-05 , 2003, pp. art 143-150).

The establishment of civil liability produces an effect represented by either correcting the error that caused harm to the author or the owner of related rights through specific implementation or compensation if it is impossible.

- 1) Specific enforcement is a restoration of the condition that existed before the assault. There are two different approaches to this procedure. The first is the Anglo-Saxon or Anglo-American approach, which holds that damage can only be redressed through compensation, unlike the second Latin approach, which prioritizes specific enforcement (Ben Dris, 2014, p. 134).

To apply the general rules in civil matters, it is not permissible to claim compensation if specific performance is possible or for a fee.

Specific enforcement is preferred over compensation or enforcement for a fee, as it leads to the complete elimination of damage, such as returning a work to its owner, transferring all revenues to the owner of the material rights to the work, and other methods that contribute to removing distortion and returning it to its origin. (Boumaza, 2016, p. 164)

- 2) Compensation is an alternative solution to specific performance if the latter is impossible. It may be in the form of a cash amount or other means.

The provisions relating to copyright do not specify compensation and leave it to general law, i.e., civil law.

Since the damage may be material or moral, the law allows the author to claim compensation for the damage in both cases, where the basis is different, as compensation for material damage is estimated according to the general rules, taking into account the surrounding circumstances and the extent of the damage's impact on the author or owner of related rights (Ben Dris, 2014, p. 135).

If the damage is caused by unfair competition, it is difficult to estimate compensation due to the lack of elements that help in this, which makes the compensation estimated arbitrarily (Boumaza, 2016, p. 166).

The most prominent example of compensation is the case of the famous song Abdelkader Ya Boualem, which was filed by the plaintiff (Z.H.)

against the National Office in 1998, demanding the office the rights to compose and write the song, which is famous in the Algerian cultural heritage. The case resulted in a ruling appointing an expert to identify the singers who sang and recorded the song, the audio tape production companies, and the copyrights that must be paid in cash. The Judicial Council upheld this decision, which led to the expertise and a claim for recourse after the 2004 expertise with the same parties, where the prosecutor requested the authentication of the expertise, which is what happened. The ruling was issued, obligating the court, as it was the one that granted the exploitation permit for the song, to compensate the plaintiff in the amount of four million, sixty-five thousand, four hundred and forty-two dinars and eighty-two centimes, or 4,065,442.82 DZD, which represents the copyright. In addition, compensation of one hundred thousand dinars, or 100,000.00 DZD, with the defendant bearing the legal expenses, including the expert's expenses. (Case Zghada vs ONDA ,, 2004)

2. Second: Criminal Action to Protect Literary and Artistic Property Rights

Although civil law constitutes the first line of defense for intellectual property rights, serious infringements that can significantly threaten financial and moral rights require criminal action. Therefore, the misdemeanor charge for counterfeiting represents an additional legal tool aimed at more effectively deterring infringers (Alouqa & Maghni, Issue 10, 2017).

Literary and artistic property rights are protected criminally through what is known as an action for imitation, which is defined as “being achieved by simply transferring a work or performance that has not fallen into the public domain without the permission of its owner.” (Ben Dris, 2014, p. 156)

Consequently, the protection of these rights necessitates the initiation of a public lawsuit against perpetrators of imitation, pursuant to Algerian Order No. 03-05..

2.1 The Misdemeanor of Imitation and Its Elements

1.- The Misdemeanor of Imitation:

The Algerian legislator criminalized imitation in Articles 151 and 152 of Ordinance 03-05 but did not provide a specific definition, instead only listing the acts that constitute it. From a jurisprudential perspective, however, imitation is defined as any direct or indirect infringement upon the rights of an author in a protectable work, irrespective of the method or form the infringement takes. (Boumaza, 2016, p. 168).

2.- Elements of the Misdemeanor of Imitation

Order No. 03-05 does not specify the elements of the misdemeanor of imitation but leaves that to the general rules, namely the legal, material, and moral elements.

Institutional Protection of Literary and Artistic Property in Algerian Legislation *Chabane Nouha, Ben gouiya Mokhtar*

- The legal element is represented by the legal texts that criminalize all forms of infringement on literary and artistic works, which are stated in Articles 151 to 155 of the aforementioned Decree 03-05 (presidential ordinance No. 03-05 , 2003, pp. art 151-156) , and is based on the principle that there is no crime and no punishment without a text.

- The moral element is the criminal intent that must be present for the crime of imitation to be committed. It is the perpetrator's knowledge and awareness of the actions that fall within imitation and his will to achieve a result represented by the infringement on a literary or artistic work and the moral and financial rights of the author who produced it. (Alouqa & Maghni, Issue 10, 2017)

The intent must be general and not specific. It is sufficient for the perpetrator to know that he is infringing on someone else's work without their permission for the moral element of the misdemeanor to be established. Moreover, good faith is not a requirement in this type of crime, which means the accused is responsible for proving it, and the judge determines whether it is present (Boumaza, 2016, p. 173).

As for joint works, if the act was committed by one of the partners without the consent of the others, it cannot be considered a crime, and no liability will be incurred against him, but he will remain civilly liable. This is an opinion agreed upon by most jurists.

However, if the act was committed by the publisher or a foreigner, then the crime is committed and the perpetrator is held criminally and civilly liable (Alouqa & Maghni, Issue 10, 2017).

- The material element does not punish the legislator for the intention to commit the misdemeanor of imitation, but if the act is carried out in the outside world and produces its effects, and because of the importance of the situation, the Algerian legislator stipulated a group of material acts that constitute the misdemeanor of imitation exclusively (Bakay & farha , 2017-2018, p. 55) and which are punishable by law in Order 03-05. Therefore, to commit a crime, the person must have committed an act that includes acts of infringement on literary and artistic works, and the protection provided for these works must not have expired yet, and the crime must have been committed either directly or indirectly (Ben Dris, 2014, p. 152).

Where it is concluded that the misdemeanor of imitation has been committed, it is sufficient for the criminal behavior (the act) to occur, for its effects (the result) to be produced, and for the causal relationship between the act and the result to be established, i.e., the infringement on the literary or artistic work between them.

Also, with reference to Order 03-05, any person who unlawfully discloses a work or infringes on its integrity or the artist's performance, copies a work or an artistic

performance, imports or exports pirated copies, sells them, rents them, or places a pledge on the circulation of pirated copies of literary works or artistic performances is considered to have committed the misdemeanor of counterfeiting (Ourziguen & Khalfouni, 2016, p. 27).

2.2 Penalties for the misdemeanor of imitation

Penalties are divided into two types: principal and supplementary, which is the type used in most misdemeanors under Algerian law.

1. Principal penalties stipulated in Article 153 of Decree 03-05 are imprisonment for a period of 6 months to 3 years and a fine of between five hundred thousand dinars (500,000.00 DZD) and one million dinars (1,000,000.00 DZD), whether the publication took place in Algeria or outside the national territory (presidential ordinance No. 03-05 , 2003, p. art 153).

The original penalty shall be doubled in the event of recidivism, according to Article 156 of the same order (presidential ordinance No. 03-05 , 2003, p. art 156).

2. Additional penalties are divided in Article 157 of Order 03-05, which include

- Confiscation, including the confiscation of financial amounts representing revenues resulting from the illegal exploitation of the work or artistic performance. It also includes all pirated copies and all equipment created for use in imitation, and all pirated copies shall be destroyed. (presidential ordinance No. 03-05 , 2003, p. art 157)
- Publishing the ruling is the responsibility of the civil party requesting it through the newspapers designated by him. (presidential ordinance No. 03-05 , 2003, p. art 158)
- Closing down the establishment producing the counterfeit, as stipulated in Article 156, Paragraph 02, either temporarily for a period not exceeding 06 months or permanently by a court ruling, if necessary, in the event of serious damage (presidential ordinance No. 03-05 , 2003, p. art 156).

This is done based on a complaint from the injured party, the owner of the protected rights, or his legal representative, i.e., the victim of the crime under discussion, which is the misdemeanor of counterfeiting, to the competent judicial authority in the region, according to Article 160 of Order 03-05.

In summary, it is evident that Algeria has made substantial progress in intellectual property protection through legislative and regulatory initiatives designed to safeguard the rights of authors and artists. Nevertheless, the Algerian legal system continues to confront several contemporary challenges that impede the effectiveness of this protection. Among the most significant of these challenges are

1. Digital imitation and electronic piracy: With the advent of the internet and digital platforms, the dissemination of literary and artistic works has become easier than ever, making them increasingly vulnerable to imitation and piracy. Although Algeria has taken significant legislative steps to combat this

phenomenon, combating digital piracy requires new and advanced mechanisms capable of dealing with rapid technological developments.

2. Lack of legal awareness among creators and artists: Many creators and artists are often unaware of their legal rights and may not know how to protect their works from infringement. This lack of awareness can lead to the widespread exploitation of intellectual property rights, often without respect for the relevant laws. Therefore, it is essential to enhance the legal awareness of authors and artists at all levels.

In addition to these challenges, it should be noted that international cooperation is a vital element in protecting intellectual property, especially in a world characterized by the proliferation of works across borders. In this context, international agreements such as the Berne Convention and the TRIPS Agreement become essential, as they ensure the protection of works at both regional and international levels.

Finally, The National Office of Copyright and Related Rights (ONDA) is the foundation of Algeria's intellectual property protection system. This office plays a crucial role in protecting the rights of authors and artists through its oversight and enforcement functions. It implements precautionary measures, such as seizure and destruction of infringing materials, enhances the effectiveness of legal procedures, and works to reduce violations of their rights. ONDA's mission to register and protect intellectual property is closely aligned with the need to strengthen legal procedures to address contemporary challenges effectively.

Overall, the success of the Algerian system in protecting intellectual property depends on its continued adaptation to modern challenges, strengthening the legal awareness of creators, and activating international cooperation to provide comprehensive and effective protection for literary and artistic works in Algeria and abroad.

Conclusion

The protection of copyright and related rights, also known as literary and artistic property rights, is a fundamental issue that contributes to strengthening the culture and social identity of societies, especially in light of the contemporary challenges posed by technological progress and the spread of digital piracy. Despite the efforts of the National Office for Copyright and Related Rights (ONDA), the enforcement of laws protecting these rights faces numerous obstacles.

This analysis highlights several findings that emphasize the urgent need to enhance Algeria's intellectual property protection mechanisms, especially for the institutions responsible for their implementation. Among the most notable findings are

1. **Inadequate enforcement of laws:** Despite the existence of national and international legislation to protect literary and artistic rights, the implementation of these laws faces challenges, particularly in the face of the increasing prevalence of digital piracy. More effective and flexible oversight mechanisms are required to keep pace with technological developments.
2. **The role of the National Copyright Office:** The National Office for Copyright and Related Rights (ONDA) is a cornerstone of the protection system for literary and artistic works. However, the institution operates under significant pressure due to a shortage of specialized human and technical resources. Therefore, it is crucial to expand its role and strengthen collaboration with other institutions to effectively combat legal violations.
3. **Weak coordination between judicial bodies:** Despite the existence of judicial mechanisms to protect intellectual property, coordination between legal oversight bodies is weak, impeding the speed of procedures and contributing to the spread of violations. Strengthening coordination between judicial and administrative bodies will play a significant role in expediting the prosecution of intellectual property violators.
4. **The importance of training local experts in intellectual property:** The study highlights the need to train and develop local experts in intellectual property rights. A shortage of specialized personnel hampers the efficient handling of cases, which necessitates the implementation of strategies to cultivate specialists in this area.
5. **Expanding the Scope of Intellectual Property Crimes:** Limiting intellectual property crimes to counterfeiting alone does not align with the current reality of intellectual property infringements. Instead, the scope of these crimes should be broadened to encompass all forms of intellectual property infringement, particularly in today's digital age and with the rise of modern technologies.

Based on these findings, it can be concluded that protecting intellectual property rights in Algeria requires a collaborative effort among government institutions, judicial bodies, and civil society. This can be achieved by developing appropriate legislation, enhancing the roles of relevant institutions, and creating specialized frameworks in this area.

The successful modernization of Algeria's copyright framework hinges on a concerted effort among all stakeholders. By embracing both immediate reforms and a forward-looking agenda, Algeria can transition from merely combating piracy to actively nurturing a thriving, sustainable creative economy that benefits creators, industries, and the public alike. Such an evolution would not only align the national system with global standards but also secure the economic and cultural value of Algeria's artistic heritage in the 21st century

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