



## THE AUTHOR'S RIGHT TO WITHDRAW FROM DISCLOSING THE INTELLECTUAL WORK TO THE PUBLIC IN ALGERIAN LAW.

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### **Abstract**

*Intellectual works are vessels for the ideas of their authors. They reflect their intellectual personalities, religious beliefs, and opinions regarding various human relationships, natural, cultural, economic, and political phenomena. Given that human thought evolves and intellectual convictions are subject to change due to the author's influences or surroundings, Algerian copyright law ensures authors the right to retract their decision to disclose their work to the public. This right can be exercised either during the creation process, termed the "right of repentance," or after the work has reached the public, referred to as the "right of withdrawal." This moral right may conflict with the rights of other parties, whether they participated in co-authoring the work, as in the case of joint authorship, or if they hold licenses for derivative works, financial rights, or other forms of dissemination to the public. Despite this conflict, the right of repentance and withdrawal is favored over the author's obligations towards others, albeit within specified parameters.*

**Keywords:** Moral rights of the author; Right of withdrawal; Financial rights; Holder of financial rights; Copyright law.

### **INTRODUCTION:**

International agreements related to intellectual property and national copyright laws, including Order No. 03-05<sup>1</sup> concerning copyright and related rights, recognize both the material rights that ensure authors financial returns by placing their intellectual works in commercial circulation through appropriate channels, as well as moral rights that grant authors several authorities. These authorities guarantee the preservation of their moral connection to their works, maintaining their integrity, determining the moment of completion and readiness for public disclosure, and simultaneously providing the possibility to retract this public disclosure. This retraction, whether in its preparatory stage or after its realization and the legitimate dissemination of the work to the public, is known as the right of repentance and withdrawal.

The author's decision to retract a work that has been published, broadcast, or presented to the public, or before finalizing the process of disclosure, involves reconsidering the original decision to make it public. This also includes the subsequent decision to exercise the prerogative right to publicize the work through available channels. This right is exercised after the author initiates the exercise of their financial right or after they have exercised it, using their own resources if available, or after the work transitions from the author's possession to the possession of others, whether they are publishers, producers, translators, or the public. The decision to retract is not arbitrary but requires a substantial intellectual rupture between the work and its author, where the content of the work no longer aligns with the author's intellectual convictions that have changed since completing the work and making the disclosure decision.

The Algerian legislator, in Article 24 of Order No. 03-05, grants the author of a work that meets the conditions of protection the right to retract from its public disclosure and presentation to the public when the work becomes contrary to the author's intellectual convictions. This right can be

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<sup>1</sup>- Order No. 03-05, issued on July 19, 2003, pertains to copyright and neighboring rights. It was published in Official Gazette No. 54, issued on July 7, 2005.



exercised whether the author's decision to retract is made after the work has left their possession and has been handed over to the holder of financial rights, whether a publisher or a producer who has initiated the process of publicizing the work. For instance, if the publisher begins printing the book under a publishing contract, this is known as the "right of repentance." The decision to retract the public disclosure of the work can also be made after it has entered available channels of communication, such as screening a film in cinemas, staging a play in theaters, placing a book in libraries, or making it available online. This is referred to as the "right of withdrawal."

Although the right to retract the publication and disclosure of one's work to the public through repentance or withdrawal may conflict and intersect with the rights transferred to financial rights holders, and despite the challenges it poses in some cases, the Algerian copyright law acknowledges this right for authors. This recognition indicates the existence of valid justifications upon which the acknowledgment of this right is based.

The justification for recognizing an author's right to retract their intellectual work from public disclosure lies in the need to balance the author's autonomy and evolving creative intentions against contractual obligations towards financial rights holders, co-participating authors, and authors of derivative works. The Algerian legislator carefully weighs these factors when addressing the exercise of this right by authors and their contractual commitments to other stakeholders.

To address the posed problem, we will cover the following elements:

**First: Justifications for legally acknowledging the author's right to retract the public disclosure of their intellectual work.**

**Second: Guidelines for the author's exercise of the right to retract the public disclosure of their intellectual work.**

**Third: The fate of the work after retracting its public disclosure.**

**\*First: Justifications for legally acknowledging the author's right to retract the public disclosure of their intellectual work:**

Although the Berne Convention<sup>2</sup> did not explicitly include the right of withdrawal in Article 6(2), which focuses on moral rights and emphasizes the rights of attribution and integrity, it does allow national legislations of member states to expand the scope of moral rights based on the minimum protection principle. This has led many countries, including Algeria, to recognize the right to disclose, as well as the right of repentance and withdrawal, even if not explicitly mentioned in the Berne Convention. This recognition is based on several justifications:

#### **1- The right to disclose the intellectual work**

The author alone has the right to choose the timing of the disclosure of their intellectual work and the manner in which it is presented to the public. As the primary custodian of their creative product, the author decides when the process of its creation concludes and when it is ready to be released to others. The decision to disclose is a psychological one that differs from publication, which is a form of financial rights<sup>3</sup>. The author may decide that their work is complete and ready for public disclosure, yet still delay exercising the financial rights granted by law for personal or material reasons, such as the absence of suitable conditions for contracting, especially in terms of financial compensation. Sometimes, the author chooses not to exercise their financial rights, opting instead to place their work in public libraries.

The decision to disclose marks a crucial turning point in the relationship between the author and their work, as well as with the public. From the moment the author makes this decision, all other authorities associated with moral rights, as well as financial rights, come into play. The law acknowledges all these rights from the moment the work is completed, automatically. As soon as

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<sup>2</sup>- "The Berne Convention for the Protection of Literary and Artistic Works," adopted on September 9, 1886, was joined by Algeria with reservations under Presidential Decree No. 97-341 dated September 21, 1997, published in Official Gazette No. 61 on September 14, 1997.

<sup>3</sup>- Claude Colombet, "Basic Principles of Copyright and Related Rights in the World: A Comparative Study," translated by the Arab Organization for Education, Culture and Science, Tunisia, UNESCO, Paris, 1995, p. 66.



the work takes on its final formal structure, the author possesses both moral and financial rights. However, their actual exercise begins only after the decision to disclose the work is made. Moreover, the right to disclose aligns with the nature of self-expression inherent to an author's personality. The author determines the intended purpose, subject matter, and is knowledgeable about all its stages. They are aware of their creative and research abilities, as well as their limitations. Thus, only the author can gauge the moment of completion of their work. Given the inherent unpredictability of human cognition in terms of analysis, research, and deduction, coupled with the potential for evolving convictions, what an author perceives as complete at a certain point may be seen as deficient after some time. Ideas, cultural and religious beliefs, and political stances that an author embraces can shift over time due to changing social, economic, and political circumstances. This further establishes the right to disclose as extending to another right, which is the right of repentance and withdrawal.

The right of repentance and withdrawal is considered a privilege or authority stemming from the moral right attributed to authors of intellectual works that meet protection criteria. These works must be embodied in an authentic formal structure, regardless of their expression style, merit, or orientation, and regardless of whether they are fixed in a tangible medium. This right empowers authors to retract their publication and make their work unavailable to the public, whether at the stage of initiating publication, such as the printing phase, or after the work has been published and is widely available for commercial circulation<sup>5</sup>.

The author who carefully weighed their reputation at the moment they decided to share their work, which embodies their personality, is prepared to release it from their possession to the public, all while maintaining their moral connection to it by keeping it associated with them. However, after some time has passed, they might find that the work no longer accurately reflects their personality or their vision of the subject matter it addresses. This is precisely why comparative legislations, including Algerian law, recognize the author's right to retract or withdraw their work from public presentation during the period between the decision to disclose it and before it is made available through channels that allow the public to access it. This right extends to after the work has been presented through these channels and has become known to and accessible by the public.

## **2- Respecting Freedom of Thought and Changing Intellectual Convictions**

The freedom of intellectual and scientific production is guaranteed in national constitutions and international treaties. Through these provisions, creators and researchers can engage in the process of authorship and present their intellectual creations within a legislative framework that ensures their protection. However, this freedom doesn't solely protect the intellectual product or grant the author extensive powers shielding them from external pressures or factors that might negatively affect their thoughts or scatter their focus. The author is recognized by copyright law as having a broad freedom to choose the subject of their creation and to determine the necessary time for this process. They are the sole overseer who decides when the creative process is complete and ready for public presentation, in the manner and form they choose.

This freedom remains incomplete unless it takes into account the potential for changes in ideas and convictions, whether political, cultural, religious, or ethical. It also acknowledges the progressive evolution in the literary, artistic, and scientific persona in terms of style and content, as a result of extensive research, reading, and intellectual and scientific engagement. An intellectual work serves as a mirror reflecting the cultural, political, and civilizational context of the society to which the author belongs. Moreover, it reflects the author's personality, their intellectual inclinations, creative abilities, analytical skills, and capacity to find solutions to the issues at hand. Thus, in recognition of the nature of human thought and the requirements of intellectual production freedom, authors are granted the right to modify or retract their work if they find that

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<sup>5</sup>- NawafKannan, "The Author's Right - Contemporary Models of Author's Right and its Protection Means," *Dar Al-Thaqafa*, Amman, 2004, p. 117.



their creation no longer aligns with their convictions or no longer matches their evolved intellectual capabilities after years of research, investigation, and learning. This right extends even after the work has left the author's possession and has been transferred to the person who holds the financial rights, and even after it has left the possession of the financial rights holder to reach the public.

### **Secondly: Guidelines for the Author's Exercise of the Right to Retract Their Intellectual Work from the Public**

The legal recognition of the author's right to exercise retraction and withdrawal represents the highest form of respecting the author's moral rights and individuality. Since this right might coincide with the exercise of financial rights that enable the dissemination of the work to the public, and since financial rights can be separated from the author's identity and can often be transferred to others, the holder of these rights might be someone other than the author themselves.

In many cases, the holder of the financial rights might be a different individual who has acquired the right to disseminate the work to the public through a contract with the author<sup>6</sup>. Therefore, the exercise of the right to retract and withdraw the work might come into conflict with the binding force of the contract between the author and the financial rights holder.

For this reason, it was necessary to impose certain limitations on this right in order to achieve a fair balance between the interests of the contracting parties: the author's moral interest in protecting their reputation and identity, and the publisher's financial interest in fulfilling the terms of the agreement and maintaining financial transactions related to the work as per the contract. These limitations are designed to ensure that both parties' interests are respected and upheld, without undermining the contractual obligations or the principles of intellectual property protection<sup>7</sup>.

#### **1-The non-conformity of the work with the author's intellectual conviction:**

The right to withdraw the intellectual work's publicity is considered an exceptional authority granted to the author, due to its potential conflict with the rights of others; publishers, producers, performers, or other authors who participated in the creative process of the work. Therefore, the legislator does not leave the author with absolute discretion, but rather requires, in Article 24, resorting to this authority when the work no longer aligns with the author's convictions. The concept of "convictions" here refers to the sum of assumptions, stances, and opinions held by the author, which could be scientific, political, cultural, ethical, or religious. The Algerian legislator, in Law No. 03-05, excludes judicial intervention in assessing the reasons for withdrawing the publication and availability of the work to the public. This enhances the exceptional authority granted to the author, as if discretionary power were left to the judge to assess the seriousness of the author's reasons, it would open the door to judicial assessment of the grounds used to exercise this authority. This could lead to a rejection of the withdrawal request if the court is not convinced of the seriousness of the author's reasons, posing a serious limitation on the author's literary right<sup>8</sup>. So, an author who is no longer convinced by the ideas and opinions in their work, which has transferred its physical possession to the holder of the financial rights, initiates either halting the creation of the basis of communication to the public before the completion of public dissemination, or withdrawing copies of the work from circulation after actual publication, through notification or announcement directed to the financial rights holder. This leads us to say that the moral element represented by the author's sense of regret about the content of their work and their desire to reclaim it from the possession of others, whether contractually associated with the rights holder or the public, must be accompanied by an external material element, which is the declaration of their intent to retract the publication of the work.

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<sup>6</sup>- AitTfatiHafiza, "Application of Copyright Law in the Higher Education Environment," *Journal of Legal and Political Sciences*, University of Ouargla, Volume 12, Issue 1, 2021, p. 883.

<sup>7</sup>- Abdullah Mubarak Al-Najjar, "The Literary Right of the Author in Islamic Jurisprudence and Comparative Law," *Dar Al-Mareekh*, Riyadh, 2000, p. 118.

<sup>8</sup>- Abdul Rashid Maamoun, Mohammed Sami Abdel Sadek, *Copyright and Related Rights in Light of the New Intellectual Property Law No. 82 of 2002*, Dar Al-Nahda Al-Arabiyya, Cairo, 2008, p. 299.



It's worth noting that this right is a pure personal right exercised by the author and does not transfer to their heirs after their death. The heirs do not have the right to exercise it after the author's death; they only have the right to initiate legal action against anyone who decides to exercise this right after the author's death. This is evident from Article 26 of Law No. 03-05, which specifies the rights that transfer to heirs after the author's death.

Through the provisions of Articles 24 and 26 of the Algerian Copyright Law, we observe that the Algerian legislator addressed the consequences arising from the exercise of the right of repentance and withdrawal between the author and the rights holder, as well as its fate after the author's death. However, the legislator did not delve into how this right is exercised in the case of a collectively authored work, where the author's decision might conflict with the desires of the other participating authors for publication. Similarly, this situation extends to derivative works, which are based on the original work, where the author wishes to retract its public release or withdraw it from circulation after publication.

Collectively authored works are based on joint intellectual effort involving a number of authors, resulting in multiple creative contributions guided by a common idea. Whether it's possible to separate each contribution from another or not depends on the nature of the shared concept<sup>9</sup>.

The protection system for such collectively authored works considers each contributing author as having moral rights, including the right of withdrawal from circulation and the right of repentance. If this right is exercised based on a collective decision by all authors, there is no issue. However, reaching a collective decision among all participating authors is often unrealistic. Therefore, individual decisions to withdraw the work from circulation might harm the interests of other authors and could distort the work, especially if a contribution is an essential element on which the work is built.

Referring to Article 15 of Law No. 03-05, which states, "... the rights of the work belong to all its authors, and these rights are exercised according to the agreed conditions between them..." indicates that the term "rights" here encompasses both moral and financial rights. Consequently, if it's not feasible to separate the contribution of each author from the other contributions that constitute the collectively authored work, the right of withdrawal cannot be exercised through an individual decision; rather, a unanimous agreement among all participating authors is required to withdraw the work from circulation.

In the case where it is possible to separate the individual contributions of each author, each author has the right to exploit their part in the work, provided that it doesn't harm the work or the other partners.

Likewise, the right to withdraw from circulation can also raise issues in derivative works such as translations. If the author of the original work, after granting permission for derivative creation, decides to permanently cease the process of public dissemination of their work, also known as the "right of regret," or withdraw it from circulation after copies have entered commercial distribution channels, what is the fate of the derivative work (derived from it) in this case? Does the author's elimination of their work from existence result in withdrawing all copies of the derivative work from the markets?

The Algerian legislator, in Law No. 03-05, did not provide solutions for such cases. In Article 24, the legislator simply offered the justification that allows the author to halt the process of publishing the work or withdraw it from the distribution channels. This justification stems from the lack of alignment between the content of the work and the author's new intellectual convictions. In fact, this justification upon which the right of withdrawal is based raises several questions. If the legislator here placed the intellectual personality of the author at a higher level than their contractual commitment with the publisher, granting them the right to halt the communication of the work to the public and withdraw it after publication in exchange for compensating the rights holder for the damages resulting from the author's decision. This is because the work is an extension of the author's personality and an expression of it. This personality changes and evolves

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<sup>9</sup>- Abdul Rashid Maamoun, Mohammed Sami Abdel Sadek, *Ibid.*, p. 301.



over time, so it's unreasonable for the work that shares a connection with the author's personality to remain inaccessible to the public.

Since derivative works might undergo certain changes required by the process of derivation, but the spirit and essence of the original author's ideas and personality should not be altered<sup>10</sup>, this implies that if the original author's intellectual convictions change after granting permission for derivation to others and they decide to withdraw the derivative work that was subject to the license from circulation, it is unreasonable to allow these changed convictions to be disseminated in other works that differ in nature but are built upon them. Changing the mode of expression and the form of the work here does not alter the content of the expressed idea.

Although it's possible to revoke the permission for derivation before the derived work comes into existence, by not allowing it to take on a tangible form, after this point, the author of the derived work possesses the moral right with all its four full authorities<sup>11</sup>.

This situation cannot be evaluated based on what is stipulated in Article 24 concerning prioritizing moral rights over the contractual obligation binding the author with the rights holder (publisher). This is because the publisher is not in the same position as the author of the derived work. The law refers to the publisher as the rights holder, indicating that they only inherit financial rights, and based on those, they can disseminate the work to the public as agreed upon in the contract with the author. However, they do not possess moral rights.

In contrast, the author of the derived work invests significant intellectual effort, deserving protection for their creation and having the status of an author entitled to moral rights, closely tied to their personality. Withdrawing the work would essentially terminate the existence of the derived work and all associated rights.

## **2-The author paid fair compensation to the owner of the financial rights:**

The exercise of the right of withdrawal and repentance, as per the second paragraph of Article 24 of Law No. 03-05, is contingent upon the author providing a fair compensation for the damages caused by the withdrawal to the beneficiaries of the relinquished rights. Thus, if the law recognizes the author's right to retract the publication of their work or withdraw it from circulation after it has been published and made public, as a privilege granted to them by the moral right recognized by the law, then they are obliged to compensate the financial rights holder, whether it is a publisher or producer. This compensation should be fair, considering the financial opportunities lost due to the author's exercise of this privilege, as well as the expenses incurred, which were expected to be covered by the sale of the work<sup>12</sup>.

The legislator aims through the enactment of this provision to achieve a fair compensation, balancing respect and reverence for the author's moral right, and what it entails of privileges and financial rights for others. Furthermore, even though the author's right to withdrawal due to the non-conformity of the work's content with their new intellectual convictions is of higher status than contractual commitment, it is restricted by being contingent upon compensating the rights holder fairly<sup>13</sup>. However, it was stipulated that the compensation must be paid in advance before exercising the withdrawal or repentance. This constitutes an obstacle for the author to exercise this right<sup>14</sup>, especially for those who lack the financial capacity to pay. Simultaneously, they are faced with an intellectual disconnect between them and their intellectual creation, which necessitates swift intervention to retract from it.

## **Thirdly: The Fate of the Work After the Decision to Withdraw its Public Disclosure**

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<sup>10</sup>- Ziyad Tariq Jasim, *Derivative Works in the Digital Environment*, University of Sharjah Law Journal, University of Sharjah, Volume 17, Issue 2, 2020, p. 730.

<sup>11</sup>- Dalia Leibzig, *Copyright and Related Rights*, translated by Mohamed HossamLotfi, King Faisal Center for Islamic Research and Studies, Riyadh, 2003, p. 119.

<sup>12</sup>- NawafKanaan, *Previous Reference*, p. 122.

<sup>13</sup>- Abdullah Mabrouk Al-Najjar, *Previous Reference*, p. 150.

<sup>14</sup>- AbdulhafizBelqadi, *The Concept of Copyright and its Criminal Protection Limits*, Analytical Critical Study, Dar Al-Aman, Morocco, 1997, p. 123.



Referring to Article 24 of Order No. 03-05, we find that it points to the authority exercised by the author during the preliminary stage preceding the work's exposure to the public. This stage occurs between the decision to reveal, publish, broadcast, or otherwise make the work available to the public, using the term "right of repentance." During this stage, the author can halt the process of making the work accessible to the public, while the authority of withdrawal after the work reaches the public and becomes widespread is referred to as "the authority of withdrawal."

Given that the justifications for repentance or withdrawal in Algerian legislation are based on purely internal motives, specifically the lack of alignment between the content of the work and the author's convictions, most of these motives can be addressed and rectified. This allows the author to modify what they deem contradictory to their intellectual convictions and reintroduce the work for circulation anew, rather than subjecting it to final elimination. This concept is not explicitly outlined in Order 03-05.

Modification is a complementary authority to the right of repentance and withdrawal, whether exercised after the right of repentance or withdrawal. It enables the author to reconsider the content of their work and make changes as necessary to align with their personality and new convictions. The modifications that the author might introduce after exercising the right of repentance can pose challenges, especially when the financial right transitions to others. These modifications can fundamentally alter the nature of the work in terms of its content or form from the original work, particularly if they were the basis for the contract with the author to disclose the work to the public or if they lead to increased financial costs for creating the public-facing work.

In such a scenario, the holder of the financial right can request contract termination with compensation or modification of the contract terms, obliging the author to cover the expenses resulting from the modification<sup>15</sup>. Minor modifications that don't lead to any change in the nature of the original work, both in terms of content and form, and don't impose additional expenses on the holder of the financial right, do not raise any issues. Examples of such modifications include rectifying linguistic, spelling, or typographical errors that could impact the author's literary or scholarly reputation.

The exercise of the right of withdrawal comes after the holder of the financial right, who has contracted with the author, has incurred the costs of creating a public-facing version of the work, as well as distribution and publication costs. In this context, if the modifications are substantial and the legal recognition of the author's right to withdraw a work that no longer aligns with their convictions exists, the holder of the financial right cannot prevent the author from exercising their right based on the terms of the contract between them. Nor can the holder compel the author to modify the work and reintroduce it for circulation.

This is because the author is the sole entity with the authority for final withdrawal or withdrawal for the purpose of modification. If the author chooses modification and it is substantial, the publisher or producer can terminate the contract and seek compensation from the author for the damages incurred. The modified work then becomes the subject of a new contract<sup>16</sup>.

#### CONCLUSION:

The law guarantees the author the right to disclose their intellectual works to the public and make them accessible beyond their possession, allowing others to benefit from them on a broader scale. In reality, the act of publicizing a work and making it available to society for utilization is the very purpose for which the work was created. However, at the same time, the law permits the author to retract their decision to disclose the work to the public when an intellectual disconnect emerges between the author and the content of the work.

The work is an extension of the author's personality, carrying their intellectual and religious convictions, perceptions of phenomena, social relationships, political and cultural events, and

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<sup>15</sup>- Abdul Rasheed Mamoun, Muhammad Sami Abdel Sadek, previous reference, pp. 304-305.

<sup>16</sup>- Abdul Rasheed Mamoun, Muhammad Sami Abdel Sadek, previous reference, p. 305.



economic aspects. When these convictions change from those expressed in the work, the meaningful connection between the work and its author is severed, and the work could become a stain on the author's reputation, one they seek to erase and distance themselves from.

Hence, the law recognizes the author's right to withdraw the work from public disclosure using any means, whether after the work has been published and reached the public (known as the right of withdrawal) or even before the publication process begins (known as the right of repentance). Through this study, we arrive at the following conclusions:

- Moral rights are interrelated and closely connected, as the right to disclose complements the rights of repentance and withdrawal, as well as the rights to protect the integrity of the work and to attribution.
- While the decision to withdraw from public disclosure may conflict with the rights of various parties, such as the financial rights holder or the right to withdraw publication, the author is permitted to exercise this right, provided they offer fair compensation to the financial rights holder.
- Numerous issues arise when exercising the rights of repentance and withdrawal for joint works and derivative works. Despite this, the Algerian legislator has not provided solutions to the problems that may arise if the author insists on exercising their right to withdraw or repent.
- The right of withdrawal and repentance takes precedence over the contractual obligations of the author to the rights holder. Nonetheless, the legislator is content with requiring the author to provide fair compensation to the rights holder, as determined by the judge.