

THE ROLE OF CIVIL LIABILITY IN PROTECTING DIGITAL RIGHTS

Dr.AMANI KHADIDJA¹

¹University of Tissemsilt Algeria, Specialization: PhD in In-depth Private Law(Algeria).

The Author's E-mail: khadidjayaakoub@gmail.com

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Abstract :

Modern technology has facilitated the execution of many tasks that were once impossible, as the transfer of information now occurs with ease and convenience, Among the fields that have leveraged this development is intellectual property, particularly the digital rights of authors. However, this advancement has led to numerous issues, including the infringement of digital authors' rights, which has prompted the Algerian legislator to establish mechanisms for their protection, one of which is civil liability.

Civil liability is considered one of the important mechanisms that provide protection for digital authors' rights, through the filing of a lawsuit by the injured party against the party responsible for the damage, provided that the necessary elements are met. One of the consequences of this is the court ruling in favor of the injured party for compensation for the damage incurred, considering that the digital rights of the author contribute to the economic development of countries.

Keywords: *digital authors' rights; civil liability; economic development; protection; compensation.*

INTRODUCTION

Intellectual property, or what is referred to as mental rights, encompasses all that is produced and created through the human mind, which is divided into two categories: the first consists of industrial and commercial property, including inventions, trademarks, industrial designs, and trade data; the second includes literary and artistic property, encompassing copyright and related rights. The latter has witnessed numerous developments, resulting in what is known as digital rights of the author, which encompass digital ownership on the internet, that is, digital works, referring to any intellectual production, whether artistic, literary, or scientific, that is made accessible to the public through electronic means.

Among the challenges facing the Algerian legislator is the provision of protection for digital copyright by preventing infringement and harm to these rights. One of the mechanisms relied upon for protection is civil liability, allowing the injured party to file a lawsuit against the party responsible for the harm if the elements of fault, damage, and a causal relationship between the fault and the damage are present, in accordance with the general rules of civil law.

This is based on the consideration that digital rights play a role in the economic development of countries seeking to promote digitization.

Accordingly, the objective of this study is to highlight the role of civil liability in protecting the digital rights of authors, given that these rights contribute to the economic development of countries pursuing comprehensive digitization processes, along with the imposition of commercial taxes that contribute to state revenues. Any infringement on the digital rights of authors is considered an infringement on digital trust, which may deter people from utilizing it, thereby hindering sound management.

From this perspective, the issue raised in this regard is: **To what extent can civil liability provide the necessary protection for digital copyright rights, ensuring their utilization in the comprehensive developmental equation?**

In this context, the following sub-questions can be posed:

- What does the developmental function of digital copyright rights consist of?
- How can the rules of liability be transferred from their abstract framework to an applied framework that ensures the protection of the interests of the rights holders?



To address the main issue and the aforementioned sub-questions, this study has been divided into two main sections. The first section discusses: the concept of civil liability in the context of digital copyright rights, while the second is dedicated to: activating civil liability, following a descriptive and analytical approach.

Section One: The Concept of Civil Liability in the Context of Digital Copyright Rights

Concepts are essential for understanding the relational connection between the variables of this study. Therefore, in this section, we will attempt to address the concept of civil liability in the context of digital copyright rights by elaborating on the concept of digital copyright rights (First Requirement); then discussing the concept of civil liability (Second Requirement).

First Requirement: The Concept of Digital Copyright Rights

Digital rights are the same fundamental human rights that exist in the offline world, but in the online world.

In 2012, and between 2014 and 2016, the United Nations Human Rights Council adopted a resolution stating that the same rights that individuals enjoy offline must be protected online. The United Nations has sought to define new rights based on cyberspace and the digital realm¹.

And thus, we will address the definition of digital rights and their role in economic development.

Section One: Definition of Digital Rights of the Author

In order to clarify the meaning of the digital rights of the author, we first address the definition of copyright in general and then move on to define digital rights.

Copyright is defined as: "the authority exercised by the author² over their works that they create, whether oral, written, visual, or artistic" It is also defined as: "the right of a person to the product of their creative thought" Therefore, copyright is based on their intellectual and mental productions, which are referred to as literary, artistic, and scientific works.

For this reason, it is not easy to provide an accurate and clear definition of copyright³.

As for digital rights, they have been defined based on the Digital Freedoms Guide issued by the Freedom of Thought and Expression Foundation as the right of individuals to access and use computers, electronic devices, software, or communication networks without restrictions.

Others have defined it more broadly as the rights that allow an individual to access, use, publish, and create digital media, or to access computers and other communication systems and their information and data transmission services, as well as the right to access electronic devices or

¹Mamoun Matar, the training guide on digital rights, the right to access the internet as a source of information and a means of sharing it, Palestinian Center for Development and Media Freedoms "MADA," November 2017, p. 07.

²The author, according to the definition of jurisprudence, is any person who produces intellectual work of any kind, as long as this production contains a degree of innovation. See Jafoor Muhammad Al-Saeed, Introduction to Legal Sciences: Lessons in the Theory of Rights, Dar Houma for Printing, Publishing, and Distribution, Algeria, Volume Two, 2001, p. 231. A literary or artistic work is considered an author's work in the legal context concerning copyright and related rights if it was created by a natural person; a legal person may also be considered an author in cases specified in this decree. Refer to Article 12 of Decree 03/05 concerning copyright and related rights, dated July 19, 2003, Official Gazette of the Democratic Republic of Algeria, No. 44, dated July 23, 2003, p. 05.

³Omar NasriShaheen, The Legal Protection of Copyright in the Digital Environment (Comparative Study), Dar Al-Janan for Publishing and Distribution, Amman, Jordan, First Edition, 2021, p. 17.



communication networks and use them, and their right to digital broadcasting networks that guarantee them information, news, and programs of all kinds⁴.

From the previous definitions, we conclude that the digital rights of the author are the authority or ability granted by law to a person over their creative works produced through their intellectual activity, which are made available to the public through the digital environment, meaning they can be transferred to a digital technical medium using various electronic devices and are legally protected.

Section Two: The Functionality of Digital Rights in Economic Development

One of the most important features of the national economy is its singular source, relying solely on oil, which renders it a fragile economy, especially since we do not control oil market prices, which are subject to a set of regulations primarily related to supply and demand. Hence, the idea of diversifying the national economy emerged, which constitutes a constitutional requirement included in paragraph 08 of Article 09 of the Algerian Constitution of 2020, by defining the objective of state institutions in building a diversified economy that values the country's natural, human, and scientific capabilities⁵.

This can only be achieved through a renewable economy that guarantees development projects.

The issue of developing the digital economy is both theoretical and practical, representing a task for the government due to the crucial role of digital technologies in enhancing the national strategic competitiveness.

The digital economy is a viable market model with vast resources that can become a source of national economic growth in the field of innovative development⁶. This allows the state, if activated, to generate a dual-nature source of wealth; on one hand, it liberates it from the burdens of the classical economy, and on the other hand, it provides economic resources through the possibility of imposing taxes on digital transactions, especially as it is moving towards digitization, as stated in the public policy statement presented to Parliament.

section Two: The Concept of Civil Liability

Liability, in general, refers to an individual committing an act that warrants accountability.

If this act contravenes ethical standards only, it constitutes moral liability; however, if it violates the law⁷, it results in legal liability that necessitates punishment. Therefore, legal liability arises from an individual's action that causes harm to others and warrants legal accountability. Legal liability is divided into criminal liability and civil liability.

What concerns us in this study is civil liability, which encompasses two types: contractual liability and tortious liability.

First: Definition of Civil Liability

Civil liability represents: "the breach by a person of an obligation established in their debt (a prior original obligation), which results in harm to another, thus making them liable towards that person⁸ and obligated to compensate them." Following this definition, it becomes clear that liability is a

⁴Ben Kroidem, Ghaniya, Digital Rights: Reality and Challenges, Journal of Comparative Legal Studies, Faculty of Law, Hassiba Ben Bouali University of Chlef, Algeria, Volume 07, Number 01, June 2021, p. 04.

⁵Presidential Decree No. 20/442 dated December 30 concerning the issuance of the constitutional amendment, ratified in the referendum of November 1, 2020, Official Gazette of the People's Democratic Republic of Algeria, No. 82, issued on December 30, 2020, p. 08.

⁶ L G Nikityuk1, L T Tkachuk1, G K Korotkova2, The role of digital Economy in Developing the Market Model of Russian Society, Advances in Economics, Business and Management Research, volume 128, 2020, p 379.

⁷Hamza Qatal, Sources of Obligation, Tort Liability, Action Entitled to Compensation, Dar Houma for Printing, Publishing, and Distribution, Algeria, 2018, p. 02

⁸, Ibid, p. 03.



consequence of violating rules that must be respected, regardless of their source, which is a significant aspect of legal doctrine. This is reflected in its general definition as: "compensation for harm resulting from the breach of an obligation established in the debtor's liability".

The source of this obligation may be a contract linking them to the harmed party, making their liability contractual, governed and defined by the contract on one hand, and the specific rules of contractual liability on the other. Alternatively, the source of this obligation may be the law in the form of general duties imposed on everyone, such as the obligation not to exceed a certain speed limit while driving. Hence, jurisprudence and legal doctrine have established that civil liability is divided into two categories: contractual liability and tort liability⁹.

Regarding contractual liability, it arises when there is a breach of a contractual obligation, and in this case, the creditor and the debtor are bound by a contract before the liability is established. An example of this is when a sale contract is concluded, and the seller interferes with the buyer's possession of the sold item, thus breaching the contractual obligation of non-interference. On the other hand, tort liability arises from the violation of a singular legal obligation that remains unchanged, which is the obligation not to harm others. In this scenario, the debtor is a third party to the creditor. An example is when the item is in the possession of its owner, and a third party interferes with it, leading to the liability of the interferer, which is tortious in nature; they have not breached a general legal obligation imposed upon them not to harm others, and the harmed party is the owner of the item¹⁰.

Some jurists argue for the necessity of distinguishing between contractual liability and tort liability due to significant differences between them; these are the proponents of dual liability. Conversely, others believe that there is no need for such a distinction, as the two liabilities do not differ from one another; these are the proponents of unitary liability.

Advocates of the first view argue that contractual liability requires the age of majority, while tort liability suffices with the age of discernment. Additionally, the burden of proof in tort liability falls on the debtor, whereas in contractual liability, the creditor must prove that the debtor has breached their legal obligation. Furthermore, notice is a prerequisite in contractual liability, while no notice is required in tort liability.

Regarding compensation for damages, in contractual liability, compensation is only awarded for foreseeable damages, while in tort liability, compensation is for both foreseeable and unforeseeable damages, among other differences. Proponents of the second view, including Professor "Blaniol," assert that there is no difference between the two liabilities, as both are penalties for a prior obligation; they are united in cause and effect¹¹.

Secondly: The Elements of Civil Liability

Civil liability is based on three essential elements: fault, damage, and the causal relationship between them, as stipulated in Article 124 of the Algerian Civil Code, which states: "Any act, whatever it may be, committed by a person with fault, and causing damage to another, obliges the one who caused it to provide compensation."¹²

1. Error

The jurisprudence and judiciary have established that error is defined as: the deviation of a person

⁹Al-Danasouri, Izz al-Din, *Civil Liability in Light of Jurisprudence and Judiciary*, no edition and no publisher, 1988, p. 11.

¹⁰Abdul Razak Ahmed Al-Sanhouri, *The Concise Explanation of Civil Law 1, The Theory of Obligations in General (Sources, Proof, Effects, Transfer Descriptions, Extinction)*, Dar Al-Nahda Al-Arabiya, Cairo, Egypt, without edition, 1966, p. 748.

Abdul Razak Ahmed Al-Sanhouri, *op. cit.*, p. 749.

¹²Article 124 of Order 75/58 containing the Civil Code, Official Gazette No. 78, dated September 30, 1975, as amended and supplemented. In all its types, whether presumed or established, refer to: Comporty Marco, *op. cit.* p. 829.



from the usual conduct of an individual, with the awareness of that person. In other words, it is: the breach of a legal obligation not to harm others by a competent person. A person must exercise caution and foresight in their behavior towards others to avoid causing harm, the obligation referred to here is an obligation to exercise care; thus, if a person deviates from the required conduct, they are considered to be in error and are held liable¹³.

2. The Egyptian Court of Cassation has defined the error that gives rise to liability as the deviation from ordinary, customary behavior and what is required of vigilance and foresight, as stipulated in Article 163 of the Egyptian Civil Code¹⁴.

From the previous definitions, we deduce that error comprises two elements: material and moral. The material element is represented by the infringement, which refers to exceeding the limits that a person must adhere to, or deviating from the required conduct so as not to harm others. This infringement may be intentional, thus constituting a civil crime, or it may result from negligence or shortcoming, referred to here as a civil quasi-crime, the deviation is measured by an objective standard or by the behavior of a person stripped of their personal circumstances, that is, the circumstances of an ordinary person.

As for the moral element, it is represented by awareness or distinction. It is not sufficient to have committed an infringement; the infringer must also be aware of good and evil. Article 125 of the Algerian Civil Code states: "The person causing damage through their act or omission, or through their negligence or lack of caution, shall not be liable unless they possess the capacity for discernment"¹⁵.

From this text, it is understood that the legislator has linked the capacity for tort liability to discernment, therefore, there is no liability for a minor who is not discernible, which, according to the Civil Code, is a person under the age of thirteen (13), as well as for the insane and the mentally deficient, even if they are not placed under guardianship, and for anyone who has lost their awareness due to an incident such as illness, provided that this loss was not by their own choice, as in the case of someone who has taken drugs and lost consciousness; in this case, they do not escape liability¹⁶.

Since the study addresses the responsibility arising from digital and intellectual property rights in general, it is essential to extrapolate from the decisions of comparative and domestic courts. In this regard, the Egyptian Court of Cassation states: "The mere international registration of this mark and its publication in the 'WIPO International Marks Journal' grants protection within the Egyptian state, and the owner is not required to take any further action. As long as the state has not notified

¹³Mohamed Sabri Al-Saadi, "The Clear Explanation of Civil Law, The General Theory of Obligation (Sources of Obligation, Tort Liability: The Act Entitled to Compensation)," Comparative Study in Arab Laws, Dar Al-Huda, Algeria, without edition and without year of publication, p. 30 and onwards.

¹⁴Refer to: Egyptian Court of Cassation, Civil Circuits, Case No. 2484 of the Year 65 Judicial, Session dated: 01/08/2019, available at the link: https://www.cc.gov.eg/judgment_single?id=111398167&&ja=301003, accessed on: 11/4/2024 at 10:30, as well as the Civil Circuits, Case No. 17704 of the Year 85 Judicial, Session dated 26/02/2018, available at the link: https://www.cc.gov.eg/judgment_single?id=111379527&&ja=303538, accessed on: 11/4/2024 at 15:00.

¹⁵Article 125 of Order 75/58 containing the Civil Code, amended and supplemented by Law 05/10.

¹⁶Mohamed Saadi Al-Sabri, op.cit. , p. 40.



the International Bureau of its rejection of the international registration within the legal timeframe, it must protect the international mark on its territory¹⁷.

This implies the automatic protection upon the international registration of the mark¹⁸; consequently, any failure by the state to implement this protection or any violation by third parties results in liability for the infringer due to the infringement of the intellectual property rights of the owner, furthermore, by analogy, what is said about tangible rights also extends to digital rights due to their inherent nature.

Given that these rights may fall outside the scientific understanding of the judge, he must seek assistance from expertise as it serves as a means to aid the judge in reaching the judicial truth¹⁹ regarding the existence or non-existence of this error.

In this regard, the Egyptian Court of Cassation holds that appointing an expert in the case is merely a means of proof intended to verify a specific reality that requires the disclosure of specialized technical information, and it does not pertain to resolving a legal dispute; this is an inherent duty of the judge that he cannot delegate to others²⁰.

2 - DAMAGE

Damage is considered the second element of civil liability; it is not sufficient for a fault to exist in order to establish liability, but the fault must cause damage. Damage is defined as the material or moral loss incurred by the victim or their legitimate interest as a result of the infringement that occurred against them. Damage is of two types: material and moral.

Material damage refers to a violation of an interest of the injured party in their body, such as assault and injury, or in their property, such as damage to movable or immovable property, this damage must be actual, meaning it has either occurred or is certain to occur in the future. On the other hand, moral damage is the harm that does not affect a person's property but rather their reputation, honor, emotions, or feelings, and it requires compensation.

This is stipulated by the Algerian legislator in the Civil Code through Article 182 bis, which states: "Compensation for moral damage includes any infringement of freedom, honor, or reputation"²¹.

The conditions for damage are as follows²²:

- It must be actual, meaning it has occurred and its effects have manifested or will inevitably occur in the future.
- It must be direct, that is, arising directly from the harmful act.
- It must be personal, meaning it affects the individual claiming compensation and that compensation for it has not been previously awarded.

The Egyptian Court of Cassation establishes the proof of the existence of damage based on the idea of the authorship of the work, it is well-established in its consistent rulings on this matter that: "The ruling for compensation for moral damage due to the existence of the fault element required for liability on the part of the appellant is based on the authorship of the first respondent of the work subject to infringement and the precedence of its classification over the infringing work is correct

¹⁷Egyptian Court of Cassation, Commercial Circuits, Appeal No. 3320 of Judicial Year 82, Session dated: 28/12/2021, available at the link:

https://www.cc.gov.eg/judgment_single?id=111730809&&ja=294299, accessed on: 11/04/2024 at 18:00.

¹⁸Ibid.

¹⁹Refer to the decisions of the Algerian Supreme Court.

²⁰Egyptian Court of Cassation, Commercial Circuits, Appeal No. 7133 of 88 Judicial Year, session dated 28/03/2019, available at the link:

https://www.cc.gov.eg/judgment_single?id=111394961&&ja=269106, accessed on: 11/05/2024 at 22:00.

²¹Article 183 bis of the Civil Code, OP.Cit.

²²Al-Danasouri, Izz al-Din, previous reference, p. 157 .



and valid"²³. Accordingly, the idea of precedence forms a presumption to be relied upon in establishing fault and determining liability, as it is inconceivable that ideas could converge entirely to reach the same work. In another ruling, it states: "Moral damage is an assumed damage that occurs merely upon the occurrence of the infringement, considering that this is a natural result supported by the bond of authorship that connects the injured party to their work"²⁴.

Thus, moral damage in this context constitutes an exception to the established rules of liability, as it is considered presumed damage upon the occurrence of the fault without the need to prove it independently.

3 - The Causal Relationship Between the Fault and the Damage

This is the third element of liability, which the Algerian legislator referred to in Article 124 mentioned earlier through the phrase "...and causes damage to others...", it is not sufficient for liability to exist merely with fault and damage; the fault must be the cause of the damage, the causal relationship refers to the direct link between the fault committed by the liable party and the damage suffered by the injured party, whether an individual or a group, meaning that bond which renders the damage a result of the fault. If this bond is absent, liability ceases to exist due to the lack of one of its elements, an example of this is when a person rents a vehicle to transport fragile goods, and the owner arranges them improperly and sends an unskilled driver or drives at high speed, resulting in the goods breaking. In this example, the liability of the lessor does not arise because the goods would inevitably break regardless of the driver's skill²⁵.

The causal relationship between the fault and the damage is legally presumed, subject to rebuttal. It is the debtor who claims the absence of this connection that must prove it, as stipulated by the Algerian legislator in Article 127 of the Civil Code, which states: "If a person proves that the damage resulted from a cause for which he is not responsible, such as an unforeseen accident, force majeure, or fault on the part of the injured party or fault by a third party, he shall not be obliged to compensate for this damage, unless there is a legal provision or agreement to the contrary"²⁶.

Section Two: The Importance of Civil Liability

The importance of civil liability in the context of digital rights for authors lies in providing justice and safeguarding the sources of development for these rights, which we will address in this section.

First: Justice

The activation of civil liability rules is the vital framework for implementing constitutional provisions that protect private property²⁷, which includes all transferable assets, whether movable or immovable, tangible or digital. In confirmation of this, the Egyptian Court of Cassation states that: If the term intellectual property rights is meant to affirm that the rights of the author or inventor deserve protection just as the owner does, because both rights are fruits of thought and innovation, this is correct. However, the nature of property is inconsistent with the nature of thought; it is not a property right, but rather an original real right that is independent of the

²³Egyptian Court of Cassation, Commercial Circuits, Appeal No. 7224 of Judicial Year 89, Session dated: 13/02/2020, available at the link: https://www.cc.gov.eg/judgment_single?id=111654860&&ja=296799 , accessed on: 30/05/2022 at 23:30.

²⁴Ibid.

²⁵Hassan Ali Al-Dhunun, Explanation of the Civil Code: Principles of Obligation, Al-Ma'arif Press, Baghdad, Iraq, no edition, 1970, p. 178.

²⁶Article 127 of the Algerian Civil Code, Order 75/58 as amended and supplemented, Op.Cit, p. 997.

²⁷Article 60 of the Constitutional Amendment of 2020, Op.cit, p. 16.



property right due to its characteristics, as it pertains to something intangible. Therefore, it is an original real right that is movable²⁸.

This means that the exploitation of others is inconsistent with the principles of justice and constitutes a form of unjust enrichment, as it is established in the provisions of rights that the owner alone has the authority to exploit them financially by any means of exploitation, which prohibits others from using this right except with prior written permission from him or his successor²⁹.

Secondly: Safeguarding Development Resources

Diversifying the national economy and moving away from dependence on hydrocarbons represents a real challenge for the government, which has been explicitly included in the government's latest plan. This cannot be realized unless legal security is provided for the various links and legal statuses encompassing rights. Therefore, (Démougue) argues that "the central driver of social, economic, and legal desires is the need for security³⁰".

Responsibility is merely a mechanism (tool) that bears characteristics of punishment against anyone who violates the rules of rights and transgresses them, thus safeguarding them on one hand and ensuring their sustainability on the other. Wealth and personal rights have no meaning—according to Ahrens—if they are not protected by the value of security³¹, which explicitly aligns with the provisions of paragraph 09 of article 09 of the Algerian Constitution, which obliges the state to protect the national economy from any form of unlawful practices.

In line with this, the Egyptian Court of Cassation holds: "The conditions that must be met for an invention to be granted a patent that protects it are that the invention must involve innovation deserving of protection, meaning it must be novel, in the sense that it includes an inventive step that surpasses the development of conventional industrial art, and that it was not previously known such that the inventor applying for the patent has not previously disclosed this invention, and it must not have been published in any country.

The condition of absolute novelty that must be present in the innovation subject to the invention does not apply to the innovation as a basis for legal protection of the work, and it is required that the invention be capable of industrial application³²", an analysis of this decision will reveal that intellectual property, in both its tangible and digital dimensions, is the result of a creative process by its owner. It is therefore neither logically tenable nor conceptually acceptable for another person to exploit it, as this constitutes a clear infringement of rights prohibited by legislation across various levels.

Section Two: Activating Civil Liability

If the author's digital rights are infringed and they suffer damage as a result, they are entitled to file a lawsuit before the competent judicial authorities in order to remedy this damage through compensation. Accordingly, this section will address the procedural course that the injured party follows by discussing both the territorial and specialized jurisdiction concerning civil liability in the field of digital rights, as well as the implications of such liability.

²⁸Egyptian Court of Cassation, Commercial Circuits, Appeal No. 18640 of the Judicial Year 82, session dated: 17/11/2021, available at the link: https://www.cc.gov.eg/judgment_single?id=111731343&&ja=295010, accessed on: 01/06/2024 at 23:30.

²⁹Ibid.

³⁰René Demougue, *les notions fondamentales du droit privé essai critique*, Librairie Nouvelle de Droit et de Jurisprudence, France, 1991, p63.

³¹René Demougue, *op. Cite*, pp. 84-87.

³²Egyptian Court of Cassation, Civil Circuits, Appeal No. 7440 of Judicial Year 78, Session dated 28/11/2020, available at the link:

https://www.cc.gov.eg/judgment_single?id=111460206&&ja=286996, accessed on: 13/05/2024 at 09:00.



Section One: Procedural Pathway

The lawsuit for compensation for damages resulting from the infringement of the author's digital rights falls under the jurisdiction of civil courts, in accordance with the general rules stipulated in Article 143 of Order 03/05 concerning copyright and related rights, which states: "The lawsuit for compensation for damages resulting from the unauthorized exploitation of the author's work and the performance for the owner of related rights falls under the jurisdiction of civil courts"³³.

Furthermore, paragraph 01 of Article 144 of the same order stipulates: "The affected rights holder may request that the competent judicial authority take measures to prevent imminent infringement of their rights or to put an end to the observed infringement and to seek compensation for the damages incurred"³⁴.

Section One: Regional Jurisdiction

Regional jurisdiction³⁵ in civil lawsuits is attributed to the judicial authorities in whose territorial jurisdiction the harmful act occurred, in accordance with paragraph 2 of Article 39 of Law No. 08/09 relating to the Code of Civil and Administrative Procedures, which states: "In matters of compensation for damage resulting from a felony, misdemeanor, or infraction, or from a tortious act, and claims for damages resulting from an act of administration, the competent judicial authority is that in whose territorial jurisdiction the harmful act occurred"³⁶.

The affected author in their digital rights, in order to restore or protect their right, initiates a civil lawsuit before the judicial authorities mentioned above, claiming their right. The damage is considered the cause of the lawsuit, and the interest is its basis, with the parties being the plaintiff (the injured party) and the defendant (the liable party), the injured party is the one who personally files the lawsuit or their representative or successor who establishes this right for them. Additionally, the creditor of the injured party may claim compensation in their name using indirect action, provided that the damage claimed for compensation is material, as moral damage cannot be claimed for compensation by the creditor.

Furthermore, the injured party may transfer their right to compensation to another, in which case this right passes to the assignee, the heir may also claim the compensation that the injured party would have sought had they remained alive, provided that the damage is material; however, moral damage does not transfer to the heirs³⁷.

³³ Article 143 of Ordinance 03/05 concerning Copyright and Related Rights, Op.cite, p. 20.

³⁴ Article 144 of Ordinance 03/05, Ibid, p. 20.

³⁵ Regional jurisdiction refers to the authority of a judicial body to adjudicate based on the location of the dispute or its geographical site, such as the domicile of the defendant or the principal place of business of a company. This means the geographical or regional boundaries within which the judicial body exercises its jurisdiction. These boundaries are linked to the rules of judicial division that define the regional jurisdiction for each judicial body, with each court being subject to the jurisdiction of a specific judicial council in accordance with Article 02 of Order No. 97/11 dated March 19, 1997, which includes the judicial division, as well as Executive Decree No. 98/63 defining the jurisdiction of judicial councils and the methods of implementing Order No. 97/11 concerning the judicial division. See RmainiaSoufiane, Lectures on the Civil and Administrative Procedure Law Course for Second-Year Law Students, Second Semester, Mohamed Lamine Debaghine University, Setif 2, Faculty of Law and Political Science, p. 24.

³⁶ Article 39 of Law No. 08/09, dated February 25, 2008, con amended and supplemented, Official Gazette of the People's Democratic Republic of Algeria, No. 21, dated 23/04/2008, p. 07.

³⁷ Mohamed Saadi Al-Sabri, Op.cit, p. 126.



The second party, who is the responsible party against whom the liability lawsuit is filed, i.e., the defendant, whether responsible for their personal act or responsible for others or for the thing under their custody, is replaced by their representative, such as the guardian or the trustee if they are a minor, the curator if they are interdicted, and the bankruptcy trustee in relation to the bankrupt or their heirs after their death, provided that it is directed towards their estate. If there are multiple parties responsible for the same damage, they are jointly and severally liable for compensation, in accordance with the provisions of Article 126 of the Algerian Civil Code³⁸, where the injured party may file a lawsuit against any of them, and then they may seek recourse against each other, as the fault of each of them contributed to the damage³⁹.

The purpose of the civil lawsuit is to compensate for damages resulting from any unlawful exploitation or direct or indirect infringement of digital copyright, as well as anything that falls within unfair competition.

The lawsuit aims to provide compensation and remedy for damages or loss of profit, it can also be preventive when the intellectual property rights holder perceives that their legitimate rights are about to be infringed; in such cases, the lawsuit is filed to halt these actions that would harm the interests of the legitimate rights holder, the Algerian legislator has placed significant emphasis on the subject of intellectual property⁴⁰.

Section Two: Specialized Jurisdiction

The specialized jurisdiction⁴¹ of the commercial court pertains to disputes related to intellectual property, in accordance with the provisions of Article 536 bis of Law No. 22/13 dated July 12, 2022, amending and supplementing Law No. 08/09 concerning the Code of Civil and Administrative Procedures, which states: "The specialized commercial court is competent to consider the disputes mentioned below:

³⁸Ibid., p. 126.

³⁹Article 126 of the Algerian Civil Code states: "If there are multiple parties responsible for a harmful act, they shall be jointly liable for their obligation to compensate for the damage, and the liability among them shall be equal unless the judge determines the share of each in the obligation to compensate."

⁴⁰Nabylouanoughi, Intellectual Property Disputes and Methods of Resolution, Journal of Legal and Social Sciences, ZianAhour University of Djelfa, Issue 02, Volume 02, June 2017, p. 205, available at the Algerian Platform for Scientific Articles ASJP

<https://www.asjp.cerist.dz/en/downArticle/434/2/2/63774>, accessed on: 05/05/2024 at 10:44

Journal link: <https://www.asjp.cerist.dz/en/PresentationRevue/434>.

⁴¹Subject matter jurisdiction refers to the authority of a court or judicial body to adjudicate a dispute or legal claim brought before it based on its subject matter. This means the power of a competent judicial authority, regardless of its level, to consider a specific type of claim or dispute. This jurisdiction is defined in two directions: the vertical direction, which divides jurisdiction among the various levels of the judicial system (courts, judicial councils, the Supreme Court) in terms of their hierarchy as first or second instance or as appellate bodies; and the horizontal direction, which refers to the division of jurisdiction among different types of cases within courts of the same level (sections). Subject matter jurisdiction is also defined according to the organic criterion concerning the parties to the case. If one of the parties to the dispute is a public legal entity, the jurisdiction falls to the administrative judiciary, and the ordinary judiciary cannot consider it. See: Ibtisam Al-Qaram, Legal Terminology in Algerian Legislation, Arabic and French Dictionary, Qasr Al-Kitab, Blida, Algeria, no edition, 1998, p. 56. Also see: Sifian Ramaynia, Op.Cit, p. 22.



- Intellectual property disputes⁴²..." Prior to the amendment of the Code of Civil and Administrative Procedures, the specialized chambers⁴³ convened in certain courts, and no others, were competent to handle intellectual property disputes, as stipulated in paragraph 07 of Article 32, which stated: "...the specialized chambers convened in certain courts are exclusively competent to consider disputes related to international trade... and intellectual property disputes..."⁴⁴ This provision was repealed by Article 14 of Law No. 22/13 amending and supplementing Law No. 08/09, which states: "The following are repealed:

- Paragraphs 7, 8, 9, and 10 of Article 32 of Law No. 08/09 dated 18 Safar 1429, corresponding to February 25, 2008, which includes the Law on Civil and Administrative Procedures...⁴⁵, it is noted from the text of the article that the specialized poles have been abolished and replaced with specialized commercial courts, which will commence operations from the date of their establishment, as stipulated in Article 13 of Law No. 22/13, which states: "The rules of jurisdiction, both qualitative and territorial, as provided in this law, applicable to administrative judicial bodies and specialized commercial courts, shall take effect from the date of the establishment of the new judicial bodies.

The administrative judicial bodies and commercial sections shall remain competent to adjudicate cases brought before them prior to the establishment of the new judicial bodies"⁴⁶.

This commercial dynamism and rapid economic openness experienced by Algeria, along with the developments occurring in the realm of international trade that are likely to increase the volume of commercial disputes, are all reasons that prompted the Algerian legislator to amend the Law on Civil and Administrative Procedures, this is in line with the current situation that requires special support from the judiciary, it should be noted that the specialized commercial courts have not been established up to the time of writing these lines, where the jurisdiction remains with the court of the council's seat, the domicile of the defendant—although originally it was under the jurisdiction of the specialized poles, which were not established until their abolition—until the new judicial bodies are established.

This raises doubts among legal professionals, as the failure to establish the specialized poles for more than 10 years since the issuance of the Law on Civil and Administrative Procedures constitutes a presumption against the possibility of establishing specialized commercial courts.

Section Two: The Subjective Path

In this section, we will address the subjective path of civil liability through two branches: the first branch (Establishment of Liability); the second branch: Effects of Civil Liability (Compensation).

First Branch: Establishment of Liability

The burden of proof in civil matters is governed by the principle that the burden of proof lies on the claimant, referred to in French as **la preuve incombe au demandeur**, this rule is established by

⁴²Article 436 bis of Law No. 22/13, dated July 12, 2022, amending and supplementing Law No. 08/09 concerning the Code of Civil and Administrative Procedure, Official Gazette of the People's Democratic Republic of Algeria, No. 21, dated July 17, 2022, p. 04.

⁴³It should be noted that the specialized poles were established under Law No. 08/09 related to the Code of Civil and Administrative Procedure, but they were not constituted until their repeal under Law No. 22/13 amending and supplementing the Code of Civil and Administrative Procedure, where jurisdiction was to be assigned to the court at the location of the council where the defendant resides.

⁴⁴Article 32 of Law No. 08/09, comprising the Law on Civil and Administrative Procedures, Op.Cit, p. 06.

⁴⁵Article 14 of Law No. 22/13, amending and supplementing Law No. 08/09 concerning the Code of Civil and Administrative Procedures, Op.Cit, p. 11.

⁴⁶Ibid.



the Algerian Civil Code in Article 323, which states: "The creditor must prove the obligation, and the debtor must prove the discharge from it"⁴⁷.

This corresponds to Article 1315 of the French Civil Code, which places the burden of proof regarding the existence of an obligation on the party seeking its enforcement, while requiring the party claiming to be released from it to prove the payment or the cause of its extinction. This means that the defendant, upon raising a defense, becomes a claimant and must prove this defense, which is another principle that complements the burden of proof on the claimant⁴⁸.

Therefore, civil proof is subject to two principles: the principle of "the burden of proof lies on the claimant" and the principle of "the defendant becomes a claimant upon contestation." This means that the claimant may, at some stage of the lawsuit, become a defendant, and the defendant may, at some stage of the lawsuit, become a claimant, such that the burden of proof is distributed equally between the parties without favoring one over the other until one of them fails to provide proof and loses the case.

Thus, the distribution of the burden of proof between the parties is the rule in civil proof, where the role of the judge is either passive or active due to its connection to the private interests of the disputing parties, provided that this burden pertains to the legal fact that establishes the right and gives rise to the obligation with these general rules being applicable to digital copyright.

Section Two: Effects of Liability (Compensation)

The civil lawsuit allows the holder of digital rights to obtain compensation for the damage incurred, as it is considered the ideal method for removing the effects of the damage. Compensation in civil liability is determined according to the general rules in the Algerian Civil Code, as stipulated in paragraph 2 of Article 144 of Ordinance 03/05, which states: "Compensation"⁴⁹ shall be assessed according to the provisions of the Civil Code, taking into account the benefits resulting from the infringement of these right"⁵⁰.

Once the conditions for civil liability are established, the judge rules for compensation for the injured party and has broad authority to determine the method by which compensation is assessed. Article 132 of the Algerian Civil Code states: "The judge determines the method of compensation according to the circumstances, and it is permissible for the compensation to be in installments, as well as to be a fixed income. In both cases, the debtor may be obliged to provide a guarantee.

Compensation is assessed in monetary terms; however, the judge, depending on the circumstances and at the request of the injured party, may order the restoration of the situation to what it was, or may rule, as compensation, for the payment of certain aids related to the lawful act"⁵¹," It is understood from the text of the article that the method of assessing compensation is based on circumstances and can be through two methods: in cash or in kind.

⁴⁷Article 323 of Order 75/58 containing the Algerian Civil Code, Op.Cit, p. 1008.

⁴⁸Soadna Al-Aid, The Burden of Proof in Algerian Positive Law, Journal of the Thinker, Faculty of Law and Political Science, Mohamed Khider University of Biskra, Algeria, Volume 09, Issue 02, September 2014, p. 191, available at the Algerian Scientific Journals Platform ASJP <https://www.asjp.cerist.dz/en/article/51304>, accessed on: 26/06/2024 at 13:44, journal link: <https://www.asjp.cerist.dz/en/PresentationRevue/131>.

⁴⁹The Algerian legislator did not define compensation due to the clarity of the concept, and instead referred to it in Article 132 of the Algerian Civil Code, which states: "The judge determines the compensation according to the circumstances ...". Article 124 also establishes the obligation for compensation for anyone who causes harm to another through their fault. Based on these provisions, compensation can be defined as the obligation arising in the liability of the party causing the harm to remedy it through monetary or in-kind payments.

⁵⁰Paragraph 02 of Article 144 of Ordinance 03/05 concerning copyright and related rights, Op.Cit, p. 20.

⁵¹Article 132 of Order 75/58, which includes the Civil Code, Op.Cit, p. 997.



The principle of compensation is judicial compensation, meaning that the judge is responsible for determining it, provided that the elements of civil liability—fault, damage, and causal relationship—are present, as previously outlined.

If these elements are met, the debtor is obligated to compensate the creditor for the damage incurred, which includes both the losses suffered by the creditor and the profits that were foregone, in accordance with paragraph 1 of Article 182 of the Civil Code, which states: "If the compensation is not specified in the contract or by law, the judge shall determine it, and the compensation shall include the losses suffered by the creditor and the profits that were foregone, provided that this is a natural result of the failure to fulfill the obligation or the delay in fulfilling it. Damage is considered a natural result if the creditor could not have avoided it by making a reasonable effort⁵²" this applies to material damage; however, for moral damage, judges are not required to specify its elements, as it is related to feelings and emotional pain, as stated in the ruling of the Supreme Court issued on March 28, 2000.

An example of compensation assessment is that an injured party in an accident is entitled to compensation for the bodily harm suffered and for the expenses incurred for treatment, which constitutes the subsequent loss to them. Additionally, this injured party has the right to be compensated for lost earnings. Another example is if the defendant damages an item belonging to the plaintiff worth 10,000.00 DZD, and the victim was going to sell it for 10,000.00 DZD, the loss incurred by the victim is the amount of 10,000.00 DZD, which is the value of the item, while the lost earnings amount to 2,000.00 DZD. However, compensation should not exceed the amount of the damage, meaning there should be a proportional relationship between the compensation and the damage. As for the criterion used in assessing compensation, it is a personal criterion, meaning it takes into account the personal circumstances related to the victim's health, financial, and family situation⁵³.

Compensation takes two forms:

1. Monetary Compensation: This is the common form of civil liability and consists of a monetary amount determined by the judge to compensate for the damage. This amount may be a lump sum given to the injured party at once, or it may be in the form of installments. It may also be structured as a lifetime annuity, depending on the judge's assessment. Compensation may also take the form of non-monetary benefits, such as awarding the injured party shares or bonds that transfer ownership to them, allowing them to benefit from the proceeds as compensation for the harm suffered. Additionally, compensation for moral damage inflicted on the plaintiff may also be non-monetary; for example, it may involve the judge publishing the ruling that convicted the defendant in newspapers, as is the case in defamation or false accusation crimes, among others⁵⁴.

2 - Specific Compensation: This type of compensation is considered one of the best methods because it leads to a complete remedy of the damage and restores the situation to what it was before the damage occurred. An example of this is when a judge orders the demolition of a wall built by a neighbor that has caused harm to another neighbor, or when a judge orders the repair of a car that has been damaged. However, this type of compensation may be difficult to enforce; for instance, a judge cannot order the restoration of a child who was hit by a car and suffered a permanent disability to their previous state, therefore, the judiciary resorts to monetary compensation⁵⁵.

The judiciary has settled, in light of Article 124 of the Civil Code, that the judge has full authority to choose the most appropriate method of compensation for the nature of the damage, within the limits of the plaintiff's requests, the basis for this is that the essence of liability is to restore the balance that has been disrupted as a result of the damage and to return the injured party, at the

⁵²Paragraph 01 of Article 182 of Ordinance 75/58 containing the Civil Code, OP.Cit, p. 1000.

⁵³Hamza Qatal, OP.Cit., p. 79.

⁵⁴Ibid., p. 84.

⁵⁵Hamza Qatal, OP.Cit., p. 83.



expense of the liable party, to the situation that existed before the damage occurred. In tort liability, the judge is exempt from the restrictions set forth in Article 182 of the Civil Code, as these pertain to contractual liability. Therefore, the judge has the discretionary power to make the compensation fair in order to restore balance to the liability of the injured party⁵⁶.

CONCLUSION:

In conclusion, based on the above, we can say that the digital rights of the author are the authority or power granted by law to an individual over their creative works produced through their intellectual activity and made available to the public through the digital environment.

This means that they can be transferred to a digital technical medium using various electronic devices and are legally protected. Today, all countries have moved towards digitization, which has become a crucial factor in enhancing strategic competitiveness, as stated in Algeria through the government's general policy statement.

Whereas we have concluded that the civil protection of digital copyright is achieved through the activation of the role of civil liability in this area by applying the general rules stipulated in the civil law, provided that the elements of fault, damage, and a causal relationship between them are present.

These rights must be protected and preserved; no right holds value if it is not protected and maintained.

Through this study, we have reached the following conclusions:

- The digital rights of the author are the authority granted by law to the author, which is made available to the public through technological media.
- Digital rights play an important role in economic development, as all countries today are moving towards digitization, which has become a contributor to strategic development.

From this, we can recommend the following:

- Civil protection for the digital rights of the author must be provided by activating the role of civil liability in accordance with the provisions of the general rules in civil law.
- The protection of digital rights is imperative; it is unacceptable for another person to exploit them, as this constitutes a clear infringement that is prohibited by all laws.

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