



LEGAL PROTECTION OF MULTIMEDIA WORKS IN ALGERIAN LEGISLATION

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Abstract:

This research aims to study the legal protection of multimedia works in Algerian legislation, given the seriousness of the infringements affecting these works in the digital environment. The research concludes that the protection established by the Algerian legislator in this field remains insufficient, as it does not take into account the digital specificity of these works. This requires the legislator to amend the intellectual property laws, in particular the Decree 03-05 on Copyright and Related Rights, in order to include mechanisms for the protection of multimedia works that are adapted to their digital nature.

Keywords: Works; Multimedia; Civil Protection; Intellectual Property; Innovation; Digital Image

INTRODUCTION:

Intellectual property rules require that authors' creations be embodied in a tangible form, known as works, as abstract ideas are not legally protected. These works have undergone significant developments with the advent of computers and electronic publishing, leading to a new type known as "digital works", which are divided into computer-related works, such as databases and software, and Internet-related works, including websites, web pages and multimedia.

Multimedia works are considered to be digital works linked to the Internet, based on electronic integration techniques between the various components that make them up, combining communication technology with information technology. Due to their technical and economic advantages, they have been widely disseminated and have become a commercial value exploited within large investment companies.

Based on the above, multimedia works must be protected under intellectual property laws; however, this protection raises many legal issues due to the technical nature of these works, particularly with regard to the scope of this protection and the conditions that multimedia works must meet in order to be protected. Therefore, the importance of this research topic, which highlights the conditions and mechanisms for the legal protection of multimedia works in Algerian legislation, derives from the following question Has the Algerian legislator provided effective protection for multimedia works?

In order to answer this question, the descriptive method was used to explain the specificity of multimedia works and the analytical method was used to analyse the relevant legal texts according to the following structured plan:

First Axis: The concept of multimedia works and the conditions for their protection.

Second Axis: The legal mechanisms for the protection of multimedia works.

First axis: The concept of multimedia works and the conditions for their protection.

Multimedia works have been the subject of intense discussion among legal scholars, mainly because of the different views on their legal nature and the difficulty of reconciling technical and legal terminology in defining the concept of these works (first axis). Like various intellectual works, multimedia works must meet a number of conditions in order to enjoy legal protection (second).

First: The concept of multimedia works

In order to define multimedia works, it is necessary to first look at their technical definition, followed by the legal definition.



1. Technical definition of multimedia

The term multimedia is a technical term, where “multi” means multiple and “media” refers to the media carrying the information, such as CDs. There are several definitions in this context, including “Multimedia programs combine text, still and moving images, sound, and graphics to convey a message and allow the user to interact with it using a computer or other electronic device”¹.

Another academic definition of multimedia is: “The integration of text, sound, and images into an integrated program that the user interacts with through a computer or television screen, allowing the user to navigate through the program by pressing a key, clicking a mouse button, or touching the screen at a specific point”².

From the above, it is clear that multimedia consists of programmes based on several elements, including written text, graphics, still and moving images, music, etc., requiring at least three media presented through a computer or the Internet³.

2. Legal definition of multimedia works

Some legal scholars define multimedia works as “those works in which information and data are represented by means of sensory effects (sound and image), which means that it is a creative intellectual work composed of a set of interconnected images and sounds, placed on specific supports and displayed by means of appropriate devices”.

This definition emphasises the essential condition of having an innovative element in multimedia works, but limits the scope of the media to images and sounds, without addressing text and writing, even though they are integral media in these works⁴.

Another legal perspective provides a different definition of multimedia works, stating: “It is a complex creation which, in its informational form, combines a series of texts, still and moving images or music, which can be designed on CDs for text reading or interaction, requiring specific devices for this purpose, or can be integrated into a computer or television set, among others, in order to provide the user with knowledge”⁵.

From this definition we can conclude that a multimedia work must combine innovative creative elements with the integration of different electronic media in the production of the work.

According to the legal definition

An examination of Algerian intellectual property legislation, in particular Ordinance No. 03-05 of 19 July 2003 on copyright and related rights⁶, does not reveal any explicit text providing a direct definition of multimedia works. However, by referring to Articles 4 and 5 of this ordinance, it is clear that the intellectual works protected by law are not limited to a specific list, thus encompassing various forms of intellectual products⁷, including digital works, especially since the legislator has not excluded them from the scope of protection.

Although there is no legal definition of multimedia, the Algerian legislator referred to it when defining broadband web services in Article 2 of Executive Decree No. 98-257 of 25 August 1998, which regulates the conditions and methods for establishing and using Internet services⁸.

In an attempt to define the legal nature of multimedia works, legal opinions have differed. Some consider them to be similar to databases, arguing that both are digital works that combine several elements such as sound, image and text⁹. However, this view is criticised because of the many differences between them; for example, databases are based on collecting, classifying and organising data without integrating them, unlike multimedia works which are characterised by integration.

Another proposed classification for multimedia works is to consider them as collective works¹⁰, based on the premise that both require the contribution of more than one person to create. However, this view has been rejected by legal scholars because it confuses the concept of integration in these works. In multimedia works, the integration of media is an inevitable result, without which the work cannot exist, whereas the integration of contributors’ works in a collective work is a legal principle established by legislation¹¹.



Some legal scholars consider multimedia works to be audiovisual works, as both contain sounds and still and moving images in addition to text. However, this similarity does not negate the fact that the content of audiovisual works is not presented in an integrated form¹².

Finally, due to the imprecision of the proposed classifications for interpreting the legal nature of multimedia works, we conclude that these works possess a uniqueness resulting from the originality of the digital integration process between different media. Therefore, multimedia works are classified as digital works that require legal protection for their authors.

Second: Conditions for the protection of multimedia works

The general rule in the field of intellectual rights protection is that works subject to protection must meet the condition of innovation, which also applies to multimedia works (1). In addition, multimedia works must be expressed and presented in a tangible form, known as the condition of physical embodiment of the work (2).

2. Condition of Innovation

Creativity is synonymous with innovation, meaning that the author must personally create the work¹³. Innovation can be defined as the author's fingerprint, stemming from their personality. In the absence of innovation, the work will not benefit from protection, which is referred to in the field of literary and artistic property as originality¹⁴.

Based on the above, a multimedia work is considered original when the personality of its author is evident, which is highlighted through the selection and organization of these works, followed by the application of digitization techniques and the digital integration of elements, ultimately embodying them in a single digital format¹⁵. However, demonstrating this is not easy, as multimedia works represent an informational product that differs from the constituent works, emphasizing the element of innovation within them¹⁶.

In this context, legal scholars argue that originality in multimedia works arises from a collection of innovations protected by copyright law, where this innovation stems from numerous contributions, some of which are original and others secondary, such as contributions from performers and producers of phonograms or videograms, as well as companies involved in audiovisual communications¹⁷.

As a result, we conclude that multimedia works enjoy legal protection under copyright law when they contain originality in their complex artistic and technical content. Despite the difficulty in verifying originality due to the intricate and interrelated technical aspects of their composition¹⁸, these works are subject to the discretion of the trial judge in case of disputes, and judges often rely on expertise in this field.

Condition of Physical Embodiment of the Work

Copyright applies to protected works, not to ideas themselves¹⁹. This means that innovative ideas must be fixed and expressed in a tangible form, regardless of the method or style of expression, as stipulated in Article 7 of Ordinance 03-05 concerning copyright and related rights²⁰.

Consequently, the creative content in multimedia works must be expressed. Given the specificity of these media and the digital environment they depend on, the concept of physical embodiment has expanded to encompass a broader and more comprehensive term known as "tangible embodiment."²¹

Regarding the tangible embodiment of creativity in multimedia works, it occurs through electronic forms of expression represented by electronic pulses or digital signals. This applies to various types of digital works, including texts, sounds, still and moving images that are electronically integrated. Integration can only be achieved through manifestation, which presupposes the existence of an electronic medium²², such as magnetic tapes, hard drives, or flexible magnetic disks.

Important multimedia works

Digital images: These are tangible embodiments of digital media. The element of innovation is also essential for a digital image to be legally protected, granting the creator both material and moral rights as an author²³.



Digital texts: These are texts on the Internet in digital form²⁴, which are protected by copyright if the condition of innovation is met in each type of these texts.

Digital audiovisual works: The Internet has contributed significantly to the development of audiovisual works, such as films, video clips and music, which are easy to download and use²⁵. They therefore need to be protected in their digital environment.

Second Axis: Legal Mechanisms for the Protection of Multimedia Works

The legal mechanisms for the protection of multimedia works are divided into civil protection (first) and criminal protection (second), and here are the provisions for each:

First: Civil protection for multimedia works

Firstly, it is necessary to examine the rights covered by civil protection for multimedia works (1), and then to explain the procedures for this protection (2).

1. Scope of civil protection for multimedia works

The scope of protection includes both the financial and the moral rights of the author of a multimedia work, which we will deal with in turn:

A- Moral or literary rights

The moral rights of the author are among the most important rights deriving from his work. These rights are based on respect for the personality of the author as a creator²⁶. This right grants the author several privileges, including the attribution of the work to him or her, that is, the recognition that the work created by the author is his or her own. In addition, the author has the right to object to any distortion or degradation of the integrity of the work, which could be detrimental to the author's reputation and status²⁷.

One of the main issues raised by the moral right of the author of a multimedia work is the frequent infringement of this right due to the ease with which the existing work can be integrated into a multimedia work and subjected to various modifications, which is referred to as the infringement of the right to respect for the integrity of the work²⁸.

Digital publishing often limits the author's right to respect for the integrity of his or her work, as the creation of a multimedia work usually requires changes to the content of the original works to be included in the multimedia work²⁹. The moral rights of the authors of the original work must be respected. Similarly, in making available multimedia works, those who use them to create other works must respect the integrity of the work and take into account the moral rights of the author.

While the financial rights of the authors of the original works that make up the multimedia work can be regulated and preserved by requiring the creator of the multimedia work to obtain prior permission to exploit their works through a publishing contract between them, the moral rights remain vulnerable to infringement³⁰.

B- Financial rights

The author of a multimedia work has exclusive rights over the financial aspects of his or her work, allowing him or her to exploit it in various legal ways. This right is characterised by the fact that it is transferable by any legal means, cannot be seized, is temporary and can be inherited by heirs.

The financial rights give the author the ability to invest in these works and to benefit from the financial returns derived from that investment or exploitation, whether by publishing, broadcasting, promoting or reproducing the work. These rights include the right to publish, which includes the printing, distribution and sale of the work³¹. The author may grant a licence for the exploitation of his work by means of a publishing contract, with appropriate remuneration, as provided for in Article 84 of the Decree 03-05 on copyright and related rights. Legal scholars consider financial rights³², such as the right of reproduction and the right of communication to the public under Article 27 of Decree 03-05, to be controllable, unlike moral rights.



Although electronic media allow users to browse and benefit from works, users may go beyond this purpose and copy these works without the author's permission for re-publication³³. This constitutes an infringement of the exploitation right, which, as mentioned above, is an exclusive right of the author.

2. Procedure for the protection of multimedia works

The Algerian legislator has taken care to protect the author's rights in various types of works, both material and moral³⁴. The author is granted the right to bring a civil action in accordance with Article 143 of Decree No. 05/03 on copyright and related rights, which states that "The civil courts shall have jurisdiction to hear claims for damages arising from the unauthorised use of the author's work and the performance for the benefit of the holder of related rights".

According to this text, civil courts are responsible for civil protection. Thus, the author of a multimedia work can bring this action to obtain compensation for the damage caused by the unauthorised use of his work.

As for the legal basis of the civil claim, it may be contractual in cases where the author of the multimedia work has a contractual relationship with the infringer, such as a publishing contract. Any infringement by the publisher constitutes an unlawful exploitation and causes damage to the author, which the publisher is obliged to compensate according to the rules of contractual liability. The claim may also be based on tort, if there is no contractual or legal relationship between the author and the infringer, in accordance with Article 124 of the Algerian Civil Code.

One of the most prominent issues in liability claims relating to multimedia works, similar to various digital works, is the difficulty in proving causation due to the multiple integrated media and their different platforms, making it difficult to identify the direct cause of the damage. The damage to the author of the multimedia work may be caused by various other reasons, such as the equipment used or the Internet service provider, which may make it impossible to determine the cause of the damage³⁵.

One of the protection mechanisms for multimedia works is the unfair competition claim, where the unauthorised use of multimedia works for commercial purposes constitutes a form of commercial interference characteristic of unfair competition³⁶.

Second: Criminal protection

With regard to the criminal aspect, the legislator has linked the filing of an action to the existence of a counterfeiting offence. Article 151 of Decree No. 05-03 on copyright and related rights states that "Anyone who commits the following acts shall be deemed to have committed a counterfeiting offence

- Unauthorised communication of the work or damage to the integrity of a work or performance by an artist or musician,
- Reproducing a work or performance by any means in the form of counterfeit copies,
- Importing or exporting counterfeit copies of a work or performance,
- Selling counterfeit copies of a work or performance,
- hiring or making available for distribution counterfeit copies of a work or a performance".

Article 160 of the Decree 03-05 on copyright and related rights allows the rightholder or his representative to lodge a complaint with the competent judicial authority. The legislator has established the sanctions set out in Articles 153 to 159 of the 05-03 Decree, which include primary sanctions such as imprisonment, detention or fines, while supplementary sanctions may include temporary or permanent closure of the establishment, confiscation or publication of the judgment³⁷.

CONCLUSION:

The research has led to a number of findings and suggestions as follows:



FINDINGS:

- Multimedia works are products of modern technology, which are of increasing interest, especially with the development of digital publishing. The protection of the rights of authors of these works is one of the major challenges facing various comparative legislations, including Algerian legislation
- Multimedia works are characterised by the blending of several elements, including images, texts and sounds, and their interaction through computer programs, which are then fixed on a tangible medium for marketing purposes.
- Moral or literary rights are among the most important rights of authors of multimedia works.
- It is not possible to conclude that Algerian legislation provides effective protection for multimedia works, given the inadequacy of the mechanisms established by Decree No. 03-05 on copyright and related rights, which are general rules applicable to all traditional and digital works.

PROPOSALS:

- There is a need to establish a legal framework for digital works in general, including multimedia works, which takes into account the specificity of the digital environment of these works.
- The legislator should provide a specific classification for multimedia works that respects their uniqueness, so as not to confuse them with the tangible medium on which they are fixed, thus neglecting their moral value.
- The Algerian legislator should establish a specific protection for multimedia works in order to reduce the digital infringements to which they are exposed.

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