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Effect of violating the contract of monopoly performance artist

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Abstract

The aim of the study is to investigate effect of violating the contract of monopoly performance artist via comparative qualitative research method in light of the previous research problem. As a result, the attack on the moral right is a crime itself and does not require an attack on the financial right to criminalize him. In conclusion, we should highlight some of the financial rights of performers' rights to public performance, namely the public performance of the artist's right to obtain financial rights because of the repeated public broadcasting of television channels.

Keywords: Performance Artist, Contract, Production Companies.

Efecto de la violación del contrato del artista monopolista de rendimiento

Resumen

El objetivo del estudio es investigar el efecto de la violación del contrato del artista de rendimiento de monopolio a través del método de investigación cualitativa comparativa a la luz del problema de investigación anterior. Como resultado, el ataque al derecho moral es un crimen en sí mismo y no requiere un ataque al derecho financiero para criminalizarlo. En conclusión, debemos destacar algunos de los derechos financieros de los derechos de los artistas intérpretes o ejecutantes al desempeño público, a saber, el desempeño público del derecho del artista a obtener derechos financieros debido a la repetida transmisión pública de los canales de televisión.

Palabras clave: Performance Artist, Contract, Productoras.

1. INTRODUCTION

This topic includes two important issues (monopoly) on the one hand, and (performance artists) on the other. The subject of the relationship between the artists on the one hand and the production companies on the other raises many questions, because they are not organized by the legislator first, and because the production companies are the dominant controlling party imposing conditions on the other party. The negligence of the legislator in regulating the rights of the artist and their implied incorporation with copyright led to the control of the production companies on the contract. So that the conditions set by the production companies become the law of the strong that gives him the weak party is the artist. Add to this the confusion between the

concept of the artist and the artist performance, on the other hand, did not distinguish between the rights of the artist on the one hand and the artist performance on the other.

In the case of an agreement between the performance artist and the producer company, the performance of the performance artist shall be specific. What is the ruling if the producer company violates the conditions of contracting with the artist? At a time when there is no legal cover or legal text showing the consequences of this violation. Leading to an imbalance of power between the parties to the contract, what is the ruling in this case? In light of the previous research problem, we will highlight them according to the following research plan: The first topic in the concept of monopoly, is divided into two requirements. The first in the definition of monopoly and the second in the comparison between the jurisprudential and economic concept of monopoly. The second section deals with the statement of the artist's intention, and he examines the juristic and legislative definition of the performance artist, respectively. The third part examines the nature of the artist's right to perform. The fourth topic deals with the basic rules contained in the contracts of harassment and the fifth discuss the violation of contractual obligations with the performer performance and legislative protection. We conclude the research by concluding with the researcher's recommendations (Naim, 2000).

1.1. The concept of monopoly

In this topic, we stand on the definition of monopoly and the definition of its content. Because the definition of monopoly has more than a meaning, sometimes has a concept of jurisprudence and sometimes be the concept of economic. As to monopolize more than the image as you will see. So we first define the concept of monopoly, and then we show whether it can be called the term monopoly on the contract of work with the artist.

1.1.1. Definition of monopoly

The monopolization intended here is where all the activities of the artist are in favor of the monopoly party, or the contract in which the oppressor party requires the artist to have all the artist's activities and productions in his favor, and to be punished by the monopoly party. The monopoly contract consists of two parties. The first is the monopolist, and usually the artist (actor or singer), whose activities are in favor of the first party, is subject to penalty in case of violating the terms of the contract. The second party: the monopolist is the beneficiary party of the monopoly contract which is usually a productive company. But what is meant by monopoly?

Monopoly Language: The concept of monopoly in language has many connotations but revolves around one meaning which is, combination and imprisonment. The word monopoly came in the

Arabic language dictionaries with a similar meaning. And in the surrounding dictionary that monopoly is taken from the sense of injustice. The first trend (traditional doctrine): According to this trend, the monopoly is (the imprisonment of goods at a time when people need it, the desire of the monopolist to control the price of the commodity). They agreed in the sentence that it is not permissible to harm people, and they restricted it to restrictions that they agreed on most of them and differed in some of them. It is a condition of monopoly. One of the conditions of monopoly, for example, is that monopolies are focused on the voices of individuals. The second trend (modern doctrine): In this direction, the monopoly takes another meaning is the broad sense, and gives a general economic concept. The concept of monopoly in the economy, the situation in which the market is one company only provides a product or service to all consumers. In other words, this company is in control of the entire market, and that is why the company is called the craft. So the market is called a monopoly. In this case, the artist's efforts are monopolized and the company monopolized and monopoly status (Najwa, 2004).

1.1.2. A comparison between the jurisprudential and economic concept of monopoly

Perhaps the first point that draws attention to the distinction between the jurisprudential concept and the economic concept of monopoly is that monopoly in the jurisprudential concept should focus on material goods. While the monopoly in the economic concept may

be on goods or services. In the sense that monopoly may be material or immaterial as the case may be. This means that monopoly in the economic concept is broader than the jurisprudential concept. The other observation is that the monopoly should cause damage to individuals according to the jurisprudential concept, while this condition is not required in the economic concept. In addition, the jurists have a view of defining monopoly in their environment. Productive work is generally competitive, but monopolization enters into the stage of trade in products. Therefore, the basic picture of monopolistic behavior they have described is that it is commercial behavior (buying and retention for resale) in facilities that produce and sell their products directly. Perhaps a question arises. What we see above is that the contract with the performer is called the term temporary exploitation contract or monopoly. The conditions agreed between the contractors are the ones that allow one of the parties to impose its conditions on the other. The contract remains an exploitation and exploitation, even if it contains conditions that give the conclusion that this contract is a monopoly (Suhailhussein, 2001).

1.1.3. The general concept of the artist (performance artist)

The contract of monopolization intended here is the contract concluded with (performance artist). The latter shall be the focus of the contract. And most likely to be the first party in it. The place of the contract is the use of the work of the artist, which is always in return

and is mainly used for the use of the production of the representative artist or musical or other. The artist (Joseph Bois) is one of the leading performers. Through his performance (I love America and America loves me) in 1969 at the Bullock Hall in New York. The beginnings of performance art appeared in 1950 when George Matthew at the Sarah-Bernar Theater in France staged a poetry concert in which he painted a large painting on the stage in twenty minutes (Ismatabdulmajid & Nurihamad, 2001).

1.2. Definition of *alfeghh*

Because the legislator did not set a specific definition of the artist, did not distinguish between him and the performer performance. As most of the world did not develop a special law guarantees the rights of performance artist in particular and the artist in general, it follows that the jurisprudence divided in the definition of artist and artist performance on the following trends: The first trend: proponents of this trend go to define the performance artist in a broad sense to include non-artists, such as circus performers. The proponents of this trend went on to define the performance artist as the person who represents, sings, casts plays or otherwise performs literary or artistic work, including a multi-section such as a circus and an acrobat. Or he (the person who represents, sings, chants, presents, plays and performs in one way or another the literary or artistic work, displays the variety and displays the circus and puppet show) (Adnan & Khater, 2009).

The second trend: If the supporters of the first trend expand the concept of (artist), the proponents of this trend narrow the concept of the artist. Proponents of this trend limit this trait (artist) to certain categories (actor, singer and musician). Artists are those who represent and perform literary, artistic, theater or musical works by acting, singing, playing music, dancing or in any other way. (Actors, singers, singers, musicians, musicians, dancers, men and women). They also knew that they (actors, singers, musicians, dancers or other persons who represent, sing, cast, sing, play or otherwise perform literary or artistic works, including folkloric works). What we see is the need to expand the definition of the artist, to include items that are closely related to the work of art. Whether the work of art is a representation, singing, dancing, theater, circus or others. The justification for this is that the artwork is not associated with a specific area, but the artistic workspace is wide and not bordered by boundaries. Therefore, the contract of monopoly artist includes all the arts and benefit from all the performers. The monopoly contracts concluded with the artists are often preventing the artist from performing any artistic activity of any kind and with any party outside the framework of the contract. Which we see that the contract of monopoly is according to its conditions, if the contract allows the artist to perform some of the technical activities outside the contract, the monopoly will be on the activity of art without the artist himself. If the contract is applicable to all the activities of the artist, the monopolist responds to the artist himself and his artistic activity, as this type of contracts includes a penalty resulting from the violation of the terms of the contract, which is often a claim to seek compensation or punishment penalty (Abdelmoneim, 1979).

1.2.1. Legislative definition of performance artist

The different legislations dealt with the definition of performance artist, and each according to his direction. And the difference between them that all these legislation did not distinguish between the artist and performance artist. They also made the rights of performance artists (adjoining) any copyright related. In the sense that the performer's right to perform is less than copyright. However, these legislations agree that they have adopted what is established in the WIPO Convention for the Protection of the Rights of Performers. This legislation has been divided into two groups: First: the set of legislation on the rights of the performer performance: and through the review of this legislation note we find that they gather to expand the definition of performer performance. According to this legislation, the performance artist is the person who represents, sings, casts plays or performs in any other manner literary or artistic work, including a multi-section such as a circus and an acrobat. Or he (the person who represents, sings, chants, presents, plays and performs in one way or another the literary or artistic work, displays the variety and displays the circus and puppet show). Second: the set of legislation that dealt with the right of the performer under the copyright law, and includes the set of laws of States that did not adopt the WIPO Convention, including the law for the protection of the Iraqi artist's right of 1992 amended in 2005. The law of the right of the Moroccan artist/ Act No. 2-00 relates to the rights of the artist and neighboring rights.

1.2.2. Adapt the right performer performance

The performer's right to perform is not material since all rights are immaterial. The in-kind or personal right to which we have already referred, each of which is material, but the right is always moral and cannot be material (Mohamedhossam, 1999) .

1.2.2. Numerous theories in determining the nature of the performer's right

Opinions differed in determining the nature of the rights of performers who respond to non-material objects, some of them and put them under the name of the literary, artistic and industrial property. On the grounds that the right of the person to produce it is a property right, as in the ownership of material objects, if it is real property, but on non-material things, and this opinion is abundant in many jurisprudence. Thus, the copyright ownership of the property and the right of the inventor, from the results of this trend in France, have been defined by the proponents of this opinion as the French legislator in the Law of March 11, 1957, which replaced the previous legislation in the right of the artist to classify this right as: For all people, he objected to this view that he repulsed the wrong idea, because he who produces my mind is different in nature from the material thing that is aware of the sense and has an object in it The supporters of the opposing opinion to say that the right of ownership but It is clear from the

confusion between the property right in general and that, And the property right is in itself materialistic also because its place is material, whereas this is not the case for the right of the performance artist, which is of another nature, that is, the place of his place is the world of thought, so the difference is clear between the world of matter and the world of thought. A part of the personality and that the product of thought is restricted by this consideration, that is, the author's moral right to produce gives him the right of review or import of what has been published from the deliberative circle and by a single will, while the disposition of the material is considered a final act and not the will of the Before, and then the objectors to consider the author's literary right is not a property right Really kind, it is the right of personal rights to them closely, but part of it and also justification for objection when this team is that the property right of permanent life sentence, while the right of an artist Aladaho right to exploit temporary. In other words, the owner enjoys two types of Interests. A moral interest lies in the protection of intellectual production, which is an extension of his personality, and the material interest is a monopoly of what results from the exploitation of the product of his mind and creativity financially.

1.2.4. The right of the performer and its importance

Socrates said in ancient times: The invention of thought the highest degree of psychological pleasure that we can get in our lives. He has started the mental production of man since ancient times, and

ever since he can see the understanding of what surrounds him and before he began to express his opinion and speak fluently the art of the statement. What should be available in the contract subject is the performance artist, which can be summarized in:

(1) That this thing is not out of the circle of dealing either by its nature or by virtue of law (62) of the Iraqi Civil Code. In other words, the artist's activity is not illegal. Thus, no one can register a new invention or discovery in his name if the innovation violates public order and morality and is contrary to the provisions of the law.

(2) That the property is a non-tangible property, not as intangible as ideas and inventions, in contrast to property in kind, something material, such as land and buildings.

(3) The performer of the performing artist must be movable and shall include books, literary and artistic works, music, drawings, and industrial designs. And all types of performance artist of ideas and mental creations mental. In any case, the performer's rights are the set of legal rules that aim to organize two main groups of rights:

The rights of authors, producers and artists or so-called literary and artistic property.

(B) Industrial property rights, a set of intangible rights that are granted to non-material persons to which their owners are entitled, have a right to prevent their exploitation or use, and which include all new industrial innovations such as patents and industrial designs used to distinguish certain products Or competition (Said, 2013).

1.2.5. The basic rules on which contracts are based on the monopoly of the performer's performance

Performance artists enjoy moral and financial rights. What is the content of each of these rights, and is it different from that granted to the author, and is the Iraqi legislator provided for them?

1.2.6. Legislative regulation of the literary rights of performers

National legislation has granted performers moral rights that are particularly distinct when compared to the author's literary rights, namely, their non-applicability or attachment on the one hand, and their permanence and non-limitation on the other. It should be noted that the WIPO Performances and Phonograms Convention was the first to grant performers moral rights, unlike the Rome Convention, which did not grant them such rights because of Anglo-Saxon objections. Since the affirmation of the moral rights of performers at the time of

the elaboration of the Rome Convention would undermine the success of the Convention.

1.3. Label artwork

This means that the performing artist shall have the right to perform his performance in the same manner or manner as he did if the artist has the right to link his performance to his name if he can. The percentage of live performance or recorded performance artists as they created, and this is the case of the Iraqi legislator has been granted the artist-performer the right to live performance ratio or audio recorded in a sound recording to him The violation of this right to write a cassette company, for example, A famous performer with singing is not his voice Or performance, this act is illegal because it is necessary to attribute the performance to the artist who performed it, not the performance of others, but the right to performance ratio to the artist in accordance with Iraqi law is a reservation that allows not to mention the name of the performing artist if the nature of utilization The performance prevents the performance ratio to the performer, taking into account the purpose that took advantage of this performance for it and how to exploit it (Hossamkamel, 2013).

1.3.1. Appeal to him

This means the right of the performing artist to object to any violation of his artistic performance that would harm his reputation and

consideration. The rule of the report of this right is that the public may have a judgment on the value of the artistic performance at a distance from each other (the distance from the idea that the artist wanted to perform.) The Egyptian and Iraqi directors gave the performing artist the right to respect his performance if the performer grants the right to preventing any change, distortion or distortion in their performance. It is a manifestation of distortion of the performance of the artist, broadcasting his performance before his final crystallization, such as a television station, for example broadcast the performance footage that is still in the preparation stage has not yet announced to the public, because the performance of the artist goes through different stages interspersed with errors and pitfalls, is not entitled to publish such performance without the prior approval of the artist.

1.3.2. Legal Privileges (Financial Rights of Performers)

The financial rights of performers are characterized by a set of characteristics that distinguish them from moral rights. It is the exclusive rights of the artist that no one can share it. No other person other than the holder of such right is entitled. This performance shall take advantage of the legal protection of artists' rights without permission except in certain cases expressly permitted by law. However, the financial rights of performers are temporary rights of a certain duration and may be reserved (Abdulla, 2008).

1.3.3. Legal duration of the financial right

This means that the financial right of the performer, unlike the literary right, is considered a temporary right with a certain period ending with its termination. For its part, the Egyptian legislator has defined the period of the financial right of the performing artist for 50 years from the date of performance or from the date of recording this performance. The financial right of the performer, though exclusive, is an exclusive right for a period specified by law. Unlike the period of protection of the author's financial right, the period of fifty years begins from the date of death of the artist as a general principle. As for the Iraqi legislator, he and the Egyptian legislator agreed to define the period of protection of the financial right of the performing artist by 50 years. The validity of this period starts from the first calendar year following the date of the first sound installation of the performance and is intended to confirm here the placement of the work in a permanent physical form or the ability to broadcast at any time And control of the broadcast and possession, while the Iraqi legislator may make the period of protection of the financial right of the author fifty years a general starting from the date of death. The result is that the period of protection of the material right of the artist performing in accordance with the Egyptian and Iraqi legislators may end and he is still alive, so that his successor does not have the right to exercise the material right of his predecessor the artist. The second result is that the Iraqi legislator does not rely on live performance Starting from the beginning of the period of protection of the physical right of the performing artist, but relied on the performance fixed in the sound

recording as a starting point for the duration of protection, unlike the legislator. If the performance is considered a starting point for the validity of the period of the material right. This means that by the end of this period, this right will be transferred to public property (Osamaahmed, 2008).

1.3.4. Types of financial right

These rights include the right to deliver and install performance to the public. The right to reproduction and the right to public access.

The right to fix the artistic work, the right to deliver performance to the public is defined as the right of the performing artist to convey to the public the sounds that make up the performance, sounds or representations of sounds fixed in a sound recording by any means. Except for the means of broadcasting in this sense, the performing artist is entitled to transfer his performance to the public through television, computer and internet. While the fixation is intended as an embodiment of sounds or for any representation from which it can be conceived, reproduced or transmitted by an appropriate instrument. It is known that the fixation here means the first installation of live performance and national legislation, and international conventions expressly provided for this right. The performer performing such a right shall have the right to object to any use of his performance which takes the form of a transfer to the public with the offer of gain if it is

done directly or automatically without prior authorization from him (Muhammadibn, 1986).

Paragraph 2: Right to imitate artistic work or reproduction: Among the other financial rights that performers are entitled to prohibit their use without their prior consent, the right to reproduce their performance included in an audio recording is intended to create one or more images identical to the origin of a sound recording in any way. Including permanent or temporary electronic storage of such registration, in other words reproduction means the production of one or more copies of any installation. The Egyptian and Iraqi legislators have provided this right if they have been given a full item, under which the performing artist shall have the right to reproduce his performance in an audio recording, whether it is temporary or permanent reproduction (Alfayrouz, 2005).

Paragraph 3: Public Performance: The right to public access means that the performing artist shall make available his artistic performance to the public by any means or technique. Such as a loudspeaker, or a phonogram, such as recordings, CDs, or radio Means CD cassettes and the like are similar, as long as they are publicly available to the public. As in the case of the right to fixation and reproduction, Egyptian and Iraqi lawmakers have provided for the artist's right to publicly make his artistic performance available. While at the same time defining the means of public access. The aim is to enable the public to receive this performance in the time and space chosen by any of them. While the Egyptian legislator was more clear in this matter than the Iraqi legislator, as the Egyptian legislator circulated yet. While the right to distribute the artistic

performance is the right of the artist to distribute his performance fixed by the sale or any other conduct of ownership (Mohammadfawaz, 2012).

1.3.5. Breach of contractual and legal obligations

Before setting the terms of the contract, the basic rules stipulated by the legislator should be observed and included in the terms of the contract. These rules are of two types, such as those stipulated in national legislation, including those provided for in international treaties. We thus conclude:

1.3.6. National protection of the rights of performers

The rights of performers enjoy two types of protection at the internal level: civil protection, which is dual protection. Is the procedural protection through which the performer can ask the competent authority to issue a temporary decision to prevent possible damage to the right to be protected, or to maintain evidence of abuse?

1.3.7. Legal protection of the rights of performers

Civil protection of the rights of performers includes the temporary procedural protection of these rights, namely, a series of expeditious procedures for the preservation of these rights and the final

protection of a final judgment by the competent court to compensate the performer as a result of the infringement of his or her rights. And the attack on the classified whether:

- (1) By manufacturing and copying it without permission for the purpose of extracting copies thereof, in the collection provided that they are intended for the reproduction of the work.
- (2) By a public performance of the work in front of the public by its presence, representation or dumping, and to prevent the continuation of the existing offer or to prohibit it in the future. The arrest also includes the revenue resulting from the publication or offer and the illegal exploitation of the work.
- (3) For the signature of a reservation, jurisdiction shall be determined by the place in which the imitative operation takes place, the place of sale, the distribution, the place of audiovisual broadcasting or the place of performance of the work to the public.
- (4) Paragraph 1: Means to protect the rights of performers: procedural protection includes future cessation of infringement measures, suspension of performance publication, seizure of performance or phonogram that has been infringed, and limitation of revenue resulting from the illegal exploitation of performance.

(5) First: Stop publication of performance: The performing artist may see that the appropriate precautionary measure to preserve his right protected by the law is to stop the publication of his performance which has been attacked. Thus, if the rights of a performer are violated, for example, in a film that has been a work of art. The precautionary measure here is a request to stop the screening of this film, and the rights of performers may also be infringed within a sound recording. The precautionary measure is to stop the manufacture or production of this recording. The Egyptian and Egyptian legislators have provided this form of procedural protection, but the position of the Egyptian legislator was clearer. If the forms of this picture were determined by stopping the performance or stopping its production or stopping its industry and according to the nature of the aggression, To stop the infringement - without specifying the forms of such a stay (Clombbe, 1997).

(6) Second: The seizure of the performance of the attack: One of the procedural protections of limiting the damage that actually occurred is the signing of the reservation or the sound recording or copying of the performance. This reservation also extends to all materials and tools used in the reproduction or reproduction of this performance, however, in order to make a reservation in the latter case, it is necessary that such material is valid only for the re-publication of the performance. In other words, the material to be reserved must be intended for the re-publication of the performance.

(7) Third: The recording of the performance revenues: This picture is a form of procedural protection to request the revenue inventory achieved by the aggressor as a result of improper exploitation of the technical performance in preparation for the arrest of this revenue. This image also includes the confiscation of illegal copies of the performance included in a phonogram, any materials or instruments used in this reproduction, as well as the confiscation of the price of tickets sold to the public as a result of the exploitation of the technical performance. This copy is executed through the assignment of an expert by the competent court to assist the minutes in charge of implementation.

(8) Paragraph 2: The executive protection of the rights of performers: This protection is achieved through the imposition of responsibility in its forms of contractual and default, by issuing a final judgment against the perpetrators of this attack, which naturally obligate the aggressor to pay compensation to this artist as a result of the damage suffered (Alyazid, 1967).

(9) The nature of the violation of the rights of performers: The nature of the civil protection to which the performer is entitled varies according to the nature of the assault on his rights. These rights may be violated by the contracting party with this artist and may be attacked by third parties, who have no contractual relationship with the artist.

1.4. Violation of the contract with the performer

There are many contractual relationships that a performer can perform in the exercise of his rights. The performer may conclude a contract with a particular author for a classified performance, such as signing an artist with a poet to perform his poetry in the form of a song. Or this artist may contract with a particular association to manage its financial rights as we have previously described, or other contracts. If the contracting party fails to comply with one of its obligations imposed by the contract between them, resulting in damage and causal relationship between them, the contractual liability shall be exercised. If the damage is done as previously stated, it must be a natural consequence of the act of breach of the contractual obligation, which is expressed by the existence of a causal relationship between the act of breach and the resulting harm (Mahmoud, 2009).

1.4.1. Violation of the legal obligation to respect the rights of performers

The infringer may not have a contractual relationship with the artist, but this infringer violates a previous legal obligation not to infringe on the rights of the performers guaranteed by the law. Hence, the infringement of the rights of the performers, in this case, is considered an offense under the law Liability, as in the case of contractual liability, this responsibility - that is, torturous - is required to provide three pillars of damage and damage and the causal

relationship between them. The first element (error) is the breach of a legal duty imposed by the law governing the rights of performers to all by the need to respect these rights. A hacker would open a website and share the performance of a performing artist and distribute it or register it for free. The second pillar of the pillars Tort is the harm resulting from the act of damage such as the damage caused to him as a result of the infringement of the rights of financial exploitation is material damage in the form of the loss of gain on the performer. The physical damage to the performer here is that he cannot get a large sum of money by imitating his voice because he has become a familiar voice. A company may use the artist's image in their commercial catalogs without their consent to promote a particular commodity (Haddad, 1993).

1.4.2. Effect of infringement on the right performer performance

The Law for the Protection of the Right of the Iraqi Artist has laid down three principles for determining the compensation that the artist deserves as a result of the violation of his rights, without distinguishing between the contractual or tortuous responsibility, the foundations of the injured artist, the performance.

As for the first, we find that there are many considerations of the artist who performs the damage that helps to estimate compensation, such as the status of this artist and his social, cultural and artistic status, and the impact of the attack on his reputation. As for the second

basis, one of the most important considerations of artistic performance is the abuse of literary or artistic value for this performance and the value of the original performance in the market. Of course, determining the literary or artistic value of this performance is a matter of substance in which the court of the matter is subject. The third principle that the judge must take into consideration when assessing the compensation is the financial benefits that the aggressor has earned because of his aggression. The value of the technical performance can be determined by the criterion of artistic viability and whether the public is interested in it. Famous and distributed in the form of material supports and put on the market without the consent of this artist, it will earn huge profits as a result.

Section 1: Penal Protection of the Rights of Performers: There is a set of acts that only performers can perform without legal authority, ie, without a prior written authorization thereof. Otherwise, an infringement of these rights would entail penal liability. Or propagate it, or disseminate it via computers, and in general any other attack on the financial and moral rights of performers.

Paragraph 1: Violation of the financial rights of performers: This includes selling, renting or trading for protected performance, mimicking protected technical performance, and publishing the protected performance by electronic means.

First: Selling, leasing or trading for protected performance: A sale, rental, or performance of a protected performance in a sound

recording shall be considered as a sale, lease or trading for any protected performance, without any prior written permission from the performing artist.

This copy of the crime shall be realized whether it is the sale, leasing or circulation of the person who copied the performance or whether it was from third parties, whether the sale, trade or trading among the public is paid or otherwise paid or earned or not. It is worth mentioning that the sale or rental of artistic performance or put it for trading among the public without a legal basis, and a license from the right to performance is directly the rights of performers without right in accordance with the law to protect the right of the Iraqi artist.

Second: The tradition of protected technical performance: The Egyptian and Iraqi legislators have stipulated that the existence of a protected performance tradition should be criminalized, sold, offered for trading or rented with the imitator's knowledge of imitation. It should be noted that the Iraqi legislator has come up with a flexible formulation directly the rights of performers without legitimacy. The tradition of protected performance is considered to be one of the pillars of the crime of imitation, namely, the legal pillar. As for the material element of this crime, it is the criminal activity that is manifested by bringing the offender to an act which constitutes an attack on the rights of the performers. These rights were literary or financial, regardless of the image taken by this act of aggression. As for the moral element, it is considered available to the imam of the criminal intent of the imitator if he must have knowledge of the tradition of protected

performance in the place of abuse. But what about a tradition of performing a protected and overseas publication?

The Iraqi legislator has explicitly stated that a crime involving a protected performance tradition is published abroad, sold, offered for sale, traded, rented or exported abroad provided that the knowledge of the imitation is available. It should be noted that this crime is committed at home, Third: Publishing the protected performance by electronic means: The criminalization of the dissemination of protected performance by electronic means, which is without the consent of the artist from the new criminalization images to meet the technological development and the accompanying means of modern publishing. The Egyptian legislator explicitly stated this form of criminalization. The physical element of this act is achieved by making the performance protected to the public by one of these means and published without the written permission of the performer.

Second paragraph: How to infringe the moral right of the performance artist: Under the law of copyright protection, the Iraqi legislator was deprived of the moral rights of performers, any image of infringement and in any form on the rights of the performers. This was stated by the Iraqi legislator when he used the phrase directly the rights of performers. These included the assault on the moral rights of performers. However, the legislator did not specify the elements of this crime. The texts that organized the literary rights of performers. It should be noted that the attack on the moral right is a crime in itself and does not require an attack on the financial right to criminalize him.

It should be noted that the violation of the rights of performers is a continuing crime.

2. CONCLUSION

That the subject (temporary holding contract) raises two issues of paramount importance. The first concerns naming the contract. The contract concluded with the artist is called a mistake (contract of monopoly), and we have seen as the term monopoly called for the imprisonment of money and imprisonment benefits that result in monopoly damage to individuals. The imprisonment of benefits if we correct the contract cannot be considered a monopoly because monopoly efforts of the artist do not entail harm to individuals. The second issue raised by this topic is the performer (performance artist). Most of the legislation called the performer's name on every person who has an artistic, musical or literary output, knowing that the term performance artist is called a specific group or category of people who practice the art of performance. We have highlighted some of the financial rights of performers' rights to public performance, namely the public performance of the artist's right to obtain financial rights because of the repeated public broadcasting of television channels.

Based on the above, we recommend that:

1. Separate the rights of the artist and the copyright, and enact separate legislation. One is copyright-related, the copyright

protection law. The second is related to the artist's right to protect the rights of artists.

2- Change the naming of contracts with artists from monopolistic contracts to temporary contracts.

3- Treatment and regulation of temporary acquisition contracts through the enactment of legal legislation regulating the rights of contracting parties.

4 - Discrimination in the legislative texts between the artist in general and the artist performance in particular, since each has a different artistic activity from the other.

5. Formation of a competent body to which all contracts entered into by the artist with any entity shall be referred to them for consideration of their legality and observance of the rights of the artist. And to consider appeals filed by the artist on the production company and vice versa.

6- Providing material and moral support to artists through the formation of a specialized body specialized in sponsoring the material and moral affairs of the artist.

7. Adopting the provisions of international treaties such as the TRIPS Agreement and including them in national legal texts.

REFERENCES

- ABDELMONEIM, F. 1979. **Sources of Commitment Study in Lebanese and Egyptian Law.** Dar Al-Nahda al-Arabiya. Lebanon.
- ABDULLA, A. 2008. **Dispute Settlement of Copyright and Related Rights Disputes.** Publication of the Center for Research and Studies. Dubai. UAE.
- ADNAN, A., & KHATER, A. 2009. **Explanation of Jordanian Civil Law.** Sources of Personal Rights. Obligations. Comparative Study. USA.
- ALFAYROUZ, A. 2005. **The Surrounding Dictionary (I. The Thesis).** 8th Edition. Al-Resalah Foundation. Cairo. Egypt.
- ALYAZID, A. 1967. **Rights on Literary, Artistic and Scientific Works.** Knowledge Establishment. Alexandria. Netherlands.
- CLOMBBE, A. 1997. **The Basic Principles of Copyright and Related Rights in the World.** Comparative Law Study. UK.
- HADDAD, A. 1993. **The Legal System for the Protection of Jordanian Work.** Comparative Study. Amman. Jordan.
- HOSSAMKAMEL, E. 2013. **The Right to Respect for Private Lives the Right to Privacy.** First Edition. Cairo City Library, Cairo. Egypt.
- ISMATABDULMAJID, B., & NURIHAMAD, K. 2001. **Legal Protection, Intellectual Property.** House of Wisdom. Vol. 1. Baghdad. Iraq.
- MAHMOUD, A. 2009. **Temporary Protection of Intellectual Property Rights.** Dar Al-Nahda Al-Arabiya. Lebanon.
- MOHAMEDHOSSAM M. 1999. **Practical Reference in Literary and Artistic Property in Light of the Views of Jurisprudence and Judgments.** Fourth Book. UK.
- MOHAMMADFAWAZ, A. 2012. **The Legal System of Contracts for Preparing Computer Programs.** Dar Al-Thaqafa Library. Saudi Arabia.
- MUHAMMADIBN, A. 1986. **Mukhtar al-Sahah.** Lebanon Library. Lebanon.

- NAIM, M. 2000. **A Study in Literary and Artistic Property and Neighboring Rights in Comparative Law.** University of Michigan. USA.
- NAJWA, A. 2004. **The Neighboring Rights of Copyright.** Dar al-Nahda al-Arabiya for Printing. Publishing and Distribution. Beirut. Lebanon.
- OSAMAAHMED, S. 2008. **Procedural Protection in the Field of Copyright and Related Rights in the Light of Law.** Dar Al-Nahda Al-Arabiya Publishers, N^o 82. Egypt.
- SAID, S. 2013. **Legal Protection of Copyright and Neighboring Rights.** City Library. UK.
- SUHAILHUSSEIN, A. 2001. **Legal Means to Protect Copyright Civil Punishment.** Yarmouk University Press. Deanship of Scientific Research and Graduate Studies. Jordan.



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