

ملخص الرسالة باللغة الانجليزية

Abstract:

This study aimed at identifying the right of author in distance education and in issues raised in this context. The issue is not about protection of author in its traditional form, who puts the product of his accomplishments and mind in the form of material that come in the form of a book, a story, or report , but rather about the protection of his right in distance education.

The matter is related to digital, information and use of temporary tools such as computers, design, multimedia, and other tools of our modern time, which in turn raises many problems at the international level provided that the author does not appear or does not come into existence in concrete material, but is totally dedicated to computers and website.

The researcher, through this study, tackled the concept of distance education, and the right of author in its traditional form, which means protection at the international level, local levels, and adapting its legal nature. At the beginning, we reviewed the previous related studies with the focus of author on distance

education and the extent of ability of the general rules in legislations of author right in its traditional form to provide necessary protection in the absence of clear texts to protect this kind of work. Then we dealt with means of protecting the right of author in distance education within comparative systems especially in France and Belgium, in an attempt to compare them to the Palestinian situation and to find ways to solve such a problem on the ground in light of the growing use of distance education in Palestinian universities.

The right of authorship in distance education has a direct relationship to intellectual property rights, such as property of courses, use, modify, the principle of fair use, the issue of material investments and return and the manner of protecting it for both the university and academic staff.

The researcher also tackled the Palestinian practical situation in this area through reviewing the experience of Palestinian universities through a project called Rufo as a study case and it is the university graduates network for open learning and distance education. This project has been supervised by Cnam University in France with the support of five Palestinian universities, namely "Birzeit University, An-Najah University, Al-Quds University, Al Quds Open University and Palestine Polytechnic University in Hebron."It is noteworthy too

mention that these universities have worked to develop courses in distance education without regard to the subject of intellectual property rights among themselves since the beginning.

This study has show that there is a clear imbalance concerning legislations of author's protection in Palestine that belong to old times. Those are the legacy of the British Mandate although there is some good texts match with Berne Convention⁴ for the Protection of Literary and Artistic Works and classifications for the year 1971 and was amended in 1979. However, it does not keep up with the evolution at the international level for protecting classifications. In addition, many of the texts contained therein are not applicable, and since they do not fulfill the purpose they have been developed especially during these days. It is noteworthy to mention that there is a draft law which was prepared in 1996 and presented for public discussion before the Legislative Council in 1999 and was presented to the special committees of the Council⁵(2), and then was presented on the agenda of the legislative plan for the government and Council of Ministers in 2011. This project was not approved until the

⁴ This agreement had been signed the first time in 1868 , then in Paris in 1896, amended in Berlin in 1908 and supplemented in Bern in 1914, amended in Rome in 1928 , Brussel in 1948 , Stuckholm in 1967 in 1967 and Paris in 1971 and amended in 1979.

⁵ This project had been presented to monitoring committee on human rights and public freedoms, legal committee and education committee on 16-3-1999 by head of Legislative Council under number 44/99, It is noteworthy that there is a draft prepared for the year 1998, but has not been presented to the Legislative Council, and now the bill for the year 1996 is presented to the Council of Ministers for debate.

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writing of this thesis. Apart from this single attempt, this subject has not received sufficient attention although it is important.

This study showed that the right of the author is with a dual nature, for it involves moral and financial rights. Moreover, the legislations of author right have created many means of civil protection for the protection right of the author in its traditional form, be they civil or criminal rights.

The study also showed that legislations of author right, including those applied in Palestine contain many rules that can be useful in some cases, in the absence of the legal text and its limitations to protect classifications and works intended for distance education, which are necessary for protecting the right of author.

The study also showed that the Palestinian laws do not include explicit provisions that state the right of author in distance education. Palestinian universities have no regulations or clear policies to protect intellectual property rights resulting from the development of materials prepared for distance learning in spite of its importance.

Moreover, the legislations of author's right in comparative Arab and foreign laws, as well as the international conventions do not include special texts for the protection of this type of work or classification, but were subject to the general rules and were covered by protection. A number of universities worldwide have developed systems and specific policies to manage these rights, under contracts and agreements held with the authors, and all who have relationship with the development of courses. There are some countries which resorted to regulating it under special laws such as the U.S. law which introduced these concepts within a law known as the Teach act issued in 2002. This also applies to Australia through a law known as The Australian (Federal) Amendment (Digital Agenda) Act 2000 issued in year 2000.

The study also demonstrated that there are many issues raised by author's right in distance education whether in terms of the relationship of universities with one another, or in terms of its relationship with its staff, or faculty members among themselves, or at the level of the relationship of the University with those outside the university, especially with regard to the property of courses designed for distance education, mechanism used and the rights arising there from, whether morally or monetary or conditions of use, investment and other related issues.

The researcher drew a number of recommendations including, the most important one which states : "It is necessary to modernize and develop the intellectual property legislations, inherited from earlier historical periods, especially those related to author's right, whether through the amendment of the existing laws or introducing new legislations, due to its shortage to provide adequate protection to the authors. Moreover, some of these texts do not keep up with developments on the International scene especially with regard to digital works. It is preferable that this amendment or the new project address the new issues in the field of author's right.

It is necessary to regulate the management of intellectual property rights in the field of distance education and the rights resulting from it in Palestine, whether through legislation or through clear and declared policies adopted by Palestinian universities provided that these policies manner of work through system of distance education and addressing all the issues that may arise by the use of distance education. It is necessary to determine the type of protection system, which regulates distance education. It is also necessary that Palestinian universities develop clear and effective policies for the organization of author's right for the materials prepared for distance learning, provided that stating all forms, issues and policies expected to regulate this right among

universities and groups that can deal with whether at the level of staff, designers, or any third party, or on the level of universities among them, through developing standardized instructions that include all Palestinian universities and apply them with regard to mechanisms of management of intellectual property rights in this kind of work or classification.

Identifying clear policies for the use of courses, leasing, amending, developing, printing and copying them and specifying the authority having the right of designing one of the courses. The need for the realization of the general rules in legislations of author's right in distance education, under the absence of explicit provisions on the protection of this kind of works or classifications. Adopting some solutions, which some countries have resorted to, for the protection of the author's right in distance education in the absence of the text, through the signing of agreements and contracts among universities and educational institutions and their staff , and all who have direct relationship in authorship rights , or by finding systems and clear instructions that are declared about the policies of intellectual property policies they pursue, or through organizing them special laws to ensure protection.

It is necessary for Palestinian universities to choose a clear model to deal with each other in terms of courses which are being prepared with each other and are jointly. In case there is no joint preparation of material whether through making a coalition among them about the courses designed together for distance learning, or through a system of "Copy left" leave the right of authorship", so the ownership of courses is open among universities. Universities must develop a clear policy on the management of intellectual property rights among themselves, particularly as the Palestinian laws did not tackle the issue of the Internet or digital. It is necessary that this matter should include determining the nature of ownership, especially the physical aspects of them including the exploitation of the course and invest it, adoption of individuals as bearers of the right of authorship, and rewards for commercial use. The principle of "fair use" which is internationally known, allows people for the right to fair use by persons without the permission of the author, especially for the purpose of instruction. It is necessary to clarify this principle and the need to set clear controls for it like some countries that have identified mechanisms for use in materials and resources prepared for distance education like the United States and Australia. Legislations of author's right in Palestine tackled this principle in the traditional sense, yet they have not

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developed any standard to apply it and ensure compliance when using the courses.