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The Legal Nature of Intellectual Property Rights in the Digital Environment

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Abstract. The world has witnessed significant technological developments, with the digital environment and its circulating digital works constituting the core of this transformation. These advancements have posed new challenges for legal doctrine and the judiciary, calling for their proper regulation. They have also given rise to numerous contemporary legal issues, including the problem of determining the legal nature of intellectual property rights. Such rights are neither *real rights*, as the latter pertain to tangible objects while intellectual rights concern intangible ones, nor *personal rights*, since the latter represent a relationship between two persons, whereas intellectual rights are powers exercised over an intangible object. Moreover, they are not inherently attached to one's personality.

1. INTRODUCTION

Numerous scholarly opinions have emerged regarding the determination of the legal nature of intellectual property rights. This doctrinal debate is not limited to the nature of these rights but also extends to whether determining such a nature is even necessary. The prevailing view holds that what truly matters are the privileges granted to the author of a work, particularly when it is digital. However, this reasoning lacks a sound legal basis, as every legal application must rest on a specific legal theory that serves as its valid foundation. In the absence of legal regulation on a given issue, or when new issues arise, legal doctrine and the judiciary can resort to such a theory to formulate solutions in accordance with its underlying principles.

The importance of studying this topic lies in identifying the legal nature of digital intellectual property rights and in finding the correct legal characterization of such rights, which are of a special kind encompassing both the economic and moral rights of their holders. This is particularly critical given that the legislator has not established a legal framework upon which the protection of these rights' models can be based.

Accordingly, the following question arises: On what basis should the legal characterization of intellectual property rights in the digital environment be established?

The hypotheses underlying this study are: the legislative deficiency affecting both the general and specific rules of intellectual property, which has led to weak protection of such rights; and the widespread lack of awareness in society regarding these rights—factors that necessitate setting clear foundations for research in this area.

The objective of this study is to determine the legal characterization of intellectual property rights, particularly those concerning digital works, and to explore effective means of addressing the legislative and judicial challenges related to this characterization, with a view to ensuring adequate protection for affected parties in this domain.

To address the issue, the study employs methodologies commonly used in legal sciences, particularly the analytical and comparative approaches. The analytical method is used to highlight the legal characterization of digital intellectual property rights, while the comparative method is occasionally used to contrast certain Arab and foreign legislations. The discussion is divided into two sections: Section One examines the doctrinal debate surrounding the determination of the nature of intellectual property rights, while Section Two addresses the modern approach to defining their nature.

Section One: The Doctrinal Debate on the Nature of Intellectual Property Rights

A scholarly debate has arisen concerning the determination of the legal nature of intellectual property rights. Many jurists attribute the difficulties they face in defining these rights to the fact that they do not fit neatly into the traditional classification of property and rights, which comprises two opposing elements: one material and the other moral. Added to this is another difficulty stemming from the fact that such rights share certain characteristics with property rights while differing from them in others; likewise, they share some features with personal rights but diverge in other respects. This gives them a special nature that is difficult to define[i]. Therefore, we will first examine the real rights theory in determining intellectual property rights (*First Requirement*), followed by the personal rights theory (*Second Requirement*).

First Requirement: The Real Rights Theory of Intellectual Property Rights

A *real right* is defined as a direct legal power of a person over a specific tangible object, such as the right of ownership, which entitles the owner to use, exploit, and dispose of the object. Proponents of this theory—which is considered one of the earliest developed by legal scholarship to explain the legal nature of intellectual property rights—argue that intellectual or mental rights are real rights because they belong to the category of real rights and possess the same attributes and characteristics that distinguish such rights[ii]. For example, the right of exclusivity and monopoly granted to the author over their work. Intellectual rights, they argue, apply to objects that can be divided into intangible and tangible items: tangible property applies to physical objects, while intangible property includes rights such as those of inventors, artists, and authors[iii].

Since a real right grants its holder the powers necessary to derive benefits from an object—such as its use, exploitation, and disposal—some jurists have argued that an author's economic right over their work enables them to dispose of it, which is sufficient to classify it as a real right. Furthermore, intangible objects can serve as the subject of economic rights and may therefore be

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subject to seizure or transfer. In the same vein, certain legal scholars have supported the idea that intellectual property rights are a type of real right, reasoning that the powers of exploitation and disposal inherent in ownership are also enjoyed by an author, albeit to varying degrees[iv].

Conversely, there is an opposing group of scholars who have abandoned this position, drawing a distinction between tangible and intangible things. A tangible thing is a physical object that can be possessed and exclusively controlled, whereas an intangible thing—such as an author's right—cannot be physically possessed because it is not material. Consequently, they contend that a tangible object is owned through its possession and acquisition, while an intangible object, such as an author's right, yields value through its dissemination among people and the awareness of it by the widest possible audience[v].

The Iraqi legislator has followed this approach by considering intellectual rights as intangible property that cannot be the subject of ownership. The criminal legislator has not overlooked this notion, as the Iraqi Penal Code classifies intellectual rights within the category of real rights. As for the judiciary, it has not classified intellectual rights as property rights, since such rights cannot be transferred to others. In fact, many decisions of the Court of Cassation have avoided using the term "intangible property," instead employing the terms "moral rights" or "copyright."[vi]

Proponents of this theory have faced considerable criticism, as classifying intellectual rights in this manner departs from the technical meaning of property rights, which pertain to tangible objects. It also conflicts with the attributes of permanence and perpetuity that characterize ownership rights, whereas the exclusive exploitation of intellectual creations is temporary and legally limited in duration. Therefore, the perpetual and lasting nature of ownership—restricted to the author—contradicts the very aim of copyright, which is to encourage literary and scientific activity[vii].

Given that the dissemination of digital works contributes to the literary and scientific advancement of societies, such progress cannot be achieved if the author monopolizes their intellectual production and withholds it from the public. Rather, it is realized through the publication of such intellectual works and ensuring their accessibility for everyone to read. For this reason, developed countries allocate substantial funds to publishing initiatives in order to enhance societal culture free of charge, while at the same time providing adequate financial compensation to the author, enabling them to maintain a decent living and dedicate themselves to intellectual and literary production.

Second Requirement: The Personal Rights Theory of Intellectual Property Rights

A personal right, or obligation, is defined as a legal power of one person over another that enables the former to compel the latter to perform an act, refrain from an act, or deliver something—for example, a creditor's right. Proponents of this theory classify intellectual rights within the category of personal rights[viii]. Although these rights encompass both economic and moral aspects, the foundation of such rights lies in their moral dimension, since they originate from the thought and creative work of the person who invented them. Advocates of this approach focus not on the content and form of the work, as in the previous theory, but on the right itself, considering it inherently linked to the creator's personality and inseparable from them[ix].

This theory emerged through the German philosopher Immanuel Kant, who regarded a literary work as part of the author's personality—intertwined with it and inseparable from it. Therefore, it cannot be considered property, but rather a collection of the author's ideas expressed in the manner they see fit. Since these ideas originate from the author, they enjoy legal protection and inviolability. This theory has faced strong criticism from proponents of the real rights theory, particularly for its view that the author's right is an inseparable part of their personality and thus cannot be assigned or subjected to seizure[x]. Such a view neglects the economic aspect of the right, despite the consensus in legal doctrine and jurisprudence that authors are entitled to remuneration for the exploitation of their rights. This leads to the conclusion that the economic aspect of copyright can indeed be assigned or partially transferred to others.

This theory tends to favor the author and the benefits they derive, even at the expense of potential harm to society. A prime example is that, under this theory, the author's right cannot be expropriated by the state—whether during their lifetime or after their death—regardless of how important it may be for the public interest. A key criticism of this theory is that it prioritizes the moral right of the author over the economic right, to the extent that it effectively neglects the financial aspect, which represents the means of exploiting the work, whether directly or indirectly[xi].

This theory has faced criticism for linking intellectual rights to the personality of the inventor or author, thereby removing from intellectual rights the notion of the material monopoly over the work and prioritizing the moral aspect. This, in turn, leads to the protection of the rights of authors and of those dealing with them, but also results in the neglect of the economic function of intellectual rights, since it focuses on the rights of authors as rights arising from the mind and creativity of their originators. However, once these intellectual rights are published, they acquire an economic function that can constitute a financial value for the author when the work is exploited[xii].

It is worth noting that there is a distinction between intellectual rights and personal rights: intellectual rights aim to protect the work itself, not the person who conceived the idea or invention, whereas personal rights aim to protect private life. Therefore, based on the above, intellectual rights cannot be classified within the category of personal rights[xiii].

Section Two: The Modern Approach to Defining the Nature of Intellectual Property Rights

Jurists have long been divided and hesitant in classifying these rights and their subject matter, particularly with respect to their designation and nature, especially in light of the current challenges posed by the digital environment. At times, they have referred to them as "literary and artistic property," later as "moral rights," and more recently as "intellectual rights[xiv]." Opinions and schools of thought have varied in determining their nature, ultimately settling on the view that they are a combination of both real and personal rights, which will be explained in *First Requirement*. In modern times, intellectual property rights have faced new challenges in the digital environment, ranging from the difficulty of detecting and proving digital infringement, making it necessary for us to clarify their nature in *Second Requirement*.

First Requirement: The Dual Theory of Intellectual Property Rights

The dual theory emerged as one of the most important traditional theories explaining the legal nature of intellectual property rights, as it adopted the concepts of both the real rights theory and the personal rights theory. Proponents believe that intellectual rights are dual in nature, consisting of financial rights and moral rights, which are distinct from each other. The moral right lies in the priority of the author over their work and creation, whereas the financial right lies in the exploitation and use of the work for financial gain[xv].

The financial right differs from the moral right in its purpose: the financial right is transferred to the heirs temporarily, while the moral right is transferred to them in perpetuity. Moreover, the moral right does not differ from property rights over tangible things in the sense that it cannot be valued in monetary terms and is thus, by nature, outside commercial transactions. It is also not subject to prescription and can be enforced against all[xvi].

The duality theory is based on the notion that the author's right is not a single right but both a material (financial) right and a

moral right. This theory owes its origin to French jurisprudence, particularly when the famous *Lecocq* case was brought before the courts, in which a ruling affirmed the duality of the author's right: the right to financial exploitation, such as printing and publishing the work, is a financial right that can be assigned to others[xvii].

Many jurists in France, Egypt, and Yemen supported the duality theory, foremost among them the jurist Abd al-Razzaq al-Sanhuri, who classified the moral right as a personal right because it cannot be waived and remains even after the author's death, regardless of the expiry of the period set by law for the financial right. Al-Sanhuri believed that the author's right is not a property right but rather an original real right independent of it, with its own specific characteristics, and that it applies to an intangible subject matter[xviii].

In contrast, Dr. Abd al-Rashid Ma'moun considered it a real right over a movable property and argued that al-Sanhuri should have focused more closely on the nature of the author's right, given that there is both a moral right and a financial right, each independent from the other. Furthermore, classifying the financial right as a real right over a movable lacks precision, because real rights are listed exhaustively, not by way of example, and this right is not mentioned among them. Moreover, the author's right does not apply to tangible property but rather to an intellectual creation[xix].

The doctrine in Egypt has been divided, among those supporting the duality of the author's right, regarding the nature of the financial right. One group—though small—considers the financial right to be an actual property right, while another views it as a right of monopoly over material exploitation. In reality, the duality theory is the one that captures the truth and has thus gained the support of both doctrine and judiciary, because acquiring this right does not depend on completing any formal procedures, such as creativity, since creativity is merely a *manifestation* of the right, not the *source* of it. There is a distinction between a constitutive manifestation and a declarative manifestation. Furthermore, the protection period of the author's rights extends for the duration of the author's life and for a number of years after their death[xx].

However, this duality does not imply equality between the financial right and the moral right. The moral right remains superior to the financial right because it is not connected to the material realm but to human thought, and because it possesses several characteristics that differ from those of the financial right[xxi].

The Iraqi Civil Code lists real rights exhaustively, and intellectual rights are not included among them. However, if the exploitation concerns the *material* (tangible) aspect of the work—such as a book—then we are dealing with ownership of movable property. Consequently, the law allows the author to carry out all legally permissible transactions related to ownership, such as sale, bequest, donation, mortgage, and others[xxii].

The Iraqi legislator adopted the theory of duality of intellectual rights through Article 70 of the Civil Code, which refers the rights of inventors and authors to the provisions of special laws—specifically, the *Copyright Protection Law No. 3 of 1981*, as amended and supplemented. This law distinguishes between financial and moral rights:

- Article 7 grants the author alone the right to decide on the publication of their work.
- Article 10 affirms the author's right to remove any infringement that may occur.
- Article 43 grants the author the right to withdraw their work from circulation or to make modifications to it.
- The financial right is stipulated in Article 8, which gives the author the right to print their work and present it to the public through lending or renting[xxiii].

This prevailing classification and theory were also adopted by the Egyptian and Yemeni copyright laws. Both explicitly stated the dual nature of the author's rights. In this context, Dr. Saad Muhammad Saad said that the author's right grants its holder two types of rights: the first is a moral right and the second is a financial right. It is noteworthy that both laws agree on adopting the dual nature of the author's right, affirming that the author possesses two rights—one moral and one financial[xxiv].

The proper legal characterization of intellectual property rights is the one that considers them to have a dual nature, thereby revealing the true substance of such rights. If the exploitation of a work is intellectual or creative in nature—such as an actor performing a specific role—this aspect represents the financial right, but since it concerns something intangible, it cannot be considered a real (in rem) right.

Section Requirement: Determining the Nature of Digital Intellectual Property Rights

The Algerian legislator has recognized the necessity of protecting intellectual property rights. Accordingly, Ordinance No. 73-14 of 08/04/1973 on copyright was issued and later amended by Ordinance No. 97-10, which was itself amended and supplemented by Ordinance No. 03-05 concerning copyright and related rights[xxv]. The legislator also enacted Ordinance No. 03-07 of 19/07/2003 on patents, amending Ordinance No. 93-17 of 07/12/1993 on the protection of inventions, which in turn amended Ordinance No. 66-54 of 03/03/1966 on inventor's certificates and patent licenses[xxvi].

At the international level, there is the Paris Convention for the Protection of Industrial Property of 1883, as amended on 02/10/1979, and the Berne Convention for the Protection of Literary and Artistic Works of 09/09/1896, which was further developed in December 1996 by the World Intellectual Property Organization (WIPO). Algeria acceded to this convention under Presidential Decree No. 97-341[xxvii] of 13/09/1997.

Both copyright and patent systems have sought to incorporate computer programs under their protection. However, most legislations have allowed their inclusion under copyright law, without excluding the possibility of granting them patent protection, given that such programs share certain characteristics of inventions. The Algerian legislator adopted this approach by classifying programs as literary works. While recognizing computer programs and databases as protected works, criminal protection under copyright law focuses primarily on the form of the program.

However, the nature of modern creations protected under intellectual property laws has changed in the context of the modern digital world and information technology. In ordinary and traditional contexts, such creations exist within a rigid and well-defined legal framework. In contrast, under information technology, they rely—through a complex scientific process—on converting information, regardless of its size, into numbers[xxviii].

This technology has given rise to new forms and types of intellectual creations—commonly referred to as information technology works—of which computer software has been the most prominent in the technological field. The most debated issue at the legal level is the extent to which such works should be afforded criminal protection, especially in light of the difficulties in detecting the perpetrator of a cybercrime and in proving the harmful act, given the ease with which such works can be altered, and the speed at which evidence can be erased or concealed. Consequently, the legal classification of such programs has been determined either as industrial inventions or as literary works[xxix].

A significant jurisprudential debate has arisen over the legal foundation of digital works, owing to the lack of a clear legal characterization of their elements. This disagreement ultimately stems from the broader debate over the nature of intellectual property rights—between those who consider them valid and those who do not consider them suitable to be the subject of

ownership rights[xxx].

An examination of the status of digital works in various legal systems reveals that most national legislations and international conventions have not directly defined digital works, nor have they explicitly specified and regulated the digital works eligible for protection. Instead, they have left room for the emergence of new types of works alongside technological advancements[xxxi]. While scholars disagree on how to classify digital works, the most appropriate division is between works related to computers and works related to the Internet. However, it is difficult to determine and enumerate all types of works protected on the Internet due to the special legal nature of the Internet itself—being global in scope, lacking a governing law, and having no central authority to regulate it.

2. CONCLUSION

From all the above, we conclude that determining the legal nature of intellectual property rights is one of the important topics that has recently undergone major developments. The legal rules governing these rights have become the subject of jurisprudential debate, especially with technological advances and the spread of transactions in the digital world, where traditional intellectual property rights—represented by copyright and industrial property rights—have become incapable of protecting many works, particularly digital ones.

Accordingly, we have reached a set of results that can be briefly stated as follows:

- The reason for the disagreement over the legal nature of intellectual property rights lies in the fact that this type of right is an intangible movable with two aspects: moral and material. The moral right is inseparably linked to the person to whom the idea is attributed and cannot be subject to commercial transactions, as that person alone has the right to disclose it to the public, modify it, or improve it. In contrast, the material right can be exploited for the author's financial benefit, giving them the right to use it, license it, or dispose of it.
- There is a distinction between intellectual rights and personal rights: intellectual rights aim to protect the work itself, not the person who conceived the idea or invention, whereas personal rights aim to protect private life. Therefore, intellectual rights can be considered a subset of personal rights.
- The theory of intellectual property rights as real rights has faced several criticisms, as classifying intellectual rights as property rights deviates from the technical meaning of ownership (which applies to tangible things) and conflicts with the characteristics of perpetuity and permanence inherent in property rights.
- The personal rights theory has also faced criticism because it links intellectual rights solely to the author or inventor, stripping intellectual rights of their material monopoly over the work and favoring the moral aspect. While this may protect authors' moral interests, it ignores the economic function of these rights, as it focuses on the intellectual and creative origins of works.
- Therefore, intellectual rights have a dual nature, which is the correct characterization that reflects their true content. If the intellectual or creative output of a work is exploited, this constitutes the owner's material right, but it relates to something intangible and thus cannot be considered a real right.
- The circulation of works over the Internet enables their unlawful exploitation due to the nature of the digital environment, which facilitates such acts. As a result, they are subject to infringements, which can be addressed through both legal and technical means. Scientifically, preventive technical measures taken before an infringement are more effective than post-infringement legal remedies.

Based on these findings, we recommend the following:

- Enact a unified and specialized law to address all issues related to traditional and digital intellectual property rights.
- Amend national and international legislation on intellectual property rights to keep pace with developments in informational works, most of which are currently ignored, resulting in the ease of copying digital works. Current laws are unable to prove or address infringement effectively.
- The Algerian legislator should have completed the legal framework for protecting digital works, especially those connected to the Internet, as intellectual property laws are the most suitable for protecting this type of work due to its specific legal nature, which does not align with traditional criminal laws.
- Organize seminars and conferences aimed at creating a conducive environment for protecting intellectual property rights, promoting awareness of their importance, implementing relevant laws, incorporating them into law school curricula, and raising public awareness of their role in developing and advancing nations.

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2. Iraqi Court of Cassation Decision No. 401 of 1901, dated 04/10/1901.
3. French Court of Cassation decision dated March 10, 1993.