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Intellectual Property Rights Protection in the Field of E-learning

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Intellectual Property Rights Protection in the Field of E-learning

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Summary

In the field of providing e-learning services, educational institutions often deal with protected works in accordance with intellectual property regulations. This dealing, from our point of view, does not go beyond three assumptions:

The first assumption: The educational institution is the owner of the rights contained in those works, whether due to preparing it within the framework of collective works, or due to purchasing the financial rights contained in them.

The second assumption: The educational institution legitimately use the protected works for the purpose of educational illustration, or for the purpose of criticism and analysis, without the need to obtain permission from the owners of those works, pursuant to the exceptions prescribed by the laws and regulations of intellectual property rights.

The third assumption: The educational institution infringes copyrights by encroaching upon protected works by making them available to students, away from the first and second assumptions.

In this research we will try to clarify the differences between the previous assumptions. Our goal is to enlighten those involved in the management of educational institutions about the licit and the illicit in the field of reproduction of intellectual works for purposes of e-learning.
Introduction

There is no doubt that education is the road to progress for any society. It is truly the main engine to the wheel of intellectual production, which is an essential element in the prosperity and advancement of peoples. In fact, what the advanced nations have reached in the fields of literature, arts, and sciences, is all attributed to writers, scientists, inventors, and other creators and innovators who deserve all the respect and care.

Followers of the path of the educational process in many countries of the world certainly recognize the developments that have occurred in this path in recent years, especially with the expansion in the use of computers and its programs and networks, and all other modern means of communication that transfer knowledge and exchange information. The developments witnessed by the world in the field of information and communication technologies have caused a qualitative leap that positively impacted the educational path, particularly the methods and means of acquiring knowledge and skills, thus transcending time and place constraints.

Thus emerged the so-called e-learning, a modern educational system that uses information and communication technologies to consolidate, develop, and expand the domain of the educational process. This system provides an educational content that is subject to active interaction through electronic media based on computer programs and on the internet network, so that the content is provided to students wherever they are, either individually or in groups, and either synchronously or asynchronously.

It is noticeable that the tremendous development that has occurred in providing educational services through e-learning has necessarily entailed the emergence of new patterns of transactions that were not known before; which consequently required the pursuit to set a firm regulation for these transactions, either by returning to the current laws and regulations, or by developing new laws and regulations to confront the legal gaps that are discovered in this regard. Among the concerned laws are those associated with electronic transactions, consumer protection, and intellectual property rights protection, all of which can help in establishing the rights and duties of those who are providing modern educational services, as well as those who are using it.

Intellectual property rights are the moral and financial rights that are prescribed to the owner of thought and creativity for the production of his mind, such as the rights prescribed to the scientist over his scientific reviews, to the writer over his literature, and to the inventor over his invention. In its advanced sense, Intellectual property rights mean the rights of the owners of the educational content over whatever they offer in the service of education, regardless of the type of content or its manner of expression. In this research, we will address the topic of “Intellectual property rights in the field of e-learning” which is a topic that is gaining a great deal of importance for the following considerations:
First, from a technological point of view: New patterns of works protected by intellectual property regulations have emerged as a logical consequence of the growing e-learning media and distance education. In the past, the book was the sole learning medium; i.e., students learn only through it. This situation has changed greatly nowadays, with the emergence of new media through which the educational content is provided. Examples of such media are: computer programs, databases, audio and audiovisual works, and multimedia works that contain texts, sounds, and still or moving images, where interaction can occur with such media.

Second, from a statistical point of view: Studies show that the steady increase in the use of e-learning system by universities, schools, and other educational institutions is due to the rising cost of educational materials in developing countries\(^1\). It is also due to the growing beliefs in the great benefits achieved by this type of education in the various aspects of the educational process. There is no doubt that as educational institutions resort to the use of e-learning system and distance education, this should be accompanied by a necessity that those in charge of educational institutions must respect the intellectual property rights prescribed to the owners of the educational content.

Third, from a jurisprudential point of view: There is a heated worldwide debate among those who call for imposing respect for intellectual property rights on the one hand, and those who call for facilitating the access to the means of acquiring knowledge, and encouraging e-learning and distance education on the other hand. This debate invites us to ask the following question: How can equilibrium be achieved so that educational institutions make educational contents available electronically, and at the same time respect the intellectual property rights prescribed to the owners of those contents?

From the above mentioned three points we recognize the importance of this research through which we shed light on how the laws and regulations of the intellectual property rights deal with e-learning media as protected works; and the rights that can be prescribed to educational institutions over these works. We will also shed light on how to deal with the problems of electronic publishing, as a means of providing the educational content to students via the internet, and how to deal with issues of intellectual piracy of e-learning software.

In fact, the educational institution, while in the framework of providing the e-learning service, often deals with protected works in accordance with intellectual property regulations. This dealing, from our point of view, does not go beyond three assumptions:

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The first assumption: The educational institution is the owner of the rights contained in those works, whether due to preparing it within the framework of collective works, or due to purchasing the financial rights contained in them.

The second assumption: The educational institution legitimately use the protected works for the purpose of educational illustration, or for the purpose of criticism and analysis, without the need to obtain permission from the owners of those works, pursuant to the exceptions prescribed by the laws and regulations of intellectual property rights.

The third assumption: The educational institution infringes copyrights by encroaching upon protected works by making them available to students away from the first and second assumptions.

In order to clarify the substantial differences among the previous assumptions, we will divide our study for the subject of "Intellectual property rights in the field of e-learning" into three topics as follows:

The first topic: Educational institutions’ rights in works in the context of e-learning.

The second topic: Educational institutions’ use of protected works for the purposes of e-learning.

The third topic: Educational institutions’ liability arising from infringing on intellectual property rights.
The first topic

Educational institutions’ rights in works in the context of e-learning

If the author is the owner of the moral and financial rights to the work that he created, then the following question arises: Is the term "author" limited to the natural person, or can be extended to the legal person? Many of the laws and systems of intellectual property rights in the world have allowed the legal person to acquire the status of an author same as the natural person, so that property of a work is proved to the legal person same as it is proved to the natural person, noting that describing the author’s right in a work as “property” is figurative, because property is originally contained in material things. If part of the nature of the author’s right is to be limited to the owner alone, then the author’s right resents this nature, as the benefits from a work cannot be limited to the author alone. Also, the author does not want his ideas to be confined to himself alone, and aims to spread them among members of the society. Property comes to fruition only by possession and exclusivity, while ideas come to fruition by spreading².

Thus, for educational institutions, which are legal entities, it is possible to prove its ownership of literary, artistic, or scientific work which it has prepared as electronic educational content. Therefore, educational institutions can practice all the moral and financial rights of such works, or they can practice the financial rights only, without the moral rights, if they have not prepared the works, but only purchased the exploitation rights contained in them, as we will see later.

In light of the foregoing, we will address the following two requirements through the first topic: Educational institutions’ ownership of collective works in the context of e-learning (The first requirement), and educational institutions’ right in the exploitation of works for the purposes of e-learning (The second requirement).

The first requirement: Educational institutions’ ownership of collective works in the context of e-learning

Collective work, as defined by jurisprudence³, is a work put by more than one author under the guidance of a natural or legal person to be published in his name and under his administration, where the authors’ work is integrated towards the general

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² See criticism of the theory of property in Arab jurisprudence:

objective intended by this person so that no participating author can be singly entitled to any special right in the collective work. Examples of collective works are: press releases, language dictionaries, and encyclopedias.

Therefore as mentioned above, collective works require the availability of two prerequisites agreed upon by laws and systems of intellectual property all over the world: The first prerequisite is that the natural or legal person takes the initiative and guide the work of the participating authors, and then publish the work under his administration and in his name. The second prerequisite is the integration of the co-authors’ contributions such that no single author is entitled to any special right in the whole work.

Given the above, the educational institution can take the initiative and contract with a group of researchers or specialists in a field of knowledge and set the general perception of the educational content of the work it requires to prepare. If the institution supervised and financed the preparation of this work and published it in its name, then the institution gains moral and financial rights of this work. Pursuant to intellectual property regulations, the collective work, unless otherwise proved, is considered to be the property of the natural or legal person who publishes the work in his name. In other words, the institution that has guided and supervised the innovation of the collective work is the only one entitled to enjoy practicing the copyrights of the work.

It is noted that the relationship between the educational institution and the participants (researchers or specialists), who are the actual innovators of the educational work, is often determined by a group of bilateral contracts where the institution enters into contracts with each participant individually. The relationship between the parties either takes the form of employment contracts, as if the participants are employees in the institution, or it takes the form of agreement contracts, where participants are independent and have no subordination relationship with the institution, even though

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4 The initiator who leads the process of collective work innovation can either be a natural person or a legal entity represented by the governmental bodies of the State (such as ministries, universities, and institutes) or private companies (such as production companies, publishing houses, and non-governmental associations). See: Abdul Rashid Maumoon and Mohamed Sami Abdel Sadek: Copyright and Related Rights, the first book, Copyright, Dar El Nahda El Arabia, 2004, paragraph 79, p. 189 and the following pages.

5 Intellectual Property laws in the Arab world emphasize collective work ownership of the natural or legal person who guided the authors in the preparation of the work, regardless of the different phrases used in the formulation of this rule. We recall the following as examples: Article (9) of the Saudi Copyright Protection System of 1424 H, clause (4) of Article (138) of the Egyptian Intellectual Property Law No.82 of 2002; Article (26) of the Kuwaiti Intellectual Property Law No. 64 of 1999; Article (26) of the United Arab Emirates Law No. 32 of 2006 regarding the amendment of law No. 7 of 2002 on Copyright and Related Rights, and Article (33) of the Kingdom of Bahrain Law No. 22 of 2006 on the Protection of Copyright and Related Rights. Also, the French legislator in Article (L113-5) of the Intellectual Property Code emphasizes the collective work ownership of the legal person, and explicitly states that as follows: Article (L 113-5): "L’œuvre collective est, sauf preuve contraire, la propriété de la personne physique ou morale sous le nom de laquelle elle est divulguée."
the institution has the right to supervise them for the agreed upon works. In all cases, these contracts determine the rights and obligations of each party. They are binding agreements for both parties as the institution that initiates the preparation of the work is bound to pay the wages or the financial worth of the literary, artistic or scientific contributions, while each researcher and specialist is bound to perform the work assigned to him in accordance with what was agreed upon.

Thus intellectual property systems state that the author’s moral and financial rights are proved, by force of law, to the natural or legal person who guides the work – the initiator or guide - as referred to in many cases. It is not proved to the actual authors who contributed their efforts to the work, where they cannot claim any of these rights.

From the above mentioned we can say that whenever the educational institution acquires the intellectual property rights of a collective work, then it owns the moral and financial rights of this work. This means that the work is attributed to the institution which is the only one having the following rights: The right to make the work available by specifying the time it can be provided to the public; the right to defend the work in the event of any infringement; to prevent its launching; or to stop its circulation; and the right to carry out substantial amendments. Adding to this its financial right in the exploitation of the work and the right to choose the method, term, and purpose of the exploitation so that it has the right to reproduce the work, publish it in paper prints, on CDs, or via the Internet, or to broadcast it on television, be it live or recorded, or to distribute it in the form of voice or audio-visual recordings, to alter it, to translate it, to lease it, to lend it, or even to assign these financial rights, or to make the work available to students and to the general public without any charges.

The second requirement: Educational institutions’ right in the exploitation of e-learning works

It happens so often that the educational institutions head to the authors who are the innovators of the works, or to the publishers to whom the exploitation rights of the works were assigned, in order to buy all or some of the financial rights for the purpose of providing the works to students in the context of e-learning, such that this act does not constitute an infringement of intellectual property rights.

Upon purchasing the rights of financial exploitation of the work, the educational institution must take into account the legal requirements demanded by the intellectual property regulations for the authenticity of assigning all or some of the financial rights contained in the work. The act of assignment issued by the author or publisher to the institution should be written, noting that writing is not a proof of the act, but a prerequisite for it. It is necessary that the written contract between the educational institution and the author or the publisher clarifies the limits of the act in terms of time.

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6 Pinsent Masons: Copyright Law for e-Learning Authors, JISC legal information, May 2005. Available via the Internet at: www.jisclegal.ac.uk.
place, method, and purpose of exploitation. This means that the term of exploitation should not be eternal, but for a defined period of time, and also the zone of exploitation should be specified (for example: within the geographical boundaries of the state, in the Gulf region, in the Middle East, or all over the world). The written contract should also specify the method with which the institution will exploit the work, whether by limiting its availability to paper prints, CDs, or via voice or audio visual recordings, or by making it available via the internet. In this regard, the number of copies allowed to be published in case of paper prints or electronic media should be indicated, and the limits of electronic publishing via the internet should be specified in order to preserve the copyright. Thus, upon contracting to buy the right of exploitation of the work in order to publish it electronically through its website on the internet, the educational institution is bind to give a license to its students and professors exclusively to enter the pages of its website and use it personally. It is possible that the users’ rights could be limited to only viewing the educational content, so that they cannot download or modify it without obtaining an explicit written approval from the institution.

**The second topic**

**Educational institutions’ use of works for the purposes of e-learning**

Many of the laws and regulations of intellectual property in the world allow the educational institutions and their employees to use protected literary, artistic, or scientific works for the purposes of educational illustrations which is known as "free use of protected works". According to this system and under certain regulations, the educational institutions and its employees have the right to reproduce the protected works for educational purposes without getting the permission of the copyright owners. Reproducing works could be done through publications, radio programs, or voice or audio-visual recordings. It can also be done through television broadcasting of works

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7 Pursuant to the international conventions, intellectual property systems in the Arab world require, for the authenticity of assigning all or some of the exploitation rights of the work, that the assignment should be in writing and should explicitly determine, in details, the forms of exploitation allowed to the assignee, its purpose, and the period of financial exploitation. In addition, it should determine the spatial scale of exploitation so that the assignee cannot exceed such scale. See the following as examples: Article (16) of the Saudi Copyright Protection System of 1424 H, Article (149) of the Egyptian Intellectual Property Law No. 82 of 2002, Article (8) of the Qatari Law No. 7 of 2002 on Copyright Protection and related rights, Article (30) of the Kuwaiti Law No. 84 of 1999, and Article (9) of the United Arab Emirates law No. 7 of 2002 on Copyright and Related Rights, as amended by Law No. 32 of 2006.

8 Electronic publishing in its colloquial meaning is using all the potentials of computer, whether hardware, software, or networks, to transform the content that is published in a traditional manner, into an electronically published content, so that it is published on CDs or through the Internet. For more details on the concept of electronic publishing, its advantages, and its tools see: Mohammed Jassim Pelhy: Electronic Publishing (print, electronic press and multimedia), Dar Al Manahej for Publishing and Distribution, Amman, Jordan, 2005.
for school or university purposes, or for vocational training. In this regard, broadcasting is made for educational purposes.

There are several questions that impose themselves in this context: What is the content of this right? What are the regulations that govern it? Does this right applies to electronic publishing, so that educational institutions have the right to make protected works available to its students via the internet?

In this topic, we will try to answer the previous questions and we will learn about the right of educational institutions in the free use of protected works and restrictions on this right. Also, we will search the extent to which educational institutions are eligible to provide protected works via the internet for the purposes of e-learning, without obtaining the permission of the owners of such work. Thus our topic will be divided into two main requirements: First: educational institutions’ right in the free use of protected works and restrictions on this right. Second: the extent of eligibility of educational institutions in the use of protected works through the internet for educational purposes.

**The first requirement: Educational institutions’ right in the free use of protected works and restrictions on this right**

The international community as well as the laws and regulations of intellectual property in many countries of the world acknowledge the right in the free use of protected works (also sometimes termed the right in the legitimate use of protected works) as an exception to the exclusive rights enjoyed by the author and his successors in the work that he created. The content of this right is that there are certain criteria laid down by the laws and regulations of the intellectual property that identify the activities, within the context of which, the use of protected works is considered legitimate, so that it is free to use without permission of the author, taking into account the conditions stipulated by law on method and term of use, as well as respecting the moral and financial rights of the authors.

The educational institutions’ use of literary or artistic works that are covered by copyright protection for educational purposes is considered to be the most prominent forms of the free use of protected works that several international conventions concerned with intellectual property rights sought to establish and confirm. An example of such conventions is the Berne Convention for the Protection of Literary and Artistic Works of 1886 which is one of the most important and oldest international conventions that undertook the responsibility of copyright protection and reinforcement. The second

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9 Nawaf Canaan: Ibid, p. 234

10 Among these activities we recall, for example: The free use of protected works for the purpose of rehabilitation of persons with acoustic disabilities using audio tapes, or with visual disabilities using the method (Braille) or inflating printed letters, Also, the free use of protected works for the purpose of criticism, analysis, or explanation and commenting or displaying of current events and facts.
paragraph of Article (10) in the convention states that: “It shall be a matter for legislation in the countries of the Union, and for special agreements existing or to be concluded between them, to permit the utilization, to the extent justified by the purpose, of literary or artistic works by way of illustration in publications, broadcasts or sound or visual recordings for teaching, provided such utilization is compatible with fair practice”. Same was acknowledged by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) in Article (9) which necessitated that member states should comply with Articles (1) through (21) of the Berne Convention; as well as the Geneva convention, also known as the Universal Copyright Convention, concluded in 1952, the second paragraph in Article(4). Also Tunis Model Law of Copyright for Developing Countries of 1976 which emphasized this exception in Article (7) of the law.

Pursuant to the international conventions mentioned above, many intellectual property laws and regulations allowed educational institutions to reproduce works for illustration for educational purposes without obtaining the author's permission and without compensating him. Thus, educational institutions can reproduce articles, brief clips of works or whole small sized works through reprography, or by making copies of voice recordings or audio-visual recordings. There are three restrictions on this right. First: The author's name and title of the reproduced work must be indicated. Second: The reproduction should be within the limits justified by the purpose. Third: Reproduction should not conflict with the normal exploitation of the work, and should not damage the author’s legitimate interests.

As for the first restriction regarding indicating the author's name and the title of the reproduced work, this restriction is imposed by the respect to the author’s moral rights, particularly the right to attribute the work to its owner, or the paternity right (La droit à la paternité) as frequently termed, so that using the work by the educational institution do not affect the author’s right of informing the public that he is the owner of this mental creativity. As for the second restriction that reproduction should be within the limits justified by its purpose, it is a logical restriction that the intellectual property regulations sought to include, so that educational institutions are not allowed to

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1An example is the current German Copyright Protection Law of 1965, amended on May 8, 1998, which states in Article (47) that “It is allowed for schools and teacher training institutes to make audio or visual records for works that are included in school broadcasting, these recordings may be used for educational purposes only, and must be destroyed at the end of the school year at the latest, unless a fair fee is paid to the author.” On the Arab level, we find Article (8) of the Saudi Copyright Protection System stating that: “The following uses of the protected work in its original language or in its translated text is considered to be lawful, without obtaining the author’s permission and that is an exception to the provisions of Article(7) ... 3 – using the work for the purpose of educational illustration through publications, radio programs, or audio visual recordings, within the limits justified by the purpose; or broadcasting the work for the purposes of school or university education, or for the purposes of vocational training, such that it is a broadcast for the purpose of education, provided that use is consistent with custom, and that the source and the name of the author of the used work are to be mentioned in the print, or radio program, or the recording”.

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reproduce work except for the purpose of serving people who prove to need the work for teaching, studying, or preparing researches. The third restriction is consistent with rules of justice and logic because the expansion in the free use of works would be detrimental to the legitimate interests of the authors, and would lead them to decline authoring for the fear of the broad expansion of using works in educational institutions. Thus, many regulations state that reproduction should involve only a single copy or separate cases, so as not to harm the author.\textsuperscript{12}

It is noted that the right of the free use of protected works prescribed to educational institutions allows them to use these works in full, or in a form that is more than just quoting\textsuperscript{13}. However there is an ongoing difficulty to define the limits of such use which justifies that some intellectual property systems tend to refuse acknowledgement of the free use of protected works for educational purposes, even though it may acknowledge the concept of free use in other fields.\textsuperscript{14} In this regard we raise the following question: Does the right of educational institutions in the free use applies to providing reproduced works through the internet?

In other words, while offering e-learning services, do educational institutions have the right to make works available for teachers and students via the internet, without obtaining the author’s permission or paying him a fair compensation?

\textbf{The second requirement: The extent of eligibility of educational institutions in the free use of work via the internet}

The question we just raised posed a wide jurisprudential controversial caused by the ongoing difficulty to define the limits within which copying and recording for educational purposes are allowed. On the one hand, some people take the restrictions listed by intellectual property laws and regulations into account, and find it a sufficient reason to deny allowing educational institutions to provide works via the Internet pursuant to its right in the free use, especially that the Internet is a wide scope for infringement on authors’ rights; thus, making works available through the internet may damage the authors’ legitimate interests, even if the availability was exclusive to professors and students. According to their point of view, exceptions to the author’s

\textsuperscript{12} Among these regulations we recall for example: Article (21) of the Bahraini law No. 22 of 2006 on Copyright Protection and Related Rights, and Article (21) of the Qatari law No. 7 of 2002 on Copyright Protection and Related Rights.

\textsuperscript{13} It is noteworthy that the quote is just quoting paragraphs of previously existing work with reference to the title of the work and its author’s name, and it must be within certain limits that cannot be exceeded, so as to be in the extent justified by the targeted purpose. So, if someone quotes lengthy paragraphs of other authors’ works, without a justification for this quoting, then this is considered an illegal act that hold the person who committed this act responsible.

\textsuperscript{14} Delia Lipszyc: Droit d’auteur et droits voisins, éd. Unesco, 1997, p. 238. The Arabic translation of this reference, Prof. Dr. Mohamed Hussam Lutfi, King Faisal Center for Research and Islamic Studies, 2004.
exclusive rights must be applied in the narrowest scope, and what can be applied in the paper environment may not work in the electronic environment. On the other hand, others think that the new technologies could let educational institutions provide protected works via the internet within the frame of the beneficiaries’ personal use, where sometimes it is only allowed to view the contents without reproducing it; thus, causing no damages to the authors’ rights.

In fact, this problem is still being researched by experts in the intellectual property systems, especially after regarding the issues of intellectual property as one of the most important challenges of electronic services in general\(^\text{15}\), although we believe that copyright and restrictions contained in it apply to the author’s intellectual innovations published on the internet, the same way as it apply to those published anywhere in the real world. Therefore, when the educational institution provides articles, excerpts from works, or small sized works to professors, students, or researchers via the internet for illustration for educational purposes then this means, from our point of view, that the institution is practicing its right in the free use of protected works, provided that the purpose behind this is not commercial, and that upon using its website through which protected works are provided, it should place technical barriers that prevent infringement - e.g., protection through electronic keys or passwords, so as to retain the rights of the owners’ of the works and prevent any illegitimate reproducing.

We may refer to the European Union Directive on the Harmonisation of Certain Aspects of Copyright and Related Rights in the Information Society issued on May the 22\(^\text{nd}\), 2001\(^\text{16}\), which stated in Article (5) that “member states may provide for certain exceptions or limitations to the exclusive rights of authors in respect of specific acts of reproduction made by publicly accessible libraries, educational establishments or museums, or by archives, which are not for direct or indirect economic or commercial advantage”. The European Directive also confirmed providing for these exceptions or limitations in the case of “use for the sole purpose of illustration for teaching or scientific research to the extent Justified by the non-commercial purpose to be achieved”.

\(^{15}\) See different views of this problem:

The Third Topic

Educational institutions’ liability arising from infringement of intellectual property rights

While the emergence of modern means of communication and the resulting electronic services have many positive impacts, it also have its negative impacts that appeared in many aspects. What matters to us most in this topic is the negative impacts in the field of intellectual property rights, which is represented in the serious infringements of these rights, and the damages that affect the legitimate interests of the owners of these rights due to these infringements.

In this topic we will address the liability of educational institutions arising from infringement of works. Our goal is to enlighten those involved in the management of these institutions about the acts carried out while providing e-learning services which may constitute infringement of intellectual property rights, so as not to be subjected to civil and criminal penalties stipulated in law. In the next section we will discuss two requirements: Civil liability (first requirement) and criminal liability (second requirement).

The first requirement: Civil liability of the educational institution

The civil liability of the educational institution for copyright infringement arises whenever elements of damage, fault, and a causal relationship between them exist. We will, in short, discuss these elements and the impacts of their existence.

First: Fault

There are two types of faults: The contractual fault and the negligence fault. The contractual fault happens when the management of the educational institution fails to implement obligations imposed by the contracts it has concluded, whether the non-implementation is intentional or due to negligence. The negligence fault happens when the management of the educational institution infringes a legal duty, whether this duty is special in the form of an obligation, or general in the form of a duty that is imposed on every person to respect the rights and freedoms of others and not to cause damages to them.

The contractual fault may exist clearly in the relationship between the educational institution and the author who assigns part or some of the financial rights of his work, in cases when the institution infringes on the obligations imposed by the exploitation contract. Examples include, but not limited to the following: The institution over passes the exploitation limits in terms of time or place, or it reproduces more than the number of copies agreed upon in the contract, or it provides the work to students on the Internet in contrast to its agreement with the author to make the work available through CD only, or the institution undergoes substantial modifications in the
form or content of the work that is published electronically, without obtaining the author’s approval.\(^\text{17}\)

As for the negligence fault, it happens in cases when infringement of copyright is done by the educational institution that is not bind to the author by any contract related to his work. This occurs, for example when such educational institution chooses any of the author’s work and transform it from a printed copy to a digital form and provide it to students on CDs or make it available via the internet; thus, damaging the legitimate interests of the author.

**Second: Damage**

Damage is the second element of the elements of civil liability. It can be defined as: «harm done to the person’s self or to his money ». In the field of research, it means that the educational institution causes damage to a legitimate interest of the author’s interests related to his works that he provided to the public. This interest could be financial, causing a tangible damage or it could be moral, causing a moral damage.

In most cases the author can be exposed to both tangible and moral damages at the same time. However, some times the fault made by the educational institution results in tangible damages only. Also, the fault may result in a moral and not a tangible damage meaning that the damage is not done to the author’s money, but to his reputation and honor; for example, if the author agrees with the educational institution to carry out the publication of a book electronically, then the book was published distorted and full of mistakes; in this case, the author may not be exposed to a tangible damage, but he will be exposed to a moral damage. In this regard, we should point out that the author deserves to be compensated for any type of damage whether it is tangible or moral because pursuant to the regulations of civil law, there is no difference between both types.

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\(^{17}\) It should be noted that the educational institution has the right to correct some physical faults that appear in the contracted upon literary works like spelling or grammatical faults where in this situation the author cannot object to such act done by the institution. A side of the French jurisprudence establishes the right of the person or entity to which the right of exploitation is assigned in the correction of these faults based on the principle of good faith in the implementation of contracts, considering that the exploitation contract oblige the owner of the right of exploitation to correct such faults. While another side of the jurisprudence establishes this right on the basis of the author’s consensual acceptance concept, where they think that the author can do the correction either by himself or by another person. In this regard see: The Primary Principles of Copyright, translated into Arabic, issued by the United Nations Educational, Scientific and Cultural organization (UNESCO), 1981, p. 52.
Third: The causal relationship

The existence of a causal relationship between fault and damage, means that the damage is a result of the fault, so that the one who makes the fault is held responsible for paying a compensation, which is a logic condition for establishing liability. This condition is derived from the rules of civil law that highlight the elements of liability and clarify its meaning in case of breaching an obligation, and which confirms that compensation should be paid for direct damage, which is considered «a natural result of failing to fulfill an obligation, or delaying its fulfillment». There is no dispute that assessing the existence or nonexistence of a causal relationship between fault and damage is considered as one of the substantive issues that are judged by the substantive court, without commenting, as long as the assessment is based on admissible evidences that are based documents.

Fourth: The impact of the existence of the elements of liability

Whenever fault, damage, and a causal relationship (which are the elements of civil liability) exist then, it is the right of the author to obtain fair compensation, where the court, upon assessing the compensation, takes into account the author’s literary and cultural status, and the extent to which the infringing institution gained from the exploitation of his work. There is no doubt that the specific performance is the best compensation as it returns the situation back to what it was before the infringement. However, if it is not possible to repair the damage caused by infringement by specific performance, in this case justice has no other solution but to resort to the other form of compensation, which is indirect compensation, by obligating the infringing party to pay a sum of money to the infringed author.

The rule for determining the amount of compensation to be paid by the educational institution varies depending on the criteria established by each of the intellectual property laws. The majority of laws, and among them the Saudi system, follow the general rules when estimating the compensation, whereas some other laws state that determining the amount of compensation should be based on the extent of the damage caused to the author in light of his social and cultural status, and the extent to which his reputation has been affected by the infringement. Among the laws, some depend on the magnitude of the fault made by the infringing party or the profits gained as a result of the infringement, while other laws place a minimum amount of compensation that no judicial body can go below when judging the infringing party18.

18 The Primary Principles of Copyright : Ibid , p. 60
The second requirement: Criminal liability of the educational institution

The criminal liability is characterized by its strong influence on the infringing party, making it more forceful than the civil liability. To clarify this, we notice that management of the educational institution may underestimate the consequence of the act of providing works electronically without obtaining the owners’ permission, and may misuse the free use of works for educational purposes when it knows in advance that the penalties for such acts are limited to a sum of money paid as compensation to the author for infringing his work. However this will not be the case if management of the institution learn about imprisonment or fine penalties where, in case of criminal penalty, the author can put a quick end to infringements on his work by filing counterfeiting lawsuits. In the following section we will discuss forms of copyright infringements and penalties prescribed in both foreign and Arab legislations.

First: Forms of Copyright infringements and penalties prescribed in foreign legislation

Legislations of intellectual property rights protection in Western countries have early realized the importance of defining the acts of copyright infringements, and the penalties prescribed for committing such acts. These legislations believe that declaring the moral and financial rights of the authors will be valueless without setting the mechanisms necessary to protect these rights criminally.

It is observed that foreign legislations follow the same path in organizing the rules of criminal protection of copyright regardless of the various systems that these legislations belong as some of these legislations belong to the Anglo-American system, whereas other legislations belong to the Latin system. In this regard we will briefly present the American copyright legislation, as a legislation that belongs to the Anglo-American system and the French intellectual property legislation, as the most prominent legislation that belongs to the Latin system.

In the United States of America, The Federal Copyright Act of 1976, to which several amendments were introduced, most recently in 2004, has an independent chapter for copyright infringement crimes and related criminal procedures. According to the amendments introduced to this act, the maximum penalty prescribed in sections (506) and (507) of the act reaches an imprisonment period of five years and a fine of not more than 250,000 U.S Dollars, or either of them, in cases of piracy and counterfeiting of computer programs and audiovisual works, and illegal use of works over the internet.

As for the current French Intellectual Property Code issued in 1992, it is noticed that the legislator frequently reconsiders forms of copyright infringements in the light of the updates in the field of infringements on rights contained in works, recordings, or protected radio programs. The legislator also cares that the prescribed penalties should be proportionate to the facts of the infringements and the changes that occur to the value of the European currency. Followers of the French Intellectual Property code notice the several amendments frequently introduced to Articles (L335-2, 3, 4, 5) of the code,
which are the articles specified for defining forms of infringements and penalties prescribed for infringing parties. These forms include, but not limited to: counterfeiting of work or audio recording, selling it, or offering it for sale or circulation or rent while knowing about the counterfeiting; manufacturing, assembling, or importing for the purpose of selling or leasing to any means or tool designed or intended to circumvent a protection technique used by the author like the technique of coding; and removing and dismantling any precautionary electronic information that ensure the use of the original copies of the work, like coding; in addition to a general provision for punishing infringement on any of the author’s moral or financial rights. Regarding the criminal penalties, they are graduated according to the seriousness of the act of infringement, reaching a maximum sentence of obligatory imprisonment for the period of three years, and a fine of not more than 300,000 Euros. The French legislator introduced the last amendments to these articles by Law No. 669 of 2009, issued on June 12, 2009.

It is also noticed that the French legislator has recently developed an integrated system for monitoring the protection of copyright in the information society, pursuant to the rule of law No. 961 of 2006, through which the legislator dealt with ways of copyright infringements via modern means of communication, especially with the ease of availability of works on various internet sites, and the possibility that network users can easily exploit these works. The French legislator has prevented, by force of law, illegal exchange transactions by imposing the digital protection systems known as "DRM" which provides the computer device that downloads files from the internet with a certain code that allows the opening of these files on that device only. The legislator has also allowed the existence of these technical systems in audio and visual recordings, so as to protect them from any illegitimate copying. The French legislator has taken into account the graduation of the amount of the financial fine imposed on those who perform illegitimate copying over the internet, so that the minimum fine is 38 Euros for those who illegally download protected works from the internet, and the maximum fine is raised up to 150 Euros if the aggressor not only downloaded work, but also made it available to other persons.

Second: Forms of copyright infringements and penalties prescribed in the Arab legislation

All intellectual property legislations in the Arab world contain original and supplementary penalties imposed on those infringing copyrights. These penalties vary in its strength or weakness from a legislation to the other. They also range from imprisonment and fine penalties to either of them.

Looking at the Saudi Copyright Protection System of 1424 Hijri, we find that in chapter (6) it defines the provisions of offences and penalties, as in Article (21) of the chapter, which defines the acts that constitute copyright infringements. Examples

\[\text{Loi n. 2006 - 961 du 1er août 2006 relative au Droit d'auteur et aux droits voisins dans la société de l'information.}\]
of such acts include, but not limited to: publishing a work that is not owned by the publisher, or publishing a work and claiming its ownership without obtaining a written permission from the author or his heirs, or their representatives; modifying the content, nature, title, or theme of the work without the author knowing it; reprinting the work without obtaining a prior written consent from the owner of the right; removing or dismantling any precautionary electronic information that ensure the use of the original copies of the work like coding or other; as well as infringing any of the rights protected under this system. As for Article (22) of this system, it defines the penalties imposed on those who commit the previously mentioned acts and they are represented in: warning, financial fine of not more than 250,000 Saudi Riyal, closing the infringing institution for a period not exceeding two months, confiscation of copies and materials used in committing the infringement, as well as imprisonment for a period not exceeding six months. These penalties are imposed on the aggressor either collectively or partly according to the case.

In the Federal Legislation on Copyright and Related Rights No. 7 of 2002 of the United Arab Emirates, we find that in Article (37) of chapter (7), the legislator punishes those who infringe on the author’s moral or financial rights with an imprisonment penalty for a period not less than two months and a fine of not less than 10,000 and not more than 50,000 Dirhams. In case of recidivism, the imprisonment penalty would be obligatory for a period not less than six months and the fine would be of not less than 50,000 Dirhams.

In the Egyptian Intellectual Property Legislation No. 82 of 2002, the legislator punishes the acts of infringements on any of the author’s moral or financial rights, particularly selling or leasing a work, a voice recording, or a protected radio program, or putting it into circulation in any form, without prior written permission of the author. The legislator also punishes the publishing of work through modern means like computer devices, internet networks, information and telecommunications networks, or via other means, without obtaining the author's consent. The penalties prescribed in the Egyptian legislation are: Imprisonment for a period not less than one month and a fine of not less than 5,000 and not more than 10,000 Egyptian Pounds, or either of them such that penalties are increased as the number of works or voice recordings in the infringement crime increase. In case of recidivism, the imprisonment would be obligatory for a period not less than three months and a fine of not less than 10,000 and not more than 50,000 Egyptian Pounds, along with confiscating the copies used in the infringement crime or resulted from it, and the equipment and tools used in committing the crime, as well as closing the facility which was exploited by the convicted in committing the crime for a period not more than six months, and publishing a summary of the judgment of conviction in a daily newspaper once or more at the expense of the convicted.

In the Bahraini law No. 22 of 2006 on Copyright Protection and Related Rights, amended by Law No. 12 of 2008, we find that deliberate infringement, on a commercial scale, on any of the author’s rights prescribed under the provisions of this law is
punished by imprisonment for a period of not less than three months and not more than one year and a fine of not less than 500 and not more than 4,000 Bahraini Dinars, or either of them. In case of recidivism, the minimum and maximum limits of the penalty are doubled, along with closing the institution in which the crime was committed, or stopping its activity for a period not less than fifteen days and not more than six months according to the case, in addition to publishing of the judgment in the local daily newspaper once or more at the expense of the convicted.

In the Omani Legislation on Copyright Protection and Related Rights No. 65 of 2008, which is the most recent Arab legislation in this regard, the Omani legislator punishes in Article (52) of the law, with an imprisonment penalty for not less than three months and not more than three years and a fine of not less than 2,000 and not more than 10,000 Omani Riyal, or either of them, for those who sell, lease, or trade a copy of the protected work without the consent of its owner; and those who intentionally trade in counterfeited papers or casings for computer program; and those who manufacture, assemble, modify, import, export, sell, lease or distribute any system or tangible or intangible means that are mainly used in the decryption of a signal carrying a program and sent via satellites, provided that the aggressor knows about it, and that the act was committed without obtaining the written permission of the legal distributor of this signal. Also those who intentionally infringe any of the author’s moral or financial rights protected under the provisions of this law are punished with the same penalties.

**Conclusion**

Through this research, we saw the relationship that links the environment of e-learning to the intellectual property rights, especially after the shift that was witnessed by the whole world in the field of education from the stage of availability to the stage of excellence and quality, so that there is an urgent need to reconsider the relationship between the educational institutions and its students and researchers. This relationship is no longer governed by a traditional intermediary material (the book) through which educational materials are provided, and is no longer limited by lectures durations inside classrooms or study halls as was the case in the past, but exceeded these temporal or spatial limits.

We have tried in this research to enlighten those involved in the management of educational institutions about means of acting in accordance with the intellectual property rights when providing e-learning services. This is achieved by clarifying the rights and duties that are proved to the institution when it prepares works, or when it buys all or some of the financial rights contained in them, as well as the rights and duties the are proved to the institution when it practices the free use of protected works for the purpose of educational illustration, pursuant to the prescribed limitations and exceptions to the exclusive rights of the author.
To sum up, the educational institution should take several considerations into account when dealing with protected works in the context of providing e-learning services, as follows:

**First** - When the educational institution acquires the author’s rights of a collective educational work that it has initiated the invitation for its preparation, supervised it, and published it under its name; then, it can solely practice the moral and financial rights contained in such work, including the right of making the work available through electronic means; and the actual authors who contributed their efforts to the work do not have the right to object to this single practice from the side of the institution.

**Second** – Upon contracting to buy the right of exploitation of any educational work in order to publish it electronically via the internet, the educational institution should take into account that the contract with the copyright owner should be in writing. This contract should specify explicitly, and in details, the limits of this exploitation in terms of time, space scale, and purpose, so that the institution does not exceed these agreed upon limits, or else, it would be subjected to civil and criminal penalties stipulated by law.

**Third** – When the educational institution provides articles, or excerpts from works, or small sized works for students or researchers via the internet as a mean of illustration for educational purposes, without obtaining the permission of the owners of such works; then, the institution is practicing its right in the free use of protected works, providing the following: The purpose behind that is not to make a profit; it should mention the author's name and the title of the work; and it should develop protected technical obstacles that prevents infringement when using its website through which these protected works are provided; thus, ensuring the prevention of illegal copying.

**Fourth** - If the educational institution has scientific periodicals that are available via its website over the internet or on CDs, it should declare that all articles, researches, and commentaries contained in these periodicals are attributed to its owners and represent their own point of views and not the views of the institution, so as to deny the liability of management and editorial staff of these periodicals in case of infringement of intellectual property rights.

**Finally** - After proving the disability of intellectual property systems and regulations to confront the vast evolution that occurred in intellectual piracy via electronic means, educational institutions should not depend only on legal protection for their intellectual rights in e-learning medias; it should reinforce such rights by other means of protection, which is the technical protection, by using the so-called "technological measures" that would prevent access to these medias and benefiting from it, except for only those holding a license from the institution, which is the owner of the right.