

Legal nature and rights of audiovisual effects

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Abstract

Audiovisual works are considered one of the most complex intellectual works in terms of their legal nature and the rights that derive from them, due to their collective creative nature, overlap in artistic contributions, and diversity in forms of economic exploitation. This research deals with the legal nature of audiovisual effects through a comparative analytical study, reviewing the different jurisprudential possibilities in adapting them, whether as joint effects, collective effects, derivative and employable effects, or effects arising from demand, while explaining the consequences of each adaptation of rights. for authors in terms of moral and financial rights. The research also addresses the position of three legal systems on these problems, namely: Iraqi law, Iranian law, and European regulation, highlighting the strengths and weaknesses of each of them. The research concluded that the jurisprudential adaptation of audiovisual effects cannot be a comprehensive and prohibitive adaptation, but rather differs according to the conditions of production of the work and the nature of the contributions to it, and that the Iraqi and Iranian legislation lacks a special and clear regulation of this type of work, which leaves room for jurisprudence and contractual agreements that often tend to favor the product at the expense of the authors. The comparison also showed that the European regulation represents a more balanced model, combining the recognition of the collective nature of audiovisual work in terms of management and exploitation, and the preservation of the minimum moral rights of the primary authors. The research concluded by emphasizing the need for the intervention of the Iraqi and Iranian legislators to develop a special legal framework that takes into account the privacy of these works, and balances the protection of the rights of creators with the requirements of economic exploitation, while benefiting from the European experience in this field.

Keywords: Audiovisual Effects, Copyright, Common Work, Collective Work, Derivative Work.

Introduction

Audiovisual creativity in the modern era is one of the most important aspects of intellectual and cultural expression, as it has gone beyond being a mere means of entertainment to become a major economic industry, an influential tool in shaping collective consciousness, and a window for the expression of various cultural identities. With this enormous expansion in the production of films, series, television programs, and digital-visual content, complex legal problems have emerged related to determining the legal nature of these works, and thus defining the rights arising from them for their owners. The peculiarity of audiovisual effects lies in the fact that they are a product of the efforts of a number of creators, led by the screenwriter, director, photographer and musician, in addition to the pivotal role played by the producer as the financier and organizer of the production process. This overlap between individual creations and collective organization makes it difficult to place these acts under a uniform legal rule.

This problem is further complicated by the differing national legislation in dealing with the concept of an audiovisual work, some of which tend to consider it as a common work, others to adapt it as a collective work, and a third that prefers to be regarded as a work derived or arising from demand. In this context, the question arises as to the adequacy of the general rules of copyright law in accommodating the privacy of audio works and whether there was a need for a special legal regime to regulate such acts independently, as had been done with some European legislation.

This research aims to provide a comparative analytical view of the legal nature of audiovisual effects, and the rights that arise from them, by studying the various jurisprudential possibilities for adapting these works, and reviewing the position of both Iraqi and Iranian law and the European regulation on these problems, while explaining the shortcomings of the Iraqi and Iranian legislations, and the possibility of benefiting from the European experience in developing the legal framework for these works.

Problem Statement

The central problem addressed in this research is the absence of a clear legal definition of the legal nature of audiovisual effects, and the consequent ambiguity in the rights resulting from them, whether at the level of moral or financial rights, in light of the multiplicity of possible jurisprudential adaptations of these works, and the different positions of national legislation on them. The audiovisual effect, by virtue of its composition of multiple creative contributions, lies at the intersection of several legal concepts in the copyright system, as it bears the characteristics of a joint work with multiple contributors and indivisibility of the work, and on the other hand, it contains the characteristics of the collective work in terms of unified management and organized exploitation, and in some cases it may fall under the description of a derivative or employable work if it is based on a previous work, or a work arising from demand if it is commissioned on the one hand Specific.

This multiplicity of adaptations raises fundamental practical and legal problems, most notably: how to determine who authors are entitled to legal protection, what are the limits of the moral rights enjoyed by each of them, how to exercise and manage financial rights, whether these rights are transferred in whole or in part to the producer, what is the impact of the contract in regulating these rights, and how to reconcile the protection of individual creativity with the requirements for the economic exploitation of work. These problems are exacerbated by Iraqi and Iranian legislation, which lack a specific regulation of audiovisual works, subject them to general rules of copyright law that are not designed to accommodate this type of work, leave the delimitation of rights to contractual agreements in which the balance of power is often tilted in favor of the producer at the expense of the authors, as well as the absence of clear criteria to distinguish legitimate quotation from infringement, and instability in judicial standards.

In contrast, the European regulation is showing remarkable progress in dealing with these problems, through the adoption of special provisions regulating audiovisual works, balancing the rights of primary authors and producers, and establishing safeguards that prevent moral rights from being devoid of their content.

First Topic: The Legal Nature of Audiovisual Effects

The first requirement: the possibility that it is a joint or collective or other effect

Section One: The Possibility of Being a Joint Effect

The possibility of considering audiovisual effects as joint effects is one of the most prominent jurisprudential trends that have attempted to explain their legal nature within the framework of copyright theory. This trend is based on the premise that audiovisual work is the product of the contribution of several people, each of whom plays an independent intellectual or artistic role, but that these contributions eventually merge into a single, indivisible work. This perception is based on the assumption that screenplay, direction, music, and photography are stand-alone intellectual creations, not Its creative character can be denied or its value can be separated from the general entity of the work¹.

According to the traditional jurisprudential adaptation, a joint work is understood as a work in which more than one author has more than one author in common, so that the share of each cannot be separated independently without detrimental to the unity of the work. When this definition is applied to audiovisual effects, a superficial harmony emerges, since the exploitation of any element of the work in isolation may lead to the distortion of the work or the loss of its artistic identity. Thus, in theory, the consideration of an audiovisual work as a joint work seems to be Compatible with its composite nature².

However, this adaptation raises practical and legal problems, particularly with regard to the definition of the status and limits of co-authorship. Not everyone who contributes to the production of an audiovisual work is necessarily an author in the legal sense, as some contributions are characterized by their artistic and creative character, while others are limited to technical or administrative implementation. This distinction narrows the circle of co-authors, which raises questions about the standard adopted to determine who is considered an author and who is not³.

At the level of comparative legislation, the Iraqi legislature did not set a specific definition of a joint work in the context of audiovisual effects, but only general texts relating to the participation of more than one author in a single work, which opens the way for the application of this adaptation to audiovisual works without an explicit text. It is noted that this legislative vacuum may lead to conflicts of interpretation, especially in disputes over the exercise or disposition of rights, since a joint work requires, as a public asset, the agreement of all authors on the exploitation⁴.

In Iranian law, although the principle of more than one person participating in a work is recognized, the texts do not provide a clear treatment of the issue of audiovisual works as joint works, making the application of this adaptation more of a matter of jurisprudence than a stable legal basis. This results in weakness in defining the legal status of shareholders, especially in the absence of a detailed regulation of financial rights and mechanisms for their management⁵.

On the other hand, some European jurisprudence has treated audiovisual effects as joint works, given the consequent complexity in the management of rights and the disruption of the economic exploitation of the work. This consideration has prompted European legislation to seek

¹ Abdel Fattah Bayoumi Hegazy, *Legal Protection of Copyright and Related Rights*, Dar Al-Fikr Al-Qanuni, Cairo, 2013, p. 148.

² Ahmed Shawky Abdel Rahman, *Legal Protection of Audiovisual Works*, Dar Al-Nahda Al-Arabiya, Cairo, 2016, p. 109.

³ Hassan Abdul Karim, *Explanation of the Iraqi Copyright Law*, Dar Al-Sanhouri, Baghdad, 2015, p. 123.

⁴ Muhammad Sobhi Najm, *Copyright and Related Rights*, Dar Al-Thaqafa, Amman, 2014, p. 176.

⁵ Abbas Karimi, *Copyright Law in Iran*, Tehran University Press, 2018, p. 92.

more flexible regulatory alternatives, based on the distribution of rights between authors and producers, rather than subjecting the audiovisual work entirely to the provisions of the joint work in the traditional sense⁶.

Thus, it can be argued that the adaptation of audiovisual effects as common works has its theoretical relevance in terms of recognizing the multiplicity of creations that make up the work, but it still falls short of grasping the practical reality of the audiovisual production industry. Its introduction may also lead to consequences that hinder economic exploitation and weaken the effectiveness of legal protection, which explains the tendency to seek other legal adaptations that are more appropriate to the nature of this type of work.

Section Two: The Possibility of Collective Effects

Another jurisprudential trend is the possibility of adapting audiovisual works as collective works, based on the fact that this type of work is often created on the initiative of a natural or legal person who organizes, directs and publishes the work in his name, with individual contributions integrated into a holistic framework in which the work is not attributed to a particular author. This trend is based on the organizational nature of the audiovisual production industry, where the producer plays a pivotal role in collecting and coordinating artistic and intellectual elements into a single unified project objective and economical⁷.

According to the general theory of copyright, a collective work is understood as a work in which several persons work under the supervision of a person who directs and publishes the work in his or her name, so that individual contributions are dissolved in the general entity of the work and the work cannot be attributed to a specific author. When this concept is projected onto audiovisual effects, it is noted that the producer often takes the lead in selecting the idea, financing the production and defining the team, which supports the argument that the audiovisual work can be adapted as a work Organizationally collective⁸.

However, this adaptation is not without problems, as the creative nature of some contributions, particularly directing, screenwriting and music composition, makes it difficult to consider them as merely integrated elements that lack intellectual independence. These contributions carry a clear personal imprint, which runs counter to the traditional idea of a collective work based on the absence of individual distinction of authors. Thus, considering audiovisual works as collective works may lead to the loss of the moral rights of the original authors⁹.

At the level of comparative legislation, the Iraqi legislature did not adopt an explicit text that would adapt audiovisual effects as collective works, but rather left it to the general rules governing collective works, which opens the way for different jurisprudence in practice. It is noted that the introduction of this adaptation in the Iraqi framework may lead to the concentration of financial rights in the hands of the producer or the regulator, at the expense of the rest of the shareholders, in light of the weak detailed regulation of moral rights¹⁰.

In Iranian law, the idea of a collective work is present in principle, but its application to audiovisual effects remains limited and unstable, due to the lack of clear texts regulating the status of the producer and his relationship with the authors. In addition, there is the influence of some cultural and organizational considerations that may favor the role of the producer at the expense of the recognition of individual creativity, which raises problems related to the fairness of the distribution of rights¹¹.

⁶ André Lucas & HenriJacques Lucas, *Traité de la propriété littéraire et artistique*, LexisNexis, Paris, 2017, p. 462.

⁷ Abdel Fattah Bayoumi Hegazy, *Legal Protection of Copyright and Related Rights*, Dar Al-Fikr Al-Qanuni, Cairo, 2013, p. 152.

⁸ Muhammad Sobhi Najm, *Copyright and Related Rights*, Dar Al-Thaqafa, Amman, 2014, p. 182.

⁹ Ahmed Shawky Abdel Rahman, *Legal Protection of Audiovisual Works*, Dar Al-Nahda Al-Arabiya, Cairo, 2016, p. 115.

¹⁰ Hassan Abdul Karim, *Explanation of the Iraqi Copyright Law*, Dar Al-Sanhouri, Baghdad, 2015, p. 129.

¹¹ Abbas Karimi, *Copyright Law in Iran*, Tehran University Press, 2018, p. 97.

European legislation, on the other hand, has treated the idea of a collective work with great caution when applying it to audiovisual effects, often preferring not to subject this type of work to this adaptation at all. It has tended to adopt compromises based on the recognition of the original authors while granting the producer broad financial rights that ensure the efficient exploitation of the work, without denying the creative nature of individual contributions. This trend reflects a deeper understanding of the specificity and complex nature of the audiovisual work¹².

Thus, it can be argued that the adaptation of audiovisual effects as collective works is based on a clear organizational and economic logic, but it remains inadequate in terms of understanding the creative dimension of the work. Its absolute adoption may also lead to an imbalance between the interests of producers and the rights of authors, which justifies the tendency to seek a special or mixed legal adaptation that is consistent with the unique nature of audiovisual effects.

Thesecond requirement: the possibility that it is derived from the effects of the demand

Section I: The Possibility of Being a Derivative and Employable Effects

In the context of determining the legal nature of audiovisual effects, the possibility of adapting them as derivative or employable works arises when they are based on a previous work or are created in the context of a contractual relationship aimed at employing creativity to serve a specific purpose. This trend is based on the fact that many audiovisual works do not arise in a vacuum, but rather rely on literary novels, plays, pre-prepared scenarios, or even previous works of art that are repurposed into a new visual format¹³.

A derivative work is that which derives from a previous work with the introduction of a new creative element that gives it an independent character, without negating its connection to the original. When applied to audiovisual effects, this concept is clearly seen in cases of novels being made into films, reproducing dramas, or adapting literary stories in the form of film or television works. In such cases, the independence of the audiovisual work in terms of form and artistic means cannot be denied, but this independence remains restricted Copyright of the original work¹⁴.

This adaptation adds an important dimension related to the multiplicity of rights, as the rights of the author of the original work coexist with the rights of those who contributed to the preparation of the audiovisual work, whether they are producers, directors or composers of music. This entails complexity in defining the scope of legitimate exploitation, especially if it is not strictly contractually regulated, which makes derivative adaptation an appropriate framework for understanding this complex relationship between the original work and the new work¹⁵.

On the other hand, the adaptation of audiovisual effects is presented as employable effects, when the work is carried out within the framework of a legal relationship in which the creativity is directed to the interest of the requesting or the user. This is particularly evident in works produced for production companies or media channels, where authors contribute to the work within a regulatory framework that limits their creative freedom and makes their work directed towards a predetermined goal¹⁶.

At the level of comparative legislation, Iraqi law does not explicitly regulate the concept of derivative or employed works in the field of audiovisual effects, but the general rules allow for the conclusion of this adaptation, especially in cases where prior permission is required from the owner of the original work. The absence of detailed texts leads to a lack of clarity in the

¹² André Lucas & HenriJacques Lucas, *Traité de la propriété littéraire et artistique*, LexisNexis, Paris, 2017, p. 470.

¹³ Ahmed Shawky Abdel Rahman, *Legal Protection of Audiovisual Works*, Dar Al-Nahda Al-Arabiya, Cairo, 2016, p. 134.

¹⁴ Abdel Fattah Bayoumi Hijazi, *Legal Protection of Copyright and Related Rights*, Dar Al-Fikr Al-Qanuni, Cairo, 2013, p. 165.

¹⁵ Muhammad Sobhi Najm, *Copyright and Related Rights*, Dar Al-Thaqafa, Amman, 2014, p. 197.

¹⁶ Abdel Karim Salama, *Intellectual Property in Modern Legislation*, New University Press, Alexandria, 2018, p. 241.

distribution of rights, especially between the author of the original work and those who contributed to its transformation into an audiovisual work¹⁷.

In Iranian law, derivative adaptation is more clearly demonstrated by the requirement that the rights of the original work be respected when re-employing or transferring it, but the regulation falls short of addressing the technical and artistic specificity of audiovisual works. As a result, the question of determining financial and moral rights remains subject to jurisprudential jurisprudence rather than to precise legislative texts¹⁸.

In contrast, the European regulation is more clear in dealing with audiovisual effects as derivative or functional works, recognizing their relative independence while preserving the rights of the original work, while granting producers rights that guarantee the effective exploitation of the work. This regulation reflects a legislative balance between the protection of previous creativity and the promotion of subsequent innovation in the audiovisual field¹⁹.

Accordingly, it can be said that the adaptation of audiovisual effects as derivative or employable works is in many cases realistic adaptations, as it is in harmony with the nature of contemporary artistic production. However, its effectiveness remains contingent on the existence of a precise legislative regulation that clearly defines the scope of rights and obligations, so as to prevent conflicts between the owners of original works and contributors to the audiovisual work.

Section Two: Possible Effects of Demand

The adaptation of audiovisual effects as effects arising from demand is presented as one of the practical adaptations imposed by the nature of contemporary artistic production, where the work is carried out at the express request of a certain entity, often a producer or a media institution, which finances the project and defines its general framework and objectives. In this context, creativity is not an end in itself, but rather a means to achieve the interest of the requesting entity, whether commercial, cultural or media²⁰.

This adaptation is based on the idea that the legal relationship governing the production of an audiovisual work is, in essence, based on a contract of request or commission, whereby the author or group of authors is obliged to complete the work on predetermined terms, in exchange for a certain remuneration or financial consideration. It follows that the element of economic, and sometimes artistic, dependence limits the creative independence of the author and makes his legal status different from that of the author of traditional works²¹.

The consideration of an audiovisual work as an effect arising from demand has important legal consequences, most notably with regard to ownership of financial rights. These rights are often transferred, in whole or in part, to the requesting party, as the one who has taken the financial risks and organized the production process. However, there is still debate about the extent to which this transfer extends to moral rights, especially in regulations that recognize the intimate nature of these rights to the author²².

At the level of Iraqi legislation, there is no explicit regulation of the effects of demand in the field of audiovisual works, but the general rules in exploitation and copyright contracts allow for the implicit conclusion of this adaptation. This absence of legislation leads to a discrepancy in practice, as the delimitation of the scope of rights is left to contractual agreements, which may often tend to favor the product at the expense of the author²³.

In Iranian law, the adaptation of works arising out of demand is more pronounced in practice than in legal texts, as the majority of audiovisual works are commissioned by production

¹⁷ Hassan Abdul Karim, *Explanation of the Iraqi Copyright Law*, Dar Al-Sanhouri, Baghdad, 2015, p. 145.

¹⁸ Abbas Karimi, *Copyright Law in Iran*, Tehran University Press, 2018, p. 112.

¹⁹ André Lucas & Henri Jacques Lucas, *Traité de la propriété littéraire et artistique*, LexisNexis, Paris, 2017, p. 489.

²⁰ Abdel Fattah Bayoumi Hijazi, *Legal Protection of Copyright and Related Rights*, Dar Al-Fikr Al-Qanuni, Cairo, 2013, p. 172.

²¹ Ahmed Shawky Abdel Rahman, *Legal Protection of Audiovisual Works*, Dar Al-Nahda Al-Arabiya, Cairo, 2016, p. 149.

²² Muhammad Sobhi Najm, *Copyright and Related Rights*, Dar Al-Thaqafa, Amman, 2014, p. 205.

²³ Hassan Abdul Karim, *Explanation of the Iraqi Copyright Law*, Dar Al-Sanhouri, Baghdad, 2015, p. 153.

institutions. However, the lack of clear rules regulating the effects of such adaptation leads to weak protection for the author, especially with regard to his moral rights and the continuation of the work to him²⁴.

In contrast, European regulation shows a more balanced trend, recognizing the nature of audiovisual works as often arising from demand, while establishing a special legal regime regulating the distribution of rights between authors and producers. The European Directives emphasize the need to protect the moral rights of authors, even in the context of the transfer of financial rights, reflecting a legislative recognition of the specificity of the contractual relationship in this area²⁵.

It is noted that the adaptation of audiovisual effects as effects arising from demand, despite its realism, is not suitable for being an exclusive or absolute adaptation, since more than one legal description may be combined in a single work, such as if the work is derived and at the same time performed on demand. Thus, the importance of this adaptation lies in its interpretative role in the distribution of rights, not in its inclusive and inhibitory description²⁶.

Accordingly, it can be said that considering audiovisual effects as effects arising from demand is a practical adaptation that is consistent with the reality of the audiovisual industry, but it still requires a careful legislative regulation that ensures a balance between the interests of the requesting party and the rights of authors, especially in legislation that has not assigned a special legal system to this type of work.

Second Topic: Authors' Rights to Audiovisual Works

The first requirement: the rights that arise from the joint or collective effects

Section One: The Possibility of Being a Joint Effect

A joint effect refers to a work that is created by more than one author, so that the contribution of each of them cannot be separated from the other without compromising the unity of the work, a characterization that is theoretically consistent with the nature of audiovisual effects, which is based on the concerted efforts of a number of authors, such as screenwriters, directors, music composers, and others, in a single creative framework that cannot be²⁷ divided.

The consideration of the audiovisual effect as a co-effect entails that all authors enjoy the prescribed rights of copyright, whether moral or financial, on an equal basis in principle. This means that each author has the right to attribute the work to him, the right to respect for its integrity, as well as to share in the proceeds of financial exploitation, unless there is a contrary agreement specifying the rates of participation or the method of distribution of the proceeds²⁸.

However, the application of this concept in the field of audiovisual effects raises complex practical problems, particularly with regard to the exercise of moral rights. The adoption of the right of objection to the amendment of each of the co-authors may in practice disrupt the exploitation of the work, especially since the nature of audiovisual production requires constant modifications imposed by technical, technical or commercial considerations²⁹.

In this context, part of the jurisprudence argues that moral rights in co-effect must be exercised collectively, so as to prevent an author from abusing his right in a way that is detrimental to the common interest of the other contributors or to the legitimate exploitation of

²⁴ Abbas Karimi, *Copyright Law in Iran*, Tehran University Press, 2018, p. 121.

²⁵ Séverine Dusollier, *Droit d'auteur et protection des œuvres audiovisuelles dans l'Union européenne*, Larcier, Bruxelles, 2019, p. 96.

²⁶ André Lucas & HenriJacques Lucas, *Traité de la propriété littéraire et artistique*, LexisNexis, Paris, 2017, p. 503.

²⁷ Abdel Fattah Bayoumi Hegazy, *Intellectual Property: Legal Protection of Copyright and Related Rights*, Dar Al-Fikr University, Alexandria, 2012, p. 203.

²⁸ Muhammad Sobhi Najm, *Copyright and Related Rights*, Dar Al-Farqa for Publishing and Distribution, Amman, 2014, p. 227.

²⁹ Ahmed Shawky Abdel Rahman, *Legal Protection of Audiovisual Works*, Dar Al-Nahda Al-Arabiya, Cairo, 2016, p. 171.

the work. However, while this solution achieves a degree of balance, it is still not explicitly provided for in many national³⁰ legislations.

At the level of Iraqi law, the legislation does not contain special provisions regulating the status of audiovisual effects as joint effects, which leads to their subjection to the general rules of joint effect. This results in ambiguity in defining the decision-making mechanism for the exploitation or modification of the work, as well as the lack of clarity on the limits of the exercise of the moral rights of each author, which opens the door to judicial disputes³¹.

Iranian law, while recognizing the principle of protecting the rights of authors, does not establish a precise regulation of the joint effect in the field of audiovisual works, which in practice leads to the predominance of the role of the producer or the financier at the expense of the authors, especially with regard to financial rights and subsequent exploitation decisions³².

In contrast, the European regulation is more clear in dealing with the idea of co-effect, recognizing the principle of co-authorship of rights, while allowing for the contractual regulation of its exercise in a way that ensures the continued exploitation of the work without prejudice to the minimum moral rights of the original authors. This approach has contributed to reducing the practical problems associated with the multiplicity of rights³³ holders.

Therefore, it can be said that the adaptation of the audiovisual effect as a joint effect achieves theoretical harmony with the reality of collective creativity, but its practical effectiveness remains dependent on the existence of a precise legislative regulation that balances the protection of authors' rights with ensuring the work's exploitability, which is lacking in both Iraqi and Iranian laws compared to European regulation.

Section Two: The Possibility of Collective Effects

Collective work refers to a work created on the initiative of a natural or legal person, which is organized, directed and published by the latter in his name, so that the contributions of the various authors are integrated into a single framework in which each individual contribution loses its autonomy. This adaptation is one of the most common adaptations in the field of audiovisual effects, given the central role played by the producer in financing the work, selecting its artistic elements, supervising its implementation and marketing it to the public³⁴.

Considering the audiovisual effect as a collective effect entails the transfer of financial rights, in principle, to the person who initiated the creation and publication of the work in his name, i.e., the producer, while the role of the co-authors is limited to the performance of their artistic contributions without having an independent right to exploit the work as a general rule. This trend is justified by the need to ensure unity of decision in the exploitation of the work and to avoid disruption that may arise from the multiplicity of owners of financial rights³⁵.

However, this adaptation raises fundamental problems at the level of moral rights, since the recognition of the work as a collective work may in practice marginalize the personal connection between the original authors and the worker, in particular the screenwriter and the director. Attributing the work to the producer alone, even if it is justified from the point of view of exploitation, weakens the right to attribute the work and makes the recognition of the authors a secondary or formal issue³⁶ at best.

In this context, it is noted that some legislation tends to sacrifice the moral rights of authors in favor of the exigencies of production, by allowing for substantial modifications to the work

³⁰ Abd al-Razzaq Ahmed al-Sanhouri, *The Mediator in the Explanation of the Civil Law*, vol. 1, Dar Ihya al-Turath al-Arabi, Beirut, 2000, p. 89.

³¹ Hassan Abdul Karim, *Explanation of the Iraqi Copyright Law*, Dar Al-Sanhouri, Baghdad, 2015, p. 168.

³² Abbas Karimi, *Copyright Law in Iran*, Tehran University Press, 2018, p. 142.

³³ André Lucas & HenriJacques Lucas, *Traité de la propriété littéraire et artistique*, LexisNexis, Paris, 2017, p. 536.

³⁴ Muhammad Sobhi Najm, *Copyright and Related Rights*, Dar Al-Farqa for Publishing and Distribution, Amman, 2014, p. 241.

³⁵ Abdel Fattah Bayoumi Hijazi, *Intellectual Property: Legal Protection of Copyright and Related Rights*, Dar Al-Fikr University, Alexandria, 2012, p. 219.

³⁶ Ahmed Shawky Abdel Rahman, *Legal Protection of Audiovisual Works*, Dar Al-Nahda Al-Arabiya, Cairo, 2016, p. 184.

without reference to the authors, as long as the producer has the right to exploit the collective effect. This approach leads to a clear imbalance between economic considerations and the legal protection of individual creativity³⁷.

At the level of Iraqi law, there is no explicit and detailed regulation of collective work in the field of audiovisual effects, but in practice the role of the producer tends to enshrine the role of the producer as the one with the effective authority over the work. This situation weakens the legal status of authors, especially in the absence of provisions that explicitly protect their moral rights when adapting the work as a collective work³⁸.

In Iranian law, the concept of collective effect, although not explicitly formulated in the texts, tends to give the producer or enterprise broad authority to exploit the work, while narrowing the scope of authors' intervention after their contributions have been completed. This is particularly evident in the author's limited ability to object to modifications or to claim a prominent proportion of his name when the work is presented³⁹.

On the other hand, the European regulation adopts a more balanced approach, recognizing the collective nature of audiovisual effects in terms of management and exploitation, while maintaining a minimum of the moral rights of the original authors. European directives and jurisprudence have taken care not to infringe on the right to attribute the work, even if the financial rights go to the producer, in order to achieve a balance between the logic of the industry and the protection of creativity⁴⁰.

Thus, it can be argued that the adaptation of audiovisual work as a collective work provides practical solutions to the problems of exploitation and management, but it remains criticized from the point of view of the protection of the moral rights of authors. The comparative analysis highlights the need for clearer legislative intervention by Iraqi and Iranian legislation to ensure that the collective character does not become a means of destroying the inherent rights of authors, as has been the case in the European trend.

Second Requirement: Rights Derivative, Employable, or Arising from the Demand

Section One: Rights Consequential to Being Derived or Employed Effects

A derivative audiovisual effect is a work that is based on a previously protected work, such as the conversion of a novel into a film, a play adaptation, or a literary work into an audiovisual form, so that the new creation is based on the re-employment of the original idea or structure in a different artistic form. The employable effect arises when a previous work is invested in a new work to achieve a specific artistic or commercial purpose, without the original work losing its legal independence⁴¹.

This adaptation results in a multiplicity of rights centers, as the author of the original work retains his or her moral rights in full, in particular the right to attribute the work and the right to object to any misrepresentation that affects the essence of his work, while the author of the derived audiovisual work acquires rights independent of his new creative contribution, provided that he does not exceed the limits of the license granted to him⁴².

Financial rights are of a complex nature in this context, as the legality of the exploitation of the derived audiovisual effect depends on obtaining prior permission from the owner of the rights to the original work. This permission is a necessary legal basis, the failure of which entails civil and even criminal liability in some legislations, even if the derivative work involves a clear creative effort⁴³.

³⁷ André Lucas & HenriJacques Lucas, *Traité de la propriété littéraire et artistique*, LexisNexis, Paris, 2017, p. 548.

³⁸ Hassan Abdul Karim, *Explanation of the Iraqi Copyright Law*, Dar Al-Sanhouri, Baghdad, 2015, p. 174.

³⁹ Abbas Karimi, *Copyright Law in Iran*, Tehran University Press, 2018, p. 151.

⁴⁰ Directive 2001/29/EC of the European Parliament and of the Council, Art. 2–3.

⁴¹ Muhammad Sobhi Najm, *Copyright and Related Rights*, Dar Al-Farqa for Publishing and Distribution, Amman, 2014, p. 263.

⁴² Abdel Fattah Bayoumi Hegazy, *Intellectual Property: Legal Protection of Copyright and Related Rights*, Dar Al-Fikr University, Alexandria, 2012, p. 245.

⁴³ Ahmed Shawky Abdel Rahman, *Legal Protection of Audiovisual Works*, Dar Al-Nahda Al-Arabiya, Cairo, 2016, p. 211.

In this context, it is noted that the adaptation of the audiovisual effect as a derivative or employable effect limits the release of the producer's hand in exploitation, unlike the collective effect, where the exploitation of the new work becomes linked to restrictions derived from the rights of others. This restriction contributes to the protection of the original author, but at the same time it may impose an economic and regulatory burden on the audiovisual production industry⁴⁴.

At the level of Iraqi law, the legislation recognizes the principle of protection of derivative works, but does not establish a detailed regulation that precisely defines the nature of the rights arising from the quoted audiovisual effect, and does not clearly distinguish between legitimate quotation and unlawful infringement. This inadequacy leaves the matter to the discretion of the judiciary, with the concomitant instability in legal standards⁴⁵.

Iranian law, in turn, emphasizes the need to respect the rights of the original work, but its regulation of derivative works remains general and does not address the technical and economic specificity of audiovisual works. This has the consequence of narrowing the scope of the practical rights of the authors of derivative works, especially when their interests conflict with those of the previous rights holders⁴⁶.

In contrast, European regulation is more precise, making a clear distinction between the right to citation and the right to exploitation, and the creation of derivative audiovisual works is subject to a clear licensing regime, while guaranteeing the rights of both the original author and the new author. This regulation has contributed to a relative balance between the promotion of creativity and the protection of acquired rights⁴⁷.

Accordingly, the rights resulting from the adaptation of an audiovisual effect as a derivative or employable effect are based on the principle of coexistence between multiple rights, and can only be efficiently regulated through clear texts that take into account the specificity of this type of work, which highlights the need to develop Iraqi and Iranian legislation in the light of the European model.

Section Two: Rights arising from the demand

An audiovisual effect arising from a request shall mean a work that is executed at the express request of a natural or legal person, who determines the purpose and financing of the work, and concludes a contract with the author or authors under which they are obliged to complete the work in accordance with specific conditions. This type of effect is predominantly contractual in nature, so that the rights arising from it are determined in the light of the prior agreement between the parties, within the limits imposed by law⁴⁸.

Such an adaptation entails that the author's moral rights remain, in principle, intrinsic and non-transferable, in particular the right to attribution of the work and the right to respect for its integrity. In practice, however, the exercise of these rights may be constrained by the requirements of the purpose for which the work was performed, since the author is presumed to accept the modifications or adaptations necessary to achieve the agreed objective, as long as this does not distort the essence of the work or damage the reputation of the author⁴⁹.

As for financial rights, the rule in the effects arising from demand is based on the transfer of the right of exploitation to the applicant, in whole or in part, as stipulated in the contract. This trend is justified by the fact that the applicant has borne the financial risks of production and has

⁴⁴ André Lucas & Henri Jacques Lucas, *Traité de la propriété littéraire et artistique*, LexisNexis, Paris, 2017, p. 589.

⁴⁵ Hassan Abdul Karim, *Explanation of the Iraqi Copyright Law*, Dar Al-Sanhouri, Baghdad, 2015, p. 193.

⁴⁶ Abbas Karimi, *Copyright Law in Iran*, Tehran University Press, 2018, p. 168.

⁴⁷ Directive 2001/29/EC of the European Parliament and of the Council, Art. 2–3.

⁴⁸ Muhammad Sobhi Najm, *Copyright and Related Rights*, Dar Al-Farqa for Publishing and Distribution, Amman, 2014, p. 271.

⁴⁹ Abdel Fattah Bayoumi Hegazy, *Intellectual Property: Legal Protection of Copyright and Related Rights*, Dar Al-Fikr University, Alexandria, 2012, p. 252.

determined the scope of use, making it more appropriate to control the exploitation of the audiovisual effect within the agreed framework⁵⁰.

However, this transition does not mean that the author is deprived of any legal status, as he continues to retain his financial rights for uses not expressly covered by the contract. In this area, a narrow interpretation of contracts is one of the most important safeguards to protect the author from an implied or unintentional waiver of his rights, especially in light of the economic inequality between the parties⁵¹.

In Iraqi law, there is no special regulation of works arising from demand in the area of audiovisual effects, making the contract the primary source of determining rights. This legislative vacuum leads to a significant disparity in the protection of authors and gives the economically stronger party a broad ability to impose conditions that may render moral rights of their practical content⁵².

In Iranian law, the situation is not much different, as works arising out of the demand are dealt with in a general framework that is predominantly civil and contractual in nature, without explicit provisions balancing the interest of the applicant with the protection of the author. This strengthens the dominance of the requesting party over exploitation, with weak safeguards for authors in the face of arbitrary conditions⁵³.

On the other hand, the European regulation is showing greater awareness of the specificity of the effects arising from the demand, by adopting rules that restrict the transfer of financial rights to the scope of the agreed purpose and emphasize that the moral rights of the author are not infringed. This trend has contributed to achieving a degree of balance between the logic of contract and the protection of creativity, without prejudice to the requirements of audiovisual production⁵⁴.

Conclusion Results

1. The research proved that audiovisual effects cannot be subject to a single comprehensive legal adaptation, but their adaptations vary between the common and the collective, the derivative and the demand arising from the demand, according to the conditions of production and the nature of the contributions, and more than one description may be combined in a single work, which requires legislative flexibility in dealing with them.

2. Iraqi law lacks a special regulation of audiovisual effects, which subjects them to the general rules of copyright law, and leads to ambiguity in defining authors and the limits of moral rights, difficulty in managing financial rights, and favoring the product at the expense of authors in the absence of explicit protective texts.

3. Iranian law suffers from a similar shortcoming, as there are no clear texts regulating audiovisual works as an independent category, leading to a reliance on practice and jurisprudence that often tends to predominate the role of the producer with a weak protection of the moral rights of the primary authors.

4. The European regulation represents an advanced legislative model, as it recognizes the collective nature of audiovisual works in terms of management and exploitation, while preserving the moral rights of the original authors and their non-waiver, and establishing a clear system for the transfer of financial rights to the producer with a guarantee of proportionate remuneration for the authors.

⁵⁰ Ahmed Shawky Abdel Rahman, *Legal Protection of Audiovisual Works*, Dar Al-Nahda Al-Arabiya, Cairo, 2016, p. 223.

⁵¹ André Lucas & Henri Jacques Lucas, *Traité de la propriété littéraire et artistique*, LexisNexis, Paris, 2017, p. 601.

⁵² Hassan Abdul Karim, *Explanation of the Iraqi Copyright Law*, Dar Al-Sanhouri, Baghdad, 2015, p. 201.

⁵³ Abbas Karimi, *Copyright Law in Iran*, Tehran University Press, 2018, p. 175.

⁵⁴ Directive 2001/29/EC of the European Parliament and of the Council, Art. 2–3.

5. The adaptation of the audiovisual effect as a joint effect leads to practical problems in the exercise of moral rights, as the right of objection of each author may disrupt the exploitation of the work, while its adaptation as a collective work, while facilitating management and exploitation, may marginalize the moral rights of authors.

6. In the case of the adaptation of the audiovisual work as a derivative or employable work, multiple and overlapping rights arise, as the author of the original work retains his moral rights, and the exploitation of the new work becomes subject to obtaining prior permission, which limits the producer's free hand in exploitation and highlights the need for precise contractual regulation.

Recommendations

1. Promulgating legislation on audiovisual effects in Iraq and Iran, which includes an integrated regulation that defines the concept of audiovisual work, distinguishes between its types, identifies authors entitled to protection, and establishes clear rules for moral and financial rights, similar to European directives.

2. Affirming that the moral rights of the authors of audiovisual works are not subject to assignment or limitation, especially the right to attribute the work and the right to respect its integrity, while approving practical mechanisms that allow the collective exercise of these rights in a way that does not disrupt the exploitation of the work, and obliging the producer to prove the names of the main authors when presenting the work.

3. Adopting a legal system for the transfer of financial rights in audiovisual works to the producer, with the condition that such transfer be limited to the scope of the purpose agreed upon in the contract, and not assuming a comprehensive transfer of rights, obliging the producer to submit periodic reports on the exploitation of the work and its revenues, and ensuring that the authors receive a remuneration commensurate with the actual revenues.

4. Establishing clear controls for dealing with derivative or employed audiovisual works, so that prior permission is required from the owner of the original work, while specifying the scope of financial rights for both the author of the original work and the author of the derivative work, and approving a licensing system that facilitates the process of quotation while preserving the rights of the creators.

5. Regulate works arising from demand in the audiovisual field, so that adapting the work in this way does not result in the loss of authors' rights, stipulating that any waiver of financial rights must be explicit and specific in terms of scope, duration and means of exploitation, and that any ambiguity in the contract shall be interpreted in favor of the author.

6. Urge the Iraqi and Iranian judiciary to adopt a protectionist interpretation of contracts for the production of audiovisual works, which gives priority to the protection of the moral rights of authors in the event of ambiguity in the contractual text, and works to fill legislative gaps through enlightened jurisprudence, based on the universal principles of copyright law and civil law.

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