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CRIMINAL PROTECTION OF COPYRIGHT AND RELATED RIGHTS "STUDY OF IRAQI LAW AND LEGISLATION OF SOME ARAB COUNTRIES"

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ABSTRACT

Due to the technological and industrial revolution taking place in the world, protecting copyrights became a modern issue related in social, economic, and commercial terms to drawing out states' policies. Therefore, this forms a strong incentive to tackle this subject in service of the society in its emerging and urgent matters. The deferent increasing violations – seen and heard in media – of the rights and efforts of others, including plagiarizing copyrighted works, trading them and making benefit from such trade, should be drawn to the attention of the law to stipulate jurisdictions against such violations and enforce the proper penalties thereto. In consideration of the writer's intangible, and financial rights, the serious consequences that effect the writer in his life and after death, copyrights in Arabic countries did not satisfy with intensifying the enforcing of temporary and interim measures, as well as civil sanctions against such violations. Nevertheless, it further forced criminal sanctions against who violates copyrights, because of the deterrence power of the criminal sanctions and its swift procedures. It is undebatable that the human civilization rises by the hands of its diligent workers. It also rises by the brainchildren, ideas and reflections of its thinkers and creators. Thus, we may say that the degree of development of any society is measured by measuring how much care that society allocates for the said group to encourage their efforts, boost their abilities, enhance their skills, and create the legal and material grounds that preserve such creative and productive minds to invest in the development and progress of the society. The said aspects carry a great importance and deserve to be researched and studied. Furthermore, as not many people are writers or reader, and as publishing houses are few, I determined to research the subject (Criminal Protection of Copyright and Related Rights "Study of Iraqi Law and Legislation of Some Arab countries"). Tackling the protection of

copyrights and the rights related thereto dictates the research to be divided into three demands, as follows: The first demand: the crimes stipulated in the copyright protection legislation. The second demand: the crime of imitation The third demand: specific or determined criminal penalties for such crimes

Keywords- Criminal protection, copyright, related rights, Iraqi law and legislation

INTRODUCTION

Due to the importance of financial and literary copyrights and the great impact it has on the author's life and after his death, the legislation of copyright protection in the Arab countries has not only decided on temporary and precautionary measures and civil penalties but has also decided criminal sanctions against those who infringe on copyright as the criminal punishment has force of deterrence and speed of procedures. The importance of the subject is reflected in the following areas:

1- There is no doubt that human civilization is also based on the hands of the diligent workers. It is also based on the daughters of ideas and thoughts of thinkers and innovators so that it can be said that the development of any society is measured by the extent of its interest in its sons from this community and encourage them and develop their abilities and talents and create the material and legal means to maintain the productive creative minds to be invested in building and developing the society.

2- The protection of copyright is a contemporary issue that has to do with the formulation of social, economic and commercial policies of countries because of the revolutions in the world of industrial technology and this is a strong motive to put this issue to the benefit of society in its emerging and emergency issues.

3- What is actually observed and what is read and heard in the various media of the attacks on the rights of others and other efforts to steal the works of rights reserved and trading and profit from them, drawing attention and statement of the rule of law in these attacks and penalties appropriate to them. The subject is dealt with by a large segment of people, including authors, readers and publishing houses

For these important advanced aspects that deserve research and study, I have determined with the help of Allah Almighty to research the subject (Criminal protection of copyright and related rights "Study of Iraqi law and legislation of some Arab countries). Talking about the criminal protection of copyright and related rights requires dividing this research into three demands, as follows:

The first demand: the crimes stipulated in the copyright protection legislation.

The second demand: the crime of imitation.

The third demand: Specific or determined criminal penalties for such crimes.

MATERIALS AND METHODS

First demand: The crimes stipulated in the copyright protection legislation

The Copyright Act No. 3 of 1971 and the Protection of Copyright Legislation in Arab Countries has criminalized the acts that constitute infringement on the authors' financial and literary rights. With reference to the provisions of these legislations and article 45 of the Iraqi copyright law it is clear to us that the criminal acts in this regard take one of the following forms

First: The sale of protected works, their desecration or their circulation in any form without the prior written permission of the concerned party:

The criminal behavior in this form is that the offender sells a protected work in accordance with the provisions of the author's judgment regardless of the type of work, whether in a book, computer program, or in an applied art design without prior written permission from the author or related right holder.

The sale shall be accompanied by the rental of the work or the circulation of the work in any form, even if the loan was made by a person who does not have the right to loan. (Saad Abd El Salam 2004)

Author protection legislation has made the act a component of the crime regardless of the manner in which the works are put forward for circulation even if the seller or lessee does not know the truth of these works because he has not infringed on the copyright

Second: imitation inside, otherwise the sale or rental of published work abroad or the exportation or shipment thereof along with acknowledgement of imitation:

The copyright protection legislation has also penalized anyone who offered to sell, trade or rent an imitated work or copies thereof, otherwise broadcasting it on the public in any way whatsoever or using this for achieving any material interest or entering it or getting it out from the country along with acknowledgment of imitation or if sufficient reasons and evidences are provided for knowing its being imitated.

Accordingly, the legal protection of literary and artistic works shall include the works of national and foreign authors published and unpublished outside the country by any means of publication. Legal protection shall also include the works of authors whose State is a member of the copyright protection which were joined by the Arab countries even though they were not citizens.

In addition, the author protection legislation took the principle of reciprocity on the works of foreign authors published abroad, in the event that the provisions of international conventions relating to the protection of copyright (Sohail Hassan Al Fatlawy 1977)

Third: Publication of works, sound recordings, radio programs or other performances protected in accordance with the provisions of copyright protection legislation in electronic form without the prior written permission of the concerned parties:

The criminal behavior in this form is that the offender publishes the protected work in accordance with copyright protection legislation, sound recordings,

radio programs or other protected performances by electronic dissemination via computer networks or by uploading on the Internet at the publisher's own site or In any other site so that the public can access the site and view the work. Thus, there is no need for them to purchase the work whether being written or registered on a CD This legislation aimed at putting an end to copyright infringements and related rights holders in the development of electronic means such as mobile phone or central shower, as the world began to turn to electronic publishing as an easier and faster way. In addition, publication of this method may expose the author's rights to loss in the event of infringement; unless such a form of criminal conduct is provided pursuant to the principle of "legality of crime and punishment"

Fourth: manufacture assembly or import for the purpose of selling or leasing any device, instrument or tool designed or intended to circumvent the technical protection used by the author or the adjacent right holder such as encryption or otherwise:

The criminal behavior in this form is that the offender breaks the technical protection procedures established for the copyright or the holders of the neighboring rights by importing, renting, selling, assembling or manufacturing equipment designed for this purpose in order to break the referred to technical protection. For example, an attempt to capture radio programs on encrypted satellite channels such as: A.R.T and Show time channels along with obtaining the programs of such channels without the payment of the prescribed fees (Abdel Fatah Bayoumy Hegazy 2008)

One of the facts that took place and dealt with this image was published by a French newspaper on technical information on how to manufacture and assemble a device to decode encryption through which you can receive the program: Cana Plus without paying the prescribed subscription. Cana Plus company has provided a compliant before the prosecution against the magazine, in which accusing it with inciting theft, yet Paris Misdemeanor Court, supported by Appeal Misdemeanor Court, has judged with the innocence of the magazine based on the grounds that decoding the encryption of special channels shall not form theft crime. Consequently, inciting to do so does not constitute incitement to a crime

Fifth: Removal, disabling or misrepresentation in bad faith for any technical protection used by the author or the adjacent right holder such as encryption or otherwise:

This is often achieved with regard to works recorded or preserved in electronic media such as: a book whose owner has preserved his or her own web site or a collection of poems written by a poet and stored on his own site. There is no doubt that the owners of these sites resort to the use of protection programs that would prevent the penetration of others to these sites and access to information material without authorization or permission and without payment of the financial consideration so scheduled. The criminal behavior of the perpetrator in this picture is to resort to an electronic means designed to paralyze the effectiveness of protection by breaking these programs and

penetrate the site and get the work. The goal may be to disable the same web site from work or make its performance slow until it reaches the point of no benefit. It should be noted in this regard that all these patterns of criminal behavior fall within the scope of a more general and comprehensive crime which is "Breakthrough of information systems". It has been subject to copyright protection legislation if there has been an attack on the copyrights or related rights.

Sixth: infringement on any of the copyrights or related rights:

The criminal behavior in this form is that the offender infringes on any of the financial or moral rights of the author or the holders of the neighboring rights, regardless of the form of infringement and whatever infringed right as long as it is a protected right under copyright protection legislation. One of the examples of infringement of copyrights is to assault on the right of parenthood such as attributing any person's work to third party along with infringement of copyrights' publications, otherwise exploit or infringement of radio programs, sound recordings or protected performances. The similarities between the two categories, not the differences between them shall be seen. One of the examples of similarities between the two works is that the work shall be a book, similar to the research plan between the books as if the book shall be consisted of two chapters and each chapter shall be divided into two or three sections and each section shall be divided into two or three researches. Each research shall be divided into two or three demands. Each demand shall be divided into two or three branches and each branch shall be divided into two or three divisions. The titles of chapters, sections, researches, demands and branches of the two books shall be similar and sources of both books shall be the same. Therefore, the plagiarism of the work is that a person is going to write a book that is a replica of another book so that all that was done by the impostor is simply replacing the words with their synonyms if they have synonyms or translate some characters into Arabic or replace the name contained in the workbook with another name. For example, the author says that Zaid is doing a certain act and the sutor replaces the name Zaid with (Bakr). There is no doubt that this last form mentioned in the copyright protection legislation (infringement of any copyright) is comprehensive and general, so that all forms of aggression against these rights, which can be revealed in practice, can be revealed in light of the rapid developments in the fields of Copyright and Related Right (Abdel Rashid Mamoun 2007)

Second demand: Imitation crime

The law on the protection of Iraqi copyright infringed the crime of imitation and defined its penalty under article 5. Copyright legislation in Arab countries also considered copyright infringement a component of a crime called "the crime of imitation".

What is meant by the crime of imitation? What are the elements to be provided for it? This is what we will search through the following:

First: the intent of crime of imitation

The majority of copyright legislation in Arab countries has not defined the crime of imitation, yet it has defined the acts stipulated in its articles, which constitute a crime of imitation, the perpetrators of which were punished by the crime of imitation.

Jurists have defined the crime of imitation as "making something new that is lighter than the old thing and similar to it for the benefit of the difference between the two things mentioned.

Others defined it as: (the crime committed by those who infringe on the rights of literary, scientific or artistic copyright) (Nawaf Kanaan 2000)

Or any infringement of any of the literary and financial rights of the author, such as the right to report the copy, the usufruct, the right to reprint and translate the work, sell it to the public, and any act concerning modification, change or deletion of the work

Or it is any direct or indirect infringement of the copyright in the work of third parties, to be protected (Abdul Rasheed Mamoun 1978)

Some French jurists have defined the crime of imitation as the transfer of a work that did not fall into the public domain without the author's permission

As others have defined them as: (every attack on literary property) and that there must be two basic conditions for the crime of imitation:

- a) The existence of a complete or partial literary theft of the work;
- b) The result of such an act of injury is harm.

In this regard, we would like to point out that although copyright legislation did not define the crime of imitation, most of these legislations have defined the term "reproduction".

In fact, the legislation here meant the meaning of imitation. Perhaps this is confirmed by the fact that WIPO has defined the crime of imitation as:

(Reproduction of published or photocopied works in any appropriate manner for distribution to the public; and re-broadcasting of radio programs without authorization) (Emad Mohammed Salama 2005)

This former definition is the same as what copyright protection legislation has said when it defines reproduction. It should be noted that the Iraqi legislator has not provided a definition of reproduction or reproduction in the Copyright Protection Act No. 3 of 1971.

The crime of imitation of literary and artistic works which are the most common does not differ from other crimes stipulated in the Penal Code, which requires the availability of its constituent elements of E and these elements are the two pillars; namely: the material and moral elements. This is what we will address through the next paragraph.

Second: Elements of the crime of imitation. If the copyright protection legislation considers the imitation of the work to be an offense punishable by law, the crime must, as mentioned above, contain what must exist in any ordinary crime in terms of its constituent elements: the material and moral elements. The material element of the crime of imitation:

The material element of the crime is: the external material act that provides for its criminalization, whether positive or negative. It is necessary for the

commission of the crime and not to be absent. This does not mean that thoughts, thoughts, desires and aspirations are not taken into account in the depths of the soul or in the mind, no matter how malicious or evil it may be, such as the material element, so long as it does not take its outward appearance with tangible material appearance. The material element of the offense of the imitation of works is verified and available in the event that the aggressor broadcasts, publishes or presents the work of the author in any form or makes modifications that would impair its integration and deviate from the form or content that the author has accepted without his permission to obtain his consent. In this regard, the so-called theft of author's authorship is mentioned. The theft of ideas from others is considered a rape of his rights, but it may be mitigated by the personal effort of the conveyor. It also introduces what some authors extract from several ideas from different parts of the work and to include them without modification or reference to their owners to be endorsed by the author himself; claiming creativity and asking for the building of glory and fame. This is a pure theft. A person who has been assaulted has the right to sue the imitator and to request that the perpetrator continue to commit the crime with compensation. It is noted that there is no crime in mentioning the words of others with the statement of sources and arbitrators and writers and authors who wish to be mentioned as a reference and therefore does not have in this case to adhere to the provisions imposed by copyright protection legislation. The presence of the material element in this crime is conditional upon the fact that the attack has already occurred on a work protected by copyright protection legislation (ie registered with the competent authorities specified by this legislation). If the work is not covered by legal protection, Tradition does not exist. There is no difference in the legal protection of works between published works of national authors as well as foreign works which are published or broadcast simultaneously in one of the member States of the World Trade Organization. Furthermore, the material element of the crime of imitation is not available if the partner of the joint work publishes the work, because the author has the right to publish the joint work without the consent of the other partners because it is the contributors to the author and the owners of rights. And therefore can not be held accountable for the crime of imitation, but can be held accountable civil and compensate the rest of the partners for the damage suffered.

Finally, it is noticed that the publisher or owner of the printing press if he published the work or an edition without the consent of all the authors or with the consent of some without some, it constitutes a crime of imitation and criminally asked before the rest of the authors. It is not necessary for the perpetrator of the crime of imitation to have the author known name but the crime is available even if the author took a pseudonym or did not mention it entirely on the work or program

The moral element in the crime of imitation:

It is not sufficient for the existence of the crime of imitation to have the material element of the perpetrator committing an act constituting the crime of

copying literary and artistic works, but the moral element must be available to complete this crime (Mahmoud Naguib 2006)

The moral element is that the criminal intent of the perpetrator is bad intent or error. There is no doubt that the existence of the criminal intent of the perpetrator (the offender) is proof that he is a scholar of the tradition of the work, knowing that he committed the offense with his knowledge of his action is an argument against him. Good faith is not presumed to be a crime of imitation. If the moral element of the accused occurred, it was evidence of the existence of his criminal intent and he had to prove that what he had committed was not for the purpose of imitation and that he had demonstrated good faith in what he had done (Abdel Rashid Mamoun 2007)

If the accused is able to destroy the moral element by proving his good intentions in the work done by the victim, the crime corner collapses and the collapse of the crime will not be necessary. However, if the perpetrator is not criminally liable for the absence of a moral offense corner if the accused proves his or her good intentions, it does not preclude him from being awarded compensation for the damage caused to the author by the damage caused to the author by the confusion he has made in the minds of the individual

Criminal penalties for copyright infringement

The availability of material and moral elements consist of the crime of exclusivity stipulated in the legislation of copyright protection in the Arab countries and punish the actor with original and supplementary (Abdel Raouf El Mehdi 2009) penalties, in the following detail:

First: Original Penalties:

Most copyright legislation has considered copyright infringement to be a crime; its original penalty has been set forth under the provisions of the Penal Code, which - without prejudice to any more severe penalty in another law - is both in custody and a fine, or one of these two penalties, which the judge has the discretion to sign. The legislation then tightened the penalty prescribed for the offenses of infringement of copyright in the case of repetition and repetition of the crime so that the aggressor is sentenced to the maximum limit of the sentence of imprisonment and is also sentenced to the maximum penalty of fine. There is no doubt that the emphasis on punishment in the case of repetition is consistent with the seriousness of the offender and that his desire to infringe on the author's rights is inherent in him and that the punishment he had inflicted; requiring increase therein (Mohammed Shokry 1978)

The following are some of the provisions of copyright protection legislation that set the original penalty for assaulting the author's rights with imprisonment or fines or in the case of repetition without a choice between imprisonment and fine

In Iraq: Article 45 of the Iraqi Copyright Protection Code No. 3 of 1971 AD has stipulated on the following:

(Whoever commits one of the following actions: 1)..... 2) 3) shall form the crime of imitation and shall be punished by a fine of not less than ten dinars and nor more than one hundred dinars.

In case of recurrence, the criminal shall be punished by imprisonment for a period of not more than three months and with a fine of not more than three hundred dinars, or with one of these two penalties.)

In Egypt: Article 181 of the Intellectual Property Protection Code No. 82 of 2002 AD has stipulated on the following:

(without prejudice to any more severe penalty in another law, whoever commits any of the following actions shall be punished by imprisonment for a period of not less than one month and with a fine of not more than five thousand pounds and not exceeding ten thousand pounds or with one of these two penalties. In case of recurrence, penalty shall be imprisonment for a period of not less than three months and the fine shall not be less than ten thousand pounds and not exceeding fifty thousand pounds.)

In Algeria: Article 151 of the Algerian copyright law, order No. 97-10 of 1997 AD has stipulated on the following:

(The perpetrator of the misdemeanor of forgery and counterfeiting shall be punished by imprisonment for a period ranging between six months to three years and with a financial fine starting from DZD 500000 reaching up to DZD 1000000 whether the publication process has been done in Algeria or abroad.)

Article 154 of the same law has also stipulated on (Penalty stipulated on in Article 151 of this order shall be duplicated against the individual.) In Syria: Article 40 of the Syrian Copyright law No. 12 of 2001 AD has stipulated on the following:

First: Any person who violates any of the protected rights shall be punished with imprisonment from three months to two years and a fine of not less than one hundred thousand Syrian pounds or one of these two penalties.

Article 41 of the same law has also stipulated on (in case of recurrence, the set forth penalty in the previous Article shall be duplicated.)

In Jordan: Article 51 of the Jordanian Copyright Law No. 22 of 1992, as amended by law No. 78 of 2003 AD has stipulated on:

a) 1) 2) shall be punished by imprisonment for a period of not less than three months and not more than three years and with a fine of not less than one thousand dinars and not more than six thousand dinars or with one of these two penalties.

b) In case of the recurrence of any of the set forth crimes in paragraph (a) of this Article, the perpetrator thereof shall be punished with the most severe penalty of imprisonment and fine.)

In the Sultanate of Amman, Article 23 of the Omani Copyright Code, issued by the Sultanate Decree No. 37 of 2000 AD has stipulated on the following:

(Whoever infringes the material or moral rights of the author or related rights holders according to the provisions of this law shall be punished with imprisonment for a period not exceeding two years and with a fine of not more than two thousand Omani riyals or with one of these two penalties. In case of

recurrence, penalty shall be duplicated.) it is noted that some of the copyright protection codes such as Bahraini and Kuwaiti Copyrights laws have stipulated on the two penalties of imprisonment and fine as original penalties, yet, they have allowed the judge, rather than most of the copyright protection legislations, in case of recurrence with duplication of the penalty, i.e. it has granted the judge a discretionary authority in this regard, Article 37 of the Bahraini copyright law No. 10 of 1993 AD has stipulated on the following:

(a)..... b).....c)..... Shall be punished by imprisonment for a period of not more than one year and with a fine of not more than one thousand dinars or with one of these two penalties and in case of recurrence of committing one of these set forth crimes in this article during three years as of the judgment date with penalty, the court may judge with the most severe limit of penalty.)

Article 42 of the Kuwaiti Copyright Law, issued by the decree law No. 5 of 1999 AD, has stipulated on the following:

(a).....b).....c).....d)..... shall be punished by imprisonment for a period of not more than one year and with a fine of not more than five hundred dinars or with one of these two penalties. If the accused has already been sentenced to one of the offenses referred to in this article and proved guilty within five years from the date of the final judgment of a previous offense, the court may impose a penalty exceeding the maximum prescribed penalty provided that the increase does not exceed half of that limit.)

Finally, the Saudi Copyright Protection Code, issued by the Royal Decree No. M/41 of 1424 AH has indicated many other penalties- in addition to the two penalties of imprisonment and fine- to be imposed on the criminal. However, the duplication of the penalty in case of recurrence shall be admissible for the judge like the Bahraini and Kuwaiti legislator as been judged in Article 22 of the referred to law by saying:

First: Any person who contravenes one of the provisions of this Law shall be punished by one or more of the following penalties: (1) The warning, (2) A fine not exceeding two hundred and fifty thousand riyals, (3) Closing the infringing establishment or contributing to the violation of the right (4) The confiscation of all copies of the author of such material as used or used in the commission of infringement of copyright.

Second: In the case of repeated infringement of the same or other work, the maximum limit of the penalty, fine and closure may be doubled.)

Second: Supplementary Penalties

In addition to the penalty of imprisonment and the fine (original penalty), the contemplator in the legislation of copyright protection in the Arab countries finds that it has provided several supplementary penalties »obtained in the following:

1- Confiscation of duplicated copies of the crime or obtained from it, as well as equipment and tools used in the execution of the machines such as printers, accessories, papers, inks, computers, printers, photocopiers and other means of infringement of copyright. Despite the fact that all copyright legislation in Arab countries agreed to make the penalty of

confiscation of complementary punishments, they were divided among themselves on whether it was obligatory or compulsory. The majority of them made it compulsory for the judge, in accordance with the principle of judicial separation of the penalty and the matter is left for his discretion according to each case, followed by the approach of the Iraqi legislator and some made it mandatory. In any case, the penalty for the confiscation of these counterfeit works is consistent with the need to preserve the work in its form and content, which was accepted by the author as an honest mirror reflecting his ideas because not to say the report of this punishment means that the offender is punished while leaving the crime of his impact in society which is unacceptable

- 2- The sentence may be imposed upon conviction by the closure of the institution which the convicted person used to commit the crime. It should be noted that the closure shall be obligatory if the convicted person is liable for the crime, especially in cases of infringement of works or programs registered or published abroad, and bringing them to be sentenced for publication inside the country unlawfully. In all cases, the period of closure shall not exceed six months. Some decide that the French legislator has decided to protect the rights of the workers of the establishment that the judiciary is to be closed if the conviction of an infringement of a copyright is proven where he decided to guarantee the rights of employees of the facility to be closed in violation of other Arab legislation that did not take into account or refer to the rights of workers in the facility (Nagwa Abu Hiba 2004)
- 3- Publication of the summary of the sentence of conviction in one or more local daily or weekly newspapers at the expense of the convicted person. The copyright protection legislation has also differed as to whether these penalties are mandatory or compulsory some of them made it compulsory for the judge while others made it mandatory. Finally, it is noted that the Iraqi legislation (Article 45) has omitted stipulating upon this penalty. However, this does not mean that the court can not order the publication of the judgment in a newspaper or magazine at the expense of the convicted person, but it may order this as long as such a provision is stipulated in Article (47) of the same law (Kamal Saady Mustafa 2004)

CONCLUSION

Through the study and through previewing the various Arab legislation that deals with the protection of intellectual works and copyright, we can monitor and draw the following conclusions:

- 1- The consideration of copyright protection legislation in the Arab countries shows that they are almost identical among them. The differences between them are limited to partial and subsidiary issues, not to the main or core issues. It is no wonder that the Arab copyright legislation is rooted in the Berne Convention for the Protection of Literary Works, in addition to the

clear implications of the Egyptian legislator on successive Arab legislation.

- 2- Copyright legislation is similar to a general principle that protection covers all creative works of literature, arts and sciences, regardless of the type, expression, importance or purpose of classification. The essential requirement of such protection is innovation, which is intended for excellence and the personal character that the author adds to his or her intellectual output. It is sufficient for the author to put his distinctive personal mark in order to deserve protection. And the judgment that the work is innovative or not, is due to the judgment of the judiciary.
- 3- Arab copyright legislation has enumerated in its own way protected works and decided to do so, for example. The protection covered all original works created directly by the author without citing them from previous works. Protection also includes derived works which are created based on another previous work.
- 4- Arab copyright legislation did not differentiate between the national author and the foreign author. It also did not distinguish between the natural author and the juridical author or between the author in real name or pseudonym or without name, as well as recognition of the author's rights in collective and joint works.
- 5- The Arab copyright legislation has worked on a number of legal protection methods for copyright, including what is temporary and what is civil, and what is criminal.

Arab copyright legislation strengthened civil protection with other criminal protection and imposed original and supplementary sanctions.

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