

Exceptions to the Right of Distribution for Literary and Artistic Property

**Associate Professor. Dr. Seyed Hassan Shobeiri
(Zanjani)^{1*}, Mohammad Walid Mahdi²**

¹*Faculty of Law, University of Qom, Qom, Islamic Republic of Iran | Email:
shshobeiri@gmail.com*

²*PhD Student, Faculty of Law, University of Qom, Qom, Islamic Republic of Iran | Email:
ijygnxb@gmail.com*

***Corresponding Author:** Associate Professor. Dr. Seyed Hassan Shobeiri (Zanjani) |
Email: shshobeiri@gmail.com

Abstract

Intellectual property represents the body of rights through which human thought and creativity are protected. It includes multiple fields, such as scientific research, patents, trademarks, industrial drawings and designs, geographical indications, copyright, and other intellectual property rights. The Universal Declaration of Human Rights addresses intellectual property as the right to the protection of the moral and material interests resulting from any scientific, literary, or artistic production of which a person is the author. Within this framework, the right of distribution constitutes one of the essential economic rights granted to authors and rights holders, as it enables them to control the circulation, publication, sale, lending, or transfer of copies of their literary and artistic works.

However, this right is not absolute. Most legal systems recognise certain exceptions that allow limited use or distribution of protected works without prior authorisation, provided that such use does not conflict with the normal exploitation of the work or unreasonably prejudice the legitimate interests of the author. This study examines the exceptions to the right of distribution in literary and artistic property through a comparative legal approach, with particular reference to Iraqi, Iranian, European, international, and treaty-based legal frameworks. It analyses general exceptions, including personal, educational, scientific, and technical uses, as well as special exceptions relating to cultural access and fair use.

The research concludes that exceptions to the right of distribution perform a balancing function between the protection of authors' rights and the public interest in access to knowledge, education, culture, and artistic expression. It further emphasises the need for clear legislative regulation of these exceptions, especially in light of technological developments and the expansion of digital distribution, in order to protect authors while preserving legitimate public access to literary and artistic works.

Keywords: Exceptions, Right of Distribution, Literary Property, Artistic Property

Introduction

Exceptions to the Right of Distribution in literary and artistic intellectual property constitute a complex subject that requires a precise understanding of the laws and procedures associated with them.

With the increasing development of artistic and technological innovations, questions arise as to how legal systems deal with exceptions that may permit the use of literary and artistic works without the need to obtain permission from authors. Therefore, the study of these exceptions is of considerable importance in the context of protecting creators' rights and promoting creativity.

Significance of the Research

The significance of this research stems from the need to clarify how exceptions to the Right of Distribution affect rights in literary and artistic intellectual property. The research helps define the boundaries between the protection of copyright and the facilitation of access to knowledge and culture, thereby contributing to a balance between the interests of creators and those of society. It also provides an understanding of the consequences of these exceptions for the arts market, thereby enhancing the capacity of policymakers and creators to make informed decisions.

Research Objectives

1. To explain the general exceptions to the Right of Distribution for literary and artistic property.
2. To explain the special exceptions to the Right of Distribution for literary and artistic property.

Research Methodology

This research relies on the methodology of comparative legal studies, whereby laws relating to exceptions to the Right of Distribution in several states are analysed. Legal literature and previous studies will be reviewed in order to understand how these exceptions are applied in actual practice. In addition, the research will include interviews with specialists in intellectual property rights in order to obtain practical insights into the challenges and opportunities associated with exceptions to the Right of Distribution. This methodology aims to provide realistic recommendations for improving the legal framework and strengthening the protection of creators.

Section One: General Exceptions to the Right of Distribution for Literary and Artistic Property

By examining the Iraqi legislation currently in force, it becomes clear that there are several general exceptions to the Right of Distribution for literary and artistic property. These exceptions are regulated by copyright laws and are intended by the legislator to achieve a balance between authors' rights and the public interest. Through these exceptions, individuals are permitted to copy protected works for their personal use without obtaining material profit, provided that the legitimate interests of the author are not prejudiced.

Similarly, parts of protected works may be used for teaching and scientific research purposes in educational institutions, provided that the source is acknowledged.

Subsection One: Personal Use of the Right of Distribution for Literary and Artistic Property

The Copyright Protection Law provides that, after publication of his work, an author may not prohibit its performance, representation, or recitation if it takes place at a family gathering, an association meeting, or a school, so long as such gathering does not derive any material profit from it, whether

directly or indirectly. If a person makes a single copy of a work for personal use, the author may not prevent him from doing so.¹

It is noticeable that the Iraqi legislator regulated copyright only, without neighbouring rights, in the Iraqi Copyright Protection Law in force, Law No. 3 of 1972.

The intellectual property offices in Iraq include industrial property, patents, and industrial designs, which fall under the Ministry of Planning and the Central Organization for Standardization and Quality Control. Trademarks are represented by the Ministry of Industry and Minerals, whereas trade names fall within the competence of the General Federation of Iraqi Chambers of Commerce.

As for copyright, it falls under the competence of the Ministry of Culture and the National Centre for Copyright and Related Rights. Among the laws protecting property in Iraq are Patent Law No. 30 of 1931, Patent Law No. 61 of 1935, and the Patents and Industrial Designs Law No. 65 of 1970. In 1976, Iraq acceded to the Paris Convention and became a member of the World Intellectual Property Organization, and the provisions of that Convention became part of Iraqi domestic legislation.

With regard to the protection of craft products and traditional industries, and the provision of an appropriate environment for local products so that they may enhance the reputation and value of domestic products and assist local companies, all producers in a given region must be able to apply the relevant production standards as determined by the producers themselves. These industries, as local production, constitute a fundamental pillar of the national economy; however, they require genuine support and reinforcement by the state in order to have a place in local and international markets. This is particularly important in view of technological development, which has led to product diversification. The massive flow of goods into the market has resulted in the entry of competing products after such activity had been confined to the local economic sphere. This led to the beginning of infringements against local products and the emergence of fraud and imitation involving similar products inside and outside the country. This matter is of great importance for finding effective solutions and mechanisms to combat and limit all unlawful activities that threaten the competitiveness of national products, especially since local production remains at an initial stage compared with the technological progress achieved by other countries within the framework of such competition.²

Major industrial states seek to protect their inventions for the longest possible period. This was the principal factor in the emergence of trade secrets, which differ from patents in the matter of preserving secrecy and non-disclosure. Protection of a patent under the patent system requires dissemination and publicity, unlike trade secrets, which require secrecy. This appears through the multiple designations used: some refer to them as undisclosed information or trade secrets, and there is also another term, namely technical know-how.³

¹Article 13 of the Copyright Protection Law No. 3 of 1971, as in force and amended.

²Qazout Lamia, *Competition of Foreign Products with Algerian Products under the Market Economy System*, Master's thesis in law, Department of Law, Faculty of Law and Political Science, University of Algiers 1, 2013–2014, p. 91.

³Ahmad Ali Omar, *Industrial Property and Patents*, 1st ed., al-Ilmiyah Press, Alexandria, 1993.

Despite the difference in terminology, various legislations agree that secrecy requirements constitute an important basis for protection against infringement and unfair competition. The unlawful disclosure of trade secrets is considered one of the most serious forms of violation of trade secrets because it obstructs innovation and has a negative impact on the progress and prosperity of the state.

The Convention provides that where a person applies for protection in one contracting state, he or she has a specific period within which to seek the same protection in other contracting states.

The advantage is that if other persons request protection for the same invention, trademark, design, or model during this period, they will not have priority. In other words, from the moment a person submits an application for protection in one of the signatory states, he has a guarantee, for a certain period of time, that another contracting state will consider him the first person to request that protection in that state, even if another person submits an application for similar protection there. Looking at the various Arab legislations, we find that they have not specifically defined the concept of unfair competition.⁴

The determination of what information is considered a trade secret ultimately depends on the specific circumstances of each case. However, unlawful conduct relating to trade secrets can be readily identified and includes industrial or commercial espionage, breach of contract, breach of trust, and other conduct that will be addressed by shedding light on the protection of trade secrets associated with the protection of intellectual property as follows. Breach of confidentiality is considered a form of violation of intellectual property rights through unfair competition. It occurs through the disclosure of confidential information and is subject to certain general conditions required for protection.

An infringement of such information is deemed an act requiring compensation in accordance with the rules of civil liability. This protection extends to secrets and know-how in their broad sense, including economic, commercial, political, family, personal, and other secrets and information among which the law does not distinguish in terms of protection.⁵

Beyond that, there are also special circumstances and cases that must be protected. In 1981, the European Union drafted the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data. The Organisation for Economic Co-operation and Development also drafted guidelines for the protection of privacy and the transfer of private data, which led to the establishment of a set of rules governing electronic data-processing operations.

This rule describes confidential data and information, as data are available at every stage of their collection, storage, and dissemination.

The TRIPS Agreement adopted the same approach in a clearer manner than the Paris Convention with respect to the protection of confidential information through unfair competition. The TRIPS Agreement covers seven types of intellectual property rights, including copyright, trademarks,

⁴Ahmad Ali al-Khasawneh, *Legal Provisions on Unfair Competition and Trade Secrets*, Dar Wael for Printing and Publishing, 1st ed., 2015, p. 39.

⁵Fadli Idris, *Industrial Property in Algeria*, 2nd ed., Office of University Publications, 2013.

geographical indications, industrial designs, layout-designs of integrated circuits, patents, and trade secrets.

Members must establish procedures for the enforcement of such protection, and member states may submit complaints to the dispute-settlement bodies of the World Trade Organization.⁶

Subsection Two: Educational and Technical Use of the Right of Distribution for Artistic and Literary Property

Intellectual property rights have not been characterised by an absolute nature of secrecy. Recently, new exceptions have emerged in response to specific social issues, such as education, a better understanding of disability in society, preservation of heritage, and even the emergence of new technologies.

The author enjoys several rights, including the right to have the work attributed to him and to have his name mentioned on all copies produced from it; the right to exploit the work unless he has assigned it to others; and the right to communicate the work to the public in any form, particularly publication, public recitation, musical distribution, theatrical performance, public display, broadcasting, sound, or image.

He also has the right to communicate the work to the public indirectly by printing, drawing, engraving, photography, any method of graphic or three-dimensional arts, photographic publication, cinema, introducing alteration or modification to his work, or translating it into another language. The author's heirs may exercise the right of translation of the work.⁷

Any work that can be seen or heard during a news report on current events may be reproduced by means of photography, television, or other mass media, provided that this is within the limits of the informational objective to be achieved and that the author's name is indicated. Libraries, non-commercial documentation centres, educational institutes, and scientific and cultural institutions may, without the author's permission, reproduce protected works by photography or similar means. The press and other media may also publish, without the author's permission, speeches, lectures, pleadings delivered during judicial disputes, and the like.⁸

Accordingly, works designed for educational and technical purposes have been excluded from the scope of the protection of literary and artistic intellectual property rights, whether in domestic legislations or international treaties. This leads to an expansion of the scope of the licence granted by right-holders to use these rights in printed textbooks, images, and musical notation within the scope of this educational exception in exchange for proprietary rights. In order to take account of uses and permit their regulation

⁶Anwar Talabah, Copyright: Intellectual, Scientific, Literary, Artistic and Electronic Property; Patents; Utility Models; Integrated Circuits; Undisclosed Information; Trademarks; Industrial Designs and Models; Plant Varieties; Commercial Transport, al-Maktab al-Jami'i al-Hadith, Egypt, 2010.

⁷Suhail Hussein al-Fatlawi, Moral Rights of the Author in Iraqi Law, Dar al-Hurriyah for Printing, Baghdad, 1978.

⁸Abd al-Rashid Ma'mun and Dr Mohammad Sami Abd al-Sadiq, Copyright and Related Rights (in light of the new Intellectual Property Rights Protection Law No. 82 of 2002), Dar al-Nahdah al-Arabiyyah, 2004.

through the system of exclusive rights, excerpts from works may be used exclusively for illustration in the context of teaching and directed to an audience composed primarily of pupils, students, or teachers, subject to compliance with the relevant special conditions.

Patents may provide indirect protection for traditional handmade products by protecting tools or manufacturing processes. If a craftsman makes a substantial improvement to a previous process or invents a new industrially applicable process, patent protection may be made available, for example, for new functional features added to tools such as carpentry tools, hand tools, brushes, paints, and musical instruments, thereby enabling substantial improvements to the product.

The Iraqi Copyright Law emphasises that, after publication of his work, the author may not prohibit its performance, representation, or recitation if this occurs at a family gathering, an association meeting, a private forum, or a school, so long as such gathering does not generate any financial proceeds, directly or indirectly. Military bands and other state-affiliated ensembles have the right to perform musical works without being obliged to pay any remuneration to the author, provided that the performance does not generate any financial proceeds, directly or indirectly.⁹

Educational and Technical Use of the Right of Distribution for Literary and Artistic Property in Iranian and European Law

Copyright is a form of intellectual property law for content creators of literary, dramatic, musical, and artistic works, sound recordings, radio programmes, films, and typographical arrangements of published editions. It grants right-holders the right to control the ways in which their works may be used.

Approximately 180 states have signed the Berne Convention, administered by the World Intellectual Property Organization (WIPO). This treaty establishes a minimum set of standards for protecting the rights of creators of copyright-protected works around the world. Many countries have also signed the Rome Convention, which sets minimum standards of protection for performers and producers. In addition, efforts have been made to harmonise copyright legislation in Europe.

Iran has been a member of the World Intellectual Property Organization since 2002 and has acceded to several WIPO intellectual property treaties. However, Iran has not yet acceded to the Berne Convention, which is among the most important conventions. This issue constitutes one of the fundamental weaknesses in supporting copyright matters under Iranian law.¹⁰

After becoming a member of the World Intellectual Property Organization, Iran acceded to several conventions. In December 2003, it joined the Madrid Agreement and the Madrid Protocol concerning the international registration of trademarks. In addition, in 2005 Iran became a party to the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, which guarantees protection for geographical names associated with specific products. These measures confirm Iran's commitment to protecting intellectual property rights and its understanding of the importance of international cooperation in this field.

⁹Article 12 of the amended Copyright Protection Law of 1971.

¹⁰Khedmat Kazar Mohsen, *Philosophy of Intellectual Property*, Tehran: Mizan Publishing House, 1st ed., 2011.

Iran ratified and acceded to the international convention for the protection of industrial property, known as the Paris Convention. This Convention aims to protect the rights of inventors and creators throughout the world.

Iran joined the Madrid Agreement in 2003. This treaty is an international treaty that allows trademarks to be registered and protected in multiple countries by filing a single application. The Madrid System is a convenient and cost-effective solution for registering and managing trademarks worldwide. The applicant files an international trademark application and pays fees to request protection in up to 131 countries. The trademark is protected in the countries selected by the applicant in the system.

It should be noted that, at the practical level, there are complexities in this process; even if the process is completed correctly, the application may be refused in some countries, or other problems may arise for the applicant.¹¹

Most countries have specifically identified exceptions and limitations to copyright in the United Kingdom, the United States, and a number of European countries, where the doctrine of “fair use” covers a wide range of uses that do not require prior permission. The concept of “fair use” covers certain uses that, overall, are deemed not to infringe the rights of the copyright owner sufficiently, or are considered to serve an important public purpose, whether they are permitted without the permission of the copyright owner or not. Fair uses include several fields, such as study and research purposes, the making of copies, or lending for educational purposes.¹²

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) forms an integral part of the Final Act of the Uruguay Round and one of the three pillars of the World Trade Organization agreements, including the agreements relating to trade in goods, services, and intellectual property. This Agreement is considered the most comprehensive international instrument concerning intellectual property rights.¹³

The limitations imposed on intellectual property rights should not be interpreted expansively. Rather, the possibility of interpretation should be restricted in view of the number of cases excluded from protection.

Some legislations have resorted to this method in order to prevent erroneous interpretations and to reach the intentions of the legislator as far as possible. The European Union Directive on certain aspects of copyright adopted this approach. Articles 2 and 3 address the rights relating to creators of literary and artistic works, while Article 5 provides for limitations and exceptions, describes their cases in detail, and

¹¹Ayti, Hamid, *Rights of Literary and Artistic Creativity*, Tehran: Dadgostar Publishing House, 1st ed., 2014.

¹²Mirjalili, Seyed Hossein, *The World Trade Organization: Structure of Rules and Agreements*, Tehran: Commercial Printing and Publishing Company affiliated with the Institute for Trade Studies and Research, 2nd ed., 2009.

¹³Mousavi Zanouzi, Mousa; Bayanat, Abu al-Qasim; Seyedi Mirhadi, *The World Trade Organization: Structure of Rules and Agreements*, Tehran: Commercial Printing and Publishing Company affiliated with the Institute for Trade Studies and Research, 2nd ed., 2010.

lists them in several paragraphs. It permits temporary reproduction according to the conditions determined by law with respect to educational use or scientific research, provided that the author's name is mentioned. It also provides for a special exception for use by persons with disabilities, provided that it is directly connected to those persons. In all cases, no profit must result from the use of this exception, whether for educational purposes or for any other purpose.¹⁴

Section Two: Special Exceptions to the Right of Distribution for Literary and Artistic Property

Special exceptions to the Right of Distribution in literary and artistic property are among the important topics in the field of intellectual property rights. These exceptions aim to achieve a balance between protecting the rights of authors and creators on the one hand and promoting access to cultural and artistic works on the other. Since such works contribute to enriching knowledge and public culture, the exceptions allow limited use of certain content without the need to obtain permission from the owner, thereby facilitating the exchange of knowledge and encouraging creativity.

Subsection One: Cultural Exceptions to the Right of Distribution for Literary and Artistic Property

Cultural exceptions to the Right of Distribution in literary and artistic property are a vital instrument for enhancing access to knowledge and the arts. These exceptions aim to provide the public with greater opportunities to benefit from cultural works, thereby contributing to the dissemination of knowledge and the promotion of cultural diversity. By permitting the use of certain content without the need to obtain prior permission, individuals are able to learn and interact with literary and artistic works more freely.

These exceptions include cases such as use in education, where schools and universities may use literary materials for academic purposes without infringing copyright. They also include non-profit uses, allowing cultural and artistic institutions to organise events or exhibitions displaying such works. Through these exceptions, a balance is achieved between protecting creators' rights and enhancing access to culture and the arts, thereby supporting innovation and social interaction.

Cultural Exceptions to the Right of Distribution for Literary and Artistic Property in Iraqi Law

Cultural exceptions to the Right of Distribution for literary and artistic property in Iraqi law are among the vital issues relating to the balance of rights between authors and society. In this context, Iraqi law seeks to provide a legal framework that guarantees the protection of authors' intellectual rights while taking cultural and social interests into account.

Cultural exceptions consist of a set of cases in which protected works may be used without the need to obtain permission from the right-holder. Among the most prominent of these cases is use for educational purposes, where the law permits the use of excerpts from books and articles in educational

¹⁴Habibah, Saeed, The Patent System in Iran after Accession to the Agreement on Trade-Related Aspects of Intellectual Property Rights, Journal of the Faculty of Law and Political Science, University of Tehran, no. 66, 2004.

institutions. This use strengthens the educational process and contributes to the dissemination of knowledge.¹⁵

Literary criticism and analysis are also considered cultural exceptions, as critics may use parts of works to conduct analyses or evaluations. This type of use enables critics to provide new insights into works and contributes to enriching cultural debate. Such use is based on the principle of freedom of expression, which is fundamental in any democratic society. In the context of the media, journalists are permitted to use excerpts from artistic works in news coverage. This use is considered part of the right to obtain information, thereby strengthening the role of the media as an oversight authority and enabling the public to access information more effectively. This type of use requires respect for authors' rights, which reinforces the importance of balancing individual rights and the public interest.¹⁶

Cultural exceptions are affected by social and economic changes. Economic crises may affect individuals' ability to access culture and the arts. Legislation must consider how culture can be supported during times of crisis.

Fair use of the Right of Distribution in Iraq forms part of global efforts to protect authors' rights. Such use requires international cooperation to address challenges relating to intellectual property. The exchange of experience and knowledge is necessary to promote a shared understanding of intellectual rights. Accordingly, cultural exceptions to the Right of Distribution in Iraqi law are a vital instrument for ensuring a balance between authors' rights and society's right of access to culture. Efforts must continue to develop laws in line with cultural and technological changes, thereby strengthening the creative environment in Iraq.

Cultural Exceptions to the Right of Distribution for Literary and Artistic Property in Iranian and European Law

A statement from the comprehensive draft law on the protection of literary and artistic property rights, which discusses performance in Article 1, paragraph 18, provides as follows: "Public performance or display means the performance or display of a work at the same time or place, or at different times and places, to persons other than family members or relatives who are present or likely to be present, in a manner whereby the performance or display does not require communication to the public within the meaning stated in the definition of communication to the public." Based on the preceding definition of public performance, the meaning of the word "public" in this research becomes largely clear. This means that the "public performance" referred to in the second part of the above paragraph is directed to persons other than relatives and family members who are addressed and informed through the media.

Naturally, this expression applies more to cases in which the performance concerns artistic works. However, this does not mean that performance has no significance in literary work; rather, the concept of

¹⁵Bakr, Ismat Abd al-Majid, *Legal Protection of Copyright: A Comparative Study*, 1st ed., Baghdad: al-Maktabah al-Qanuniyyah, al-Mutanabbi Street, 2008.

¹⁶Khater, Sabri and Bakr, Ismat Abd al-Hamid (2001), *Legal Protection of Intellectual Property*, 1st ed., Bayt al-Hikmah Publications, Baghdad, Iraq.

performance includes artistic and literary works alike. Nevertheless, in the case of literary and written works, as protected by international instruments, the matter is mostly centred on the publication and presentation of literary works, which are separately protected by international instruments and various laws. (Berne Convention, 1971, Article 11). Therefore, the WIPO Treaty refers to a type of right under the name “Right of Communication to the Public” (WIPO, 1996, Article 10). Thus, it includes the right to perform sound or recorded works by wired and wireless means (Article 14). This right refers to the situation in which members of the public have the ability to access a recorded performance at the time and place of their choosing.¹⁷¹⁸

Performance under the United States Copyright Act includes any visual or audible representation, whether presented by wireless telegraphy, by showing cinematographic films, by recording, or by any other form of representation.¹⁹

In the Law for the Protection of the Rights of Authors, Composers and Artists, the right of publication and distribution (distribution) is mentioned separately, alongside performance and exploitation, indicating the legislator’s concern with the distinction between intellectual works and artistic works in the field of performance. Public performance rights are also recognised in the United States. As stated in the Federal Rules of Procedure, if music is played in the presence of more than one person other than in a private or domestic place, it is likely to be considered a “public performance” and therefore subject to legal protection in this regard.²⁰²¹

Some hold that the performer’s rights in this respect are very limited, and that the WIPO Treaty does not include any rights for the performer in relation to public performances by wired and wireless means.

On the basis of these premises, it appears that the public performance of literary works is equivalent to publication and the right to benefit from them in a manner that enables the general public to see them and access their content. According to international instruments and the Law for the Protection of Literary and Artistic Works, it is regarded as an example of “private performance,” that is, performance in the presence of relatives and family, and it is distinguished in this respect.

Continuing the process of strengthening the legal protection of this right, and in light of the “harm principle” as the most important basis for criminalisation in the criminal law of most countries, according

17 Shobeiri, Seyed Hassan (2010), ‘Preliminary Draft of a Comprehensive Law for the Protection of Literary and Artistic Property Rights and Related Rights,’ Tehran: Supreme Council of Intellectual Property.

18 Colombet, Claude (2006), *Fundamental Principles of Copyright and Neighbouring Rights in the World*, translated by Ali Reza Mohammadzadeh Vadqani, Tehran: Mizan Publishing House.

19 Copyright Act 1968, Article 27.

20 Mohammadzadeh Vadqani, Ali Reza (2006), *Fundamental Principles of Copyright and Neighbouring Rights in the World*, Tehran: Mizan Publishing House.

21 Office of the Attorney General, Memoranda, p. 770S).

to the draft [9] IDPPA, “violation of the right in the original aspects of a copyright-protected work” was criminalised.²²

In French law, since the “right of performance” is considered part of the “right to protect intellectual property arising from fashion design,” Article L.335-3 considers the reproduction, display, or distribution of intellectual works in violation of the owner’s rights, regardless of the means of commission, to be a violation of the right and a crime. This is because, once the intellectual creations of fashion are reproduced unlawfully, after being disclosed—including through performance of the work—or even before that, harm is realised.²³

It is worth noting that the first convention concerning literary property between Iran and Germany was approved by the National Assembly. After the establishment of the constitutional system and the increased publication of books, the need for laws that would protect writers became more urgent than ever. At that time, Articles 245 to 248 of the General Penal Code adopted on 10/5/1310 were the only provisions supervising authors’ rights. However, this objective was not achieved either. Therefore, in mid-1955, twenty-two members of the National Assembly sought to find a solution to protect authors’ rights and began drafting a law. Thereafter, a draft law consisting of nine articles and two notes was submitted to the House of Representatives. Finally, the bill was submitted to Parliament in November 1968 and, upon the proposal of Ahmad Shamlou, was named the “Law for the Protection of the Rights of Authors, Composers and Artists.” It was finally approved on 20 December 1969.

Subsection Two: Fair Use Exceptions to the Right of Distribution for Literary and Artistic Property

Rights in literary and artistic property are fundamental rights that protect the creations of individuals and creators. However, copyright laws include exceptions known as “fair use.” This use permits individuals to use protected works without the need to obtain permission from the right-holder, thereby contributing to the promotion of creativity and artistic criticism. These exceptions vary to include educational, critical, and commentary uses, and they aim to achieve a balance between protecting authors’ rights and stimulating innovation.

Fair use exceptions are an important instrument in the world of culture and the arts, as they allow academics, researchers, and creators to benefit from existing works in order to enhance their ideas and projects. Through these exceptions, excerpts from literary or artistic texts, or even musical passages, may be used in a broader context, thereby enhancing cultural dialogue and encouraging the development of

²²Daniels, C. (2012). Made in America: Is the IDPPPA the Answer to the United States Fashion Industry’s Questions about Design Protection? Available at: <http://repository.law.miami.edu/umblr>.

²³Alikhani, Sakineh; Habibah, Saeed; Alipour, Hassan; and al-Haymanesh, Mohammad Reza (1400), ‘Challenges and Solutions for the Criminal Protection of Intellectual and Artistic Creations in the Field of Fashion (A Comparative Study of the Legal Systems in Iran, France and America),’ *Quarterly Journal of Cultural and Communication Studies*, no. 56.

new ideas. Nevertheless, understanding the limits of fair use and how it is applied is necessary to ensure that authors' rights are not infringed.²⁴

Fair Use Exceptions to the Right of Distribution for Literary and Artistic Property in Iraqi Law

In Iraqi law, fair use of the Right of Distribution for literary and artistic property is an important subject that addresses the balance between protecting authors' rights and freedom of expression. Fair use is defined as an exception to the exclusive rights enjoyed by the author, enabling individuals to use protected works without the need to obtain permission from the right-holder. These exceptions include several cases, such as use for education, criticism, and commentary.

Fair use exceptions in Iraq include the use of excerpts from literary and artistic works in educational works, where schools and universities are permitted to use texts or musical passages within curricula. This use is considered necessary to promote learning and is encouraged by legislators. Criticism and commentary are also considered fair uses, as critics may use parts of artistic works to analyse or discuss them without infringing authors' rights. Furthermore, fair use is permitted in the context of news and press reports, where journalists may use protected materials to cover events or provide information relevant to the public. This type of use strengthens the public's right to obtain information and is considered an essential part of freedom of expression.²⁵

Fair use exceptions require consideration of several factors, such as the nature of the work used, the purpose of the use, and its effect on the market. Fair use is viewed as an instrument for protecting the public interest; however, at the same time, any use that may harm the author's interests or reduce the economic value of his work must be avoided. Fair use is also a developing subject, evolving with technological changes and the emergence of new platforms. For example, fair use in the internet age may raise questions about how it applies to digital content. The need to clarify intellectual property laws is increasing in order to meet the requirements of the digital age, which requires legislators to review existing laws and amend them in line with new challenges. Accordingly, fair use of the Right of Distribution in Iraqi law is an important instrument for achieving a balance between protecting authors' rights and strengthening the public's right of access to information. This field requires careful study to ensure that laws remain flexible and applicable in light of continuing changes in the cultural and technological landscape.²⁶

Fair Use Exceptions to the Right of Distribution for Literary and Artistic Property in Iranian and European Law

²⁴Islam al-Jaafrah, *The Possibility of Arbitration in Intellectual Property Disputes*, unpublished Master's thesis, Mu'tah University, p. 26.

²⁵Habib al-Amari, *Conflict of Legislative Jurisdiction Concerning Copyright and Its Exploitation*, *Journal of the University of Babylon – Humanities*, vol. 27, no. 3, pp. 82–85.

²⁶al-Sayyid Abd al-Wahhab Arafah, *al-Wasit in the Protection of Intellectual Property Rights*, Alexandria: Dar al-Matbu'at al-Jami'iyyah, 2004, p. 95.

Under the Rome Convention, the WIPO Performances and Phonograms Treaty, and many national laws enacted before or after the Rome Convention, performers are considered a category. Article 3 of the Rome Convention includes within the term “performers” actors, singers, musicians, and persons who present literary and artistic works in some manner, such as delivering speeches, reciting addresses, presenting entertainment and amusement programmes, and participating in other activities.

According to this definition, performers are a specific category of individuals who perform literary works. When a performance consists of only one performer, identifying the right-holder is easy. However, when the performance is the product of collective work, ownership and enforcement of rights face legal complexities. For example, in a performance, artists are those who play a role in its production; but what about a person who does nothing specific in the performance, does not speak, and expresses himself in very limited words, such as a servant? What about the conductor who does not play a single note on stage, or the persons working behind the scenes? Are they considered artists? Domestic laws of states usually make decisions in this regard. For example, in France, speakers who have fewer than thirteen lines in a cinematographic play are not considered actors.

However, according to Article 9 of the Rome Convention, member states are not obliged to protect persons such as acrobats and jugglers. Nevertheless, the Convention allows contracting states to extend protection to those whose performances are not connected with literary and artistic works. For this reason, some contracting states to the Convention have expanded protection to include other activities, such as improvisation, singing and the translation and interpretation of works, and variety circus artists, as well as all participants in an orchestra, including conductors and other performers.²⁷²⁸²⁹³⁰

In general, under the Rome Convention, the beneficiaries of performers’ protection include actors, singers, musicians, and other persons who recite, deliver, represent, or perform in some other manner literary and artistic works and other expressions of popular culture (folklore). Accordingly, individuals such as reciters of the Holy Qur’an, chanters, and tawashih groups are also considered performers and may be protected under the law. The WIPO Performances and Phonograms Treaty, in Article 2(a), includes, in addition to the items mentioned in the Rome Convention, the recitation of works and the performance of expressions of popular culture (folklore) as types of applicable activities.

In Iranian law, the Law for the Protection of the Rights of Authors, Composers and Artists, issued in 1969, and the Law on the Translation and Reproduction of Books, Publications and Sound Works, issued in 1973, do not expressly mention performers. Some argue that because the 1969 Law protects the artist as

²⁷Shakeri, Zahra; Mousipour, Nour Ali; Soheila (2017), ‘Cultural Studies’ – Communications, no. 39.

²⁸Habibah, Saeed; Shakeri, Zahra (2010), ‘Border Measures in the Protection of Intellectual Property Rights,’ Business Research Journal, no. 57.

²⁹Hosseini Nik, Seyed Abbas (2015), ‘A Critique of Accession to the Berne Convention.’ Electronic submission available at: <http://www.booklaw.ir/uploads/WV63868J1117726.ocx>.

³⁰Hikmatnia, Mahmoud (2008), ‘Fundamentals of Intellectual Property,’ Tehran: Institute for Research, Culture and Islamic Thought.

a “creator” and what is created through art as a “work,” and because performers, according to international instruments, include actors, singers, musicians, and anyone who performs a literary or artistic work—all of whom are considered “artists”—it may be concluded that the word “artist” in this law also includes “performers.”

However, this view is incorrect, because by “artists” under Article 2 of this law the legislator means the creators of literary and artistic works, such as painters, sculptors, and poets; it does not include performers of the works of others, who are considered, in a sense, artists who use works. Therefore, although performers are artists, specific rights cannot be inferred from a general title in the law. Related rights, including performers’ rights, are without precedent and require legal clarification.

Naturally, even in such a case, and with an expansive interpretation of Article 4 of the said law, so that audiovisual works, music, poetry, songs, chants, and plays are considered to include their performance, performing artists in Iranian law would enjoy rights similar to copyright, which of course has no precedent in any international instrument or domestic law.

Conclusion

Exceptions to the Right of Distribution in literary and artistic property constitute a legal mechanism aimed at achieving a balance between the protection of authors’ and creators’ rights and the fulfilment of society’s needs. These exceptions allow protected works to be used in certain circumstances without the need for prior permission from the right-holder, such as fair use in education, scientific research, or non-commercial purposes, while observing the legal conditions that ensure that the author’s legitimate interests, or the value of the artistic or literary work, are not prejudiced.

References

1. Ahmad Ali al-Khasawneh. Legal Provisions on Unfair Competition and Trade Secrets. Dar Wael for Printing and Publishing, 1st ed., 2015.
2. Ahmad Ali Omar. Industrial Property and Patents. 1st ed., al-Ilmiyah Press, Alexandria, 1993.
3. Islam al-Jaafrah. The Possibility of Arbitration in Intellectual Property Disputes. Unpublished Master’s thesis, Mu’tah University.
4. Anwar Talabah. Copyright: Intellectual, Scientific, Literary, Artistic and Electronic Property; Patents; Utility Models; Integrated Circuits; Undisclosed Information; Trademarks; Industrial Designs and Models; Plant Varieties; Commercial Transport. al-Maktab al-Jami’i al-Hadith, Egypt, 2010.
5. Ayti, Hamid. Rights of Literary and Artistic Creativity. Tehran: Dadgostar Publishing House, 1st ed., 2014.
6. Bakr, Ismat Abd al-Majid. Legal Protection of Copyright: A Comparative Study. 1st ed., Baghdad: al-Maktabah al-Qanuniyyah, al-Mutanabbi Street, 2008.
7. Habib al-Amari. Conflict of Legislative Jurisdiction Concerning Copyright and Its Exploitation. Journal of the University of Babylon – Humanities, vol. 27, no. 3.

8. Habibah, Saeed. The Patent System in Iran after Accession to the Agreement on Trade-Related Aspects of Intellectual Property Rights. *Journal of the Faculty of Law and Political Science, University of Tehran*, no. 66, 2004.
9. Habibah, Saeed; Shakeri, Zahra (2010). "Border Measures in the Protection of Intellectual Property Rights." *Business Research Journal*, no. 57.
10. Hosseini Nik, Seyed Abbas (2015). "A Critique of Accession to the Berne Convention." Electronic submission available at: <http://www.booklaw.ir/uploads/WV63868J1117726.ocx>.
11. Hikmatnia, Mahmoud (2008). "Fundamentals of Intellectual Property." Tehran: Institute for Research, Culture and Islamic Thought.
12. Khater, Sabri and Bakr, Ismat Abd al-Hamid (2001). *Legal Protection of Intellectual Property*. 1st ed., Bayt al-Hikmah Publications, Baghdad, Iraq.
13. Khedmat Kazar Mohsen. *Philosophy of Intellectual Property*. Tehran: Mizan Publishing House, 1st ed., 2011.
14. Daniels, C. (2012). *Made in America: Is the IDPPPA the Answer to the United States Fashion Industry's Questions about Design Protection?* Available at: <http://repository.law.miami.edu/umblr>.
15. Office of the Attorney General, Memoranda, p. 770S).
16. Suhail Hussein al-Fatlawi. *Moral Rights of the Author in Iraqi Law*. Dar al-Hurriyah for Printing, Baghdad, 1978.
17. al-Sayyid Abd al-Wahhab Arafah. *al-Wasit in the Protection of Intellectual Property Rights*. Alexandria: Dar al-Matbu'at al-Jami'iyyah, 2004, p. 95.
18. Shakeri, Zahra; Mousipour, Nour Ali; Soheila (2017). "Cultural Studies" – Communications, no. 39.
19. Shobeiri, Seyed Hassan (2010). "Preliminary Draft of a Comprehensive Law for the Protection of Literary and Artistic Property Rights and Related Rights." Tehran: Supreme Council of Intellectual Property.
20. Abd al-Rashid Ma'mun and Dr Mohammad Sami Abd al-Sadiq. *Copyright and Related Rights (in light of the new Intellectual Property Rights Protection Law No. 82 of 2002)*. Dar al-Nahdah al-Arabiyyah, 2004.
21. Alikhani, Sakineh; Habibah, Saeed; Alipour, Hassan; and al-Haymanesh, Mohammad Reza (1400). "Challenges and Solutions for the Criminal Protection of Intellectual and Artistic Creations in the Field of Fashion (A Comparative Study of the Legal Systems of Iran, France and America)." *Quarterly Journal of Cultural and Communication Studies*, no. 56.
22. Fadli Idris. *Industrial Property in Algeria*. 2nd ed., Office of University Publications, 2013.
23. Qazout Lamia. *Competition of Foreign Products with Algerian Products under the Market Economy System*. Master's thesis in law, Department of Law, Faculty of Law and Political Science, University of Algiers 1, 2013–2014.

24. Colombet, Claude (2006). *Fundamental Principles of Copyright and Neighbouring Rights in the World*. Translated by Ali Reza Mohammadzadeh Vadqani. Tehran: Mizan Publishing House.
25. Mohammadzadeh Vadqani, Ali Reza (2006). *Fundamental Principles of Copyright and Neighbouring Rights in the World*. Tehran: Mizan Publishing House.
26. Mousavi Zanouzi, Mousa; Bayanat, Abu al-Qasim; Seyed Mirhadi. *The World Trade Organization: Structure of Rules and Agreements*. Tehran: Commercial Printing and Publishing Company affiliated with the Institute for Trade Studies and Research, 2nd ed., 2010.
27. Mirjalili, Seyed Hossein. *The World Trade Organization: Structure of Rules and Agreements*. Tehran: Commercial Printing and Publishing Company affiliated with the Institute for Trade Studies and Research, 2nd ed., 2009.