



## Criminal Guarantees for Intellectual Property Protection with a Look at Domestic Law

**S. Aref Hosseini, Ahmad Mirzaei\*, Ismail Abdollahi**

*Department of Criminal Law and Criminology, Bushehr Branch, Islamic Azad University, Bushehr, Iran.*

### ABSTRACT

Intellectual property is found almost everywhere in creative works such as books, movies, music, recordings of music, art, software, and in everyday objects such as cars, computers, medicines, industrial and commercial works, and Signs are also in the realm of intellectual property. The community supports and appreciates the benefits of intellectual property created by those who devote their time and resources to fostering innovation and knowledge development and preventing the minds of the nation from escaping. This design of the intellectual property system benefits society in various ways that can be supported by criminal support of this system to enrich public knowledge and culture. We have achieved fair competition, fostering economic growth, sustaining innovation and creativity, promoting and enhancing technological and cultural advancements, and, most importantly, promoting public order and the proper use of our rights.

**Keywords:** Criminal Guarantee, Intellectual Property, Domestic Law.

### INTRODUCTION

Intellectual property law is a branch of the law of science that upholds the intellectual creativity and economic value of human creations and grants it to its creator under limited conditions for a limited period. It is human to bring human beings the merit and worth of life, and governments must protect literary works and inventions (Pila & Torremans, 2019). Intellectual property rights are divided into two categories: industrial property rights and intellectual and artistic property rights. Its literary and artistic ownership consists of two parts: 1) the rights of the original authors (copyright) 2) This includes the rights of individuals who market and distribute literary and artistic works to the public, including anchors, audio producers and broadcasting organizations, industrial property rights, patents, trademarks, and industrial designs. And protects agriculture and prevents unfair competition that is contrary to the noble principles of industry or commerce (Bently & Sherman, 2014; Dorafshan, 2018; Dutfield & Suthersanen, 2008).

The fundamental role of protecting intellectual property rights in raising the index of scientific, social, and industrial development and progress of societies, recognizing the rights of intellectual property creators, protecting them both globally, domestically, and in the field of jurisprudence has been accepted and accepted. It can be said that this support is allowed, although some theories such as "the need for the free flow of information," "the need for further

\* . Corresponding Author: [kasrahoseini1983@gmail.com](mailto:kasrahoseini1983@gmail.com)

To cite this article: Hosseini, S. R., Mirzaei, A., Abdollahi, M. (2020). Criminal Guarantees for Intellectual Property Protection with a Look at Domestic Law. *Journal of Exploratory Studies in Law and Management*, 7 (2), 94-107.

## **Criminal Guarantees for Intellectual Property Protection with a Look at Domestic Law**

development of social cooperation and co-operation," and some jurisprudential "such as intellectual property incompatibility with Islamic rules and regulations," this Support is not justified (Parvin & Seyedin, 2017; Shahraki, 2012).

With the development of the publishing industry as well as the advancement of technology in communications technology and computer science, the possibility of reproducing and distributing intellectual products has been dramatically facilitated, so that vast criminal proceeds have been made available to criminals and part of the state's income is lost. Innovators have severely infringed society and fair competition so that, in addition to compensation, to enhance the intellectual impact of the criminal defense community on criminalizing intellectual property rights violations and consequently enforcing them. Criminal penalties on them are very much needed because of the challenges in the area of crime growth thought, how to detect and prosecute criminal protection of the rights and the lack of such support is the victim and foundations.

Intellectual property offenses include all conduct that infringes on the rights of the intellectual property rights holder, including trade secrets, copyright infringement, trademark infringement, and, most importantly and enforcement (Afori, 2011; Pappalardo & Messe, 2019). In addition to seizing, confiscating, and destroying goods, and on the merits, they require imprisonment and a cash fine based on the severity and weakness of the offense.

The specific nature and specialized nature of these offenses and sometimes group and organized characteristics, the existence of predominantly white-collar offenders, the lack of an active criminal system, the requirement of a specific intellectual property criminal law, and the adoption of a discriminatory criminal policy to criminalize copyright infringer behavior. And consequently, the legislature has to determine the appropriate punishment. In the Iranian criminal justice system, criminal protection of intellectual property began with the enactment of the General Penal Code 1304, followed by the scattered and specific laws adopted under the "Copyright, Copyright, and Artists Protection Act of 1969" and "Patent Laws, Plans." Industrial and Trade Marks Approved 2007, "and Article One of the Law on Prevention and Suppression of Fraud in the Preparation of Scientific Works of the Notes Adopted on 2017 and the New Intellectual Property Protection Act 2018 has imposed the most criminal offenses. The article seeks criminal safeguards against intellectual property in domestic and international law.

Because there is a fundamental gap between the criminal aspect of intellectual property and the protection of the work in the laws of Iran and there is still no comprehensive investigation, so we have collected the criminal law safeguards in domestic law to There are no sporadic laws in this regard. We first examine the implications and principles of criminal law in support of local law ownership.

### **CONCEPTOLOGY**

"Ownership" means fake or the name means "to own." It means both "ownership and tenure" and "property and property to which it belongs" (Dehkhoda, 1998).

The word "thought" either means "thought," which is the sum of thoughts, or the name means "to think and reflect" (Dehkhoda, 1998).

The English equivalent of this word is "Intellectual". It is a term that refers to one's ability to think logically, to identify objects, or to use this ability (Snell-Hornby, 1991).

"Intellectual property" means all kinds of ownership and total control over intellectual works for the creator of intellectual work. Legally, the term "intellectual property" refers to special rights and privileges over intellectual property. In the United States, intellectual property includes rights created by copyright, patent and trademark rights. The copyright law grants the author the right to reproduce, distribute, perform and adapt a literary, artistic, or musical work.

Patent law gives the inventor the exclusive right to invent, use or sell the invention, and the trademark law gives the company the exclusive right to use a trademark or trademark to identify its products (Laighi, 2002).

The term "intellectual property" also refers to intellectual property. The expression of ideas, the management of words, sounds, or images, as embodied in books, documents, and films, are all considered intellectual property.

By analyzing the meanings and definitions presented, some scholars have explored the semantic uses of the term intellectual property in three areas: "Specific Mobile: Including Literary and Artistic Property," "Specific: Including Intellectual Property and Information" and "General: Ownership of All Non-Material Affairs" Of economic value. Of course, in this article, the third meaning is not taken into account.

"Guaranteed" in meaning: used to guarantee something, to accept and guarantee someone, to compensate something, to shelter, and so on (Dekhoda, 1998).

Criminal guarantees are those guarantees of penalties, penalties, retribution and leverage that are imposed by the legislature and are, from a standpoint, against civil, administrative, commercial, and so on.

Criminal safeguards for crimes against intellectual property are penalties implementing and enforcing copyright laws in a country. In this sense, intellectual property is regarded as tangible property as a right of citizens to be violated and violated in various ways by natural and legal persons. In fact, the evolutions of human social life and the increasing development of technologies and the development and expansion of knowledge acquisition tools have introduced new life to human beings, which can be referred to as "life or the age of thought" even in the industrial dimension - which itself The product of human intellectual progress is in the specific scientific field - it affects. If, in the agricultural or industrial age, it was the possessions that human beings were fond of, today more than the possessions are the thought that has been taken into consideration; The article, research and ... In this sense, forms embedded in human thought - not materially - but embodied in human thought, have very beneficial and valuable approaches and results for the individual and society and have a high spiritual status. , Is of interest. It is only natural, then, that this is also subject to fraud and the rape of profiteers and opportunists. However, the nature of crimes against intellectual property differs in many ways from crimes against objective property, even the characteristics of the perpetrators and the victims. Various explanations have been provided as to why these offenses can be identified, the causes of such offenses, and the ways to prevent and deal with them.

## **THEORETICAL FOUNDATIONS**

### **Natural Right Theory**

Theory of Natural Right to Justify Intellectual Property Highlights in Wendy's Theory. In trying to limit copyright protection, Gordon offers a different reading of John Locke's theory of work (Adler & Fromer, 2019; Fromer, 2012; Moore, 2012). His general view is that, contrary to popular notion, and his interpretation wrong, the philosophy of natural law does not provide strong support for the rights of authors and authors. The theory of natural law "necessarily considers public rights along with the rights of those who create intellectual products through their work." In Gordon's view, "a closer examination of Locke's theory" suggests that "when natural rights restrictions are taken seriously," in some cases, subtle matters cannot be granted ownership.

Gordon's way of arguing emphasizes what we have said about John Locke, the environment of different conflicts and perceptions. It is crucial for Locke's words to determine where Lock's

## **Criminal Guarantees for Intellectual Property Protection with a Look at Domestic Law**

interpreter determines his point of departure and focus. Gordon places this departure as the ethical task that Locke believes exists in the natural state and governs how human beings treat each other. These assignments are of divine origin and can be understood and discerned by reason. Locke, on the other hand, argues that the main factor driving people to transition from natural state to civil society is the lack of security for natural rights in the natural state. Human beings form civil society precisely because its authorities provide such security. But what are these natural rights that cannot be protected before civil society is formed?

According to Locke, two types of rights can be identified in Locke's view:

Liberty rights; free arenas, and claim rights; areas in which the right holder can claim others. Using these two categories, he then identifies four types of natural rights and obligations in his discussion. .

The first and foremost item in this series is a right-of-way assignment: all individuals have an assignment, except in cases of urgent need, not to harm others. The right not to be harmed is reasonably preceded by other natural rights, and hence the duty to do no harm, except in cases of extreme necessity, wherever it conflicts with other natural laws.

Second, there are two key freedoms: 1) All human beings have the right to spend their efforts in whatever way they see fit; These two freedoms mean that, at least with the utter lack of need, the law of nature does not give anyone the right to claim against the harmless use of another's own effort or the harmless use of the commonality.

In intellectual property too, creators and creators of intellectual works must own their own original product of thought, only provided that their ownership does not impair the ability of others to create and rely on a pre-existing cultural matrix and scientific heritage. All persons have an equal right to use subscriptions. But what is important is that Locke's restraint, in addition to providing a moral justification for acquiring work-related property, inevitably limits the amount of property possessed. If this ownership is to be achieved by satisfying the "sufficient and equally good" constraint of others, it is natural that one can never own a whole or a large part of it with little work, because it does. Will make others worse off. This is where the question of the appropriateness of the work done with the remuneration or entitlement arises. How much ownership does a person who works for a joint venture own?

It seems that according to the law of nature, which is based on the principle of non-harm, and according to Locke, there must be some sort of proportionality between the work done and the work that is entitled to the results of its work. But Locke himself has not made this clear. This proportion is Locke's constraint. Hence, Robert Nazik's famous interpretation will not be very local. "If I own a can of tomato juice and mix it with the sea ... will I become the owner of the sea or have I stupidly destroyed my tomato juice?" He says. Wines are not considered to be sea-mingling, but rather a childish act of entertaining, or foolishness, and secondly, assuming it to be work, in violation of the requirement of sufficient and equally sufficient. Good for others.

### **Personality Theory**

In this theory, ownership is linked to personality, self-development and prosperity, and to concepts such as human freedom and dignity. Having some kind of control over the objects is considered essential to the human personality and in the sense of "personhood". Margaret Jane Radin summarizes the basis of a personality-oriented perspective on ownership(Nanayakkara, 2019): "To achieve a true belief - to be a person - one needs to have some control over resources in the external environment. The necessary guarantees of this control take the form of property rights"(Radin, 1981-1982).

The Theory of Two German Philosophers, Georg Wilhelm Hegel and Immanuel Kant. What the commentators of the two philosophers have said is that, in short, Hegel considers "the will of

the individual to be the core of the individual being that is constantly in the pursuit of action and efficiency in the world. Hegel, in the hierarchical elements of one's intellectual structure, imagines that will the highest position is sitting. The possession of foreign objects is "the act of partaking of the human will and, in fact, the manifestation of one's personal freedom and the manifestation of one's personality"(Hughes & Sadler, 2013). For Kant, too, the book or other literary product is not merely a genus of commodities but "the exercise of powers and authorship"(Palmer, 1990), but in contemporary understanding of personality theory on such concepts as Freedom, self-organization, privacy, and human dignity are emphasized, and private ownership is seen as the means to deliver these fundamental values. Edwin Hettinger puts forward an argument from this theory as follows: "Private property can be justified as a tool of sovereignty. Dominating some objects is important for one's independence and self-organization"(Hettinger, 1989). He then quotes Ronald Durkin as saying that "some kind of sovereignty over a range of personal belongings is essential to human dignity. According to this argument, the use or consumption of certain objects is also necessary for life. By giving people ownership of these objects, their means and means of survival are put in their own hands, thereby enhancing their independence and security. In other words, "private ownership reduces the necessities of life for interdependence between individuals and removes power from the group and empowers the individual" and again "private ownership strengthens privacy. for example, Owning your own home is an example of this: privacy, security and a limited range of self-organization "(Hettinger, 1989).

William Fischer argues that "contemporary personality theorists believe that private property rights should be recognized only if they can promote personal prosperity by supporting or providing for humanitarian needs or fundamental interests"(Fisher & Lovell, 2009).

### **Utility Theory**

Fritz Maklap and Edith Penrose in the 19th century in their examination of the nineteenth-century patent dispute have put forward two utilitarian arguments to justify the patent:

1. Industrial development is desirable for society. Inventions and their exploitation are indispensable for industrial development. Neither the invention nor its exploitation is sufficiently attainable except inventors and venture capitalists hope that successful, costly activities will bring benefits that are worth their efforts and put their money at risk. The simplest, cheapest and most effective way to give these incentives is to grant patents on patents.

2. Industrial development is desirable for society. To ensure this progress at a sustainable level, Landes and Posner talk about copyright. In their view, the distinguishing features of most intellectual products are that they are easily reproducible and that one person's use of them does not impede the benefit of others. These features create the risk that the creators of these products will not be able to cover their express costs (the time and effort spent writing or writing and the costs of negotiating with publishers or record companies), as duplicates only incur costs. Low production costs are the cost of producing and distributing books or CDs, thereby offering consumers low-cost similar products, lowering product prices(Landes & Posner, 2009).

Landes and Posner claim that all other ways that allow creators to recover their costs are wasting more social resources. In their view, this utilitarian logic should be used in shaping the doctrines of the field, and in most cases it has been.

Landes and Posner claim that trademarks have an unusual economic benefit: they improve the quality of our language. Trademarks can save communication costs and make conversations more attractive by adding to our repository and inventory, and by creating words and phrases that are valuable to people because of their intrinsic enjoyment as well as their information value. Of

## **Criminal Guarantees for Intellectual Property Protection with a Look at Domestic Law**

course, trademarks can sometimes be socially detrimental, such as allowing the first entrant into a market to avoid competition by monopolizing an attractive or informative brand. According to Landes and Posner, understanding these benefits and disadvantages should guide lawmakers and judges when regulating trademark rights; - Symptoms should be protected when they are useful to the community and when they are generally harmful (Which is usually the case).

### **PENAL GUARANTEES FOR INTELLECTUAL PROPERTY OFFENSES IN IRANIAN LAW**

Laws that specifically and specifically protect intellectual property in Iran have determined the offenses and penalties of those who violate them, which are reviewed in order of status.

Penal Guarantees for Intellectual Property Crimes in the Law on Protection of the Rights of Authors, Authors and Artists;

Chapter 4 of the Copyright, Artists and Artists Protection Act criminalizes copyright infringement of authors, authors, and artists. According to Articles 1 to 4 of the Act, the following constitute crimes against the intellectual property of authors, authors and artists:

Crime of unlawful distribution, distribution or distribution of a work by its own name: According to Article 5 of this Law, anyone who owns, in whole or in part, another work protected by the Copyright Act, without the author's permission Or even publishing, distributing or distributing in the name of the creator or knowingly in the name of another person, is sentenced to imprisonment from six months to three years. Cases where infringers of intellectual property rights have been exploited by publishing, distributing, or illegally distributing the work have profoundly materialized, not only does the amount of punishment inconsistent with the objectives of the punishment (in particular the purpose of punishment deterrence), the offenders may Professionally, without engaging in the aforementioned criminal offenses, by recruiting individuals to commit these crimes spiritually. In this case, the main criminal responsibility rests with the steward of the crime and the aforementioned individuals are considered only deputy criminals and, under Article 2 of the Islamic Penal Code, are subject to the minimum punishment provided for in Article 2 of the Copyright Act, sentenced to six months imprisonment.

#### **Unlawful Translation, Broadcasting, or Publishing Crime**

Article 1 of the Copyright, Artists and Artists Rights Act has provided for the imprisonment of three months to one year for unlawful printing, publishing, and distribution of translated works first published in Iran.

It appears that the guarantee of enforcement is in view of the policy of detention of the judiciary and in accordance with Article A, "Law on the Collection of Certain State Income and its Use in Certain Cases," (which is less than ninety percent of the lawful imprisonment). And one day and up to a maximum of ninety-one days, requiring the judge to issue a sentence of more than ninety and one day imprisonment or sentence to convert imprisonment to a fine of seventy thousand Rials and one to three million Rials), at least in Cases that offend in this way to massive material (economic) exploits

#### **It Has Been Found To Be Inadequate and Has No Deterrent Effect**

Also, for a deputy in these crimes, as stipulated in Article 1 of the Islamic Penal Code, only the minimum legal penalty (three months) will be imposed, which is in accordance with Article A, paragraph 2, of the Law on Collection of Some Government Income and its Use in Cases. The modal of the approved 1 will become a cash penalty.

Doctrine of the Abuse of a Name, Title or Special Trademark Reference to a work other than: In accordance with Article 1 of the Copyright Act, Infringers of Article 2 of the Copyright, Copyright and Artists Act, with imprisonment of three months to one year are sentenced.

According to Article 2 of the Copyright Act, the name, title and special sign that represent the work will be protected by this law and no one may reproduce it for another work of the same kind or the like, Apply in a manner that induces doubt. "

It should be noted that the application of this article has caused problems for the creators. Although the article was intended to criminalize "unlawful use of another work's name and title" and to protect the creators of intellectual works, in cases where the individual by its act results in the removal of the creator's name, title and trademark, Not paid. The only by-laws in this field are the titles, titles, and retrospective use of titles that guarantee the rights of filmmakers and provide solutions to the dispute between program and film partners.

It should be noted that the provisions of Sections 1 and 2 of the said Law do not apply to the abuse of the name, title, or label of the publications, as it is covered by Article 4 of the Press Law. According to Article 5 of the said law:

Whenever the publication, name, or mark of another magazine imitates: minor modifications, so as to be misleading to read, prevent it from being published and carry a sixty-one day imprisonment for up to three months and a fine of up to one Ten million Rials will be sentenced. The prosecution of the crime is subject to the private plaintiff's complaint. Guarantees of violation of Article 4 of the Press Law, imprisonment from sixty-one days to three months, and fines ranging from one million to ten million Rials.

#### **Adaptation to another Work, Without Due Process: Adoption**

It means modifying or modifying a work in order to present it in a different form. The right of adaptation is one of the intellectual property rights of There are intellectual works. Articles 1 and 2 of the Copyright, Copyright and Artists Protection Act constitute the legal basis for the offense of unlawful adaptation of another work.

The guarantee of the violation of the right to insert the name, title or mark of the work when it is adapted is a term of imprisonment of three months to one year, as stipulated in Article 4 of this Law. However, in accordance with Article 3 of the Copyright Act, the use of copyrighted works is limited to the ordinary and for scientific, technical, educational and educational purposes, either critically or as an endorsement, even without reference, even without permission. Author is allowed.

It is also worth noting that in international law, according to Article 5 of the Berne Convention, the authors of the work enjoy the exclusive right to adapt, adjust or otherwise modify their work.

Crime of alteration, distortion, and unlawful dissemination of literary and artistic work: Subject to Article 3 of the Copyright Act, any alteration or distortion of, or dissemination of, the work protected by such law is prohibited without the author's permission. Pursuant to Article 5 of the said law, he shall be punished by imprisonment of three months to one year in violation of the said provisions.

It is also worth noting that paragraph 2 of Article 9 of the Berne Convention also confers on him the right to object to any distortion, defect or alteration of the effect of the author. Of course, contrary to Iranian law, it has made it difficult to establish a reputation for dignity.

At the end of the examination of the various types of penal guarantees of the Copyright, Copyright and Artists Protection Act, it is necessary to note, in accordance with Article B, Section

## **Criminal Guarantees for Intellectual Property Protection with a Look at Domestic Law**

2, of the Law on the Collection of Some Government Income and its Consumption in Specific Approved Acts, for offenses which are punishable at least. Their statutory term is less than ninety-one days and the maximum is more than ninety-one days imprisonment, the judge hearing is required to sentence to more than ninety-one days' imprisonment or the conversion of imprisonment to a cash fine of seventy-one thousand Rials up to three million Rials.

Also, in accordance with Article 5 of the Copyright Act, the private plaintiff has the right to apply for a judgment in one of the newspapers and to have his or her own costs finalized by the issuing court. This is only a matter of restoration of dignity and elimination of doubt and lacks the criminal aspect of prosecution because it does not include a criminal offense if requested by a private plaintiff (and not by direct court order).

### **Penal Guarantees for Intellectual Property Offenses in the Law of Translation and Reproduction of Books and audio effects**

The crime of reproduction, publication and distribution and use of non-proprietary translation without the permission of the right holder: Article 1 and Article 3 the Law on Translation and Reproduction of Books, Magazines and Audio Works constitutes the legal pillar of the said offense. Subject to Article 4, the right to copy, reproduce, exploit, publish and distribute any translation work with the Translator is its legal inheritance. Also, according to Article 4 of the Act, those who act in accordance with the provisions of Article 7 will, in addition to the payment of private plaintiff's damages, be sentenced to imprisonment of three months to one year. .

It is noteworthy that, under Article 1 of the Copyright Act, only the translation, publication and distribution of another translation, called non-translatable, was criminalized, while Articles 1 and 2 of the Translation, Reproduction and Reproduction Act were criminalized. Audio 1 has also accused the translator of reproducing, publishing, and distributing non-English translation, even in the name of an interpreter. Therefore, development law has been criminalized, without making any difference in the punishment. Also, after comparing we find that the translated poem belongs to the non-being A book or a publication shall not be subject to Articles 1 and 2 of the Law on Translation and Reproduction of Books, Magazines and Audio Works (as per the law and not the general provisions of this Article; Artists are supported.

The crime of unauthorized reproduction of books and periodicals printed in the original language and form: Article 5 of the said law states: "Reproduction of books and periodicals in the same language and form as is printed for the purpose of sale and material exploitation by offset. No photography or similar ways are prohibited without the permission of the rightful owner."

Also, pursuant to Article 6 of the above-mentioned law, the three of us are sentenced to one year imprisonment.

Crime of unlawful copying or reproduction of audio works for the purpose of material exploitation: In accordance with Article 3 of the Law on Translation, Duplication of Books, Magazines and Audio Works; is prohibited for sale without the permission of the proprietors or the sole proprietor or legal representative. Pursuant to Article 7 of the said law, the guarantee of violation of these rules is three months to one year imprisonment.

Audio works subject to Article 3 of the Law on Translation and Reproduction of Books, Magazines and Audio Works, if have the legal protection of any copy of the original audio work, the date of release, the name and address of the manufacturer and the sole proprietor and its trademark. Therefore, audio works that do not have even one of the aforementioned items will not enjoy the protection of Article 2 (using Article 2 of the Law on Translation and Duplication of Audio Books and Publications.



Also, under Article 4 of the said Act, the reproduction of acoustic works for scientific, educational and research use, or for personal and private use, subject to no material gain, shall not be considered a crime and the act committed shall not be subject to Article 7.

It should be noted that according to Article 5 of the Act, the protection of audio works will be related to the audio works of Iranian nationals and the audio works of nationals of other countries shall be protected only under the condition of reciprocal action. Also, the supply of the work by an Iranian citizen even abroad and importing or exporting the work is subject to legal protection in accordance with Article 6 (2) of the Law, and the offender will be entitled to three months to one year imprisonment.

Criminal Safeguards against Intellectual Property Law Copyright Protection of Computer Software Developers;

The offense of unauthorized publishing, distribution, use, and use of computer software other than: Articles 1 and 2 of the Copyright Act. Adopted computer software constitutes the pillar of the said law.

According to Article 4 of the said law, the copyright, copyright, material and intellectual property of computer software belongs to its creator. The term of protection of copyright is thirty years from the date the software was created and the term of protection of the copyright in the work is indefinite. According to Article 5 of this Law, anyone who violates the rights protected by this Law, in addition to compensation, is sentenced to imprisonment of ninety-one days to six months and a fine of ten to fifty million Rials.

It should be noted that by enacting the "Law on Persons Disallowing Activities in the Visual and Visual Affairs of the Year", unlawful duplication of computer software may occur in cases where it infringes the right,

Consideration of Article 2 of this Act has been specifically criminalized. According to this article, any natural or legal person, etc. who reproduces without permission the copyrighted work ... - by impersonating the official label of the Ministry of Culture and Islamic Guidance affixed to the tape and CDs. And video (CD) or replacement of tape with the contents of the labeled tape cassette and the like - as the case may be, in addition to the punishment of forgery and damages where the infringement is causing financial damage, if the owners of the work demand damages Compensates and in any case fined from two million Rials to twenty million Rials.

Misuse of Computer Software Name, Title and Trademark: Pursuant to Article 2 of the Copyright Software Act, the name, title, and trademark of software representing this software are protected by this law. No one can use them for any other software of the same kind or the like, in an inductive manner.

According to Article 5 of this law, anyone who violates the rights protected by this law is sentenced to 90 days in jail and up to six months in prison and a fine ranging from ten million to fifty million Rials.

As it can be seen, the country's legislature has used two approaches to compensation (penalties) and imprisonment penalties and fines for dealing with intellectual property crimes. It may be argued that the legislator is seeking prosecution for the offender and, on the other hand, by imposing imprisonment and applying it to detention, rehabilitation, and even at the highest presumption, when imprisonment is coupled with educational corrective measures. That's not the case - it has sought to reform and rehabilitate criminals.

However, such criminals - as in the forensic analysis of such crimes. They naturally think of the enormous profitability of these crimes and the ways they can escape the formal control system (criminal control), especially when the criminal justice system is plagued with problems and its

## **Criminal Guarantees for Intellectual Property Protection with a Look at Domestic Law**

focus on such crimes is reduced. In addition to these crimes, the black crime figure is much higher than some other crimes. Therefore, even if they are arrested they will only deal with one or more of their crimes. As such, the profitability of such offenses against penalties is so high that criminals are less likely to repeat such offenses. In addition, the flaws in the criminal justice literature and the attention of criminal policymakers to legal and judicial detention have had a profound effect on removing the barriers faced by these criminals.

### **Domestic Law Approach to Intellectual Property**

Since the dissemination of intellectual property laws in Iran makes it difficult to distinguish criminal offenses and intellectual property penal guarantees, at least in some cases, even for jurists, here we will disregard some legal materials.

Publication, distribution by non-translation: Several legal provisions have been enacted on the subject. Article 1 of the Law on the Protection of the Rights of Authors, Authors and Artists provides:

Anyone, in whole or in part, of any work protected by this law in their own name or in the name of the author, without his or her permission in the name of someone other than the originator, publisher, distributor or distributor, he will be sentenced to imprisonment of six months to three years.

According to Articles 1 and 2 of the said law, the word "work" herein shall mean everything created by the knowledge, art, or initiative of the author, artist or artist. Thus, it encompasses all scientific, literary and artistic works, including books, treatises, plays, poetry, hymns, ballads, audiovisual and visual works.

However, the inclusion of Article 1 of Article 7 of the Copyright Act does not cover the translation work (protection of the translation is subject to Article 2).

It is worth mentioning that with the adoption of the Law on the Translation and Reproduction of Books, Magazines and Audio Works in the Year 2, in accordance with Article 5, the reproduction of books and publications in the same language and form as printed was forbidden for the purpose of selling or exploiting them without the permission of the right holder. And according to Article 5 of this law, the punishment for that crime is three months to one year of imprisonment. However, previously unauthorized reproduction of books and periodicals in the same language and manner as was published, resulted in imprisonment of six months to three years under the provisions of the Copyright Act. It would appear that the reduction in the punishment for the conduct - provided for by law - does not appear to be defensible. In other words, the new regulations appear to have diminished the legal protection of intellectual property in these cases.

Also, Article 3 of the Law on the Translation and Reproduction of Books, Magazines and Audio Works; the recording or reproduction of non-proprietary audio works without the permission of the right holders or the sole proprietors or legal guardians of the sale (willful and deliberate infringement of It carries a prison sentence of three months to one year under article 6.

Whereas, in accordance with its provisions, the Software Creator Protection Act, it publishes, publishes, implements and uses material and non-material software without the permission of the proprietor, prohibits, and infringes it for imprisonment from ninety days to six days. Months and fines ranging from ten million to fifty million Rials.

In the light of the foregoing, it may be said that the unauthorized reproduction of books, periodicals and audio works - which later became subject to specific protection under the translation and reproduction law of books, publications and audio works - was subject to Article 5 of the Copyright Act, Authors and Artists; It was after the enactment of the Law on Translation and Reproduction of Books, Publications and Audio Works; in particular, the reproduction of

books, publications and audio works was excluded from the scope of Article 6 of the Copyright Act. It is important to note this distinction because of the differences in the penalties provided for in the two laws.

It is noteworthy that although software was not invented at the time of the adoption of Act 1 or 2, to protect the intellectual property of software creators in the so-called "work" referred to in Article 2 of Law 4 or the "Audio Works" Article 3 of the Act 4 stated that by adopting a specific law protecting the rights of computer software creators in year 1, the legal protection of computer software was excluded from the inclusion of rules 1 and 2.

Subsequently, by enacting the Code of Punishment for Persons Unauthorized in Audiovisual Affairs (1), to protect the intellectual property of the authors of the audiovisual works, the unlawful reproduction (without permission) of these works (if any) That would undermine the copyright of the work, and be free from the commission of other offenses, such as forgery, etc., under the recent law, which, under Article 6 of the Act, would result in a fine of between two million and twenty million. Rials. Therefore, unauthorized reproduction diminishes the copyright of another work, subject to the latter law (Rule 4), where the penalty for increased penalties is increased, while imprisonment is eliminated.

The crime of reproduction, publishing, distribution and use of non-translation Article 2: The Law on Protection of the Rights of Authors, Authors and Artists

"Anyone who publishes, distributes or publishes another translation without his or her own name will be sentenced to a prison term of three months to one year."

Following the enactment of the Law on Translation and Duplication of Books, Publications and Audio Works, in accordance with Article 5, the right to reproduce, reproduce, exploit, publish and distribute any translation belongs to his legal successor. The perpetrators of violations of these rights, in accordance with paragraph 5 of the said law, are imprisoned for three months to one month are sentenced.

In view of the two above, what exactly has caused the legislator to impose new rules on abuses of another translation, because neither attenuation or development in the criminalization of that behavior nor a change in the minimum or

The maximum penalty is the statutory penalty. Even if we declare that translation work is subject to the protection of Article 3 of the Law on Translation and Reproduction of Books, Magazines and Audio Works, only books, journals or audio works, including copyright, copyright and artist rights in all respects. The aforementioned (books, publications, and audio works) seem to be no justification for rationalizing the new regulations unless the legislator attempts to subject them separately to the laws protecting the ownership of sound works from other copyrighted works, authors and artists. Be considered.

Crime of abuse of a work's name, title or special designation: According to Articles 1 and 2 of the Copyright, Artists and Artists Rights Act, the designation, title and trademark of a work has legal protection. A person who uses similar signs (albeit in a manner that induces suspicion and confusion with the original mark) is sentenced to a prison sentence of three months to one year. However, in two cases on intellectual property issues, special rules were laid down: Firstly, in accordance with Article A of Article 3 of the Press Law, the following publications were issued:

Whenever the publication, name or trademark of another magazine is copied with minor modifications, so as to be misleading to read, it is prevented from publication and commits imprisonment for a change of sixty-one days to three months and a fine of up to Ten million to one hundred million Rials are fined.

## **Criminal Guarantees for Intellectual Property Protection with a Look at Domestic Law**

Second, a law was passed to protect the rights of computer software creators that specifically protected the intellectual property of computer software. According to Article 4 of the Act: "The name, title and special sign that represent the software are protected by this law and no one may impersonate them for other software of the same or similar kind, as the indictment alleges. According to Article 6, the offenders are sentenced to imprisonment of ninety-one days to six months and a fine of ten million to fifty million Rials.

### **Article One of the Law on Prevention and Prevention of Fraud in the Proceedings of the National Academic Council of Education 2017**

According to Article One of the Law on Prevention and Fraud Prevention of Fraud in the Preparation of Academic Works Approved 2017, the supply or submission of works such as a dissertation, dissertation, article, research project, book, report or other written or recorded scientific-scientific or artistic work Electronic or other electronic by any natural or legal person for the purpose of profiting as a profession or occupation for the purpose of presenting the entire work or part of it as a criminal offense by itself and the offender or offenders in addition to the funds received by the State Treasury The penalties are as follows:

1. The commission of a crime by a natural person is punishable by a fine of three and a fine of six.

2. In case of a crime committed by a legal person, in addition to the punishment of the perpetrators, and the executors and their respective executors, the punishment of the legal person shall be determined in accordance with Articles 20, 21 and 22 of the Penal Code.

### **Proposed Bill to Parliament**

Article 5 of the proposed Bill on the Protection of Intellectual Property and Art submitted to Parliament, as a guarantee of criminal execution, reads as follows: (1) everyone who has the rights protected in this law by the will of the authors, artists and translators, etc. A gross misdemeanor for the purpose of breaching material interests will be sentenced to imprisonment of ninety-one days to one year or a fine of ten million to fifty million Rials, or both. The court will determine the amount of the fine in terms of the amount of the proceeds of the infringement,

1. Whenever the offender is re-sentenced within eight years of his or her final conviction for a violation of the rights protected by this Act, the court may impose a penalty of up to twice the maximum sentence referred to in paragraph (1),

2. If the Civil Court does not render a decision in accordance with Articles 1 to 2, the Criminal Court shall apply the measures and enforcement guarantees provided for in the said Articles.

Article 4 The Bill entitled "Guarantee of Abuse of Techniques and Work Certificate" states:

The following acts are considered to be contrary to the law and in accordance with Articles 1 to 4, the violation of the rights protected by this law shall be considered:

(A) Manufacturing or importing for the purpose of selling or renting any device or device intended to be designed or manufactured solely to suppress any device or device intended to prevent or limit the reproduction of an effect, a page, or an audio tape; or Radio or television program or impair or impair the quality of copies it was made.

(B) build or import for the purpose of selling or leasing any device or device capable of receiving or assisting the receipt of encrypted programs that are broadcast or otherwise publicly available, such as receiving from Via satellite by people who do not have the right to receive the program (for example, the receiving device or receiver, element and dish and the like),

(C) Unauthorized removal or alteration of the electronic ID of the work,

(D) distributing, distributing, distributing, broadcasting, distributing or distributing unauthorized works, shows, pages or audio or radio or television programs with or without sufficient reason to That the work's electronic ID is removed or modified without permission.

1. In the implementation of Articles 1 to 2, any device or device referred to in paragraph (1) and any copy of which the work's identity is removed or the information in it has been altered shall be deemed unauthorized and any unlawful act contained in Paragraph (1) of this article shall be regarded as an act which infringes on the intellectual and artistic property with the rights conferred thereto and shall be subject to criminal penalties and civil liability provided for in Articles 1 to 4. "

Explanation that the terminology law used should define those terms by the legislator so that, in practice, the interpretations of the lawyers, especially the judges, do not come into play, which fortunately have been defined in Article 2 of many intellectual property terms. And so the bill has partially eliminated the problems and ambiguities of the law.

## CONCLUSION

In view of the foregoing, it is clear that all three laws, and the proposed bill of 1398, have criminalized the "abuse of the name, title or special mark of the work's representative". It is noteworthy that although the "publications" were subject to the protection of the law, the reformers of the press law in the year 6 of the new regulations sought more serious support in some cases and increased legal penalties for their occurrence. Under the press law, the crime of using a name, the title of a special representative of a publication, although pursued only by the prosecution of a private plaintiff, does not preclude the prosecution of the prosecution. Thus, it appears that under the press law, the offense was considered "partial pardonable crime", whereas copyright, copyright and artist rights were considered to be pardonable offenses under the bill. New 1398 intellectual property protection does not appear to be a criminal offense and can be pursued by a claimant. Also, legislator 2, on the reduction of the legal amount of imprisonment and of course

The penalties include imprisonment and cash penalties, which can be attributed to the policy of reducing the prison population (due to the effects of imprisonment) and providing a source of income for the government. The country's legislature because of their late invention and widespread use of computer software - after two decades of enacting a law protecting authors, authors and artists - also because of the need for special protection for computer software creators - Technology and technology advances at a surprisingly fast, easy, fast and wide-ranging attack on PC owners - Passage of copyright law protects PC software creators' serious intellectual property rights. In fact, pay attention to the gross difference in terms of imprisonment from ninety-one days to six months and a fine of ten million Rials to fifty million Rials and compare the amount of punishment mentioned in Article 6 of the Press Law (which includes imprisonment of sixty-one). Provides up to three months a day and a fine of one million to ten million riyals for press offenders on the crime, as well as more stringent support for the legislator's support for intellectual property in light of the scattered laws in this area. Given the increasing aggression against the rights of the creators of the aforementioned penalties, house insurance is.

## REFERENCES

- Adler, Amy, & Fromer, Jeanne C. (2019). Taking Intellectual Property into Their Own Hands. *California Law Review*, 107, 1455.
- Afori, Orit Fischman. (2011). Flexible Remedies as a Means to Counteract Failures in Copyright Law. *Cardozo Arts & Ent. LJ*, 29, 1.

## **Criminal Guarantees for Intellectual Property Protection with a Look at Domestic Law**

- Bently, Lionel, & Sherman, Brad. (2014). *Intellectual property law*: Oxford University Press, USA.
- Dehkhoda, Ali Akbar. (1998). *Dictionary*. Tehran, Iran: University of Tehran.
- Dorafshan, Sayyed Mohammad Hadi Ghabooli. (2018). Interface between competition law and intellectual property licences in Iran. *Queen Mary Journal of Intellectual Property*, 8(3), 231-249.
- Dutfield, Graham, & Suthersanen, Uma. (2008). *Global intellectual property law*: Edward Elgar Publishing.
- Fisher, Colin, & Lovell, Alan. (2009). *Business ethics and values: Individual, corporate and international perspectives*: Pearson education.
- Fromer, Jeanne C. (2012). Expressive incentives in intellectual property. *Virginia Law Review*, 98(8), 1745-1824.
- Hettinger, Edwin C. (1989). Justifying intellectual property. *Philosophy & Public Affairs*, 18(1), 31-52.
- Hughes, Jonathan, & Sadler, Simon. (2013). *Non-plan: Essays on freedom, participation and change in modern architecture and urbanism*: Routledge.
- Laighi, Gholamreza. (2002). *Copyright and Publishing in Islamic Countries*. Tehran, Iran Iran Book House [In Persian].
- Landes, William M, & Posner, Richard A. (2009). *The economic structure of intellectual property law*: Harvard University Press.
- Moore, Adam D. (2012). A Lockean theory of intellectual property revisited. *San Diego L. Rev.*, 49, 1069.
- Nanayakkara, Gowri. (2019). Separating the Singer from the Song *Performers' Rights in Sri Lanka* (pp. 1-16): Springer.
- Palmer, Tom G. (1990). Are patents and copyrights morally justified-the philosophy of property rights and ideal objects. *Harv. JL & Pub. Pol'y*, 13, 817.
- Pappalardo, Kylie, & Messe, James. (2019). In support of tolerated use: Rethinking harms, moral rights and remedies in Australian copyright law. *UNSWLJ*, 42, 928.
- Parvin, Mohammad-Reza, & Seyedin, Ali. (2017). CRISPR-Cas9 Gene-Editing Technology from Intellectual Property and Biosafety Law Perspective. *Iranian Journal of Medical Law*, 11(42), 191-228.
- Pila, Justine, & Torremans, Paul. (2019). *European intellectual property law*: Oxford University Press, USA.
- Radin, MJ. (1981-1982). Property and Personhood. *Stanford Law Review*, 34, 957.
- Shahraki, Alireza. (2012). Intellectual property valuation: case study in Iran. *International Journal of Academic Research in Business and Social Sciences*, 2(5), 174.
- Snell-Hornby, Mary. (1991). *Translation Studies—Art, Science or Utopia*: K. van Leuven-Zwart and T. Naaijkens (eds).