

## THE CRIME OF INFRINGING COPYRIGHTS BY ARTIFICIAL INTELLIGENCE

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### Abstract

This research addresses a newly emerging issue in contemporary jurisprudence namely, the infringement of authors' rights through artificial intelligence (AI), which has acquired both material and moral value. This development necessitates the establishment of protection mechanisms to prevent violations, fraud, and the exploitation of others' efforts. It is evident to any discerning mind the positive effects of such protection, such as preserving interests, achieving justice, and thereby contributing to the advancement and progress of the world. At the conclusion of the research, we documented the findings we reached, the most significant of which is that the infringement of authors' rights through AI by exploiting and benefiting from the fruits of their efforts is unlawful and considered a form of unjustly consuming others' wealth, an act that is clearly prohibited. The foundation and core of law lie in the establishment of justice among people and the prevention of injustice and violation of others' rights. We recommended a legislative amendment that would define an appropriate criminal penalty proportionate to the crime of infringing on authors' rights through AI, with a focus on alternative criminal penalties. These include the suspension of punishment execution, supervised probation, conditional release, community service, fines, deferred sentencing, judicial reprimand, exile, compulsory education as a penalty, installment-based penalties, and pledging to maintain public order.

**Keywords:** Infringement; Protection; Rights; Author; Artificial Intelligence.

### Introduction:

Artificial intelligence crimes are considered among the most critical crimes of the near future, if not already occurring in some forms today. Technological advancement has contributed to the emergence of many such crimes, as sophisticated programming has granted certain AI-operated machines capabilities so advanced that they pose risks comparable to the development of self-acquired expertise, enabling them to make independent decisions in various situations, much like human beings. The evolution of civil, economic, and scientific life has given rise to issues newly emerging in contemporary jurisprudence, foremost among them being the infringement of authors' rights through artificial intelligence. This has made it necessary to establish legal protections, prevent violations and fraud, and stop the exploitation of others' efforts. The positive effects of such protection, such as preserving interests and achieving justice, are evident to any rational mind, and these contribute to the progress and advancement of the nation. Scholars have long categorized authorship rights as moral rights with financial value, which grant the author a certain proprietary authority over the product of their thought,

imagination, or intellectual activity. Moral rights are intangible yet possess recognized financial worth under Islamic law; they must be protected. The right of authorship falls under this category, as the effort exerted in the act of creation grants its author a form of exclusive entitlement that carries the essence of a legal right.

### **First: Importance of the Topic**

Undoubtedly, this topic holds great significance in the field of criminal law studies, as reflected in the following points:

1. This study represents a serious attempt to assess the extent to which legal texts have addressed the criminalization of infringement upon authors' rights through artificial intelligence, with the aim of formulating a legal framework and a criminal penalty that aligns with contemporary realities.
2. The infringement of authorship and publishing rights through artificial intelligence is one of the newly emerging issues in jurisprudential discourse. This requires scholars and jurists to formulate an effective and ethical legal system that safeguards and protects the author's rights in their work, making use of all scientific advancements in this field in order to correctly interpret and apply legal rulings to such cases. (Al-Sharif, 2021)
3. Criminals have become increasingly creative in committing crimes, disregarding law, ethics, or authority. As a result, the sovereignty of legislation has been undermined, and new crimes have appeared that Arab societies were not previously familiar with. This calls for a comprehensive study of the legislation governing the infringement of authors' rights through AI, to present findings and recommendations that may contribute to reducing this criminal phenomenon.
4. The legislative process in Palestine has been paralyzed due to the ongoing genocide in Gaza and persistent political and legislative division. This necessitates continued research and study to keep pace with legislative developments, with the goal of providing a study that assists lawmakers in drafting a modern legislative amendment to address AI-related infringements on authors' rights.
5. Humanity today is facing a fierce assault on values and ethics, marked by increasing materialism in society. Hacking of websites, theft of their contents, bypassing of security systems in information networks, and cracking of password-protected software have made it urgently necessary to track such breaches, protect the rightful owners of data, and deter perpetrators with appropriate penalties. Hence, the importance of this research lies in identifying both legal and jurisprudential rulings and determining suitable punishments.
6. The integration of authorship into the realm of artificial intelligence highlights the critical role of experts who are directly engaged with real-world technological developments. These realities form the entry point for scholars to formulate the appropriate legal rulings. Modern sciences have now become essential tools that enable jurists to understand current realities and accurately issue rulings on emerging issues.

### **Second: Methodology of the Study**

In this study, we adopted a balanced, scientific research approach aimed at achieving its intended objective. The method used is an analytical and foundational approach to legislative texts that regulate the infringement of authors' rights through artificial intelligence. This was done by shedding broader and objective light on these texts in order to uncover their true nature and to express our stance regarding the legal loopholes they may contain. We also analyzed

legislative and judicial approaches, focusing on enriching the jurisprudential aspect, selecting from them what helps clarify our ideas and bring them closer to the reader's understanding.

#### **Fourth: Structure of the Study**

Criminal justice and its equal application to individuals has become one of our foremost concerns. Nothing pains us more than the injustice suffered by an innocent person, for such injustice is eternally forbidden. Undoubtedly, a proper understanding of the principles, fundamentals, and details surrounding the infringement of electronic authorship rights through artificial intelligence requires addressing its essence, the two elements of the crime, and the criminal penalties involved. This allows us to examine the issue objectively. Accordingly, the structure of the study is as follows:

- **Introductory Section:** The concept of electronic authorship rights and artificial intelligence.
- **Chapter One:** The two elements of the crime of infringing upon authors' rights using artificial intelligence.
- **Chapter Two:** The criminal penalty for the crime of infringing upon authors' rights using artificial intelligence.

#### **Introductory Section**

##### **The Nature of Electronic Copyright and Artificial Intelligence**

The entry of authorship into the digital, computerized world has made it imperative for scholars to closely examine its details, by understanding its true nature, clarifying the underlying meanings, and identifying the risks of infringement. This understanding enables the legal classification of such cases and the derivation of appropriate rulings in accordance with legal principles and frameworks.

##### **Section One: The Concept of Copyright:**

Terminologically, a "right" refers to something established or confirmed. The term "property" derives from the Latin word *Proprius*, which means "the right of ownership" belonging to the owner. As for the term "intellectual", it refers to something intangible. (Al-Kamali, 2019)

In criminal law, the word "*owner*" includes anyone who shares ownership of an item that can be stolen, or a person who possesses or holds it in trust, or has the legal right to retain it. For an infringement upon copyright to occur, the subject matter must be capable of being owned, that is, it must be considered property under the law. This includes anything that qualifies as a financial asset or is subject to financial rights. (Egyptian Cassation No24118)

The Palestinian Penal Code defines "property" as: "... *the term 'property' includes all living beings or inanimate objects that can be legally owned.*" (3). Some legal scholars argue that: "*Ownership is a direct authority granted by law to an individual over all the products of their mind and thought, granting them the right to exclusively benefit from and profit materially from these ideas, for a legally defined period, without dispute or objection from others.*" (The Palestinian Penal Code, 2014). (Al-Kaswani, 1998)

Others define intellectual property as referring to all that relates to the creations of the human mind, a definition affirmed by many legal researchers. Property rights refer to the bundle of legal rights over the use to which a source is put and over the use made of any income that may be derived from that resource" (Charles and Hill, 1997), (Roger E. Schechter and John R. Thomas, 2003)

The **World Intellectual Property Organization (WIPO)** defines it as: “*The legal rights resulting from intellectual activity in the industrial, scientific, literary, and artistic fields.*” The two researchers state that **copyright** is: “*A set of exclusive legal rights concerned with protecting scientific, literary, and artistic works of the author.*” (Alexandra George, 2012)

They further note: “*The legislator has extended protection to the authors of such works regardless of their type, method of expression, significance, or intended purpose, provided the work contains an element of originality. This means the author must have imparted some personal touch to it and presented it in a tangible form that brings it into existence and makes it ready for publication. Without these conditions, the work does not qualify for the level of protection granted to a copyrighted creation.*” Cassation No. (3354)

### **Section Two: The Concept of Artificial Intelligence:**

Artificial Intelligence (AI) is considered a branch of computer science and one of the core foundations of modern technological industries. It can be defined as: “*The ability of digital machines and computer systems to perform specific tasks that simulate or replicate those performed by intelligent beings—such as the ability to think, learn from past experiences, or engage in processes that require cognitive operations.*” Artificial Intelligence in the Field of Law and Judiciary:

Artificial intelligence, in the legal and judicial domains, refers to the science of deriving solutions to legal problems that hinder the application of justice by simulating human cognitive processes. It serves as a substitute for humans in performing many legal and judicial tasks, such as drafting, analysis, and application of the law, aimed at achieving swift and effective justice. However, the outcomes of artificial intelligence systems are unpredictable, as they often operate within a so-called “black box”, whose internal mechanisms have yet to be fully understood or made transparent. Cybercriminals (hackers) are capable of accessing confidential and personal information, violating privacy and data confidentiality with relative ease. This is due to the astonishing advancement of computer technologies driven by AI, which is paralleled by an even greater evolution in cybercrime and its execution methods. Moreover, those committing these crimes are not ordinary users, they are often experts in computer systems. (Hijazi, 1991.)

The 2019 Internet Health Report highlighted several major problems facing the web. Chief among them is the dominance of major tech companies over users’ lives and the violation of user privacy through apps and programs that continuously track personal data for advertising and commercial purposes. The report also noted the bias of AI tools against certain social groups, and growing concerns about the impact of explicit content on teenagers, especially given the constant online presence of most young people. The report emphasized that privacy has become a critical issue on the internet, where companies exploit every click a user makes to build a personal profile and target them accordingly. It pointed out that most applications transmit user data to large internet companies through data trackers for marketing and commercial reasons. This matter remains highly controversial, primarily because the technology associated with AI is still relatively new, and most countries around the world lack explicit legislation or technical frameworks to regulate the use of such systems. There are also growing concerns over misuse. Imagine a private company having the power to purchase a system that can access a facial recognition database, identifying you just by walking past a building, allowing them to retrieve all your stored information. Or consider the scenario where a government authority misuses this technology to target specific groups with heightened

surveillance or punitive action. Whereas in the past, an individual's privacy might be violated through eavesdropping or unauthorized photography, today, that privacy is breached through the hacking of emails, personal computers, and databases, including those of health insurance companies, hospitals, credit institutions, and social security systems. These breaches often aim at seizing personal data and informational services, including acts of infringement on copyright.

### **Section Three – The Risks of Copyright Infringement:**

The risks associated with the infringement of copyright can be illustrated through the following points:

#### **First:**

Protecting intellectual works, and, by extension, the rights of authors, has become a major concern for rights holders today. When others exploit the fruits of their labor, it destroys their motivation for creativity and innovation, and deprives them of the opportunity to benefit from and manage their work in ways that fulfill their legitimate interests and those of society. (Al-Suaibi, P. 2020)

#### **Second:**

The difficulty of enforcing legal procedures has led to an increase in the scope of violations against copyright. This is compounded by how easily current technological protection methods can be bypassed, especially with the advent of tools like artificial intelligence. These tools can retrieve and utilize copyrighted materials without compensating the rightful owners, thereby neutralizing the effectiveness of copyright protections. (Al-Suaibi, P. 2020)

#### **Third:**

Islamic law, and many modern legal systems, strictly prohibit the infringement of others' property, especially moral/intellectual rights, which revolve around two core principles: (Faraj et al. 2024)

- First: The right to attribute the work to its rightful owner, this is purely a moral right, and integrity and honesty require giving proper credit to the original creator.
- Second: The right to financially benefit from the work's exploitation or publication within the boundaries of the law. (Al-Abadi, 2011)

As a result, the Palestinian legislator prohibits any arbitrary or unlawful interference in a person's privacy, family affairs, home, or correspondence. (Palestinian Cyber Crimes Act, 2018)

Despite thinking we are in control of our personal data, protected by passwords, security measures, or the privacy settings offered by platforms like Facebook, the truth is that this control is often illusory. Many of these tools fall short when confronted with the invasive capabilities of modern AI and digital surveillance systems. This evolving situation raises urgent legal and ethical questions regarding the protection of privacy, intellectual property, and human dignity in the digital age. Indeed, the reality is quite different: much of what we write, or what is written about us, and much of what is exchanged, whether by our will or without it, in specific moments or contexts, does not simply vanish. Instead, it remains stored in massive digital archives, and it may not be in our best interest for such information to be retrieved by others in different times or contexts. (Mustafa, 2022)

The current challenges posed by data processing, collection, use, and commercialization undoubtedly have negative implications for how the internet is used, whether in commercial, social, or governmental settings. There is an urgent need for legislative and regulatory frameworks that empower users to understand the realities of what happens to their personal data and the information they upload online. Equally, users must be empowered to exercise their



rights over their data in a way that ensures their privacy is preserved, and that their intellectual, industrial, and literary rights are protected. (Jabour, 2016).

It is clear that artificial intelligence holds great promise and powerful capabilities for the future. However, it is equally clear that the pace of its development must slow down slightly, long enough for us to re-evaluate our legal and ethical rules, and to agree on new social contracts that ensure AI technologies are harnessed wisely. This approach allows us to reap the benefits of AI while minimizing its risks as much as possible.

## **Chapter One: The Elements of the Crime of Infringement of Copyright by Artificial Intelligence**

### **Introduction:**

Describing any phenomenon as a crime indicates either the commission of an act criminalized by law or the omission of an act mandated by law. This means that there is no crime nor criminal penalty unless the elements related to the crime are fulfilled. Consequently, the crime of infringement of copyright by artificial intelligence consists of its two elements: the mental (*mens rea*) and the physical (*actus reus*) elements. The following will provide a detailed discussion of these elements:

### **Section One: The Moral Element**

#### **Introduction:**

This element consists of two components: knowledge and will, which refer to the psychological foundations of the physical aspects of the crime. They are the means to identify the person responsible for the crime, which is known as criminal intent. It is understood from the infringement of copyright by artificial intelligence that it involves exceeding the permitted limits, violating something legally protected, or unauthorized use of a work or something similar without the permission of its owner or holder. Legal scholars hold that the criminal intent in the mental element of the crime of infringement of copyright by artificial intelligence is based on two fundamental components: (Bilal, 2006)

**First: Knowledge:** The rule in Palestinian legislation is that for the knowledge which establishes criminal intent to coexist alongside will, the perpetrator must be aware of all the legal elements of the crime. If knowledge of any of these elements is absent due to ignorance or mistake, then criminal intent is also absent. (Glaser, 1957 & W. Schabas, 2001)

The knowledge must cover all elements of the factual situation as stipulated by the law, meaning all stages of the conduct, whether by act or omission, and it also includes the causal relationship between the conduct and the result. (Abu-Amer, 1993)

This means the infringer must know that the violations they commit regarding copyright by artificial intelligence could cause harmful damage to the information or its product; this is conditioned on having a deliberate intent for that. In this case, the infringement is described as intentional, unlike cases where knowledge and intent are absent, in which the act is described as an error. (Al-Shawabkah, 2006)

The perpetrator must know that their conduct is capable of causing harm to the subject matter of the right, and must foresee the result arising from this violation. For example, someone who copies a work using artificial intelligence believing it to be their own, but it later turns out to belong to a colleague, does not have the intent to infringe. (Egyptian Criminal Breach, No, 1281)

Ignorance of the law or misunderstanding its provisions does not negate criminal intent, since knowledge and correct understanding of the law are presumed for all people, even though this presumption often contradicts reality. (Jarada and Hosnia, 2020). Nevertheless, it is a

presumption dictated by practical reasons to protect the interest of the public. Accordingly, the Court of Cassation has ruled that knowledge of criminal law and complementary penal laws is presumed for everyone, and thus ignorance or mistake in this regard is not accepted as a defense to negate criminal intent. (Egyptian Criminal No, 1104)

Therefore, for criminal intent to be established, it is the same whether the perpetrator is aware of the rules of criminalization or ignorant of them, and whether they are mistaken about their reality or not. (As regards knowledge of law there is a rule proactively in all countries that every man is supposed to know the law he is deemed to know the law. A man cannot say I did know it, the court will not accept it. However, sometimes you may blunder, in very limited cases, in respect of certain administrative rules or by-laws you may say 'I did not know 'I did not see the notice. The court might take it into consideration taking it as a cause of mitigation, after conviction and before sentence. (Bardaky, 1945). The rule is that ignorance of criminal law is not an excuse that absolves criminal liability. Thus, the perpetrator cannot claim, for example, that they believed their act was lawful at the time they committed it due to a mistake or ignorance, and therefore they lacked criminal intent. The truth is that ignorance or mistake regarding facts negates criminal intent only if that ignorance or mistake relates to a fact that constitutes one of the elements of the crime, meaning the mistake must be substantial, as jurists say. However, if the ignorance or mistake relates to a fact that does not constitute an element of the crime, then it does not negate criminal intent because it is a non-substantial mistake. (Egyptian Criminal Cassation No. (955)

**Second: Will:** Will is the second element of criminal intent. It is a psychological force that directs all or some of the body's members towards achieving an unlawful purpose, that is, to infringe on a right or interest protected by law. (Al- Husainawi, 2009) (Egyptian Criminal Cassation No. (955)

The will must be directed towards both the criminal conduct and the criminal result in the case of material crimes, or towards the criminal conduct alone in the case of formal crimes. But in criminal law, no external conduct, however serious or even fatal its consequences may have been, there is no punishment unless it has been produced by some form or other of guilty mind or "means rea", no punishment without means real, that is the basic rule. True, he must not have intended to commit the particular curiae which he did commit. The result may have been differently intended by the wrong doer. In any case, he must have intended to do what you and I know to be illegal. (Bardaky, 1945)

It is necessary that the will of the perpetrator in the crime of infringing intellectual property rights be directed to attributing the work or part of it to the perpetrator and not to its true author. Also, for criminal intent to exist, the will must be directed toward achieving the criminal result. For example, the will of the infringer must be directed towards exercising control over the work by publishing it, considering it their own right. If the perpetrator declares that the work is a product of their own ideas as part of a role in a play, then criminal intent is not established. (Palestinian Supreme Criminal Appeal No. (32 / 65), Supreme Criminal Appeal, session held on 26 July 1965, previously cited source, Volume 19, p. 92. (Palestinian Criminal Cassation No. 257 / 2004, session held on 16 June 2004, unpublished). (Blakesley, 1996)

Criminal intent is an internal matter that the perpetrator harbors and conceals within themselves; therefore, it is often impossible to prove it directly in some crimes. (Mustafa, 1983). The judge's way to ascertain and confirm its existence is by inferring it from external manifestations that reveal and show it. The judge relies in this regard on the behaviors exhibited

by the perpetrator and the surrounding external circumstances. This means that determining criminal intent is a purely objective matter subject to the discretion of the trial judge, under the supervision of the appellate court, based on the evidence before them. The Court of Cassation does not have jurisdiction to review this discretion as long as the inference was reasonable. (Egyptian Criminal Cassation No. 2127)

## **Section Two: The Physical Element**

The physical element in every crime is a fundamental component of the crime's body, as it relates to the tangible, perceptible aspects upon which the crime is based and which can be perceived through the senses. It serves as concrete evidence that is easy to identify and rely upon in order to establish proof against the perpetrator. Thus, punishment is based on tangible physical conduct, not merely thoughts circulating within the mind, making accountability logical. Criminal liability for a legal entity (juridical person) is originally an old concept, yet it remains a matter that sparks considerable scholarly and judicial debate. Its status has not been decisively settled in many modern criminal codes, except in Anglo-American systems and those aligned with them. Apart from this there are certain special laws which make corporations as such liable, mainly companies ordinance, you will find there a good many sections, inflicting certain penalties on the corporations for instance, for not holding a meeting in time, for not sending monthly returns, and so on. All these penalties consist of fines. In short, in view of the definition embodied in the interpretation ordinance and also in the light of section 4. It would not be difficult to introduce the English principles in our law. (Blakesley, 1996)

The question then arises: Is it possible to apply the principles of such liability to devices and robots operating with artificial intelligence?

Legal scholarship that opposes the idea of criminal liability for legal entities nevertheless acknowledges civil liability for their actions, and this liability is only imposed if a fault on their part is proven. So why do we accept their capacity to commit fault in the civil field but reject it in criminal law? The truth is that a robotic person (artificial entity) enjoys all rights except those inherently tied to the natural human condition, within the limits prescribed by law. (Article No. 61 of the Civil Law). This element consists of an act and a result, with a causal relationship between them:

### **First: Criminal Conduct:**

Criminal liability is personal and is only borne by the one who committed or participated in the crime. Therefore, a person is not held responsible for a crime committed by someone else because judicial justice refuses to hold accountable one who is entirely unrelated to the offense. Criminal law does not recognize liability for the actions of others. (For instance: The basic rule in Criminal law that the man is responsible for his own acts. We spoke of the restricted scope of Criminal Law. We also mentioned the limited responsibility in cases of accident, and then we spoke of the relation between moral and legal responsibility and we stressed the fact that there properly speaking. (Bardaky, 1945)

If a robot or any automated device operating with artificial intelligence behaves in a criminal manner against a natural person or infringes on any of that person's rights contrary to criminal legislation, what is the extent of its responsibility for that behavior, whether active or passive?

The rule is that criminal punishment only applies to those whose responsibility for the committed crime has been established. Therefore, criminal liability is personal and only applies to those who committed or participated in the crime. A person cannot be criminally punished



twice for the same act or omission, whether under the provisions of the Palestinian Penal Code or any other law. (Article (21) of the Palestinian penal code states that: A person cannot be twice criminally responsible either under the provisions of this Code or under the provisions of any other law for the same act or omission, except in the case where the act or omission is such that by means thereof he causes the death of another person, in which case he may be convicted of the offence of which he is guilty by reason of causing such death, notwithstanding that he has already been convicted of some other offence constituted by the act or omission.). Criminal law, which was originally designed to deal with human individuals, faces difficulties in keeping pace with the development of autonomous machines and in dealing with advances in artificial intelligence. Criminal law naturally assigns liability to the operator of the machine. For example, if a search engine (Google) provides you with false information on which you base a decision, you will be the one held criminally responsible for it. The basic principle in crime is that punishment is only borne by the person who is convicted as responsible for it. The punishment must be proportionate in severity to the nature of the crime involved, meaning that a person is only accountable for their own wrongful act, and the guilt of the crime is attributed only to its perpetrator. Punishment is only imposed on the one who committed the offense. The concept of the "personality of punishment" and its proportionality to the crime are linked to who is legally considered responsible for committing it.

Before imposing criminal liability on someone, a thorough examination must be made as to whether they exercised any control over the machine. This may result in the non-conviction of machines that commit crimes. This lack of punishment poses an uncomfortable problem for human societies, requiring creative thinking to resolve this complex issue. It is inconceivable not to hold a person accountable for crimes committed through artificial intelligence in society, especially if such crimes become widespread and alarming. In civil law, the driver of a car is currently held civilly liable for traffic accidents related to their vehicle, even if they were not involved in causing them.

**1: Criminal Act:** Legal scholars refer to this as "positive conduct," but most comparative legislations, such as the Palestinian law, use the term "act." (Cross and Jones, 1976)

The movement or organic motions that constitute the criminal act must originate from or be caused by the will. If the will is absent, the movement loses its voluntary character, and the criminal act is not established, even if the movement physically causes the violation of rights protected by law. For example, a person who suddenly faints and falls onto a computer causing the downloading of a scientific research document does not commit a criminal act because their movement lacks voluntariness. (Al-Qahouji, 2002)

**2: Criminal Omission:** This is a rare type of behavior, as most crimes are active (positive) acts. It is referred to as "omission" or "negative conduct." (Abu-Amer, 1993)

The general rule in criminal law is that it sometimes imposes an obligation to refrain from an act on those subject to it, and it may also impose duties to perform certain acts. The Palestinian legislator punishes failure to fulfill such obligations. This latter type of obligation aims to protect a specific interest, and neglecting it constitutes an infringement on that protection. (Sorour, 1981)

### **Second: The Criminal Result:**

The concept of the criminal result refers to the consequence that follows from the criminal conduct, whether by action or omission. It is the tangible harm inflicted on the interest protected by the law. (Al-Khalaf, n.d.)

The Palestinian legislator has stipulated that the intended result of committing an act or omission does not matter unless there is an explicit legal text stating that the intention to achieve that result constitutes an element of the crime, either wholly or partly, derived from that act or omission. (Article No, 2/11 of south penalty code No 74, Article (11) of the Palestinian penal code states that: ... (2) Unless the intention to cause a particular result is expressly declared to be an element of the offence constituted, in whole or in part, by an act or omission, the result intended to be caused by an act or omission is immaterial.) Legal scholars are divided into two approaches regarding its definition: the legal approach and the material approach. (Al- Qahouji, 2002)

Supporters of the legal approach define the criminal result as: "the aggression inflicted upon a right or interest protected by law, whether this aggression manifests as actual damage to the protected right or interest or merely exposing it to danger." The material approach views the result as a change occurring in the external world as a consequence of the criminal conduct. According to this approach, the result is not an element in all crimes. For example, in the crime of copyright infringement by artificial intelligence, the legal result is the violation of the ownership right, whereas the material result is the change represented by transferring the stolen property into the possession and ownership of the perpetrator. As an element of the physical aspect of the crime, the result is only considered if it embodies the characteristics of this element through an external manifestation or a tangible material entity in the external world. Therefore, the material approach tends to prefer the legal approach. (Voinet, 1989.)

Accordingly, any human behavior that causes a change in the external environment, whether the consequences are great or small, does not always have legal significance. When the legislator does recognize the natural consequences of behavior, whether by action or omission, they become part of the legal components of the crime, so it cannot be said that the crime is complete unless the result has occurred. (Hosni, 1984)

### **Third: The Causal Relationship:**

The causal relationship means that the criminal conduct, whether by action or omission, is what led to the occurrence of the criminal result required by the law in the model of the crime. (Egyptian Cassation No.30138). In other words, it means proving that the result would not have occurred in the external world unless a specific act was committed or a particular omission was made. (Mustafa, 1983)

Hence, its legal importance becomes clear, as it is one of the elements of the physical component in material crimes, and its existence is a fundamental condition for criminal liability. If the result can be attributed to the conduct, the physical element of the crime is complete, and consequently, criminal liability is established if the other elements of the crime are fulfilled. (Hosni, 1984 & Zakr, N. 2001). However, if the causal relationship between the conduct and the result is absent, meaning that the result did not occur due to the perpetrator's conduct, then liability for the completed crime cannot be established. Accordingly, the presence or absence of causation applies to crimes where the legislator requires the occurrence of a material criminal result as part of the crime's model. It does not matter whether the result was caused by an act of the perpetrator or by an omission that led to the criminal result. However, if the crime is formal (i.e., the legislator requires only the commission of the act itself to constitute the physical element), then there is no need to examine causation. (Sorour, 1981)

In the case before us, regarding infringement of copyright by artificial intelligence, the physical element consists of conduct that violates the law in the digital environment, the effects

of which reflect on reality as assault and theft (the result), and the causal relationship between conduct and result is clear. The conduct is the unauthorized breach of the digital environment, which causes harm to the author and theft of their belongings, thus describing it as an intentional crime. Only the author has the right to exploit their work financially by any means, including directly transferring the work to the public in any form or indirectly transferring it by copying copies within their reach. No one else may exercise this right without prior written permission from the author or their successor. Such permission must be in writing, explicitly and in detail specifying each right transferred, its scope, purpose, duration, and place of exploitation, so both parties are clear about the terms and to avoid vague, unfair general terms in the contract. Writing is an essential pillar of the contract; it cannot be established without it, and it is necessarily required to prove it, which no other evidence can replace. (Egyptian Cassation No. 7440)

It is worth noting the difficulty of proof due to the nature of the violation in this virtual environment. It has characteristics that make it hard to follow up and detect, as it has no international boundaries, it is global. Additionally, since it does not involve violence as other material crimes do, it is a "soft crime" that does not cause the noise or attention of crimes such as shooting or killing. (Murad, 1998)

## **Chapter Two: Criminal Punishment for Infringement of Copyright by Artificial Intelligence<sup>(1)</sup>**

### **Introduction:**

Criminal scholars have not viewed punishment merely as retribution demanded by moral rules or simply as a fair and deserved compensation for society. Rather, they have added a preventive function, whereby punishment plays a role in protecting society from criminals by creating an effect that limits the commission of new crimes, whether by the perpetrator or others. With this we come to the Banes of ethical retribution. Temptation and provocation do not make the offence a non-criminal act, but may cause a mitigation in punishment. (Bardaky, 1943).

Clarifying the criminal penalty resulting from infringement of copyright through artificial intelligence techniques requires addressing two topics. The first concerns the violation of intellectual property rights by artificial intelligence, and the second concerns the theft of intellectual information by artificial intelligence, explained as follows:

### **Section One: Violation of Intellectual Property Rights by Artificial Intelligence**

The newly emerging interests are represented in the establishment of legal centers created by the new digital life, such as intellectual property rights over software designs, in addition to industrial property rights, commercial names of various websites, and rights arising from their operation and the services they provide to customers. (Egyptian Cassation No. 7224)

The law stipulates that: "Freedom of artistic and literary creativity is guaranteed, and no lawsuits to stop or confiscate artistic, literary, or intellectual works, or against their creators, may be raised except by judicial order. No penalty involving deprivation of liberty or preventive detention may be imposed for crimes committed due to publicizing the artistic, literary, or intellectual product." (Palestinian Cyber Crime Act No 100, 2018)

Anyone who violates intellectual, literary, or industrial property rights according to applicable legislation through the electronic network or any information technology means shall

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<sup>1</sup> To be noted that the draft law stipulates that attempted commission of such crimes is punishable by half the penalty prescribed for the completed offense. See: Article (391) of the Draft Palestinian Penal Code of 2003.

be punished by imprisonment for a period not exceeding six months or a fine of not less than five hundred Jordanian dinars and not exceeding one thousand dinars, or the equivalent in legally circulated currency, or by both penalties.(Palestinian Cyber Crime Act No 100, Article No 20, 2018)

Intellectual property crimes are crimes related to the assault on the moral or material rights that grant the owner an exclusive right over a work, invention, or derivation. The assault may take the form of imitation, reproduction, forgery, or other methods of violation.(Ali and Mukhtar, 1992)

Therefore, anyone who violates another's intellectual property rights, whether related to literary, artistic, photographic works, or equivalent, is punishable by imprisonment for a period not exceeding six months and a fine not exceeding five hundred dinars, or by one of these two penalties. (Article No. 389 Palestinian Penal Code)

The Arab Convention on Combating Information Technology Crimes criminalizes the infringement of the author's rights as defined by the law of the member state, if the act is committed intentionally and not for personal use. It also criminalizes the infringement of neighboring rights related to the author's rights, as defined by the law of the member state, if the act is committed intentionally and not for personal use. (Article (17) of the Arab Convention on Combating Information Technology Offences).

Furthermore, the Palestinian Copyright and Publication Law stipulates that:

1. Any person who knowingly commits any of the following acts is considered to have committed a crime contrary to this law:
  - a. Prepares for sale or rent a copy that infringes on a work whose copyright is still valid, or
  - b. Sells or rents such a copy or offers it for sale or rent in the course of trade, or
  - c. Distributes such a copy with the intention of trading it or in a manner that unjustly affects the rights of the copyright holder, or
  - d. Exhibits such a copy to the public with the intention of trading, or
  - e. Whoever imports into the United Kingdom a copy of such a work for the purpose of sale or rental shall be deemed to have committed an offense under this law and, upon conviction, shall be liable to a partial fine not exceeding forty shillings for each copy dealt with in violation of this article, provided that the total fine for the entire transaction does not exceed fifty pounds. If the offender repeats the crime, he shall be punished for the second and subsequent offenses with the same fine mentioned above, or with imprisonment with or without hard labor for a period not exceeding two months.
2. Anyone who knowingly manufactures or obtains a plate with the intent to produce copies that infringe on a work whose copyright is still valid, or who knowingly causes this for their own benefit without the consent and approval of the rights holder, is considered to have committed a crime under this law. Upon partial conviction, the offender shall be fined no more than fifty pounds. If the offense is repeated, the offender shall be punished for the second and subsequent violations with the aforementioned fine or imprisonment with or without hard labor for a period not exceeding two months.
3. The court before which any such case is brought, whether the accused is convicted or acquitted, may order the destruction of all copies or plates in the possession of the accused if it is proven that they caused an infringement, or may order their delivery to the

copyright holder, or may otherwise dispose of them as it deems appropriate. (Article (11) of the Palestinian Copyright Law No. (16) of 1911)

The Court of Cassation has ruled that: "The legislator, aiming to strike a suitable balance between guaranteeing all legal protections for the rights and powers of the author over their work on one hand, and ensuring the optimal availability of creative works on the other hand, thus encouraging the widespread dissemination of knowledge and creative activity, has established a series of licenses and exceptions as limits and exceptions to the exclusive rights granted to copyright holders.

The legislator permits these licenses and exceptions to be exercised without the permission of the copyright holders, and without compensation or remuneration. These include allowing the performance of a work within the family framework, encompassing parents, children, grandchildren, and family friends only, or by students within an educational institution. This is considered personal, non-public use, with some expansion in the concept of such use, especially when necessary for teaching purposes in educational institutions, to encourage learning and scientific research and to raise the level of education through access to the fruits of human creative intellect. (Paragraph (1) of Article 171 of Law No. (82) of 2002 concerning the Protection of Intellectual Property Rights states: "Without prejudice to the moral rights of the author in accordance with the provisions of this law, the author may not, after publishing his work, prevent others from performing any of the following acts:

First: Performing the work in meetings within a family framework or by students within an educational institution, as long as this is done without collecting direct or indirect financial compensation). However, the condition for applying the license stated in the first paragraph of Article (171) of the Intellectual Property Rights Protection Law is that such use must be free from any intent of direct or indirect financial gain." (Egyptian Cassation No. 1985)

### **Section Two: The Theft of Intellectual Information by Artificial Intelligence**

Anyone who steals information from a computer system owned by another person shall be punished by imprisonment and a fine not exceeding three thousand dinars, or by either of these two penalties.(Article (390/1) of the Draft Palestinian Penal Code of 2003)

Personal or real rights are not considered theft because they lack a physical entity; a right is merely a legal abstraction. For example, a person who deceives their neighbor into believing they have an easement right on their property and actually exercises it is not considered a thief. (Refer to: Article (263) of the Palestinian Penal Code of 2003. Meanwhile, Article (330) of the Draft Palestinian Penal Code of 2003 defines it as follows: "Whoever takes movable property owned by another without their consent and with the intent to possess it.").However, if such a right is registered in a document, then taking or transferring this document, which is a physical object, would constitute theft.Finally, benefit or use of a thing can never be the subject of theft because benefits do not have a tangible physical existence in the external world; rather, they are a mere intangible state that cannot be taken. Examples include the use of natural forces such as heat, cold, or light. For instance, a person who uses fire lit by their neighbor without consent is not a thief of heat, and a person who uses their neighbor's lamp for light is not a thief of light.As for electronic crime, some legal scholars have formulated numerous definitions, which vary depending on the scientific field they belong to and the criteria of definition itself. (Abu Al-Rob, 2018)

Researchers have broadened the scope of the criminal phenomenon emerging from the use of computers from a technical perspective, while legal scholars studying the same



phenomenon have given different definitions based on their legal focus. Among legal scholars, the definitions vary according to the subject of the study, whether related to criminal law, private life, or intellectual property rights. (The legislator has stipulated that: "Freedom of artistic and literary creativity is guaranteed, and no lawsuits may be filed or initiated to suspend or confiscate artistic, literary, or intellectual works, or against their creators, except by judicial order. No custodial penalty or pre-trial detention shall be imposed for crimes committed due to the public display of artistic, literary, or intellectual products." Intellectual property crimes are offenses related to the violation of moral or material rights that grant their owner an exclusive right over a work, invention, or derivative. Such violations include imitation, reproduction, forgery, and other forms of infringement. (Ali and Mukhtar, 1992)

It is noteworthy that in analyzing the legal nature of informational property, there exists only material informational property, which cannot be separated from this nature, such as machines and computer devices. There is also material informational property that contains intangible content, which gives it its real value, such as magnetic tapes. Undoubtedly, programs and information can be acquired by operating them, that is, by loading them into a computer and using the necessary techniques for operation through a password key. Therefore, it is permissible to obtain (or acquire) what they contain. Anyone who obtains private information of others during its recording or transmission by any means of information processing, or enables others to obtain private information during its recording or transmission, whenever its disclosure could harm the reputation of its owner or their personal life, is liable under the law. (Qashqoush, 1992)

## Conclusion

With its tremendous development, technology has become a major threat and poses significant challenges to criminal law. This is what we attempted to address in this research, which has ultimately led us to a set of findings and recommendations, as outlined below:

### First: Findings:

1. Prohibition and criminalization are parallel paths that must proceed together to ensure the highest meanings of criminal justice; thus, criminalizing the infringement of copyright through artificial intelligence is necessary.
2. Scholars have traditionally classified copyright as an intangible right with financial value that grants its owner certain financial authority over it, stemming from their thought, imagination, or activity.
3. Copyright is a set of exclusive legal rights concerned with protecting the scientific, literary, and artistic works of the author.
4. Copyright is a jurisdiction recognized by law to anyone who produces innovative intellectual output in the fields of science, arts, and literature, publishing it through communication networks either on physical media (such as memory cards) or in digital form displayed on the internet, to serve a specific interest.
5. The presence or absence of causation applies to crimes in which the legislator requires the occurrence of a material criminal result, such as the theft of intellectual information through artificial intelligence. It does not matter whether the result was caused by the perpetrator's act or omission leading to the criminal outcome.
6. The legislator has granted protection to authors of works regardless of their type, form of expression, importance, or purpose, provided that the work includes some element of innovation.

7. The mental element (*mens rea*) is present in the crime of copyright infringement; this occurs when the offender knows that their actions infringe on copyright in a way that causes harmful impact to the information or its product, with deliberate intent. Therefore, the infringement is described as intentional; otherwise, if there is no knowledge or intent, the act is considered a mistake.
8. Proving the crime of copyright infringement by artificial intelligence is difficult due to the characteristics of violations in this virtual environment, which make monitoring and detection challenging. Such violations transcend international borders, being global, and since they do not involve physical violence like other material crimes, they are considered "soft crimes" that do not cause public uproar like murder or assault.
9. Infringing on copyright by artificial intelligence, through exploitation and benefiting from the efforts of their owners, is unlawful and constitutes an unjust taking of others' money. This is prohibited, as law is founded on justice and the prevention of injustice and infringement of others' rights.

## Second: Recommendations:

- 1- We recommend a legislative amendment that defines a criminal penalty proportional to the crime of infringing copyright through artificial intelligence.
- 2- It is recommended to focus on alternative criminal sanctions, including: suspension of sentence execution, probation, conditional release, community service, fines, postponement of criminal sentencing, judicial reprimand, exile, compulsory education penalties, installment payment of fines, and submitting a pledge to maintain public order.
- 3- It is necessary to unify the regulatory, legal, administrative, and institutional frameworks for protecting copyright through artificial intelligence in all its fields, scientific, medical, literary, or artistic.
- 4- There should be a swift move towards governing the judicial system and electronic litigation, adopting concepts of accountability, transparency, integrity, and fairness to ensure the exercise of good governance powers.

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