



Research Article

Comparative Study of the Enforcement Guarantees of Literary and Artistic Property Rights in the Legal Systems of Afghanistan and Iran

Fazel Rabi Khairkhah¹, Rahmatullah Fazil², Saifuddin Jahed³

1. Department of Law, Faculty of Law and Political Science, Parwan University, Afghanistan
E-mail: khairkhahghawsi@gmail.com 
2. Department of Law, Faculty of Law and Political Science, Parwan University, Afghanistan
E-mail: Rahmatullahfazil8@gmail.com
3. Department of Law, Faculty of Law and Political Science, Parwan University, Afghanistan
E-mail: yusofisaifuddin154@gmail.com



Copyright © 2026 by Authors, Published by JUSTICES: Journal of Law. This is an open access article under the CC BY License <https://creativecommons.org/licenses/by/4.0/>

Received : March 26, 2026
Accepted : May 27, 2026

Revised : April 21, 2026
Available online : June 14, 2026

How to Cite: Fazel Rabi Khairkhah, Rahmatullah Fazil, & Saifuddin Jahed. (2026). Comparative Study of the Enforcement Guarantees of Literary and Artistic Property Rights in the Legal Systems of Afghanistan and Iran. *JUSTICES: Journal of Law*, 5(2), 26–42. <https://doi.org/10.58355/justices.v5i2.221>

Abstract. Literary and artistic property rights are considered among the most important branches of intellectual property law, playing a fundamental role in supporting creativity, innovation, and cultural development. The infringement of these rights, in addition to causing financial and moral damages to creators, weakens scientific, literary, and artistic motivations within society. This study examines and analyzes the enforcement mechanisms for the infringement of literary and artistic property rights in Afghan law through a comparative study with Iranian law. In this research, the civil and criminal sanctions related to the infringement of the rights of authors, writers, artists, and researchers have

been analyzed, along with the role of precautionary measures, compensation for damages, seizure and confiscation of unlawful works, prevention of continued infringement, publication of court judgments, and judicial prosecution. The type of this research is qualitative and the method employed for collecting data is based on documentary and library research. In other words, after examining the relevant texts, the findings have been described and analyzed on the basis of the principles governing literary and artistic property rights. The findings of the study indicate that both the Afghan and Iranian legal systems have provided relatively extensive mechanisms for the protection of literary and artistic property rights. Nevertheless, shortcomings remain in certain areas, including the precise determination of moral damages, the deterrent effect of punishments, and the effective implementation of laws. The study concludes that strengthening civil and criminal enforcement mechanisms, accelerating judicial proceedings, and achieving greater harmony with international standards can play a significant role in reducing violations of literary and artistic property rights and ensuring effective protection for creators.

Keywords: Literary and Artistic Property Rights, Copyright, Civil Enforcement, Criminal Enforcement, Compensation for Damages, Afghan Law, Iranian Law.

Abstrak. Hak kekayaan intelektual di bidang sastra dan seni dianggap sebagai salah satu cabang terpenting dalam hukum kekayaan intelektual, yang memainkan peran mendasar dalam mendukung kreativitas, inovasi, dan perkembangan budaya. Pelanggaran hak-hak ini, selain menyebabkan kerugian finansial dan moral bagi pencipta, juga melemahkan motivasi ilmiah, sastra, dan seni dalam masyarakat. Studi ini meneliti dan menganalisis mekanisme penegakan hukum terhadap pelanggaran hak kekayaan intelektual di bidang sastra dan seni dalam hukum Afghanistan melalui studi perbandingan dengan hukum Iran. Dalam penelitian ini, sanksi perdata dan pidana yang berkaitan dengan pelanggaran hak-hak penulis, pengarang, seniman, dan peneliti telah dianalisis, bersama dengan peran tindakan pencegahan, kompensasi atas kerugian, penyitaan dan penyitaan karya ilegal, pencegahan pelanggaran berkelanjutan, publikasi putusan pengadilan, dan penuntutan yudisial. Jenis penelitian ini adalah kualitatif dan metode yang digunakan untuk pengumpulan data didasarkan pada penelitian dokumenter dan pustaka. Dengan kata lain, setelah meneliti teks-teks yang relevan, temuan-temuan tersebut telah dideskripsikan dan dianalisis berdasarkan prinsip-prinsip yang mengatur hak kekayaan intelektual di bidang sastra dan seni. Temuan studi ini menunjukkan bahwa sistem hukum Afghanistan dan Iran telah menyediakan mekanisme yang relatif luas untuk perlindungan hak kekayaan intelektual sastra dan seni. Meskipun demikian, masih terdapat kekurangan di beberapa bidang, termasuk penentuan yang tepat tentang kerugian moral, efek jera dari hukuman, dan implementasi hukum yang efektif. Studi ini menyimpulkan bahwa penguatan mekanisme penegakan hukum perdata dan pidana, percepatan proses peradilan, dan pencapaian keselarasan yang lebih besar dengan standar internasional dapat memainkan peran penting dalam mengurangi pelanggaran hak kekayaan intelektual sastra dan seni serta memastikan perlindungan yang efektif bagi para pencipta.

Kata Kunci: Hak Kekayaan Intelektual Sastra dan Artistik, Hak Cipta, Penegakan Hukum Perdata, Penegakan Hukum Pidana, Ganti Rugi, Hukum Afghanistan, Hukum Iran.

INTRODUCTION

Literary and artistic property rights, as one of the most important branches of intellectual property law, play a fundamental role in protecting scientific, literary, cultural, and artistic creativity. The growth of knowledge, technology, and modern means of communication in the contemporary era has provided unprecedented

opportunities for the creation and dissemination of intellectual works. However, alongside these advancements, the infringement of creators' rights has become one of the serious challenges facing legal systems. Unauthorized reproduction, publication, translation, adaptation, and exploitation of literary and artistic works not only cause financial and moral harm to the owners of such works, but also reduce motivation for creativity, innovation, and cultural production. Therefore, effective protection of literary and artistic property rights is regarded as an essential requirement for ensuring justice, encouraging intellectual creation, and promoting cultural development in every society. (Rustambekov et al., 2024: 17)

In contemporary legal systems, the mere recognition of literary and artistic property rights without the establishment of effective enforcement mechanisms cannot guarantee genuine protection of these rights. The importance of enforcement mechanisms lies in the fact that, on the one hand, they prevent violations of the rights of creators, and on the other hand, they provide the means for compensating damages resulting from such infringements. For this reason, legislators in various countries have sought to provide effective protection for authors, writers, artists, and other intellectual creators through the adoption of civil remedies, criminal sanctions, and precautionary measures.

In Afghan law, the Law on the Support of the Rights of Authors, Writers, Artists, and Researchers, as well as the Penal Code, contain special provisions for the protection of literary and artistic property rights. In addition to criminalizing infringements of intellectual property rights, these regulations provide enforcement measures such as imprisonment, monetary fines, compensation for damages, confiscation and destruction of unlawful copies, seizure of works, prevention of continued infringement, and publication of court judgments. Nevertheless, technological developments, the expansion of cyberspace, and the emergence of new methods of copyright infringement have further highlighted the necessity of revising and strengthening protective mechanisms. (Boyle & Jenkins, 2024: ix-x)

On the other hand, Iranian law also has a relatively extensive background in the field of literary and artistic property protection, and various laws have been enacted to safeguard the rights of creators. A comparative study between the legal systems of Afghanistan and Iran can reveal the strengths and weaknesses of both systems and provide suitable solutions for improving legal protections.

The importance of this research lies in the fact that examining the enforcement mechanisms for the infringement of literary and artistic property rights is not only of academic and legal significance, but also carries considerable social, cultural, and economic importance. Effective protection of intellectual rights contributes to cultural growth, strengthens the creative economy, and encourages creators to produce scientific and artistic works. Accordingly, the present study seeks to examine and analyze the civil and criminal enforcement mechanisms for the infringement of literary and artistic property rights in Afghan law through a comparative study with Iranian law, and to evaluate the effectiveness of these mechanisms in protecting the rights of creators.

Enforcement Mechanisms of Literary and Artistic Property Rights in Afghan Law

Copyright infringement refers to the use or reproduction of copyrighted works without the permission of the rights holder, the consequences of which extend far beyond financial losses suffered by creators and rights owners. This phenomenon weakens the integrity of intellectual property rights, limits innovation and creativity, and threatens the sustainability of creative industries. Furthermore, copyright infringement has broad social consequences, including cultural erosion, loss of employment opportunities, and reduced motivation for artistic expression. By diminishing the value of intellectual property rights, copyright infringement also undermines the fundamental principles of justice, fairness, and respect for creativity. (Choudhary, 2024).

The law protecting intellectual property rights plays a significant role in identifying acts that may constitute infringement of intellectual property in various fields. Awareness of such laws is essential for an academic society. The protection of intellectual property rights is the principal objective pursued by all literary and artistic property laws. The foundation of protection in intellectual property legislation is based on the principle that the law does not permit a person to appropriate for themselves what has been created through the effort, skill, and investment of another person (Mittal, 2018).

The enforcement mechanisms of literary and artistic property rights hold fundamental importance in legal systems because if respect for literary and artistic property rights remains limited to mere recognition in legal provisions without practical means of protection, such rights would become meaningless. Under Afghan law, infringement of literary and artistic property rights constitutes an independent offense and does not require the commission of other crimes such as theft, destruction of property, or breach of trust for its realization. The enforcement mechanisms provided under Afghan law for the protection of literary and artistic property rights in various fields include the following:

Criminal Enforcement Mechanisms

Criminal enforcement refers to the punishment prescribed by law for individuals who violate legal provisions. Accordingly, if a person commits a crime, they shall be subjected to the punishment determined for that offense, and through this mechanism the implementation of criminal laws is guaranteed. (Accessed on 11/2/1405, IRIB News) Article 742 of the Penal Code of Afghanistan specifies the acts that constitute the offense of infringement of literary and artistic property rights:

“A person who publishes, reproduces, performs, displays, offers for sale, distorts, alters, manipulates, materially or morally exploits, or translates a book, treatise, booklet, poem, composition, play, translation, painting, drawing, geographical map, musical work, cinematic film, television series, radio or television program, sculpture, calligraphic or photographic work, graphic or architectural work, handicraft, invention, scientific discovery, industrial design, trademark, or any other right arising from the intellectual activities of another person in their own name or in the name of another person without the written permission of its owner, shall be

deemed to have committed the crime of infringement of intellectual property rights. The perpetrator of the offense of infringement of intellectual property rights shall be punished in accordance with the provisions of Chapter Seven of the Penal Code of the country.”

Regarding criminal sanctions for the infringement of literary and artistic property rights, Article 743 of the Penal Code expressly provides that:

“(1) A person who intentionally violates another person’s copyright for the purpose of obtaining commercial benefit shall be sentenced to a maximum short-term imprisonment or a monetary fine ranging from thirty thousand to sixty thousand Afghanis.” The term “copyright” mentioned in this law refers to the right of reproduction. Reproduction means any act that results in making or producing another copy of the original work. The form or medium, and whether the reproduction is temporary or permanent, is not of importance; what is significant is the violation of the creator’s rights. (Alizadeh, 1397: 40)

Furthermore, according to Article 748 of the Penal Code, upon the complaint of the owner of intellectual property rights, the infringer shall be subject to judicial prosecution. (Accessed on 11/2/1405, 8AM Media) Therefore, proceedings related to crimes involving infringement of literary and artistic property rights commence upon the complaint of a private complainant and are terminated upon their withdrawal.

Likewise, the court may order the confiscation of the infringing copies and the materials used in their reproduction. In this regard, paragraph (1) of Article 30 of the Law on the Support of the Rights of Authors, Writers, Artists, and Researchers provides:

“Issuance of an order for the confiscation and destruction of copies resulting from the infringement and their related components, without compensation to the infringer, in such a way that no harm is caused to the owner of the work.”

Paragraph (2) of the same article, regarding the instruments used for committing copyright infringement, further provides:

“Issuance of an order for the confiscation & destruction of the materials. Equipment used by the infringer in producing the copies, without compensation to the infringer, in a manner that minimizes future infringements.”

Civil Enforcement Mechanisms for the Infringement of Literary and Artistic Property Rights

Based on the principles of civil liability, any person who causes unjustified and abnormal harm to another person is obligated to compensate for such damage. Under specific laws relating to civil liability, courts may order compensation for the aforementioned damages. In addition to general civil liability rules, this issue has also been addressed in literary and artistic property laws.

Civil enforcement mechanisms are regarded as among the most effective and widely used remedies in the field of intellectual property law. (Accessed on 10/2/1405, Tebyan) The Afghan legislator has not overlooked this matter. Article 29 of the Law on the Support of the Rights of Authors, Writers, and Researchers grants the aggrieved party the right to file a civil claim alongside a criminal action.

Under Afghan law, the civil enforcement mechanisms for literary and artistic property rights include compensation for damages and the cessation of the infringement of literary and artistic property rights.

Compensation for Damages

When the rights of the owner of a literary or artistic work are infringed, the right holder is entitled to request compensation for the damages incurred. Accordingly, the owner of the work whose rights have been violated may claim compensation from the person responsible for the harmful act. The basis of this principle lies in the legal maxim “whoever destroys something is liable for it” (itlaf shay’an dhamanahu), meaning that anyone who destroys another’s property is responsible for it, as well as the principle “harm must be eliminated” (al-darar yuzal). (Nahzat-Farahi, 1390: 31)

In this regard, paragraph (4) of Article 30 of the Law on the Support of the Rights of Authors, Writers, Artists, and Researchers states:

“Issuance of an order for the payment of fair compensation (including the expenses of the plaintiff, including attorney’s fees, in accordance with the provisions of law)”. It is evident that Afghan law does not disregard the payment of damages to the claimant and assigns the court the duty to order compensation in cases of infringement of literary and artistic property rights. However, it should be noted that the legislator has also taken fairness into account, as the law refers to “fair compensation,” which reflects an effort to prevent excessive claims by the plaintiff.

In addition to the damages arising directly from the infringement of literary and artistic property rights, the costs incurred by the claimant in pursuing the case, including legal fees and attorney’s expenses, are also considered compensable. Therefore, compensation for the infringement of literary property rights includes not only the damages resulting from the violation itself but also the costs associated with legal proceedings.

Restitution of Illegally Obtained Benefits

The benefit obtained from the infringement of intellectual property rights is returned to its rightful owner. In this regard, Article 747 of the 1396 Penal Code explicitly states:

“In all cases provided for in this chapter, the benefit obtained from intellectual property rights shall be returned to its owner.”

Such benefits may include income generated from the sale of illegal copies, profits derived from unauthorized commercial use, or any form of economic exploitation of the work. Accordingly, the offender must not only endure criminal punishment and compensate for damages, but also return any financial gains acquired through the infringement to the owner of the work.

The result of this approach is the actual restoration of the victim’s losses. It also creates a stronger deterrent effect: when the offender knows that no benefit will be gained from the violation, their incentive to infringe the rights of others is significantly reduced.

Prevention of the Continuation of Infringement

According to paragraph one, sub-paragraphs one, two, and three of the Law on the Support of the Rights of Authors, Writers, Artists, and Researchers of Afghanistan, the court, upon the request of the claimant in cases of infringement of literary property rights, issues an order to prevent the continuation of the violation. It also orders the confiscation and destruction of copies resulting from the infringement and their related components, without providing any compensation to the infringer. Likewise, in order to prevent the continuation of the infringement of literary and artistic property rights, the court may order the confiscation and destruction of materials and tools used by the infringer in producing such copies.

Accordingly, if works such as books, software, films, and similar materials are illegally reproduced or distributed, the court orders the seizure (confiscation) of all unauthorized copies. Thereafter, the confiscated copies and related production tools, such as duplication machines—are destroyed. The confiscation and destruction of copies resulting from the infringement of literary and artistic property rights, as well as the seizure and destruction of tools used in producing such copies, constitute a deterrent measure. Through its implementation, the infringer is prevented from reusing such materials. No compensation is paid to the infringer for this confiscation and destruction, since the act itself constitutes a violation of the law. Therefore, the infringer cannot acquire any vested right from unlawful conduct. The result of such judicial orders is the reduction of infringements to a minimum, namely the prevention of repeated offenses and violations of the rights of the author through the elimination of tools used for producing illegal copies.

In addition to this, harm to the rights holder must also be prevented. For example, the destruction of all illegally distributed books in the market may lead to a shortage of books; therefore, instead of destroying all copies, part of them may be used for the benefit of the rights holder with their permission, and the proceeds from such use should be transferred to the owner of the work.

Preservation of Evidence and Interim Measures

Prior to issuing a final judgment, the court may order provisional seizure, preservation of documents and evidence, or a temporary ban on publication in order to prevent further harm to the holder of intellectual property rights. In this regard, paragraph (2) of Article 30 of the Law on the Support of the Rights of Authors, Writers, Artists, and Researchers states:

“The court may, where delay is likely to cause irreparable harm to the rights holder or where there is a risk of destruction of evidence, take a provisional decision in accordance with relevant legislative provisions, including seizure or similar measures, without notifying or hearing the defendant, for the purpose of preventing violations of this law or preserving evidence related to the alleged infringements.”

A careful examination of this provision shows that Afghan law not only addresses punishment and the destruction of illegal copies, but also allows the court to adopt urgent measures prior to the final adjudication of the case to ensure immediate protection of the rights holder. In other words, the rights of the creator

are safeguarded against urgent threats and the destruction of evidence through such interim measures.

This provision enhances the effectiveness of legal protection for authors, as waiting for the final judgment could otherwise allow illegal works to be disseminated or evidence to be destroyed.

Publication of Court Judgments

In some cases, the court may order the publication of its decision in widely circulated media at the expense of the convicted party, with the aim of restoring the reputation of the creator. The publication of judgments, due to its stigmatizing nature, can have a deterrent effect, as individuals have a strong desire to protect their honor and reputation. The threat of losing these values creates concern and fear, which serves as a means of preventing individuals from violating the rights of others and of society.

Although the publication of judgments may have a corrective and socializing effect on certain offenders with minor criminal records, helping to prevent them from reoffending, it should be noted that those offenders who repeatedly commit crimes and have a serious criminal history—once exposed through such enforcement—may no longer show willingness to reintegrate. This enforcement mechanism, due to its strong stigmatizing effect, also carries a punitive dimension. However, since a single act of loss of reputation may result in the offender losing remaining social trust, such a sanction is generally effective primarily in the first instance in achieving its punitive purpose. (Accessed on 20/2/1405, *Journal of Criminal Law Research*).

Regarding the publication of judgments, Article 746 of the 1396 Penal Code of Afghanistan provides that:

“A person who repeatedly commits the offenses set forth in this chapter shall be punished in accordance with the provisions on recidivism in this law, and upon the request of the victim, the matter shall be published in one of the public media at the expense of the offender.”

The term “recidivism” in this article means that if a person repeatedly commits crimes such as unauthorized reproduction, unlawful publication, or unauthorized use of works, they shall be punished under the provisions relating to recidivism in the same law. Accordingly, punishment becomes more severe in cases of repeated offenses, and the court may impose stricter penalties.

Likewise, upon the request of the victim, the court may order the publication of the infringement and the imposed punishment in one of the public media, with the cost of publication borne by the offender. The importance of such publication lies in several aspects: first, it creates a general deterrent effect in society, discouraging others from committing similar offenses. Second, it supports the rights holder by confirming their legal rights and raising public awareness through dissemination of the judgment. Third, it demonstrates stricter legal treatment in cases of repetition, indicating that the legislator considers repeated infringement of authors’ rights a serious threat to public order and cultural rights.

Judicial Prosecution

Judicial prosecution in cases of intellectual property infringement is considered a right of the injured party; therefore, the victim has the discretion to decide whether or not to initiate legal proceedings against the infringement of their rights. In this regard, Article 29 of the Law on the Support of the Rights of Authors, Writers, Artists, and Researchers (2016 A.H. Solar) provides:

“A person who violates the provisions of this law may be subject to civil and criminal proceedings before the court upon a written request by the injured party or their legal representative.”

Similarly, Article 748 of the 1396 Penal Code stipulates that the initiation of proceedings for intellectual property infringement is dependent upon the complaint of the rights holder, stating:

“The prosecution of the offenses set forth in this chapter shall be contingent upon the complaint of the owner of intellectual property rights.”

From the content of these provisions in the Law on the Protection of Copyright and the Penal Code of Afghanistan, it can be understood that intellectual property infringement is subject to judicial proceedings only when a formal complaint is filed by the rights holder. Accordingly, judges and other state authorities do not initiate proceedings *ex officio*, and prosecution depends on the initiative of the rights holder.

The rationale for this approach may include the following: first, intellectual property rights are primarily private rights, and their infringement generally affects the personal interests of the creator or publisher rather than public order. Therefore, the legislator has entrusted the decision to initiate proceedings to the rights holder. Second, making prosecution dependent on the rights holder reduces the burden on the judiciary, as automatic prosecution of all intellectual property violations would place excessive pressure on courts. Thus, only those cases that are significant to the rights holder are brought before the court. Third, this approach maintains a balance between individual rights and public order; more serious offenses such as large-scale forgery or organized infringement have a public dimension, whereas ordinary cases of infringement remain subject to private complaint.

However, it is evident that the assessment of non-material (moral) damages is highly complex. Therefore, it is not easy to establish a clear standard by which a judge can determine a specific monetary amount for compensation. The social conditions and cultural context of each society play a significant role in the valuation of moral damages, depending on whether the society is more materialistic or value-oriented. (Accessed on 11/2/1405, Droit Blogfa).

Enforcement Mechanisms for the Infringement of Literary and Artistic Property Rights in Iranian Law

Literary and artistic property rights in all developed countries are currently recognized and protected by the legislator, and the purpose of such protection is the safeguarding of both individual and social interests. Similarly, the protection of the material and moral rights of literary and artistic property contributes to the encouragement of creators and the expansion of culture and the arts.

Criminal Enforcement Mechanisms

For violations of legal regulations and infringements of the material and moral rights of authors, criminal enforcement mechanisms have been established, which vary depending on the nature of the offense. However, in general, these sanctions are of a punitive nature. (Safaei, 1386: 88) In this context, several of these offenses are discussed below. Crimes against intellectual property include all acts that violate the rights of owners of intellectual creations, with trade secret theft, copyright infringement, and trademark forgery being among the most significant offenses in this field.

Enforcement mechanisms for intellectual property infringement include, in addition to the seizure, confiscation, and destruction of goods and their publication in media, imprisonment and monetary fines depending on the severity of the offense. (Mirzaei, 2024: 314) It should be noted that criminal responses constitute only part of the broader range of remedies for intellectual property infringement.

According to Article 23 of the Law on the Protection of Authors, Composers, and Artists:

“Anyone who publishes, distributes, or offers for distribution all or part of another person’s work protected under this law, whether in their own name, in the name of the original creator, or knowingly in the name of another person without the permission of the creator, shall be sentenced to imprisonment from six months to three years.” (Accessed on 10/2/1405, Tebyan).

From the content of this article, it is evident that the prescribed punishment does not fully align with the objectives of criminal sanctions, particularly the goal of deterrence. Professional offenders may, without directly participating in the execution of the crime, use others as indirect perpetrators; in such cases, the primary criminal liability lies with the direct offender, while others are considered accomplices and, according to Article 726 of the Islamic Penal Code, are sentenced to the minimum punishment specified in Article 23 of the Law on the Protection of Authors, Composers, and Artists. This indicates that the Iranian legislator has not exercised sufficient precision in drafting Article 25 of this law. Article 23 prescribes imprisonment from six months to three years for the unauthorized publication, distribution, or dissemination of a protected work. However, in cases of alteration or distortion of the work in addition to publication, changes are also made to the protected work, and therefore the punishment should have been stricter or at least equivalent.

Similarly, Article 24 of the same law provides that anyone who unlawfully prints, publishes, or distributes translated works that were first published in Iran shall be sentenced to imprisonment from three months to one year. However, if the offender gains significant financial or material benefit from such actions, this punishment is insufficient and lacks deterrent effect. Likewise, the penalty under Article 726 of the Islamic Penal Code, which prescribes the minimum punishment for accomplices in such crimes, does not provide sufficient deterrence.

According to Article 17 of the same law, names, titles, and distinctive signs identifying a work are protected, and no one may use them for another similar or identical work in a manner that creates confusion. Therefore, under Article 25 of the

same law, violators are subject to imprisonment from three months to one year. Likewise, a person who modifies or presents another person's work without mentioning its name, title, or identifying mark during adaptation is also subject to imprisonment from three months to one year.

According to Article 19 of the same law, any alteration, distortion, or publication of a protected work without the permission of its creator is prohibited. Under Article 25 of the law, violations of these provisions are punishable by imprisonment from three months to one year. (Mirzaei, 2024). Furthermore, Article 22 of the Law on the Protection of Authors, Composers, and Artists limits protection to works that are first published, distributed, or performed in Iran, and excludes works first published abroad. This represents a significant legal gap regarding the protection of Iranian authors' works abroad and foreign authors' works within Iran. (Accessed on 10/2/1405, Tebyan).

Civil Enforcement Mechanisms for the Infringement of Intellectual Property Rights

Civil enforcement mechanisms and the obligation to compensate damages are regarded as among the most effective and widely used remedies in the field of intellectual property law. The enforcement of any right is so essential that, in principle, every right must be accompanied by an enforcement mechanism; otherwise, it cannot be considered a true legal right (Barikloo, 1393).

In Iranian law, civil enforcement mechanisms for the infringement of intellectual property rights include compensation for damages, issuance of injunctions to prevent further infringement, seizure of infringing products, and ultimately the publication of court judgments in newspapers (Hosseini, 1391).

Compensation

The interests of the victim of intellectual property rights infringement are a priority. Therefore, the infringer must compensate for it. The infringer faces the committed act, the results of the committed act, its effects on the victim, society and even his family, and compensates for it through direct experience of the unpleasant conditions that have been imposed on the victim of the infringement (Abbasi, 2005).

According to the law, the plaintiff can request damages and losses from authors, composers and artists. Article 28 of the Law on the Protection of the Rights of Authors, Composers and Artists, approved in 1348: "If the violator of this law is a legal entity, in addition to the criminal prosecution of the responsible natural person whose crime resulted from his decision.

The damages of the private plaintiff will be compensated from the property of the legal entity, and if the property of the legal entity alone is not sufficient, the difference will be compensated from the property of the perpetrator of the crime." Article 7 of the Law on Translation and Reproduction of Books, Publications and Audio Works, approved in 1973: "Persons who knowingly and intentionally commit one of the following acts:

Shall be sentenced to a misdemeanor imprisonment of three months to one year in addition to paying damages to the private plaintiff: Those who act contrary to

the provisions of Articles 1, 2 and 3 of this law. Those who import or export the items mentioned in Article 3 that were illegally obtained abroad into the country.” In Article 8 of the aforementioned law, “If the violator of this law is a legal entity, in addition to the criminal prosecution of the responsible natural person whose crime resulted from his decision, the damages of the private plaintiff shall be compensated from the property of the legal entity.

If the property of the legal entity alone is not sufficient, the difference shall be compensated from the property of the responsible natural person.” By inferring from the aforementioned legal articles, it can be stated that in Iranian law, in the event of a violation of literary and artistic property rights, the infringer will be responsible for compensating for the damage caused. In the aforementioned legal articles, the term “compensation for damages” is ambiguous and it is not clear what damages the legislator intended to compensate, nor is it clear how to determine the amount and method of compensation. (Abhari, 2010).

Although Iranian intellectual property laws are silent on methods of compensation, Article 101 of the Intellectual Property Protection Bill, Book One, Literary and Artistic Property and (Related Rights), which shows the perspective of the Iranian legislator, states, “The holder of the rights protected by this law may, independently of a criminal lawsuit or as a consequence thereof, demand compensation for material and moral damages resulting from the violation of his rights from the infringer or infringers of the rights by filing a legal lawsuit.

The amount of damages is determined based on general rules and considering the importance and amount of material and moral damages incurred by the right holder and the amount of benefits that the infringer has gained through the violation of the rights, as well as the certain benefits that the right holder has been deprived of” (Saki, 1403).

Prevent infringement

The author can request the court to prevent the printing, publication, distribution or presentation of the infringed work. This action is usually taken to prevent further damage. Therefore, civil and criminal penalties are not enough to enforce the author's rights, but in most cases, action must be taken to prevent the publication, distribution and presentation of the work.

In this case, Article 29 of the Law on the Protection of Authors' Rights... stipulates: "The judicial authorities may, while examining the complaint of a private plaintiff regarding the prevention of the publication, distribution and presentation of the works complained of and their seizure, issue the necessary orders to the judicial officers." Issuing a temporary order to prevent the continuation of the infringement process or the collection of reproduced works, which is referred to in Article 29 of the Law on the Protection of Authors' Rights.

If the infringement continues on an ongoing basis, eliminating the source and cause of the harm constitutes the most effective means of compensation, since, in legal custom, the destruction of the source of damage is itself regarded as a form of reparation. (Katouzian, 1374: Vol. 1, pp. 530–531) Moreover, expedited proceedings and the issuance of interim injunctions, in legal terminology, refer to adjudication outside

the ordinary order of hearings and the issuance of a temporary judicial order aimed at preventing the continuation of harm. (Emami, 1393: 254) Accordingly, where the rights of an author are infringed and his or her intellectual work is unlawfully reproduced, duplicated, or disseminated without consent, the most rational course of action is the immediate prevention of further production and distribution of the infringing work. Furthermore, if unauthorized copies of the work have already been produced, the prevailing circumstances may necessitate the seizure and, where appropriate, destruction of the infringing goods and copies in order to prevent further damage to the author.

If the infringement continues on an ongoing basis, eliminating the source and cause of the harm constitutes the most effective means of compensation, since, in legal custom, the destruction of the source of damage is itself regarded as a form of reparation (Katouzian, 1374). Moreover, expedited proceedings and the issuance of interim injunctions, in legal terminology, refer to adjudication outside the ordinary order of hearings and the issuance of a temporary judicial order aimed at preventing the continuation of harm. (Emami, 1393).

Accordingly, where the rights of an author are infringed and his or her intellectual work is unlawfully reproduced, duplicated, or disseminated without consent, the most rational course of action is the immediate prevention of further production and distribution of the infringing work. Furthermore, if unauthorized copies of the work have already been produced, the prevailing circumstances may necessitate the seizure and, where appropriate, destruction of the infringing goods and copies in order to prevent further damage to the author.

Seizure and Confiscation of Unauthorized Works

One of the measures adopted to safeguard the interests of right holders within the sphere of intellectual property is the seizure, confiscation, and destruction of infringing goods. Decisions concerning infringing acts—through the destruction of goods, their removal from ordinary channels of commerce, determination of the fate of tools and instruments used in infringing activities, and the issuance of injunctions to prevent the continuation of infringement—are regarded as effective enforcement mechanisms in reducing violations and discouraging infringements of intellectual property rights (Dehghan, 1398).

In this regard, Article 29 of the Iranian Law on the Protection of Authors, Composers, and Artists provides that: “Judicial authorities may, while adjudicating the complaint of a private claimant, issue the necessary orders to judicial officers for the prevention of publication, distribution, of the works subject to the complaint, as well as for their seizure” (Accessed on 1/2/1405 at Islamic Consultative Assembly Research Center).

Similarly, Article 9 of the Law on the Translation and Reproduction of Books, Publications, and Audio Works of 1973 stipulates that judicial authorities, following the filing of a claim by a private complainant, are authorized *proprio motu* to prevent the publication, distribution, and offering of the subject matter of the complaint and ultimately to order its seizure. However, where the author or right holder requests

provisional or precautionary measures, judicial authorities are obligated to adopt the appropriate decision (Abhari, 1399).

Article 122 of the Draft Comprehensive Bill on the Protection of Literary, Artistic, and Related Rights addresses this matter in a more comprehensive manner, providing that: "Where the predominant use of a device or instrument consists in the infringement of rights, judicial authorities shall, at the request of the right holder, order its destruction, removal from commercial circulation, or delivery to the right holder as compensation, in such a manner that the risk of infringement is minimized."

Furthermore, Article 123 of the same draft provides that: "Upon the request of the right holder, and insofar as it does not conflict with other legal obligations, the competent court shall order the removal from commercial circulation or destruction of reproduced or distributed copies, or shall deliver such copies to the injured party as compensation. This provision shall not apply to third parties who acquired such copies without knowledge of their unauthorized nature." (Dehghan, 1398).

Publication of the Judgment

The publication of a conviction judgment is regarded as one of the shame-oriented enforcement measures. Understanding the underlying philosophy behind the implementation of legal sanctions plays a significant role in assessing their effectiveness and efficiency. One of the principal objectives of sanctions-whether civil or criminal is deterrence, and the publication of judicial decisions can play a substantial role in both individual and social deterrence. In other words, sanctions should operate in such a manner those infringements of intellectual property rights are repeated, neither by the infringer nor by other members of society. The publication of a conviction judgment may therefore be examined from the perspective of its deterrent function, since individuals generally attach considerable value to their reputation and social standing, and the threat of losing such values may create fear and concern, thereby discouraging persons from violating the rights of others and the interests of society. Nevertheless, such an approach may be considered somewhat superficial and cannot be regarded as universally effective in all circumstances (Rostami Tabrizi, 1392).

Accordingly, the author believes that the publication of a conviction judgment may indeed create a deterrent effect; however, such an outcome cannot be predicted with absolute certainty in every case. With respect to the publication of judicial decisions, Article 29 of the Iranian Law on the Protection of Authors, Composers, and Artists expressly provides that: "The private complainant may request the court issuing the final judgment to publish the contents of the judgment in one of the newspapers selected by the complainant and at his or her expense." Under Iranian law, therefore, the publication of the judgment is carried out at the expense of the private complainant.

According to Article 26 of the same law, the term "private complainant" refers to the Ministry of Culture and Arts. Consequently, the request for publication of the judgment is made by the said Ministry and at its own expense. Furthermore, pursuant to Article 31 of the same law, criminal proceedings are initiated upon the complaint

of the same complainant and shall cease upon withdrawal of the complaint (Accessed on 1/2/1405 at Islamic Consultative Assembly Research Center).

CONCLUSION

Although explicit legal provisions regarding the protection of literary and artistic property rights exist in both countries, in practice they have received little attention and have continually been subject to infringement. This indicates that having modern and effective laws alone is not sufficient to achieve the objectives of legislation unless there is serious commitment to their enforcement. The efforts undertaken by literary and artistic creators in producing valuable intellectual assets are of unparalleled significance and are appreciated by society as well as protected by legislators.

Overall, both Afghanistan and Iran have made considerable efforts to protect literary and artistic property rights through civil and criminal enforcement mechanisms. Nevertheless, Afghan law demonstrates greater clarity in certain areas, such as the restitution of profits derived from infringement and the broad authority granted to courts regarding precautionary measures. In contrast, Iranian law benefits from a stronger legislative history, a richer legal doctrine, and more extensive academic development.

Despite these strengths, both legal systems continue to face challenges such as weak enforcement mechanisms, insufficient penalties, ambiguities regarding moral damages, and inadequate adaptation to technological developments. Therefore, revising legal frameworks, strengthening enforcement institutions, providing specialized training, and enhancing compatibility with international standards could significantly improve the protection of literary and artistic property rights in both countries.

It should be added that, so far, no research has been conducted regarding the enforcement mechanisms for the infringement of literary and artistic property rights in the legal systems of Afghanistan and Iran. Therefore, this study gains its significance in the hope that more researchers will engage in further studies on this subject, and that governmental authorities, just as they have demonstrated their commitment through the enactment of various laws, will also undertake the necessary practical measures in this field.

In conclusion, the author suggests that legislators and law enforcement authorities should take into consideration the shortcomings identified in this research article concerning the enforcement mechanisms for the infringement of literary and artistic property rights, and take effective steps toward addressing and remedying them.

Based on the findings and discussions presented in this study, the following recommendations are proposed for future research:

1. The findings of this study indicate that the legal framework governing copyright enforcement in Iran is characterized by fragmented and relatively outdated regulations. Therefore, conducting independent and comprehensive studies on civil, criminal, and administrative enforcement mechanisms of copyright law in Iran would

contribute to a deeper understanding of this field and provide foundation for reforming existing laws and developing more effective regulations.

2. The analysis further reveals that the enforcement mechanisms currently provided under Iranian law lack sufficient effectiveness and deterrent capacity to prevent copyright infringement. Consequently, further specialized research is required to identify and address the legal gaps and deficiencies within Iran's copyright protection system. Such studies may assist policymakers and legislators in improving and modernizing the existing legal framework.

3. In Afghanistan, limited scholarly and professional research has been conducted on copyright enforcement mechanisms. This shortage of academic studies has contributed to a lack of awareness among both copyright holders and potential infringers, thereby increasing the incidence of copyright violations and reducing the frequency and effectiveness of legal proceedings in this area. Accordingly, it is recommended that more extensive quantitative and qualitative research be undertaken on copyright enforcement, public awareness, judicial practices, and the practical challenges associated with protecting authors' and creators' rights in Afghanistan.

4. Furthermore, comparative studies involving the legal systems of Afghanistan, Iran, and other jurisdictions with advanced intellectual property protection regimes are highly recommended. Such research could facilitate the identification of best practices and successful models, thereby contributing to the development of more effective copyright protection mechanisms in the countries under study.

REFERENCES

- Abbasi, Mostafa. (2005). *New Horizons of Restorative Justice*. Tehran: Daneshvar Publications.
- Abhari, Hamid, et al. (2020). "A Comparative Study of Compensation for Damages Arising from Intellectual Property Infringement in Iranian Law and the TRIPS Agreement." *Biannual Journal of Legal Civilization*, Vol. 3, No. 7, pp. 106-127.
- Alizadeh, Ramziyeh. (2018). "Criminal Enforcement of Intellectual Property Rights." *Justice Legal and Cultural Monthly*, Vol. 20, Serial No. 187, Ministry of Justice, pp. 34-55.
- Barikloo, Ali Reza & Mostafa Nasr Abadi. (2014). "Legal Remedies for the Infringement of Literary and Artistic Rights in Iranian and Common Law Systems." *Comparative Law Review*, Vol. 10, No. 1, pp. 135-154.
- Boyle, James & Jenkins, Jennifer. (2024). *Intellectual Property: Law and the Information Society: Cases and Materials* (6th ed.). Durham: Duke Law School.
- Choudhary, Swapnil. (2024). "Copyright Infringement: Bridging the Gap Between Legislation and Enforcement." *International Journal for Multidisciplinary Research (IJFMR)*, Vol. 6, Issue 3.
- Dehghan, Sakineh. (2019). "Methods of Prevention and Compensation for Damages in Intellectual Property Infringement (Under Iranian Law and International Instruments)." *Journal of Legal Research*, No. 39, pp. 141-167.
- Emami, Asadollah. (2014). *Intellectual Property Law*. Tehran: Mizan Publications.

- Hosseini, Seyed Hassan Mir. (2012). *An Introduction to Intellectual Property Law*. Tehran: Mizan Publications.
- Katouzian, Nasser. (1995). *Non-Contractual Obligations*. Tehran: University of Tehran Press.
- Ministry of Justice of Afghanistan. (2016). *Law on the Protection of the Rights of Authors, Composers, Artists, and Researchers (Copyright Law)*. Official Gazette No. 1230.
- Ministry of Justice of Afghanistan. (2017). *Afghan Penal Code*. Official Gazette No. 1260, Kabul.
- Mirzaei, Ahmad, et al. (2024). "Criminal Guarantees for the Protection of Intellectual Property." *Comparative Research in Fiqh, Law and Politics*, Vol. 6, No. 1, pp. 312-327.
- Mittal, Dhruv. (2018). "Intellectual Property Laws: Copyright and Remedies and Actions for Infringement of Copyright." *International Journal of Law Management & Humanities*, Vol. 2, Issue 1.
- Nahzat Farahi, Abdulwahid. (2011). *A New Commentary on the Jurisprudential Principles of the Hanafi School*. Kabul: Maiwand Printing and Publishing House.
- Rostami Tabrizi, Lamia. (2013). "An Analysis of the Publication of Conviction Judgments in Iranian Criminal Law from the Perspective of Criminal Philosophy." *Criminal Law Research*, Vol. 2, No. 4, pp. 137-165.
- Rustambekov, Islambek, Gulyamov, Said & Ubaydullaeva, Anna. (2024). *Intellectual Property in the Digital Age*. Rome: Roma Tre Press.
- Safaei, Seyed Hossein. (2007). *Civil and Comparative Law*. Tehran: Mizan Legal Foundation Publications.
- Saki, Narges, et al. (2024). "The Possibility of Protecting the Rights of Open-Source Software Creators from the Perspective of Intellectual Property Law and Its Civil Remedies in Iranian Law." *Comparative Research in Fiqh, Law and Politics*, pp. 81-99.