

**Council for Trade-Related Aspects of
Intellectual Property Rights**

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**MAIN DEDICATED INTELLECTUAL PROPERTY
LAWS AND REGULATIONS NOTIFIED UNDER
ARTICLE 63.2 OF THE AGREEMENT**

KUWAIT

By means of a communication from its Permanent Mission, dated 21 August 2000, Kuwait has notified the attached text¹ of Decree Law No. 64 of 1999 Governing Intellectual Property Rights, under Article 63.2 of the Agreement.²

**Conseil des aspects des droits de propriété
intellectuelle qui touchent au commerce**

**PRINCIPALES LOIS ET RÉGLEMENTATIONS CONSACRÉES À LA
PROPRIÉTÉ INTELLECTUELLE NOTIFIÉES AU TITRE
DE L'ARTICLE 63:2 DE L'ACCORD**

KOWEÏT

Par une communication de sa Mission permanente, datée du 21 août 2000, Koweït a notifié le texte¹ ci-joint du Décret-loi n° 64 de 1999 régissant les droits de propriété intellectuelle, au titre de l'article 63:2 de l'Accord.²

**Consejo de los Aspectos de los Derechos de Propiedad
Intellectual relacionados con el Comercio**

**PRINCIPALES LEYES Y REGLAMENTOS DEDICADOS A LA
PROPIEDAD INTELECTUAL NOTIFICADOS EN VIRTUD
DEL PÁRRAFO 2 DEL ARTÍCULO 63 DEL ACUERDO**

KUWAIT

Mediante una comunicación de su Misión Permanente, de fecha 21 de agosto de 2000, Kuwait ha notificado el texto¹ adjunto del Decreto Ley N° 64 de 1999 que rige los Derechos de Propiedad Intelectual, en virtud de lo dispuesto en el párrafo 2 del artículo 63 del Acuerdo.²

¹ In English only./En anglais seulement./En inglés solamente.

² The WTO Secretariat has been in contact with the Permanent Mission of Kuwait to obtain an improved and more complete text of this notification in areas where this text is not clear or is incomplete. The additional material will be circulated as soon as it is received./Le Secrétariat de l'OMC a contacté la Mission permanente du Koweït pour obtenir un texte plus clair et plus complet des parties de la notification qui sont incomplètes ou manquent de clarté. Ce complément d'information sera distribué dès qu'il sera reçu./La Secretaría de la OMC ha estado en contacto con la Misión Permanente de Kuwait con el fin de obtener una copia más clara y más completa de las partes del texto notificado que no resultan claras o están incompletas. La información adicional se distribuirá en cuanto se reciba.

DECREE
LAW NUMBER 64 OF 1999
GOVERNING
INTELLECTUAL PROPERTY RIGHTS

Having reviewed

The Constitution, and

The penal code issued as law #16 of 1960 and all amending laws,

The penal procedures and trial regulations issued under law #17 of 1960 and all amending laws, and

Law #3 of 1961 on publications and printing and all amending laws,

The Civil and Commercial Procedures Law issued as decree law #38 of 1980 and all amending laws,

The Civil Law issued as decree law # 67 of 1980 as amended by law #15 of 1996,

Law #16 of 1996 ratifying the Arab Convention for the Protection of Authors' Rights,

Law #2 of 1998 ratifying the affiliation of the State of Kuwait with the World Intellectual Property Organization Treaty, and

With the approval of the Council of Ministers,

We do hereby promulgate the following decree law:

First Part
Scope of Protection

Article (1)

The authors of newly created works of arts, letters and science shall be under the protection hereof irrespective of the value, type, objective or expressive style of these works.

An author means the person who creates the work, or to whom the work is attributed upon publication thereof whether by mentioning his name on the work or in any other manner unless there is evidence to the contrary.

Article (2)

The protection shall cover the following works in particular:

- (a) Written works.
- (b) Works delivered orally, such as lectures, speeches, religious sermons and the like.
- (c) Theatrical works and musical plays.
- (d) Musical works with or without songs.
- (e) Works performed by means of movements or steps and mainly prepared for direction.
- (f) Movie works, and audio, video and radio works.
- (g) Painting and works depicted by means of lines, colors, and diagrams as well as works of architecture, sculpture, arts, carving and decoration.
- (h) Photographic works.
- (i) Works of applied art, including craft or industrial designs.
- (j) Illustrations, geographic maps, designs, plans and models relating to geography, topography, architecture and science.
- (k) Computer works including software, databases and the like.
- (l) Derived and translated works.

The protection also covers the title of the work if this is created and it is not a common expression that indicates the subject matter of the work.

Article (3)

The protection shall also cover those who, under permission from the author, have translated the work into another language and those who have abridged, amended or explained such works or carried out any other act that gives such works a new shape.

The protection stipulated in the previous paragraph does not effect the protection of the original author of the work.

However, the rights of an author of a photographic work shall not result in preventing others from taking new photographs of the photographed object even if these new photographs are taken in the same way and in the same general circumstances as the first photographs.

Second Part

Author's Rights

First Chapter - General Provisions

Article (4)

The author shall have the right to decide whether his work should be published and to determine the manner in which it is to be published.

He is solely entitled to utilize his work financially in any manner and third parties may not exercise this right unless they have prior written permission from him or his successor.

Article (5)

The author's right of utilization includes the following:

- (a) The reproduction of the work in whatever form.
- (b) The presentation of the work to the public through public performance, theatrical performance, radio transmission, TV or cinema shows or by any other means.
- (c) The translation of the work into any other language or its amendment, summarization, explanation or modification into any other form.

Article (6)

His work shall be attributed to him, unless the work is mentioned incidentally.

Article (7)

After publishing his work, the author may not prevent the presentation or performance of his work if an act occurs during a private meeting that does not yield any financial outcome directly or indirectly.

Article (8)

If a person reproduces a copy of a published work or translates it or quotes from it or modifies it in any other manner for his personal use, the author may not prevent him from doing so.

However, such a work may not be published except under permission from its owner and the author.

Article (9)

After publishing his work, the author may not prohibit its analysis and short quotations from it where the purpose thereof is criticism, enlightenment, study or information, provided that the reference to the original work and the author are clearly mentioned.

Article (10)

Newspapers, periodicals, radio, TV and other mass media may use, without the author's permission, articles relating to the political, economic or religious discussions which preoccupy the public opinion at a specific time as long as the quoted original does not contain an explicit provision expressly prohibiting such quotation.

When a quotation is cited or published, a reference to the work of art and the author's name must be clearly shown.

Article (11)

Newspapers, radio and other mass media may, without the author's permission, publish and broadcast by way of information, speeches, lectures and discussions given at public sessions of the legislative and administrative chambers and scientific, literary, artistic, political, social, and religious meetings as long as these speeches, lectures and discussions are addressed to the public.

Judicial pleadings held in public may also be published without the author's permission within the limits allowed by law.

Article (12)

In the cases stipulated in the previous two articles, the author shall be also entitled to publish collections of his speeches and articles.

Article (13)

The author's heirs are solely entitled to exercise the rights to financially utilize a work in the manner stipulated herein subject to compliance with the following:

- (a) If the author had entered into a written contract with third parties concerning the use of his work, his contract must be executed in accordance with its provisions.
- (b) If the author has made a will preventing publication or specifying a date thereof or other conditions, his will should be executed.
- (c) If one author of a joint work dies and there is no heir or executor, his share shall equally pass to the remaining authors unless there is a written agreement to the contrary.

Article (14)

If the heirs or successors of a Kuwaiti author do not publish a work or republish it and the Minister of Information deems that publication of the work is in the public interest and they fail to publish the work within one year of the date the minister requests them to do so by registered letter with recorded delivery, the Minister may obtain an order from the president of the Court of First Instance to have the work handed to him for publication without prejudice to the rights of the author's heirs or successors to fair compensation.

Article (15)

Performing artists such as actors, singers, musicians and others are entitled to have a performance attributed to them in the form in which they performed it. They are also entitled to the financial right to utilize their performance whether through presenting their performance to the public or by making available to the public the original recordings of the performance or copies thereof or the rental thereof or by making their recorded performance available to the public through radio or computer.

Radio stations are entitled to the financial rights of a licence to use their recorded materials and to prevent any utilization of their programs without prior written permission from them.

Article (16)

Protection of the right of an author of a work in a foreign language and the right of the translator of such work into another foreign language to the translation of such a work into Arabic shall expire if the author or the translator did not exercise his right within five years of the date when the original or the translated work is first published.

However, the Minister of Information may license the translation of a work into Arabic or the publishing thereof after one year from the date of the original or translated work is first published. In this case, the author or the one to whom the translation rights has passed shall be fairly compensated.

Article (17)

Without prejudice to the provisions of the preceding article, the protection of the author's rights of financial utilization shall expire:

First: Upon the lapse of fifty years after the death of the author. This period shall be calculated in the case of joint works as of the date of death of the last surviving author, specifically as of the end of the calendar year in which the death occurs.

Second: Upon the lapse of fifty years as of the end of the publishing calendar year in which the work is published with respect to the following works:

- (a) Works, which are published under an assumed name or without the author's name unless the author reveals his identity during this period or his true name becomes known to the public, in which case the said period will expire as contained in the first item.
- (b) Works in which the entitled person thereto is an artificial person.
- (c) Cinema works, photographic works, applied arts, computer software and databases.
- (d) Works that are published for the first time after the death of their authors.

Third: Upon the lapse of fifty years as of the end of the calendar year during which the performance was made in the case of the actors and as of the end of the calendar year during which the work was recorded in case of the producers of cinematic films, records or recordings prepared for TV or radio.

Fourth: Upon the lapse of twenty years as of the end of the calendar year when the programs were first transmitted in case of radio broadcasters.

Second Chapter

Provisions Relating to Some Works

Article (18)

If more than one person join together with respect to the creation of a work whereby the share of any one of them in the joint work cannot be separated out from the shares of the others, all the authors shall be considered as owners of the work in equal shares unless they agree otherwise in writing.

In this case, none of them may exercise their rights as authors except under the unanimous agreement of all the joint authors. In case of dispute, only a Court of First Instance may decide the matter.

Each of the joint authors shall have the right to take precautionary and summary procedures upon the occurrence of any infringement of the authors' rights as well as to file cases for claiming his share of any compensation for damages he has incurred as a result of such infringement.

Article (19)

If more than one person has contributed to the creation of a work whereby the part made by each can be separated out, each one of them shall be entitled to utilize the part which he has contributed provided that this would not affect the utilization of the joint work unless they agree otherwise in writing.

Article (20)

Without prejudice to the right of the author of the literary part of the lyrics of a musical work, the author of the musical part shall be solely entitled to license the public performance or the execution, publication or reproduction of the whole joint work.

The author of the literary part shall have the right to publish his own part. However, he may not dispose of this part as the basis for another musical work unless he and the composer of the musical work agree otherwise in writing.

Article (21)

In the case of joint works which are performed as movements accompanied by music and all similar works, the designer of the movement shall be entitled to license the public performance of the whole joint work or the execution or reproduction thereof.

The author of the musical part shall have the right to dispose of this part only provided that it should not be used for a work similar to the joint work unless they agree otherwise in writing.

Article (22)

The following persons shall be considered to be partners in the compilation of a cinematic work or a work prepared for radio or TV:

First: The author of the scenario or the owner of the written idea of the work.

Second: The one who modified the literary part of the work so as to make it suitable for such work.

Third: The author of the dialogue.

Fourth: The music composer if such music is made specifically for the work.

Fifth: The director if he exercised actual control over the work and made a positive effort with respect to the intellectual aspects involved in achieving any of these works.

If a cinematic work or a work prepared for radio or TV is a simplified version of, or has been derived from, another previous work, the author of this work shall be considered to be a partner in the new work.

Article (23)

The author of the scenario and the one who adapted the literary work and the author of the dialogue and the director shall together have the right to display the movie or the work prepared for radio or TV despite the objection of the author of the original literary work or the music composer, without prejudice to the rights of the objector arising from his contribution to the compilation.

The author of the literary or musical part shall have the right to publish his part of the work in another manner unless agreed otherwise in writing.

Article (24)

If one of the participants in the compilation of a musical work or a work prepared for radio or TV did not complete his own part or could not do so because of circumstances beyond his control, he shall not be entitled to prevent the other participants from using the part which he has already completed; and he shall be considered the author of the portion of the part he has completed and shall have proportionate rights.

Article (25)

The producer of a movie work or a work prepared for radio or TV shall be the natural or artificial person who assumes the completion thereof or who assumes responsibility for such completion or who provides the author of the work with the necessary material means for completion of the work.

In all cases, the producer shall be considered as the publisher of the work and shall have all the publisher's rights.

During the period of utilization agreed upon the producer shall be a legal representative of the author of the work and his successors with respect to any agreement on the showing or utilization thereof without prejudice to the rights of the authors of the literary or musical works unless agreed otherwise in writing.

Article (26)

A collective work is a work that is created by a group under the directions of a natural or juristic person whereby the work of each participant can neither be separated nor distinguished.

The person who directs the creation of this work and organizes it as a compiled work shall be solely entitled to exercise the author's rights.

Article (27)

If the work is created for the account of a natural or juristic person, the author's rights shall be attributed to the creator unless an agreement in writing provides otherwise.

Article (28)

Concerning works under an assumed name or which do not bear the author's name, the publisher whose name is registered on the work shall be considered as authorized by the author to exercise his rights as stipulated herein unless the contrary is established.

Article (29)

The person who takes photographs is not entitled to show, publish or distribute the original or copies thereof without the permission of the persons whom he photographs unless it is agreed otherwise in writing.

This provision shall not be effective if the photograph was published in connection with accidents which occurred publicly or which are related to public officers or well-known public persons or if the publication thereof is permitted by the public authorities in the public interest.

However in such cases, the photograph may not be shown or circulated if such an act would impair the honour, reputation or dignity of the person who is the subject of the photograph. The person who is the subject of the photograph may permit publication in newspapers and magazines and other similar publications even if the photographer does not permit this unless a written agreement provides otherwise.

These provisions shall apply to pictures whatever the method of drawing thereof, including drawing, carving or by any other means.

Third Chapter - Disposal of Compilation Rights

Article (30)

The author may transfer to third parties the utilization rights stipulated in articles (4), second paragraph, and (5) hereof.

However, the transfer of one right shall not result in the transferee obtaining authorization to exercise any other rights.

The disposal shall be valid only when it is in writing and the right being disposed and its extent, its objective, and period and place of utilization, are clearly specified.

The author shall refrain from any act that would materially impair the use of the disposed right.

The provisions relating to the author's assignment of his financial rights shall apply in accordance with the provisions of this decree-law relating to performing artists.

Article (31)

The author's disposal of his rights to the work whether wholly or partially may be done on the basis of a proportionate sharing of the revenues resulting from the utilization or on another basis.

However, if it is found that the agreement is unfair to the rights of the author or if it becomes so as a result of circumstances occurring after the contract date, the court, taking the circumstances into account and after balancing the interests of both parties, may rule that part of the net profit resulting from utilization of the work be paid to the author in addition to the agreed amount.

Article (32)

Each disposal of the rights stipulated in articles (4), first paragraph, and (6) hereof shall be invalid.

Article (33)

An author's disposal of his total future intellectual output shall be invalid.

Article (34)

Disposal of the title to the sole original copy of a work of whatever type shall not result in the transfer of the author's right in this work. However, the transferee of the title to this copy may not be obliged to allow the author to reproduce or present or show it unless it is otherwise agreed in writing.

Article (35)

The author shall solely, if serious reasons arise, request the court of first instance to withdraw his work from circulation or introduce amendments thereto despite his disposal of his rights to financial utilization. In this case, the author shall pay to the one to whom the rights of financial utilization have passed a fair compensation which must be paid within a time period specified by the court, otherwise the judgment will have no effect.

Third Part

Procedures and Penalties

First Chapter - Procedures

Article (36)

A judge of summary matters in a court of first instance may order, pursuant to a request from the author or his successor and under an order issued subject to a petition, the following procedures in respect of each work published or shown without written permission from the author or his successor, in violation of the provisions of article (5) hereof.

First: Detailed description of the work.

Second: Suspension of the publication, presentation or manufacturing of the work.

Third: Imposition of attachment against the original work or its copies or the material used for republishing this work.

Fourth: A recording of the public performance in connection with a copyright melody, acting or presentation of a work to the public and prevention of the continuance of the existing show or prohibition thereof in the future.

Fifth: Calculation of the revenues resulting from publication or performance by an expert delegated for this task if necessary and the imposition of attachment against such revenues in all cases.

The judge of summary matters may order that an expert be delegated to help the execution officer and order the plaintiff to lodge an appropriate guarantee.

The plaintiff shall file a case in a competent court within the eight days that follow the issue of the order. If the case is not filed within this period, all matters connected thereto shall be deemed null and void.

Article (37)

The party whose application was rejected and the one against whom the order was issued may object to such an order before the judge concerned and this does not preclude the filing of the original case before the court. Objection shall be made using the ordinary procedures for filing a case. Such an objection must be justified otherwise it will be null and void.

In respect of the complaint, a judgment shall be made to confirm, amend or cancel the order. A judgment may be made for the appointment of a receiver for the disputed work, who shall be responsible for republishing, showing, manufacturing or reproducing the work provided that the revenues arising should be lodged in the court treasury and the receivership shall be terminated upon unanimous agreement of the concerned parties or by the court's judgment. The complaint against that order shall not result in the suspension of its execution.

Article (38)

The court before which the matter in dispute is filed may upon the request of the author or his deputy order the destruction of the copies of the work which was unlawfully published and the materials used for publishing it, provided that such materials may not be used for another work or it is not possible to change the features of the copies and the materials or make them unusable, at the responsible party's expense. However, the court may, if the author's rights shall expire after less than two years as of the date the judgment is to be issued, and subject to non-prejudice to the author's rights as stipulated in articles (4) and

(5), item C, and (6), first paragraph, replace the judgment for destruction or changing the features to a judgment for confirmation of precautionary attachment for satisfying the compensation ordered in favour of the author. However, no judgment may be issued for destruction or changing the features, if the filed dispute relates to a translation of some work into Arabic in a way that violates the provisions of article (16), first paragraph. The judgment shall be limited to confirmation of precautionary attachment of the translated work in satisfaction of the compensation adjudged by this court in favour of the author.

In all cases in connection with the debt due to him arising from his entitlement to compensation, the author shall have a lien on the net sale price of the items and the money attached for fulfillment thereof. The only lien that shall have priority over the said lien is the court costs and any expenses incurred in preserving and maintaining such items and in collecting such funds.

Article (39)

The author's rights may not be subject to attachment but copies of the published work may be subject to attachment. This provision covers works whose owner died before publication thereof unless it is conclusively proved that he intended to publish it before his death.

Article (40)

Buildings may not be subject to attachment and no judgment may be made for the destruction or confiscation thereof with the intention of preserving the rights of an architectural author whose design and drawings may have been unlawfully utilized.

Article (41)

When an infringement occurs against one of an author's rights as stated herein, the author shall be entitled to compensation.

The national heritage of Kuwait Society is a public property of the state. And the state, acting through the Ministry of Information, has the right to exercise the author's literary and financial rights on him.

Second Chapter - Penalties

Article (42)

Any person who:

- a - infringes the author's rights as stipulated in articles 4, 5, 6, first paragraph, and 12 hereof,
- b - sells or offers for sale or circulates or broadcasts to the public in any manner or brings in or takes out of the country any imitated work,
- c - discloses or facilitates the disclosure of computer software before it is published, or
- d - removes or participates in the removal of a property right that regulates or limits public access to the work or the performance or the transmission or the recorded material,

shall be liable to imprisonment for a maximum of one year and a maximum penalty of five hundred Kuwaiti Dinars or either of these penalties. The court may order the confiscation of all tools used for unlawful publishing if such tools are suitable only for such publishing as well as the confiscation of all copies.

It may also order its judgment to be published in one or more newspapers at the expense of the convicted party. If the accused has a previous conviction for committing one of the crimes stated herein and it is established that he committed one of these crimes within five years prior to the date of the latest judgment, the court may penalize him under this crime with a penalty exceeding the duly stipulated maximum limit provided that such increase in the penalty does not exceed half the said limit and the court may also order closure of the establishment used to commit the crime for a maximum of six months.

Fourth Part

Closing Provisions

Article (43)

Without prejudice to the provisions of the international treaties applicable in the State of Kuwait, the provisions hereof shall apply to the following:

- (a) Works compiled by Kuwaiti nationals and published inside or outside Kuwait.
- (b) Works compiled by Arab authors who are nationals of the signatory countries of the Arab Convention for the Protection of Author's Rights, which are published in one of the said countries.
- (c) Works compiled by foreign authors and published for the first time in the State of Kuwait.
- (d) Works compiled by nationals of the signatory member states of the World Organization Intellectual Rights Treaty, published for the first time in one of the said countries.
- (e) Works compiled by foreign authors who are nationals of the countries which treat the works of Kuwaiti authors on a reciprocal basis.

Article (44)

The provisions hereof shall apply to the works stated in the preceding article that exist at the effective date hereof. However, concerning the calculation of the term of protection for these works, it must include the period that elapsed from the date of effectiveness of the term until the effective date hereof.

The provisions hereof shall apply to all deeds and contracts made after the effective date hereof even if it relates to works previously published or shown or acted. Concerning contracts made before the effective date hereof, the provisions hereof shall not apply thereto and the said contracts shall remain subject to the provisions that were effective at the date these contracts were concluded.

Article (45)

The Minister of Information shall delegate staff as required for the execution of the provisions of this law and these employees shall be entitled to have access to the printing presses, book shops, publishing houses and public firms dealing in the works subject to the provisions hereof, to search for violations and materials that are used to commit violations and to record notes thereon as necessary. They may seek the assistance of the police in the performance of their tasks when necessary.

Regarding violations in respect of which a judgment may be made for the closure of a firm, the Minister of Information or his assignee may order the closure of the firm in which such a violation was committed until the public prosecution or the court permits the opening thereof or the case is decided.

Article (46)

The public prosecution shall undertake the investigation, execution and prosecution with respect to all crimes resulting from the application of this decree-law.

Article (47)

Any provision contrary to this decree-law is hereby cancelled.

Article (48)

The Minister of Information shall issue orders as necessary for the execution of this decree-law. He shall also issue regulations governing the system for filing compiled works, the procedures thereof, due fees and the preparation of a special register for recording the disposals relating to the compiled works that are subject to the provisions of this decree-law.

Article (49)

The ministers, each within his powers, shall execute this decree-law which shall come into effect as of its date of publication in the official gazette and which shall be presented to the National Assembly.

Amir of Kuwait

Jaber Al Ahmed Al Sabah

Bayan Palace

Effective Date: 29th December, 1999

برهان

د. سيف

EXPLANATORY MEMORANDUM OF THE DECREE-LAW FOR THE PROTECTION OF INTELLECTUAL PROPERTY

Literary, artistic and scientific works are the fruits of human thought and the mirror of man's character. There is no doubt that the protection of the authors' rights has become one of the strongest requirements necessitated by the current state of cultural progress and the introduction of modern techniques in printing and publishing. Therefore, the protection of authors' rights and the preservation of their efforts and intellectual innovations have become necessary in order to encourage them to continue their creative and scientific activities.

Due to the importance of protecting authors' rights, Kuwait became a party to several conventions such as the Arab Convention for the Protection of Authors' Rights in 1986 and the founding treaty of World Intellectual Property Organization. For these reasons and to complete the basic laws of the country, the attached law has been prepared for the comprehensive and effective protection of the author through nationally applicable legislation.

The provisions of this law reflect significant modern legislative attitudes and points of view, and are in line with contemporary legislation and take into consideration international conventions relating to the protection of authors' rights with which Kuwait is affiliated. The law includes the provisions of these conventions and adopts the latest solutions devised by these international conventions, notably the World Convention on Author's Rights (Geneva 1952) and its various amendments, the Arab Convention for the Protection of Authors' Rights, the Convention on Trade Related Intellectual Property Rights (TRIPIS) and the founding treaty of the World Intellectual Property Organization with which Kuwait is affiliated as per law #2 of 1998 as well as the reports of the International Committee formed in accordance with the provisions of the aforesaid convention for keeping pace with the developed countries which adopted these solutions after they became internationally established rules.

The first part of the law specifies the scope of protection but in anticipation of future developments, does not limit the types of artistic works protected to those specified. However, the law establishes a general structure and gives some examples of the common types. The first paragraph of article (1) provides that the works whose authors have legal protection are newly created works in the fields of arts, letters and sciences irrespective of their value, type, compilation, objective or expressive style, so that this scope includes works currently in existence and works which may be created in the future.

The second paragraph of this article defines the author as the person who creates the work as well as the person to whom the work is attributed upon publication thereof in any manner that helps to identify this person. This is a legal fact that may be disproved by all legally stipulated means.

Article (2) provides examples of works, whose authors are protected under the law, from among those that are common and in general use at the present time. These include computer software and databases which, in conformity with rules established in accordance with international conventions, are considered in the same light as literary works. It does not omit to expressly provide that protection also covers the title of the work if this is distinguished with an innovative form and is not a common word denoting the subject matter of the work.

Article (3) provides works derived from previous works, including translated works as well as all forms of existing works compiled into new forms, with protection after permission from the original author to do so had been obtained.

The third paragraph of this article provides a restriction with respect to photographic works, namely that the author should not prevent others from taking new photographs of the thing photographed. This restriction is not considered a prejudice to the rights of the photographic author. The protection of photographic work necessitates the prevention of copying directly from the same photographic work without permission from the author. However, it does not prevent other photographs being taken from the same place,

even if this is done under the same circumstances as when the first photographs were taken.

In the second chapter, the law regulates the authors' rights. The first part of this chapter deals with general provisions. Article (4) stipulates that the author shall solely decide whether his work is to be published and how it should be published. He also has the right to utilize it financially and the article prevents third parties from using this right except under prior written permission from the author or his successor.

Article (5) states some ways in which a work may be utilized financially, namely its reproduction and presentation to the public through public performance, translation, modification, summarization, explanation and amendment into any other form. It is understood that these forms are not mentioned in this article merely as examples.

Article (6) states some of the author's literary rights relating to his work. It stipulates that he is solely entitled to have his work attributed to him. He and his successor have the right to object to any modification made by third parties to his work without permission from him and it also states the exceptions thereof.

On the other hand, articles (7) to (11) describe situations when the author is deprived of the right to object to the utilization of his own work by third parties even if such utilization is made without his permission. It may be noted that these situations do not conflict with the author's rights relating to his work because they do not imply a material utilization or infringement of his literary right. However, they are in harmony with the nature of this right which aims to promulgate culture in general, such as musical play or acting in a private meeting which does not yield a financial benefit or where the reproduction is done for the private use of an individual or by a public library or registered non-commercial house provided that the reproduction is limited to the fulfillment of its needs and does not harm the ordinary utilization of the work, or the presentation, quotation or analysis of the work for the purpose of criticism, study or information, etc... provided that the reference and author's name are clearly mentioned. However, the author shall solely have the right to publish collections of his speeches or articles as stipulated in article (12).

After the law has stated the author's rights during his life, it clarifies the disposition of such rights after his death. Article (13) thereof limits the passing of material utilization rights to his heirs and obliges them to comply with any contracts he may have concluded with publishing houses or to comply with his will should this prevent publication or set times or conditions thereupon. In the case of a joint work, it provides for the passing of his share to the remaining authors in equal shares if he has no heir or legatee and it is not agreed otherwise in writing.

Then the law deals with the case when the heirs of a Kuwaiti author do not publish the work of their legator nor republish it. Where the public interest necessitates publication of the work, article (14) entitles the Minister of Information to request the heirs to publish the work by registered letter. If the author's heirs or his successors insist on refusing to publish the work, the Minister shall be entitled to have an order issued by the president of the Court of First Instance to hand the work over to him for publication. All this shall be without prejudice to the right of the author or his successor to fair compensation.

Article (15) of the law provides special provisions concerning performing artists such as singers, musicians and dancers as practical reality reveals that the drawing power of some performing artists exceeds the attractiveness of the author of the work. Indeed the artists may be the basic reason why a work is popular and the public is attracted to it.

Whereas the author's financial rights to his work is temporary by its nature, articles (16) and (17) of the law state when the period of protection for all types of works expires. Article (16) provides for the expiry of the author's right of protection and the right of the person who translated his work into another foreign language in connection with the translation of such a work into Arabic if the author or the translator does not exercise this right within five years from the date the original or translated work is first published. However, the Minister of Information may license the translation of the work into Arabic or the publication thereof one year after the date the original or translated work was published for the first time, provided to a fair compensation is paid to the author or the person to whom the translation rights have passed, for the purposes of promulgating culture and the benefits society can acquire from every innovative and creative

work.

The first item of article (17) states the general rule relating to the period of protection, namely that it lasts for the author's life and fifty years from the date of death of the last surviving author. In both cases, the period shall start as of the end of the calendar year when death occurred. The second and third items of this article provide for another date for the commencement of the period of protection in connection with some works. The law here takes into consideration the public interest and gives it priority over the author's interest in view of the nature of the work or the conditions attached to its publication or where the author is an artificial person. The second item of this article considers the first date of publication to be the time from which the fifty-year period should be calculated and after which the right of utilization shall expire in connection with works published under an assumed name or without mentioning the author's name unless the author is known to the public under his assumed name or unless the author discloses his identity. In this case, the provisions contained in the first item hereof shall be applied to him. This is also applicable to works where the entitled person is an artificial person. This is also the case in connection with cinema works, photography works, applied arts, computer software, databases and the works that are published for the first time after the death of their author. The third item considers that the end of the calendar year for such works is the commencement date for calculating the fifty-year period for the expiry of protection in the case of performing artists and the end of the calendar year during which the recording was made in the case of producers of cinematic works or works prepared for radio or TV. The fourth item provides for a shorter protection period in connection with the programmes of broadcasting centers, ie twenty years to commence as of the end of the calendar year during which the work was first broadcast.

In the second chapter of the second part, the law deals with some works that require special provisions such as a joint work that is compiled by several persons whereby the portion of any of them cannot be separated from the share of the others. Article (18) provides that all the authors are considered as having equal rights in such a work unless it is otherwise agreed in writing. It prevents them from exercising copyright in such a work except under their unanimous agreement, other than for taking precautionary and immediate procedures and for making a claim for compensation for the damages incurred because of infringement, and it provides that the court of first instance is competent to decide any dispute between them in this matter.

However, if it is possible to separate the share of each author, article (19) provides that each of them is entitled to utilize the part that he solely contributed, provided that this shall not affect the utilization of the joint work unless it is otherwise agreed in writing.

Due to the fact that one element of a jointly compiled work may have special predominance or importance in relation to the other elements, article (20) entitles the author of the musical part only of the lyrical works, such as opera and operettas, to license the public performance of the joint work in whole or the execution or publication thereof. It also entitles the author of the literary part to utilize his own part provided that he shall not use it as a basis for another musical work unless it is otherwise agreed in writing. Article (21) entitles the designer of movements in joint works which are performed in the form of movements accompanied by music, such as ballets, shows and sport games (if accompanied with music), to license the public performance, execution or shooting of the whole joint work and grants the composer of the musical part the freedom to dispose of his part provided that it is not utilized in a work similar to the joint work unless it is agreed otherwise in writing.

After article (22) specifies who is considered to be a partner in the creation of cinematic work or a work prepared for radio or TV. Article (23) provides that the author of the scenario of this work and the person who amended the literary work and the director are together entitled to present it despite the objection of the music composer, without prejudice to the rights resulting from participating in the composition. The second paragraph of the article entitles the author of the literary and musical parts to publish his work in any other manner unless it is otherwise agreed in writing. Article (24) deals with the case when a participant in the compilation of one of these works does not complete his own part and deprives him of the right to object to the use, by the other participants, of the part which he has already completed so that his objection, which may be ungrounded or unimportant, does not result in the suspension of the artistic work or in gross material losses which are not compatible with the reasons for the objection.

Because the production of visual works necessitates its producer's presentation thereof without interference from the authors who have interests in the same work, article (25) defines the producer of cinematic works or works prepared for radio or TV as the natural or artificial person who completes or assumes responsibility for such completion or the one who gives his authors thereof the material and financial means necessary for such completion, and then grants him all the publishing rights as their attorney as well as their successors' attorney with respect to the presentation and utilization thereof unless it is otherwise agreed in writing.

Article (26) provides that a collective work is a work that is created by a group under the supervision of a natural or artificial person whereby the contribution of each participant cannot be separated nor distinguished, such as dictionaries, encyclopedias and thesauruses. In this case, only the person who supervises the innovation of the work and compiles it shall be entitled to exercise the rights of the author.

Article (27) of the law provides, in connection with a work created by a person for the account of another person, for a provision contrary to that related to the collective work. In the case of a collective work, the contribution of each participant to the work is mixed with the contributions of the others and thus cannot be attributed to one of them only. Therefore, the law decides that it is to be attributed to the natural or artificial person who directed and organized the innovation of the work. As for a work compiled by a specific person, even when under the supervision and for the account of another person, the character of the author shall remain clear and evident in it and therefore the work shall be attributed to the innovator as a general rule unless it is otherwise agreed in writing.

Article (28) of the law contains a legal fact that the publisher of works made under an assumed name or works which do not bear the author's name is considered to be the latter's attorney with respect to the exercise of his rights thereto.

Article (29) of the law contains some provisions relating to photography. It lays down a general rule that a photograph may not be displayed or published or reproduced without a written consent from the person who is photographed, unless the photograph is published on the occasion of a public event or is related to officials or well-known persons or if the authorities permit publication in order to serve the public interest, unless such an act affects the honor or reputation of the person photographed.

The third part of the second chapter of the law deals with compilation rights. Article (30) provides for the right of the author to transfer the right of utilization to third parties as referred to in articles (4), second paragraph, and (5) of the law. It stipulates that, in order that the transfer be valid, each right that is subject to transfer, and its extent, purpose and its place and period of utilization must be stated in writing. Writing here is the basis of validity and not just a means of probation. The law, in the last paragraph of this article, obliges the author to refrain from any act that would impair the transferee's utilization of the transferred right. The fifth paragraph provides that the provisions relating to the author's assignment of his rights in accordance with the provisions of this law apply to performing artists. Article (31) also permits the author to dispose of his rights relating to the work on the basis of a sharing of revenues and treats the case when an agreement is unfair to the author's rights with a provision necessitated by considerations of justice and which is considered a deviation from the general rules of contracts, on the basis that an author is usually ignorant of the relationship existing between him and the publisher or the presenter particularly if he is a rising or new author.

As the literary rights stated in article (4), first paragraph, and article (6) of the law are personal rights of the author, the law explicitly stipulates in article (32) that any disposal thereof is invalid. It also states in article (33) that the author's disposal of his total future intellectual output is invalid.

If a work is a single original work of art, the law is keen to provide explicitly in article (34) that the author's disposal thereof cannot transfer his rights to the transferee but he is not entitled to oblige the latter to enable him to reproduce an original copy thereof or present such a copy unless they agree otherwise in writing.

The law does not omit to entitle the author alone in article (35) should serious reasons arise, to request the Court of First Instance to order the withdrawal of his work from circulation, despite the disposal of his

right of utilization, in consideration for a compensation to the transferee for any resulting material damages. The author must pay the compensation as ruled by the court in advance within a specified period before the actual withdrawal of the work. If the author does not pay the compensation within the specified period, the judgment ordering withdrawal shall be made invalid and the work may be put into circulation again.

In the third part thereof, the law states the precautionary procedures and penalties that guarantee the protection of the author's rights in an efficient and quick manner. Article (36) permits the author and his successor to request the judge of summary matters in the court of first instance to order the adoption of all or some of the protective procedures specified should his right to publish the work or show it be infringed without a written permission from the entitled person. These protective procedures are of two types:

The first type:

This is intended to prevent damage resulting from the infringement of the author's rights, ie the prevention of future damages. This type includes the following procedures: Detailed description of the work, suspension of its publication, presentation or manufacture, recording of a public performance with respect to a compiled music or act or presentation, and preventing the continuation of the existing show or its prohibition in the future.

The second type:

This is intended for the assessment of the actual damages resulting from the infringement and adopting the procedures that would preserve the author's rights by eliminating of such damages. These types of procedures includes attachment of the original work or its copies as well as the materials used for reproduction thereof and assessment of the revenues resulting from publishing or showing it by an expert delegated for this purpose, with attachment of these revenues in all cases. The ordering judge may oblige the applicant to deposit an appropriate guarantee to ensure the seriousness of the application.

This article also obliges the concerned party to file the original dispute with a competent court within eight days following the issuance of the order, otherwise the order shall be deemed null and void.

Article (37) provides that an appeal may be filed against an order issued in the cases stipulated in article (36) before the judge who made the order who may rule for confirmation of the order or amendment or cancellation thereof and appoint a receiver for the disputed work.

Article (38) mentions some procedures by which the trial court, upon referral of the original dispute and upon the request of the author or his deputy, may order the copies of the work unlawfully published and the materials used for publishing it be destroyed or that its features be changed or it be rendered unusable. However, it made an exception for this in the circumstances when the author's right expires less than two years after the date the judgment is issued. Instead of this, it permits the court to rule for confirmation of precautionary attachment for fulfillment of the compensation filed in favor of the author. This exception necessarily includes the case of a work translated into Arabic in violation of the first paragraph of article (16) on the basis that this violation is not so serious that it necessitates a judgment for destruction. The second paragraph of the article provides that the amount of compensation granted to the author shall have a lien over the sale price of the attached items and money for fulfillment thereof. The only lien that shall have priority over it is that of the judicial expenses to preserve, maintain and collect such amounts.

Article (39) provides that attachment may not be imposed on the author's right to publish his work. The right that may not be attached is the author's financial right. Concerning the literary right, it is well established that it may not be subject to attachment or disposal thereof because it is one of the rights attached to personality. The provision that attachment of the financial rights may not be imposed, although it is disposable by nature, is considered a deviation from the general rules so that the author is not obliged to publish his work involuntarily through attachment in violation of his literary right. If the author voluntarily decides to publish his work and had done so, his literary right shall expire and only his financial right remains, ie the copies that were published and are possessed by him. Therefore, this article expressly provides that these copies may be attached. However, the author's financial right related to works where he has died, before

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