



KUWAIT

Intellectual Property Law: Law no. 5 of 1999

LAW NO. 5 OF 1999 ON INTELLECTUAL PROPERTY RIGHTS

Having perused Article 71 of the constitution, and
The Penal Code promulgated by Law No. 16 of 1960 and all its amending laws; and
The Penal Procedure and Trials Code promulgated by Law No. 17 of 1960, and all
amending laws; and
The Civil and Commercial Procedure code promulgated by Law No. 38 of 1980 and all
its amending laws; and
The Civil Law promulgated by Law decree No. 67 of 1980, duly amended by Law no.
15 of 1996; and
Law No. 16 of 1986 ratifying Inter-Arab-Copyright Convention; and
Law No. 2 of 1998 ratifying the State of Kuwait accession to the convention
establishing the International Organization of Intellectual Property, and
Pursuant at the proposal made by the Minister of Information; and
After ratification by the Council of Ministers
We hereby promulgate the following law :

TITLE 1

THE SCOPE OF PROTECTION

Article 1

Authors of creative classified works of literary, arts and sciences of whatever value, nature or purpose of their authorship or manner of expression shall be under the protection of this Law. A person who creates a classified work or to whom the classified work is, attributed at the time of its publishing or diffusion, whether by stating his name in such classified work or by any other means of whatsoever nature shall be considered as author, unless otherwise is established and proved.

Article 2

The protection shall particularly include the following classified works:

- a) Written classified works.
- b) Orally delivered classified works, such as lectures, speeches, religious preaching, sermons and the like.
- c) Classified theatrical, dramatic and musical works .
- d) Classified musical works, whether related to words or not.
- e) Classified works performed by means of moves or steps, which are materially prepared and worked out for production and /or direction.
- f) Cinema and broadcasting audio visual classified works.
- g) Line or color painting and imaging works graphic and architecture drawings, sculpture works, arts, ornamental, decorative and engraving works.

- h) Photographic works .
- 1. u) Applied Arts works, whether vocational or industrial.
- i) Illustrative images, geographical maps, designs, layout-drawings plans and miniature models of Geographical, Topographical, Architecture and Scientific works.
- j) Computer-classified-works, such as software, software-packages data bases and the like. Classified derivatives and translated works. The protection shall also include the title of classified work if it is creatively characterized and not merely a business- expression for the purpose of indicating the classified work subject matter.

Article 3

Any person who under the author's authorization translates a classified work into another language, summarizes, amends, illustrates or otherwise describes in detail or construes the same in a manner under which the classified work appears in a new shape shall enjoy the said protection too. The protection established and specified in the preceding paragraph shall not prejudice the protection enjoyable by the principal author of the classified work, provided that the rights of a photographic classified work's author shall not constitute preventing others from taking new photographs of the same photographed item even if the new photographs are taken from the same place; and generally, under the same circumstances whereby the first photograph was taken .

Title II COPYRIGHTS

CHAPTER 1 GENERAL PROVISIONS

Article 4

Only the author shall have the right to determine on publishing his classified work, and specify the manner of publishing. He shall alone have the right to utilize his classified work financially in any way of utilization, and no other person may exercise such right, unless a prior written authorization is obtained from the author or this successors.

Article 5

Regarding utilization the author's copyright shall the following :

- a) Reproduction copies of the classified work in any manner whatsoever.
- b) Conveying and/or communicating the classified work to public and audience of viewers in a public performance, theatre works, broadcasting means Television and/or Cinema shows or any other means,
- c) Translating the classified work into any other language, amending, summarizing, construing, illustrating or modifying the same in any other shape or manner.

Article 6

The author is the only person to whom the classified work is attributed, save when the classified work is accidentally broadcasted or viewed within introduction of a certain material of current events.

The author or his private / public successor shall have the right to reject or prevent any deletion, alteration, modification, addition or any other amendments to be made in his classified work without having secured his permit or authorization. Amending ,

altering, modifying or enhancing the classified work into an other shape is exempted from the provision of the preceding article, unless such act affects the author's reputations, his academic status or artistic prestige or in the event of prejudicing the contents of the classified work. However, in all cases any translation amendments, modification or improvement made in the contents of the original classified work shall be clearly indicated and stated therein.

Article 7

The author after publishing of his classified work may not prevent rhythming and eurhythmics or playing of such classified work if it has taken place at a private gathering or assembly, which does not directly or indirectly result in any financial income.

Article 8

If a person has made a single copy of a classified work already published, or he has translated, adapted, modified or altered the same for his personal use in any other manner whatsoever, the author may not prevent him from doing so, provided that the publishing of such works may not be made, unless the permit of its owner and the author is obtained.

Article 9

The author after having published his classified works he may not prohibit conducting and carrying out of analysis and minor quotations if they are meant for criticism, educational, cultural, and study works or for information purposes, provided that the original reference, source and name of author are clearly indicated and mentioned therein.

Article 10

Press, Periodicals, Broadcasting, Television and/or other information media may communicate without the author's permit, any articles or comments relating to political, economic or religious discussions or comments relating to political, economic or religious discussions over which the public opinion is concerned at a specific period of time, unless such communication is expressly restricted and /or prohibited as provided for in the original text from which such a communication shall be made.

In the event of communicating, publishing or quoting any such work, etc. the relevant source reference and name of the author shall always be clearly indicated and stated therein.

Article 11

Press, Broadcasting and other information media without having secured the permit of the author may publish and broadcast, for the purpose of communicating news, speeches, lectures, preaches and talks delivered at open meetings and sessions of legislative and administrative assemblies and bodies as well as the meetings held by academic, literary, technical, political, social and religious Institutions since such speeches, lectures, talks and preaches are directed to public, which shall be addressed accordingly. Moreover, legal open arguments and pleadings may be published within the scope of law without having secured the permit of the author.

Article 12

In the event of cases provided for in the preceding two articles, the author alone shall have the right to publish his complied speeches, articles and/or essays.

Article 13

The author's heirs shall alone have the right to financially utilize the relevant classified work in the manner prescribed in this law, provided that the following stipulations are observed and abided by:

- a) If the author had concluded a contract in writing with a third party for utilization of his classified work, then his contract should be implemented in conformity with its stipulated terms.
- b) If the author had directed by a will that his classified work, should not be published or he had fixed specific date or stipulated other conditions for that purpose, then the contents of his will shall be implemented.
- c) If one of a joint classified work's authors died, and he had no heir or trustee, his relevant share be equally devolved to the other joint authors, unless otherwise is agreed upon in writing in that respect.

Article 14

If the heirs of a Kuwaiti author or his successors have failed to publish or republish his classified work, and the Minister of Information deemed it necessary to publish such classified work, for the public interest, but the heirs or successors have continued to abstain from doing so for one year period with effect from the date of his request forwarded to them by means of a registered letter, then he may exercise the said right under an order issued by the Chief Judge of the Court of First Instance, confirming delivery of the said classified work to him for publishing purposes, but without prejudice to the right of author's heirs or successors for a fair equitable compensation.

Article 15

Performing artists, such as performer-actors, singers, musicians and instrumentalists shall be entitled to a percentage of performing for what they performed on the basis of their creative ability. Moreover, they shall enjoy the financial right to utilize their performance, whether by means of communicating their performance to public audience, or for reproduction, leasing, and the public availability of their performance already confirmed through broadcasting or electronics means of computer-software and packages.

The Broadcasting corporations shall enjoy a financial right to license utilizing of their records and to prevent any use of their programs without a prior written permit given by them in this respect.

Article 16

The protection of author's copyrights of a foreign language classified works, with the right of the person translating such work into another language, against translations of that classified work into Arabic language shall expire within a lapse of five years with effect from the first day the genuine classified or translated work was published. Nevertheless, the Minister of Information may license translating into Arabic or publishing of such classified work after a lapse of one year from the date of publishing the original classified work or the date of work translated for the first time. In such a case, the author or the person to whom the translation work was devolved shall be fairly and equitably compensated.

Article 17

Without prejudice to the provisions of the preceding article, the protection of author's copyright against utilizing his work in a financial manner shall lapse as follows :

- 1) After a lapse of fifty (50) years from the date of author's death. As for the period of a joint classified work it shall be calculated from the date of death of the last alive party of the joint - authors, with effect from the end of the relevant Gregorian year in which he died.
- 2) After a lapse of fifty (50) years from the end of the Gregorian year in which the classified work is published regarding the following.
 - a) The classified works which are published under assumed name or published without having the author's name indicated therein, unless the author's personality is revealed by well known to all, then the period shall be expired as stipulated in clause "1" herein.
 - b) The classified works the copyright holder of which is deemed to be a judicial person I e a body - corporate.
 - c) Classified Cinema Topographic and Photographic works, as well as applied arts, computer programmes and data bases.
 - d) The classified works, published for first time after the death of their author i.e. writer or composer.
- 3) After expiry of fifty (50) years, with effect from the end of the Gregorian year in which the performance is made with regard to performing artists, and as from the end of the Gregorian year in which the recording was made in case of Cinema records producers or of the records prepared and intended for television or broadcasting requirements.
- 4) After a lapse of twenty (20) years as from the end of the Gregorian year in which the first radiocast or telecast is made in case of broadcasting.

CHAPTER 11 PROVISIONS GOVERNING CERTAIN CLASSIFIED WORKS

Article 18

If more than one person have jointly participated in a written or composed classified work to an extent where no share of any of them could be separated from the other shares, then all of them shall be considered equal joint holders of that classified work, unless otherwise is agreed upon in writing . In such a case none of them may exercise the author's rights constituted under copyright, save upon agreement of all authors (writers and /or composers). But in the event of disputed, the court of First Instance shall determine on the issue. Each of then joint authors shall have the right to take preventive measures and summary proceedings in case of a copyrights infringement. He shall also be entitled to file a lawsuit to claim his share in compensation for the damages sustained by the reason of such infringement.

Article 19

If more than one person have jointly participated in writing or composing a classified work where the share of each could be separated then each of the participants shall be entitled to utilizing the part of his participation separately, provided that such act shall not prejudice the joint utilization of the classified works, unless otherwise is agreed upon in writing.

Article 20

Without prejudice to the right of author of a literary proportion in a lyric music classified work, the composer of the musical part shall alone be entitled go a license for of performing in public the entire joint classified work, or to implement , publish or reproduce the same. The author of the literary part shall have the right to publish the part belonging to him, provided that he may not dispose of that part in a way to

be a basis for another musical classified work, unless otherwise is agreed upon in writing.

Article 21

For joint classified works which are performed with moves accompanied with music and for all other similar classified works, the designer of move and steps shall have the right of being licensed to perform in public the entire joint classified work or to implement or reproduce the same.

The composer of the musical part shall alone have the right to disclose of that part, provided that , it shall not be used in a classified work similar the said joint classified work, save when otherwise is agreed upon in writing.

Article 22

The following shall be considered as partners in a cinema classified works, or in a classified works prepared and intended for broadcasting or television (TV) purposes:

- 1) The scenario-editor or the author of a classified written thought.
- 2) The scrip-writer who modifies a literacy classified works in a manner to suit such art.
- 3) The Dialogist, i.e. the dialogue writer.
- 4) The music composer (the musician) if a music is specially composed for such a classified works.
- 5) The director, and /or producer if he could manage to observe an actual control, and has intellectually performed a positive work duly realizing and achieving and of the aforesaid classified works. In case of a movie, TV, or broadcasting classified work which is simplified or extracted from a former classified work, then the author of the classified work shall be deemed as a prater in the new classified work.

Article 23

The scenario-editor, the scrip-writer who modifies a literary classified work, the dialogue- writer (dialogist) and the director i.e. the producer shall all collectively have the right to display and show any movie-classified work or any classified work prepared for broadcasting or a TV. show in spite of any objection raised by the author of a genuine literary classified work or raised by a music composer. the musician, but all of which shall be made without prejudice to the civil rights of the objector, as duly constituted and existing by the reason of this participation in the relevant authorship.

The author of a literary proportion or of a music composition each shall have the right to publish or diffuse his classified work in any other way, unless otherwise is agreed upon in writing.

Article 24

If any of the participants of a music classified work or of a classified work prepared for broadcasting or for a TV show has refused to perform his proportional works or failed to do so for circumstances or reasons beyond his control, he shall have no right to prevent the other participants or deprive them of using the part he has already performed, but he shall be deemed a composer author of his accomplished part of work, and consequently he shall enjoy the rights constituted accordingly.

Article 25

Any natural or judicial person who has undertaken the implementation of or who has been held responsible for implementing a movie – classified work prepared for a

radio broadcasting or a TV. show or who has made the necessary financial means available at the hand of a classified work author for realizing the production and/or direction of the same shall be considered a producer. However, in all cases the producer shall be considered as a publisher of the classified work , and consequently he shall be entitled to all rights of the publisher.

The producer, shall within the utilization period agreed upon be considered as attorney acting on behalf of the authors (writers or composers) of the classified work and on behalf of their successors regarding any show or utilization agreement, but without prejudice to the rights of any. Literary or music classified works author's unless otherwise is agreed upon in writing.

Article 26

A collective classified work denotes a classified work jointly planned and made under direction of a natural or judicial person to the extent that the work of each participant could not be separated and singly identified .

The judicial person which directed and organized the creation of such classified -work shall be considered as author, which alone shall be entitled to the exercise of the author's rights.

Article 27

If a classified work is created for the account of a natural or judicial person, the Author's right shall be established in the favor of the creator, save in the event of an agreement stipulates otherwise in writing.

Article 28

In case of any classified work mode under assumed names or which do not bear the name of author, the publisher whose name is shown in the classified work shall be deemed as a person authorized by the author to exercise the rights established under this law, unless otherwise is proved.

Article 29

Any person takes a photograph or picture shall have no right to shown exhibit, display, publish or distribute its originals or reproduction without having secured the permit of persons of whom he has taken such a photograph or picture, unless otherwise is agreed upon in writing.

This provision shall not be applicable if the publishing of such a photograph or picture was made on occasion of events publicly occurred or related to any official men or persons enjoying public reputation or in case the competent authorities have approved the same act for the purpose of public interest. Nevertheless, showing, displaying or circulating of the picture or photograph in the event of the preceding case may not be made if it shall prejudice or result in disparagement of honor, reputation or dignity of the person whom it represents. However, the photographed or pictured person may permit publishing his photo or picture in daily papers, periodicals, magazine and such similar publications, even of a written agreement stipulates otherwise.

The provisions shall be applicable to all pictures images, photographs and/or portraits of whatever manner or way they are made whether by means of imaging, picturing painting and engraving or by any other means.

CHAPTER 111

ASSIGNMENT OF AUTHORSHIP'S RIGHTS

Article 30

The author may assign to a third party directly the exercise of utilization rights provided for in Article 4, paragraph 2 and Article 5 of the law hereof provided that the assignment of any right herein shall not constitute authorization of the assignee to exercise any other right. It is conditional that for the validity of said assignment it should be written, with the right under assignment expressly determined and specified therein, besides clearly indicating and stating its extent, purpose, duration and place of utilization.

The author shall abstain from any act which may obstruct or impair the financial use of the assigned right.

The provisions governing the assignment made by the author regarding his financial rights in accordance with the provisions of this law decree shall be applicable to the performing artists.

Article 31

The assignment of author's rights regarding his classified works whether fully or partially may be made on the basis of a proportional sharing in the yield of utilization or haphazardly by casual means. Nevertheless, if it is proved that the agreement, is inequitable and prejudicing the rights of the author or it has become so under certain circumstances occurred after conclusion of the relevant contract, the court may, on the basis of the said circumstances and after counterbalancing of the two disputing parties, interest pass a judgment in favor of the author confirming payment of a part of the net profit resulting from utilization of the classified work, in addition to what already agreed upon.

Article 32

Any assignment of the rights provided for in Article 5. Paragraph "1" and Article "7" of this Law shall be void and null.

Article 33

Any assignment made by the author regarding the total of his future intellectual production shall be deemed null and invalid.

Article 34

The assignment of the single original copy title of a classified work of whatsoever type shall not constitute the assignment of the author's right of such a classified work. Nevertheless the assignee to whom the ownership is devolved may not be compelled to let the author's copy, reproduce, communicate or show the said classified works. All of which is applicable, unless otherwise is agreed upon in writing.

Article 35

In the event of serious reasons occurred the author shall alone move for the court of first Instance to withdraw his classified work from circulator or to introduce and make any modifications or adjustments, in spite of his assignment of the relevant financial rights. In such a case, the author shall be bound to compensate the assignee to whom the financial utilization rights are devolved fairly in equitable

manner .Such just compensation shall be paid within a term specified by the court; otherwise the effect of judgment shall be no longer existing and completely nullified.

TITLE 111 PROCEDURE AND PENALTIES

CHAPTER 1 PROCEDURE

Article 36

The summary actions judge at the Court of First Instance shall, upon a motion moved for by an author or his successor and pursuant to a writ of judgment on a petition, rule the following proceedings to be applied regarding each classified work published, shown or exhibited without a written permit given by the author or his successor, on the ground that the provisions of Article 5 of this Law are violated

- 1) To conduct a detailed description of the classified work.
- 2) Cessation and discontinuation of publishing, diffusion showing exhibiting or making of such classified work.
- 3) To levy an execution and attachment on the original classified work, its reproduction, copying and on the materials used for republishing and rediffusion of such classified work.
- 4) To confirm and establish the public performance of any musical rhythm, theatrical acting, recital, recitation or delivery of any classified work before the public , with discontinuation of the existing show or prohibiting the same in future.
- 5) Calculating and assessing the income resulting from publishing, diffusing showing or exhibiting of the classified work through an expert to be delegated for such a purpose whenever deemed necessary, besides levying attachment and execution on such income in all cases. The summary actions judge may rule that an expert to be delegated and commissioned for the purpose of assisting the execution officer, besides imposing a suitable bail to be deposited by the petitioner.

The petitioner shall bring the original cause of disputer before the competent court of merits, within an eight day period following the date of court ruling which if brought not within the said limitation the issue shall be deemed void and null.

Article 37

A petitioner whose motion was caused to be rejected and ruled out and the person adjudged accordingly may each brings a complaint against the same before the judge who made the rules. Such act shall not prevent the institution of the original action before the competent court; and the relevant complaint shall be instituted under normal applicable proceedings of action at law filing . Moreover, it should be grounded and substantiated, otherwise it shall be deemed void and null.

A judgment shall be rendered in respect of the complaint whether confirming upholding quashing or vacating the said ruling. Moreover, (syndic) shall be appointed for the classified work under dispute whose duty is to republish exhibit reshow re-make or reproduce copies of such classified work, provided that the yields

of the production shall be deposited with the treasury of the court. The said receivership shall be discontinued by agreement of all concerned collectively or under a court judgment. The complaint raised against the ruling shall not ensue its stay of execution.

Article 38

The Court of merits before which the original dispute is brought shall at the request of the author or the person acting on his behalf destroy and/or damage the reproduced copies, pictures and /or images which were illegally published, together with the materials used for its publishing purpose, the features and characteristics of those reproduced copies and materials or to make the same unuseful for work. All of which shall be made at the expense of the party held liable.

Nevertheless, if the right of the author shall lapse after less than a two year limitation with effect with effect from the date of judgment rendition, the court without prejudice to the author's rights provided for in Articles 4 and 5 clause "c" and Article 6, Paragraph "1" hereof may commute the judgment of damaging the condemned work or changing its characteristics by a judgment confirming attachment on property for payment of any amount adjudged to be payable to the author, such as compensations and indemnities, relates to a transaction of a classified work into Arabic in order to avoid violating the provisions of Article "15" paragraph "1".

In such a case the judgment rendered shall be limited to confirmation of attachment on property regarding the translated classified work, for the purpose of settling any amount the court adjudged payable to the author, such as compensations and indemnities.

However, in all cases, the author for his debt originating and resulting from his right of compensation and indemnity shall have a prior lien over the net price of the items sold and the money attached for payment of his due debt, save the lien of court fees and legal attorney charges and the expenses spent for maintaining and keeping such items and for collection of the said amounts.

Article 39

The author's rights and entitlements may not be attached, but the reproduced copies of the classified work already published and/or diffused may be seized and attached. The said judgment shall include the classified works whose author had died before their publication and/or diffusion, unless it is conclusively and proved that he had meant to have them published before his death.

Article 40

Buildings and constructions shall neither be subject to attachment and seizure nor to a judgment deterring their demolition, damage or confiscation for the purpose preserving the rights of the Artistic author whose drawings and designs were illegally utilized and used in the relevant project.

Article 41

Every author of any right provided for herein whose right is infringed shall be entitled to compensation and shall have the right of being compensated accordingly.

CHAPTER 11

PENALTIES AND PUNISHMENT

Article 42

Punishable with imprisonment for a term not exceeding one year and a fine not more than KD 500/- Five Hundred Kuwaiti Dinars or with either of these two penalties, every infringer who:

a) Infringes the author's rights provided for in Articles 4,5 and 6 Paragraph "1" and Article 12 of this law.
b) Any infringer who sells, offers for sale, circulates, broadcasts to Public by any means whatsoever or who has imported in or exported out of the country any unguenuine and /or imitated classified work.

c) Any defaulter who reveals discloses or facilitates showing up or revealing a computer programme prior to its publishing or diffusion.

d) Any defaulter who removes or facilitates to remove to clear away or to eliminate any means of protection organizing or restricting the classified work not shown, demonstrated, performed or recorded by public audience.

However , the court may rule confiscating all tools assigned to the task of illegal publishing if they are only useful for such a purpose, besides confiscating all reproduced copies too. Likewise the court may rule the rendered judgment to be published in one or more issues of the Gazette or a newspaper at the expense of the defaulter adjudged guilty. However, if the accused infringer had been condemned before and punished for committing one of the crimes referred to in this article, and it was established within a five year term from the date of final judgment that he has committed any of the preceding crimes, then the court may pass a judgment , provided that it shall not exceed one half of the said prescribed penalty, besides rolling lock-out of the firm utilized in committing the crime for not more than a six month term.

TITLE IV FINAL PROVISIONS

Article 43

Without prejudice to the provisions of international conventions and agreements enforceable in the state of Kuwait , the provisions of this Law hall be applicable to:

a) The classified works of Kuwait State citizens, i.e. Kuwaiti nationals which are published within the country or abroad.

b) The classified works of Arab authors who are nationals of the member-states of Inter- Arab copyright convention which are published in any of these states.

c) Classified works of foreign authors which are published in the state of Kuwait for the first time.

d) Classified works of authors of member- state Nationals of the International organization of Intellectual property Rights.

e) classified works of foreign authors who are nationals of states treating the classified works of Kuwaiti authors on the basis of reciprocity.

Article 44

The provisions of this Law shall be applicable to the classified work referred to in the preceding article which are existing at the time of its enforcement , provided that for calculating the protection period of these classified work, the duration lapses as from

the date of the event occurring which is fixed for the commencement of the said period up to the operative date of this Law shall be included them.

The provisions of this Law shall be applicable to all event, occurrences and -/or contracts following its effective date even though they relate to classified works already published, diffused shown or played. As for the contracts which were concluded prior to the enforcement of this Law, they should not be subject to its provisions, and shall remain to be governed by the provisions which were applicable at the time such contracts were completed and finalized.

Article 45

The Minister of Information shall delegate the officials required to implement the provisions of this Law. Such officials shall have the right to enter any printing press, bookshops, publishing houses, public places and shops which deal in the classified works governed by the provisions of this law for the purpose of controlling the events occurred and the material - subject of pertinent violations, besides recording the necessary minutes and records of occurrence . They shall whenever deemed necessary seek the assistance of Policemen for performing their duties and the tasks entrusted with.

As for the violations which are subject to lockout and shutting, the Minister of Information or any official delegated by him may give the order of lockout to close up the violating firm, until the Public Prosecution Permit is secured or the Competent court rules to open it or the case is determined and a relevant judgment is passed in that respect.

Article 46

The Public Prosecution shall undertake the authority of investigating, inquiring and taking action and prosecuting affairs in all crimes resulting from the implementation of the provisions of this Law decree.

Article 47

Any text contradictory to the provisions of this Law shall be repealed.

Article 48

The Minister of Information shall issue the resolutions deemed necessary for the implementation of this Law decree,. Moreover, the Minister of Information shall issue a decision duly regulating the system and rules of filing and depositing the classified works, with the relevant procedure and any payable fees, besides establishing a special Register for recording all incoming and actions of the classified works subject to the provisions of this Lade Decree.

Article 49

All Ministers, each with his jurisdiction shall implement the provisions of this Law Decree, which shall be operative the date published in the Official Gazette, and shall be brought before the National Assembly.

Amir of Kuwait

Jaber Al Ahmed Al Sabah

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