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| RESEARCH ARTICLE |  The Scope of Protection for Engineering Works in the Literary and Artistic Property System |
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| Doi Serial | https://doi.org/10.56334/sei/8.10.15 |
| Keywords | Copyright, engineering designs, intellectual creativity, architect, formal procedures. |
| Abstract The Algerian legislature has stipulated in the Law on Literary and Artistic Property the protection of every innovative intellectual production, whether literary or artistic, regardless of its type, mode of expression, merit, or purpose. Given the importance of engineering designs, they have also been included within this system, provided that they fulfil the requirement of creativity, which constitutes the essence of legal protection. Furthermore, the technical and distinctive nature of these works grants them dual protection: on the one hand, they are subject to the general provisions of the copyright and related rights system; on the other hand, they are governed by legislative and regulatory texts about planning, development, and building safety, as well as laws concerning the material ownership enjoyed by the project owner. | |
| Citation. Mezili O. (2025). The Scope of Protection for Engineering Works in the Literary and Artistic Property System. <i>Science, Education and Innovations in the Context of Modern Problems</i> , 8(10), 142-153. https://doi.org/10.56352/sei/8.10.15 | |
| Issue: https://imcra-az.org/archive/384-science-education-and-innovations-in-the-context-of-modern-problems-issue-10-vol-8-2025.html | |
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| Received: 06.03.2025 | Accepted: 04.07.2025 Published: 10.08.2025 (available online) |

Introduction

Engineering works, as artistic achievements, play a vital role in the field of urban development, as they represent the embodiment and expression of a particular culture, articulated through a collection of knowledge and skills in the art of construction. This has afforded them a significant position within the system of literary and artistic property, given that the latter seeks to encourage creativity and innovation in various fields, including engineering, by granting the necessary rights to the creators of these works, thereby enabling them to control their legal use and exploitation. This, in turn, contributes to the enhancement of the knowledge economy and stimulates innovation and investment in these sectors.

Notably, the protection afforded to engineering works under the system of literary and artistic property, as well as under laws specific to architects, encompasses buildings and similar structures, in addition to projects, designs, plans, schemes, and prototypes prepared prior to the commencement of construction.¹

¹ Article 4 of Ordinance No. 03-05 of 19 July 2003 concerning Copyright and Related Rights, Official Gazette, 23 July 2003, no. 44, p. 8.

Accordingly, the question arises as to the status occupied by engineering works within the system of literary and artistic property and the extent to which the laws specific to architects align with those about copyright and related rights in protecting engineering works and their creators.

Section One: Defining the Nature of Engineering Works and the Criteria for Their Protection under the System of Literary and Artistic Properties

The issue of defining the nature of engineering works within the system of literary and artistic property involves two fundamental problems. The first concerns the necessity of determining their concept by providing a definition and clarifying their status within the system itself (Subsection One). The second is limited to identifying the criteria for their protection on the basis of the Copyright and Related Rights Law, as well as legislation relating to architects (Subsection Two).

Subsection One: The Concept of Engineering Works and Their Relationships to the System of Literary and Artistic Properties

The Algerian legislature did not address the definition of engineering works in the Copyright and Related Rights Law. However, the architect, that is, the creator of the engineering work, was defined as follows: "The author in the field of architecture refers to any engineer responsible for the execution and supervision of a construction project."² On this basis, in the course of his work, the engineer must first prepare a concept, known as engineering design, which constitutes the first step the architect takes in conducting the engineering study.

As a result, and in light of the importance of engineering designs, it is necessary to provide both a linguistic and a technical definition in the absence of a legal one.

Linguistic Definition of Designs or Engineering Works:

The term consists of two words. The first is "design" (plural: designs), which refers to a drawing or a plan for a building, a road, or similar structures.³ The second is "engineering," derived from the verb "to engineer," which means estimating and drawing shapes.⁴

The technical definition of engineering design, also referred to as architectural design, is aimed at meeting individual needs and relies primarily on shapes, lines, and curves in pursuit of artistic creativity. These designs are primarily based on mathematical principles and a set of geometric forms while also drawing upon personal skills and knowledge, as well as modern technologies, to achieve a product or service with distinctive and unique characteristics that enable competitiveness in the market.⁵

The primary objective of the system of literary and artistic property lies in encouraging intellectual creativity and rewarding its author by granting them exclusive rights over their intellectual production. As engineering designs are considered among the creative artistic works that emerge through the intellectual creativity derived from the imagination of the engineer, it is only logical that they should receive legal protection and that the Algerian legislature should include them among original works.⁶ That is, works whose existence does not depend on any preceding works.

² Article 9 of Legislative Decree No. 94-07 of 18 May 1994 concerning the Conditions of Architectural Production and the Practice of the Architectural Profession, Official Gazette, 25 May 1994, no. 32, p. 4.

³ Al-Munjid fi al-Lugha al-'Arabiyya wa al-Adab, 2007, p. 232.

⁴ Al-Munjid fi al-Lugha al-'Arabiyya wa al-Adab, 2007, p. 875.

⁵ Samira Abdel Daim, "On the Extent to Which Engineering Designs Are Subject to Legal Protection under Intellectual Property Laws," *The Critical Journal of Law and Political Sciences*, Faculty of Law and Political Sciences, University of Tizi Ouzou, 2021, vol. 16, no. 3, p. 57.

⁶ Article 4 of Ordinance No. 03-05 mentioned above.

Accordingly, the Algerian legislature has regarded architectural design as original, creative artistic work that enjoys protection once it fulfils certain conditions and is subject to specific principles stipulated in the Law on Literary and Artistic Property. This law therefore forms the foundation for the protection of the architect's work as an artistic achievement worthy of intellectual protection, regardless of the purpose, merit, or mode of expression of the engineering work.⁷ This opens a wide door to creativity. Thus, the taste of the architect, whether at a high level or not, and the message or intended purpose of the design are of no importance. Similarly, the artistic and aesthetic value of engineering work is not taken into account when determining its eligibility for protection. What matters is the fulfilment of the legal requirement; once the engineering work demonstrates intellectual creativity, it is afforded legal protection.

The benefit of the legal protection granted to engineering works results in the attribution of the status of the author to the natural person who created them, as stipulated in Articles 12 and 13 of Ordinance Nos. 03-05 mentioned above.

In principle, authorship is ascribed primarily to the natural person,⁸ as only such a person is able to create intellectual work. Therefore, the architect, as the creator of engineering work, is regarded as an author under the Law on Literary and Artistic Property.

As with any general rule, there are exceptions; in some instances, the author of an engineering work may be a legal entity, as permitted by the legislature in specific exceptional circumstances.⁹ This applies to collective designs in which several architects participate, under the initiative and supervision of a natural or legal person, and which are published in that person's name.

The Algerian legislature has also addressed the presumptions that may determine the identity of the author of an intellectual work subject to legal protection.¹⁰ These are simple presumptions, which may be rebutted by evidence to the contrary. Thus, if the author of the intellectual work is known, the rights holder is the natural or legal person who declares the work in their name, the person who lawfully makes the work available to the public, or the person who registers the work in their name with the National Office for Copyright and Related Rights.¹¹ Provisions that equally apply to innovative engineering designs.

Conversely, suppose a work is produced without mention of its author's name. In that case, the person who lawfully makes it available to the public is deemed the rights holder and enjoys legal protection unless any interested party proves otherwise.¹² In the case of anonymous work where the person who first made it available to the public is also unknown, the exercise of rights devolves to the National Office for Copyright and Related Rights.¹³

⁷ Article 3 of Ordinance No. 03-05 mentioned above states: "Every creator of an original literary or artistic work shall be granted the rights set forth in this Ordinance. Protection shall be granted, whatever the type of work, its mode of expression, merit, or purpose, upon the deposit of the work, whether or not it is fixed in any medium that allows it to be communicated to the public."

⁸ The first paragraph of Article 12 of Ordinance No. 03-05 mentioned above provides: "For the purposes of this Ordinance, the author of a literary or artistic work shall be considered to be the natural person who created it."

⁹ The second paragraph of Article 12 of Ordinance No. 03-05 mentioned above states: "'A collective work' is a work created by several authors, at the initiative and under the supervision of a natural or legal person, and published in their name."

¹⁰ Article 13 of Ordinance No. 03-05 mentioned above.

¹¹ The National Office for Copyright and Related Rights is the body responsible for matters relating to copyright and related rights in Algeria, according to Article 2 of Executive Decree No. 05-365 of 21 September 2005, which includes the fundamental law, organisation, and functioning of the National Office for Copyright and Related Rights, Official Gazette, no. 65, issued 21 September 2009.

¹² The second paragraph of Article 13 of Ordinance No. 03-05 mentioned above states: "If a work is published without the author's name, the person who lawfully makes it available to the public shall be considered the representative of the rights holder, unless proven otherwise."

¹³ The third paragraph of Article 13 of Ordinance No. 03-05 mentioned above.

Notably, the provisions of these latter two cases cannot be applied to engineering works, as the Algerian legislature requires the architect to identify himself or herself and any participating architects involved in preparing the design through an identification plaque that includes their names.¹⁴

This plaque constitutes a fundamental procedure of great importance in establishing the attribution of the design to the architect, as its placement is subject to an administrative authorisation granted by the minister responsible for architecture.

Subsection Two: Conditions for Engineering Works to Benefit from the System of Literary and Artistic Properties

The ability of an engineering design to benefit from the system of literary and artistic property is contingent upon the fulfilment of several conditions of varying importance. Some of these are essential and mandatory for the conferral of legal protection to architectural engineering designs. In contrast, others have not been granted the same degree of importance or obligation by the Algerian legislature in establishing such protection.

Although the Algerian legislature did not explicitly stipulate any formal requirements concerning engineering works, such requirements can be inferred from specific legal provisions. For example, regarding the condition that there must be a tangible intellectual achievement, no article in the Copyright and Related Rights Law directly addresses this; however, Article 7 of Ordinance No. 03-05 mentioned above.¹⁵ Excluding ideas from legal protection. This implies that creativity must take the form of an intellectual achievement embodied in material reality, capable of being exploited and disposed of, since ideas that are not given a material structure are excluded from legal protection.¹⁶

Thus, the work must be given a material form; this constitutes a formal requirement that cannot be disregarded.

However, the artistic achievement itself does not need to be fixed on a physical medium. A distinction must be made between form and physical medium:¹⁷ Form refers to the translation of ideas from imagination into reality, and this does not necessarily require fixation on a physical medium. The absence of such a medium does not negate the existence of an artistic achievement embodied materially.¹⁸ For example, engineering designs found on information networks also enjoy legal protection once they meet other legal requirements, even if they lack a physical medium.

Accordingly, it can be concluded that intellectual achievement entails a combination of two elements: it is both a mental investment and a formal procedure that gives it material embodiment.¹⁹ The absence of either results in the

¹⁴ Article 12 of Legislative Decree No. 94-07 mentioned above provides: "Every architectural project must bear the note of the architect or architects who participated in its conception." The Algerian legislator clarified the meaning of this note in Article 2 of Executive Decree No. 15-88 of 11 March 2015 concerning the identification of the creators of architectural works for buildings and constructions, Official Gazette, no. 14, issued 15 March 2015, which stipulates: "The note referred to in Article 12 of Legislative Decree No. 94-07 of 1994, as mentioned above, means the identification plaque that identifies the architect or architects who designed the building or structure."

¹⁵ Article 7 of Ordinance No. 03-05 mentioned above provides: "No protection is afforded to ideas, concepts, principles, methods, and modes of work or procedures associated with the creation of intellectual works as such, except in the manner in which they are included, structured, or arranged in the protected work, and in the independent formal expression of their description, interpretation, or clarification."

¹⁶ A. Lucas, *Propriété littéraire et artistique* (Daloz, 1994), p. 11: "A work can only be subject to copyright once it leaves the realm of speculation and enters the tangible world of form."

¹⁷ Article 3 of Ordinance No. 03-05 mentioned above.

¹⁸ A. Latreille, "L'histoire des œuvres, reconnaissance et protection," *RLDI*, 2011, p. 2: "It is necessary to distinguish form and support: one may perceive a form of expression without there necessarily being a material support."

¹⁹ Hassanein Mohamed, *Al-Wajeez fi al-Milkiyah al-Fikriyah* [A Concise Guide to Intellectual Property] (National Book Foundation, Algeria, 1985), p. 30: "The formal element is the transformation of the work from the realm of thought to the

forfeiture of legal protection. The author is thus required to provide both elements, even though the Algerian legislature has not explicitly imposed this formal obligation but has excluded ideas from the scope of legal protection.²⁰ In this respect, the provisions of the Berne Convention have taken a similar approach, granting member states the right to refuse legal protection to artistic works that have not assumed a specific material form.²¹

Therefore, for an architectural engineering design to enjoy legal protection, it must be expressed in an original formal embodiment. This means that the idea, creativity, or design conceived by the architect must be materialised in a particular form, which may take various shapes, such as a plan, a drawing, a sculpture, an engraving, or any other form that allows it to be communicated to the public. The type of formal embodiment chosen by the architect or the nature and purpose of the design²², whether it concerns religious, educational, cultural, or other types of urban structures requiring engineering designs, has no consequence.

In addition to the formal requirement that an architectural engineering design must possess a formal embodiment to benefit from the system of literary and artistic property, there is another requirement related to the substantive aspect of engineering work. Unlike the formal requirement, failure to satisfy the substantive requirement results in the denial of legal protection. This requirement concerns the subject matter of protection itself rather than the form in which it is expressed.

Accordingly, the substantive requirement constitutes the essence and core of the protection of engineering works and consists of the condition of creativity. The system of literary and artistic property allows for the protection of intellectual works; however, not all works are eligible for legal protection.²³ Only creativity can confer such protection. Conversely, works lacking intellectual creativity are not eligible for protection. Thus, the legal protection of engineering works is contingent upon the presence of intellectual creativity, and given the absence of a legal definition of this term, it is difficult to determine with precision which engineering works qualify for protection.

The failure of the Algerian legislature to address the concept of intellectual creativity in engineering works subjects them to the discretionary authority of the trial judge, who determines whether the creator is entitled to the rights arising from the Law on Literary and Artistic Property and whether any infringement constitutes imitation.

Notably, the level of creativity required in engineering works to obtain legal protection is similar to that required for other intellectual works; that is, the architect's personality must be evident in their design. The architect does not need to arrive at a wholly unprecedented creation; rather, the design idea may have existed previously, but the architect may have developed and modified it on the basis of personal creativity founded on scientific principles acquired throughout their training, thereby making it distinct from other engineering designs. An architect may derive engineering ideas from the innovations of another architect, provided that blind imitation is avoided; in this regard, the Code of Professional Duties for Architects also expressly prohibits such conduct.²⁴

realm of reality, giving it tangible existence, whether through writing, drawing, sculpture, sound recording, photography, speech, or movement.”

²⁰ Article 7 of Ordinance No. 03-05 mentioned above.

²¹ Paragraph 2 of Article 2 of the Berne Convention, to which Algeria acceded by Presidential Decree No. 97-141 of 13 September 1997 concerning Algeria's accession, with reservation, to the Berne Convention for the Protection of Literary and Artistic Works of 9 September 1886, as completed and amended, Official Gazette, 14 September 1997, no. 61, p. 8: “However, the legislation of the countries of the Union shall determine the protection to be granted to official texts of a legislative, administrative and legal nature, and may exclude from protection one or more categories of works which have not been fixed in a material form.”

²² Article 3 of Ordinance No. 03-05 mentioned above.

²³ F. Zéraoui Salah, “Contrat de négre et droit de paternité dans les œuvres littéraires : L'ombre du créateur ou le créateur dans l'ombre?” in *Mélanges en l'hommage à A. Benhamou* (Kounouz éd., no. 1), p. 93: “Literary and artistic property permits the protection of works of the mind, but not every creation of the mind is necessarily a protectable work. In fact, the creation of a literary or artistic work grants its author legal protection only on the condition that it is original.”

²⁴ Article 18 of the Code of Professional Duties for Architects, adopted by a majority of members of the National Conference of Architects at its ordinary session held at the Palace of Nations—State Residence, Sahel, Club des Pins, Algiers, on 17 and 18

Creativity in engineering works may also be manifested in the unique and personal approach adopted by the architect in utilising space and addressing environmental constraints. Other expressions of creativity in engineering works include how the architect incorporates or departs from the surrounding architectural style, either building upon it with additions or deliberately diverging from it. Furthermore, creativity may be found in methods for maximising light or space, creating forms not previously achieved by others, or employing new materials to attain a unique result. All such manifestations distinguish engineering work from others. This is consistent with the position adopted by the French judiciary,²⁵ which holds that creativity in engineering works is realised through certain features that reveal the taste, intelligence, or expertise of their creator.

The concept of creativity in the field of engineering differs from that of novelty,²⁶ which is excluded from the system of literary and artistic property? Thus, it is not sufficient for engineering work to be novel for it to be regarded as an innovative intellectual achievement. Nevertheless, from a judicial perspective and in the context of establishing imitation of engineering works, it is common to prove the existence of a prior, similar engineering work to demonstrate that the architect has imparted a personal character to the work, thereby qualifying it for legal protection as long as it presents similar features previously accomplished by others.

On the basis of these findings, an engineering design is protected under the system of literary and artistic property as long as it demonstrates creativity and is embodied in a distinct and original form, without the need to follow specific administrative procedures such as registering the design with the National Office for Copyright and Related Rights. The deposit procedure, whether for literary and artistic works in general or for engineering works in particular, is not mandatory to benefit from the rights and protection conferred by the system of literary and artistic property; instead, creativity alone is sufficient to enjoy such protection.

Section Two: Rights Arising from the Protection of Engineering Designs

Upon creating engineering work, the author immediately enjoys copyright, and these exclusive rights are divided into two types: moral rights (Subsection One) and financial rights (Subsection Two), as is the case for any creator of an intellectual achievement. The latter may be assigned according to objective conditions of exploitation determined by the author and are temporary rights that lapse after the legally prescribed period. In contrast, the former are intrinsically linked to the author's personality, remain with the author forever, and may not be infringed upon by others under the penalty of prosecution for infringement.

Subsection One: Moral Rights of the Author of an Engineering Work

The moral right of the author may be defined as a set of legal provisions stipulated in Chapter One of Title Two of Ordinance No. 03-05 mentioned above, which enable the author to defend the personality expressed in their engineering work. The author retains full authority over their engineering work through this moral right.²⁷ This thus appears to be the legal embodiment of the relationship between the author and his or her intellectual creation.

The recognition by the Algerian legislature of the moral right of the author since the issuance of the first legal text on literary and artistic property²⁸ is commendable, as French legislation did not initially adopt this right but focused

December: "It is strictly forbidden to steal or imitate the work of any architect; such conduct constitutes professional misconduct."

²⁵ C.A. Aix-en-Provence, 2nd Chamber, 12 April 2018, no. 17/10421.

²⁶ It should be noted that the concept of novelty is associated with industrial property and not with literary and artistic property.

²⁷ A. Morillot, *De la protection accordée aux œuvres d'art, aux dessins et modèles industriels et aux brevets d'invention dans l'empire d'Allemagne* (Paris/Berlin, 1878), p. 111: "Moral right, in a sense, extends the author's personality."

²⁸ Article 22 of Ordinance No. 73-14 mentioned above: "The author shall enjoy the right to respect for his name, status, and work. The right known as the moral right is always a right attached to his personality, and it is neither transferable nor subject to prescription; it is a right that passes to his heirs or to those authorised, within the framework of the applicable laws."

solely on provisions related to financial rights. Prior to the Law of 11 March 1957,²⁹ there were no specific provisions concerning moral rights, and the eventual adoption of such rights by the French legislature was the result of intense doctrinal criticism.³⁰

Among the moral rights enjoyed by the architect is the right to attribute engineering design, known as the right of paternity, as stipulated in Article 23 of Ordinance No. 03-05 mentioned above.³¹ This is achieved by indicating the architect's name and surname on the engineering design, as well as any information the author wishes to communicate to the public, such as academic qualifications or future projects. Article 12 of Legislative Text No. 94-07³², concerning the conditions of architectural production and the practice of the architectural profession, also affirms the obligation to attribute the architectural design to the architect or to the architects who contributed to its design. In addition, Article 2 of Executive Decree No. 15-88 relating to project owners requires that a plaque bearing their names be displayed. If the work is a joint effort between architects, the name of each participant must be indicated.

The author of an engineering work is also guaranteed, under the Law on Literary and Artistic Property, the integrity of their design and protection against any form of alteration or modification of its purpose without their consent. This is known as the right of integrity.³³ Others are therefore obliged to respect engineering designs, even those designed by the project owner. This issue is particularly significant regarding the integrity of engineering work and arises prominently when the project owner makes modifications to designs or studies. The architect may object to any alteration made by the project owner to engineering designs that might affect the work or infringe upon the author's right of integrity as a moral right. At the same time, the assignment may pertain only to the financial rights of the project owner.

Notably, the project owner's obligation to respect the integrity of the architectural work within the framework of a contract for services is a legal duty established by Article 11 of Legislative Decree No. 94-07³⁴ mentioned above. However, the situation differs when modifications concern the technical aspects of buildings in a state of disrepair, where the project owner is permitted to carry out changes necessary to protect a building that may be at risk of collapse (Article 60 of Law Nos. 90-29 on Planning and Urban Development).³⁵ This is especially the case for public buildings. Conversely, the architect may claim compensation for any harm to their reputation resulting from changes made by the project owner.

²⁹ Law No. 57-298 of 11 March 1957, on intellectual and artistic property, *Journal Officiel de la République Française*, 14 March 1957, p. 2723.

³⁰ M. Foucault, "Qu'est-ce qu'un droit d'auteur?" in *Dits et écrits, 1954-1975* (Gallimard, 2001), p. 820: "Moral right is the primary, solid and fundamental unity, which is that of the author and the work."

³¹ Article 23 of Ordinance No. 03-05 mentioned above provides: "The author of the work is entitled to require that his family name or pseudonym, in its customary form, appear on the appropriate media of the work. He may also require that his family name or pseudonym appear in all forms of transient communication of the work, where customs and professional ethics permit."

³² See note 16 on p. 3.

³³ Article 25 of Ordinance No. 03-05 mentioned above provides: "The author has the right to require respect for the integrity of his work and to object to any modification, distortion, or corruption thereof if such acts are likely to harm his reputation as an author, his honour, or his legitimate interests."

³⁴ The second paragraph of Article 11 of Legislative Decree No. 94-07 mentioned above states: "The architect retains the moral ownership of the architectural work and may, unless otherwise contractually agreed, publish this work. However, he may not use it for the benefit of another project owner without the consent of the owner of the project."

³⁵ Article 60 of Law No. 90-29 of 14 Jumada I 1411, corresponding to 1 December 1990, concerning Planning and Urban Development, as amended by Law No. 04-05 of 14 August 2004, *Official Gazette*, 10 November 2004, no. 71, p. 12, provides: "Any total or partial demolition of a building is subject to a demolition permit in the areas referred to in Article 46 above, or whenever required by technical and safety conditions. The demolition permit is prepared and issued in the forms, under the conditions, and within the time limits prescribed by the regulations."

In addition to the right of paternity and the right of integrity, the Algerian legislature has recognised the rights of the creator of innovative engineering work to disclose and withdraw.³⁶ Thus, the author may disclose a work published under their name or a pseudonym and may transfer this right to others.

As architecture represents a cultural and civilisational expression of the architect, in the event of infringement or alteration of their engineering work, the heirs have the right to bring an action for subsequent compensation. The right of disclosure granted to the architect is particularly significant, given its connection to their financial right; the project owner may not undertake a study until the architect has received payment for the disclosure of the architectural work prepared within the framework of the contract for services.³⁷

For withdrawal,³⁸ it is manifested in the right of the author of the architectural work if they believe that the work no longer reflects their convictions to halt its communication to the public by exercising the right of repentance and withdrawing a work that has already been published.

Subsection Two: Financial Rights of the Author of an Engineering Work

The legislature grants the creator of an innovative engineering work a set of rights intended to enable the exploitation of their artistic achievements and thus derive financial benefit from it. These are known as financial rights. Such rights confer upon the architect the exclusive authority to dispose of their design, whether by transferring the work or presenting it to the public.

The financial rights of the architect may be assigned by their holder, either wholly or partially. Unlike moral rights, which are perpetual, as they are intrinsically linked to the creator's personality, financial rights are temporary. Their protection lasts for a specified period.³⁹ Moreover, expires upon its conclusion, after which the work falls into the public domain, allowing others to use it freely and without the need for permission or prior authorisation from the architect or those to whom the rights have been transferred.

It follows that the architect enjoys the right to transfer their intellectual creation.⁴⁰ That is, to fix it in any material form to communicate it to the public.⁴¹ Transfer is the basis of the author's control over their intellectual creation and may take various forms. It may be affected through classical means, such as printing engineering designs, or the use of modern technologies, as these allow the work to be fixed on a nonphysical medium or to exist only temporarily, such as in a computer's memory.

Currently, digital transfer is the most widespread method in the field of engineering design, which poses a risk to the financial rights of their creators, as such designs are challenging to monitor and are not subject to territorial boundaries, as is the case with the internet. These technologies enable the transfer of the original work from a traditional to a digital environment, as digitisation is considered a form of transfer, given that the legislator has used the expression "reproduction of the work by any means whatsoever." ⁴² This opens the door to all modern

³⁶ Article 22 of Ordinance No. 03-05 mentioned above.

³⁷ The first paragraph of Article 11 of Legislative Decree No. 94-07 mentioned above states: "The study of the architectural work prepared under a contract between the project owner and the architect shall be the property of the owner of the building specified in the contract, and the project owner may not use it for any other purpose without the prior consent of the architect."

³⁸ Article 24 of Ordinance No. 03-05 mentioned above.

³⁹ Article 54 of Ordinance No. 03-05 mentioned above.

⁴⁰ The second paragraph of Article 27 of Ordinance No. 03-05 mentioned above.

⁴¹ Farha Zéraoui Salah, *Al-Kamil fi al-Qanun al-Tijari al-Jaza'iri, al-Huquq al-Fikriyya, Huquq al-Milkiyyah al-Sinaiyyah wa al-Tijariyyah, Huquq al-Milkiyyah al-Adabiyyah wa al-Fanniyyah* [The Complete Guide to Algerian Commercial Law: Intellectual Rights, Industrial and Commercial Property Rights, Literary and Artistic Property Rights] (Ibn Khaldoun Publishing and Distribution, 2006), no. 432, p. 477: "... Transfer allows for the material fixation of the intellectual production by means of various tools aimed at achieving communication between the public and the work."

⁴² The second paragraph of Article 27 of Ordinance No. 03-05 mentioned above.

technological methods, including digitisation, which allows for the circulation of engineering works over the internet. However, this often infringes upon the rights of the architect; therefore, such works should be protected by requiring the author's permission and consent for any digitisation process involving their design.

Although the Algerian legislature has provided an exception to the right of reproduction, allowing others to reproduce a legally protected intellectual work without the author's permission or prior authorisation when the reproduction serves a private interest (personal or family purposes) or a public interest (training or educational purposes)⁴³ An exception to this exception has also been stipulated. The right to make a private copy applies to all intellectual works except for architectural works embodied in the form of buildings or similar structures.⁴⁴ The purpose of this exception is undoubtedly to provide broader protection, as the reproduction of such designs could cause harm to either the owner of the building or the project owner. Hence, neither others nor the architect may use the same designs to execute or construct similar buildings for third parties without the consent of the project owner, with whom the architect has a legal relationship based on employment or a contract for services.⁴⁵

In addition to the right to transfer engineering design, which is essentially the fixation of intellectual creation on a material medium, the architect also enjoys, under the Law on Literary and Artistic Property, another right known as the "right of communication."⁴⁶ This right is based on the decision to communicate engineering design to the public by any means, whether traditional, direct, or indirect, involving material media.⁴⁷ The legislature has not specified any particular method or approach that the author must follow in presenting their work to the public, especially in an era marked by the development of communication and information technologies. Today, architects have the right to rely on highly advanced and rapid techniques to communicate their engineering designs to the public, such as through websites and digital platforms.

On this basis, it is prohibited for others to transfer or communicate an engineering design to the public without the prior consent of the architect during the period in which the design is protected, namely, throughout the lifetime of the architect and for fifty years after their death, commencing from the year following the date of the architect's death.⁴⁸ Thereafter, these rights pass to the heirs. Upon the expiration of this period, engineering design fell into the public domain concerning its financial aspects, allowing any person to exploit it freely and without restrictions.

Notably, when a work is created within the framework of a contract for services, ownership of the rights passes to the person who commissioned its creation, for the purpose for which it was produced.⁴⁹ As stipulated by the provisions of the Law on Literary and Artistic Property. Although Article 20 of Ordinance No. 03-05 mentioned above is somewhat general and ambiguous, Article 11 of Legislative Decree No. 94-07 expresses that the architect retains the moral rights to their engineering design and that it may not be used for the benefit of another project.

⁴³ Articles 41 and 45 of Ordinance No. 03-05 mentioned above.

⁴⁴ The second paragraph of Article 41 of Ordinance No. 03-05 mentioned above states: "... However, an exception is made to the provisions of the first paragraph of this Article for the reproduction of architectural works in the form of buildings or similar structures, the linear reproduction of an entire book or musical work in written form, the reproduction of databases in digital form, and the reproduction of computer programs except in the cases provided for in Article 52 of this Ordinance."

⁴⁵ Article 20 of Ordinance No. 03-05 mentioned above.

⁴⁶ Article 27 of Ordinance No. 03-05 mentioned above.

⁴⁷ Farha Zéraoui Salah, *op. cit.*, no. 433, p. 480: "The author has two ways of presenting their intellectual production to the public. The first is direct, as the author personally carries out the process, which is the traditional method of presenting the work, such as through public performance or representation. The second is indirect, involving the use of various material means to present the work to the public."

⁴⁸ Article 54 of Ordinance No. 03-05 mentioned above.

⁴⁹ Article 20 of Ordinance No. 03-05 mentioned above provides: "If a work is created within the framework of a contract for services, the person who commissioned its creation acquires ownership of the author's rights for the purpose for which it was produced, unless there is a contrary provision."

It follows from the above that the financial rights of the architect constitute intangible movable property that may be assigned. Consequently, the author of the engineering work is obliged to transfer the engineering designs to the project owner, which gives rise to several consequences, as described below:

- **Transferability:** Disposition is effected by a written contract by the provisions of Article 62 of Ordinance No. 03-05⁵⁰ mentioned above.
- **Immunity from seizure:** In the event of publication, seizure applies only to existing copies, meaning that it affects only tangible, material items.
- **Remuneration of the architect in the case of repeated use of engineering designs:** The question arises as to the architect's entitlement to remuneration when engineering designs are reused. This matter is addressed in the provisions of the amended and supplemented Joint Ministerial Decree of 1988,⁵¹ which stipulates that a clause for repeated studies must be included whenever engineering designs are reused. Suppose the contract does not contain such a clause. In that case, repetition is considered unlawful, and the architect may claim remuneration for the repeated use of their engineering designs by Algerian law.⁵² If the original drawing is repeated, a fee amounting to 50% to 100% of the value of the project is added; if the preliminary project is repeated, the fee ranges from 50% to 90%. These are not considered bonuses but rather reductions from the value of the project. Conversely, the project owner may request that the architect prepare an adaptation study for the project,⁵³ in which case, the architect is remunerated for it as a new study under the provisions of literary and artistic property. This, however, contradicts Article 11 of Legislative Decree No. 94-07 mentioned above,⁵⁴ which prohibits the use of the study for any purpose other than that for which the project owner prepared it unless the architect's consent is obtained.

Conclusion

Despite the technical nature of engineering designs, they nevertheless benefit from legal protection by the general rules of literary and artistic property, as well as from special protection provided by legislation related to architecture.

Accordingly, engineering designs enjoy the protection of the system of literary and artistic property as long as they are marked by intellectual creativity and embody the spirit and competence of their creator, similar to other literary and artistic works subject to the copyright and related rights system. However, some differences exist between them and other intellectual works. The Algerian legislature grants legal protection to literary and artistic works upon fulfilment of the condition of intellectual creativity, without the need to complete any formal procedures such as deposits. In contrast, certain formal requirements set out in the specific texts on architecture are binding on the architect, such as the identification plaque, which is considered a fundamental procedure. Since the specific prevails over the general, Article 3 of Ordinance No. 03-05, mentioned above, which limits the conditions for protection to the presence of intellectual creativity, does not apply to architectural engineering works.

⁵⁰ Article 62 of Ordinance No. 03-05 mentioned above provides: "A written contract shall effect the assignment of the author's financial rights." The contract may, where necessary, be concluded through the exchange of letters or telegrams specifying the financial rights assigned, by the provisions of Article 65 below."

⁵¹ Article 35 of the Joint Ministerial Decree of 28 Ramadan 1408, corresponding to 15 May 1988, concerning the procedures for carrying out construction works and the payment thereof, Official Gazette, 26 October 1988, no. 44, p. 1479, provides: "The technical consultancy contract must include a clause prohibiting repeated studies in every case where such repetition is not justified."

⁵² Article 48 of the aforementioned Joint Ministerial Decree of 1988.

⁵³ Article 70 of Ordinance No. 03-05 mentioned above.

⁵⁴ Article 11 of Legislative Decree No. 94-07 mentioned above.

Moreover, the architect's benefit from this system grants them a set of financial and moral rights over their engineering design. Notably, in this respect, benefiting from this system does not preclude the application of other relevant laws, particularly those relating to public order, which prioritise the general interest of society over the private interest of the architect.

Conflict of Interest

There is no any conflict of interest

Funding

There is no Funding and Sponsored Organization

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