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# Legal Protection of the Academic Staff's Innovations According to the Jordanian Legislation

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The innovations of the academic staff are parts of the intellectual property which should be legally protected by the legislator as part of the private property. It is a legitimate human intellectual production that includes the abstract and material aspects, through national legislation and international conventions. The material value of any scientific production is not only the direct financial income but can take different forms such as a research paper, book, software program or an invention in any field including medical, engineering, technical, humanitarian and social. Given the nature of work in universities that goes beyond mere teaching to scientific research and innovation, and due to the significance of research in providing legal protection for academic staff's innovations, the researchers implement the descriptive analytical approach in the light of legislations and judicial rulings related to the subject of research. The paper concludes some findings and recommendations including that the protection of academic staff's innovations has to obtain special care and be explicitly included in the relevant legislation.

**Keywords:** *Legal protection, innovation, academic staff.*

## **Introduction**

Intellectual creativity is a human product characterized by a distinct civilizational character, hence the importance of protecting it. This prompted countries to enact the necessary laws and join international agreements that provide protection for these rights, such as the (International Organization for the Protection of Intellectual Property) which was established to play a fundamental role in the field of intellectual property protection. Most countries have joined this organization and signed the international treaties and agreements managed by this organization.

This interest comes as a result of the great development in the field of intellectual property rights, which changed the perception of copyright and the inventor. The acquisition of the intellectual rights resulted in a special significance, locally and internationally, and had a great impact on economic development. This reflects the high economic value of innovations and inventions.

Innovation is one of the most important parts of intellectual property rights, to motivate and protect the innovator and inventor to create a supportive environment for creativity, innovation and development. The main segment that work in this field are academicians and faculty members in universities. Countries have passed legislation to protect innovations and inventions and to stimulate this creative environment because of its fundamental role in the civilization advancement and to solve the problems of societies and meet their aspirations.

This research examines the legal protection of the academicians and faculty members' innovations provided in the intellectual property legislation and the legislation regulating the work of faculty members in universities, and other relevant legislation.

## **Significance of the Study**

There is no doubt that the civilizational progress of nations and countries is based on innovation and creativity, in which the academicians and researchers bear a great responsibility, as they are more involved in the innovation and scientific research. Therefore, this issue is of great significance due to the frequent cases of infringement of intellectual property rights of the researchers and academicians. This confirms the necessity of providing the required legal protection for them.

Moreover, research and studies that examine the intellectual property rights, copyright and patents usually investigate this issue in general. However, this paper focus specifically on the productions of the academicians and faculty, and the special protection that they should get. This, undoubtedly, contributes to encouraging and motivating the research, creativity and innovation process in universities and higher education institutions.

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## Problem Statement

The research problem investigates the required legal protection for the innovations of the academicians and faculty members, because their tasks are mainly based on research, innovation and authorship. Therefore, these rights are worthy of legal protection at the national and international levels, and this paper seeks to answer the following question: What are the forms of legal protection for innovations of the academicians and faculty members in the Jordanian law?

## Research Objectives

The main objectives of this paper are:

- To investigate the legal protection required for the innovations and patents of the academicians and faculty member.
- To identify the legal protection for the innovations and patents of the academicians and faculty member in the Jordanian law.
- To examine the legal protection of intellectual property rights for the innovations and patents of the academicians and faculty member provided in the international conventions.

## Research Methodology

The paper executes the descriptive analytical approach to examine the Jordanian legislation and judicial rulings in respect of the intellectual property rights protection comparing with international conventions in this field. This approach aims to achieve the scholarly findings to identify the national and international protection forms to the academicians and faculty members' innovations and patents and provide necessary recommendations in this field.

## Research Structure

The paper consists of two parts, with three sections each, and a conclusion as the following:

**Part One:** What is the legal protection for the academicians and faculty members' innovations and patents?

Section I: The concept of legal protection for the innovations of the academicians and faculty members.

Section II: Types of legal protection for the innovations of the academicians and faculty members.

Section III: The legal nature of protecting the innovations of the academicians and faculty members.

**Part Two:** Legal protection of the innovations of the academicians and faculty members in Jordanian law.

Section I: The civil protection for the innovations of the academicians and faculty members.

Section II: The penal protection for the innovations of the academicians and faculty members.

Section III: The international protection of the innovations of the academicians and faculty members.

**Conclusion:** Findings and recommendations.

**Part One:**

What is the legal protection for the academicians and faculty members' innovations and patents?

The concept of intellectual property (IP) refers to the intangible and abstract property that is the result of innovation and creativity of the mind which includes copyrights, trademarks and patents. However, as this paper focuses on the protection of the innovations of the academicians and faculty members, legal protection will be examined in three sections, the concept of legal protection, types of legal protection and the legal nature of protecting the innovations of the academicians and faculty members.

Section I: The concept of legal protection for the innovations of the academicians and faculty members.

What prompted countries to consider protecting the intellectual property rights is its great impact on the economy and technology and on trade and cultural relations between countries. Protection in its narrow sense means not to violate the rights of innovators and creators or defend those rights and their intellectual and creative property from any kinds of violation. As for the broad meaning of the concept of protection, it refers to supporting and assisting innovators and inventors, providing the requirements for innovation and invention, and stimulating scientific, economic and technological progress by providing them with appropriate conditions. It also denotes to widening the sphere of protecting those rights beyond the geographical limits of states and internationalizing them by concluding international agreements and treaties (Ismail, 2010, p. 37).

The purpose of protection is to encourage the competition of innovators, create a healthy competitive atmosphere by protecting these rights and preventing unfair competition and all acts of forgery, counterfeiting, fraud, and unlawful appropriation. In this context, an author is a creator and producer of a mind work in the literary, scientific or artistic field, therefore the academician and faculty member have all the powers that it gives him the right to authorship (Sultan, 2009, p. 64).

Before examining the types of legal protection and its forms, it is worth defining the concept of intellectual property that which arises on immaterial productions as a result of human thought. Some experts defined it as the ownership that is perceived by thought and mind because it is a pure

mental product, and the right of the person over it is his right to the product of his mind, and the production of his thought, regardless of the manifestation that this or that product takes. IP can also be defined as those rights that respond to intangible things from the product of mind, such as copyright over his ideas, the right of the inventor to his inventions, the right of the artist to his paintings, and the right of the composer to his tunes. Another definition refers to IP as a new term that has resulted from economic and legal developments in the world in the recent period. This property is intangible and the product of mind, creativity, and thinking (Al- Rahahlah and Al-Khalidi, 2012, p. 18).

As for innovation, it is as defined by some scholars as: that the author has a role that highlights his personality regardless of its moral value and financial significance. therefore, some refers to the innovation as the emergence of the personal character of the author in terms of expressing the idea, without the author presents his personality (Mustafa, 2009, p. 95).

The prevailing opinion holds that innovation is meant for the author to have an intellectual role in which to present his personality, both in terms of the subject of the work or in terms of expressing the idea and the way in which he deals with this idea. Others define innovation as the personal character that the author provides to his work, and this character is what it is allowed to distinguish his work from others'. Innovation can also be defined as producing a new product that has unique features, that is, it is a birth of a new integrated entity that is completely novel and has its own features and characteristics distinct from other works. Moreover, innovation can be defined as a mindset process that relies on a set of abilities characterized by a number of characteristics, the most important of which are sensitivity to problems, fluency, originality, novelty, exclusivity and flexibility. Finally, innovation can be defined as bringing something useful from the fields of knowledge that satisfies people with knowledge of the field of innovation (Jalal, 2005, p. 96).

In light of the previous definitions, it can be said that innovation is characterized by mental production in which authenticity and relative novelty, not the absolute novelty, are shown in the field of literature and art. This is what is required in mental innovations so that it is distinct from each other.

The personal imprint of the author must appear in it, which allows To the public by knowing his name by simply reading his work if he is well-known, or by saying that his attribution to an author with an innovative ability to express his ideas has ended, and therefore the mental work does not enjoy legal protection unless it involves a degree of innovation (Abdullah, 2008, p. 94) .

Based on the previous definitions, it can be said that innovation is characterized by mental production in which originality and relative novelty appear in the field of literature and art. In light of prevailing trends in this regard, the originality and absolute novelty in the innovation is not required, but originality and relative novelty must be available, and this is what is required in mental innovations. and the author's personal imprint must appear in it, which allows the public to know his name by simply reading his work if he is well-known, or to say that his attribution to

an author has an innovative ability to express his ideas, and therefore he does not enjoy A mental work with legal protection unless it involves some degree of innovation.

In terms of novelty, innovations can be classified into different forms as follows:

- 1- The first form: It includes works of creativity, which are characterized by complete novelty, where the author creates a new idea worthy of legal protection. This could be in any branch of knowledge, literature, arts and various sciences. These works are created without quoting, customizing or translating from other works. This means that the creative author has the absolute use of this work and its material and moral rights.
- 2- The second form: There are works that are relative to innovation. This refers to those works that are derived from original works by translation and representing them in another language or dialect, or to modify them from one genre to others. This form also contains all the works of summarizing, elaborating, authenticating, or even commenting on existed works providing a relative innovation and a degree of novelty and originality. In this form of innovation, the author reproduces the original work, after obtaining the necessary permission from the author or his successors, unless the intellectual property has expired.

For any type of works to enjoy a legal protection, it should be presented in tangible form such as writing, filming, drawing, recording. As for the abstract ideas that have not been produced, they are not protected by laws and any person can approach and implement them after attributing them to their original owner (Mustafa, 2009, p. 111).

Base on the previous definitions, it seems that they look at the intellectual property through the person behind it, its creator or the author and given his right to attribute the product to him, as well as his right to own it or decide the fate of this intellectual production, based on the theory of natural right.

Considering the type of works of academicians and faculty members, it is characterized as an intellectual production. This work includes mainly teaching and conducting research. Therefore, he may create, invent and produce new works and all these products are related to the concept of intellectual property.

Regarding the authorship, providing protection for the author's moral right requires that there should be an author as stipulated by the copyright legislation. It also requires that this author create an innovative work that applies to the description of the book. Therefore, the scope of protection for the moral right for the author is defined by the personal scope i.e. the 'author' and the subject scope i.e. 'the script'.

In addition, the matter requires specifying both the spatial scope, place of protection, and the era of the protection, the time scope. Here it must be said that the scope of the moral right does not lag behind the scope of the materialistic right, in terms of the personal scope, the subject scope, and the spatial scope. These rights require the necessity of the existence of an author and an innovative

work to which the description of the work applies, in addition to the extension of protection to a specific place. However, the moral right is independent from the materialistic right in terms of time scope, as the moral right is an eternal right that is not limited to a specific period of time, while the materialistic right is determined within a specific period of time, during which it enjoys protection, then it reverts to the public domain and protection is lifted from it (Haroon, 2006, p. 105).

In order for protection to be granted, the work must be innovative. Innovation, in the work, is what creates a person's right that deserves protection. Considering the meaning of innovation, most of the Arab copyright legislation, especially the old ones, do not mention a definition of the concept of innovation. However, the Islamic jurisprudence defined it as "the innovative production that no one has produced it before, therefore originality is the most significant base of innovation so all the included ideas emanate from the person, belong to him and express him. Innovation appears in a product when the personal characteristics of the author is available there or in other words innovation is achieved by the emergence of the personal and individual features of the author. The second concept of the innovation criterion is objective, and is basically valid by the effort and work exerted by the author, regardless of the work's attachment to the person of author. This concept prevails in the Anglo-Saxon countries, such as England and the United States of America, and the fact that the difference between the two concepts previously presented is closely related to determining the nature of copyright (Haroon, 2006, p. 132-133).

Creativity here, according to the provisions of copyright, is considered a personal criterion, as it is seen as expressing the personality of the creator (the author), as well as distinguishing it from others. Therefore, if a work is published on a subject, and then, after a period of time, another work is published by another author on the same subject, then the similarity between the two books does not mean that the second work is stripped of originality, or that the second author has violated the rights of the first author. This is based on the enjoyment of any author who can freely address topics which have been examined before by previous authors, as long as the new author has modified its essence, rearranging or translating them, so that the author stands out in what he adds.

As for the invention, several similar definitions appeared for it, as some defined it as: "a new innovation which can be used in the industrial field by various industrial methods. (Abu Al- Haija, 2006, p.118) In all these definitions, the invention refers to any innovation or development in the scientific or industrial fields. (Muhafadhah, 2011, p. 18) This definition is similar to the definition previously adopted by the Supreme Court of Justice (now the Supreme Administrative Court) as it defined it as an innovative idea that goes beyond the development of existing industrial products, and the improvements that increase productivity or achieve technical or economic advantages in industry.

The second article of the Jordanian Patent Law defines the invention as: any innovative idea, in any of the fields of technology, which relates to a product or a manufacturing process or both and

practically solves a specific problem in any of those fields”. Article Three of the Jordanian Patent Law specifies the general conditions for the protection of the invention, which state that: “The invention shall be patentable if it meets the following conditions:

“If it is novel as regards the prior industrial art and is unprecedented as regards disclosure to the public in any place in the world by means of written or oral disclosure, by use, or by any other way which allows awareness of the invention’s content before the relevant filing date of the patent application or the priority of the application claimed under the provisions of this law.

The disclosure of the invention to the public shall not be taken into account if it occurred twelve months before the filing date of the application or before its priority date, if any, and it occurred due to actions taken by the applicant or his predecessor or due to an abuse made by third parties against the applicant or his predecessor.

If it involves an inventive step that, having regard to the prior art relevant to the patent application, it would not have been obvious to a person having ordinary skill in the prior art of the invention subject.

If it is industrially applicable that it can be made or used in any type of agriculture, fishing, service or industry in their widest senses including handicraft”.

A patent is considered a type of intellectual property that is related to the person of its owner, and of a temporary nature, because the legislator determines its owner for a period in which protection is decided upon, and by the end of this period the prescribed protection expires. More precisely, it is not permissible for anyone other than its owner to utilize it without his consent or permission, or to issue a compulsory license, if one of the cases of compulsory licensing is available, and that is for the duration of the legally prescribed protection period (Abu Al- Khair, 2008, p. 91).

Moreover, it is necessary to define who is the academician and faculty member whom we are looking at the legal protection for their innovations, inventions and works and what their duties are. However, searching in the relevant legislation, regulations and instructions related to universities and higher education institutions and what is related to the work of the teaching staff, the faculty member is defined by academic ranks only, as mentioned in Article 16 of the Jordanian Universities Law, that a faculty member is the professor, associate professor, assistant professor, teacher and assistant teacher. Article 18 of the university faculty system stipulates the tasks of the faculty member as:

- 1- Teaching and evaluation.
- 2- Conducting theoretical and applied research and studies.
- 3- Community service.
- 4- Supervising theses, projects, reports, and scientific and social activities.

5- Academic advising.

6- Participating in university councils and committees, and in those in which the university participates.

7- Any other matters assigned to him within the scope of university service.

## **Section II: Types of legal protection for the innovations of the academicians and faculty members.**

Intellectual property rights are similar to other property rights in that they allow their creator, inventor, the owner of a patent, trademark, or author to benefit from the protection established for the moral and material interests resulting from attributing the scientific, literary or artistic product to its owner, for which protection is decided against any infringement by others. These rights have a financial value for their owner as they are the product of his mental and intellectual creativity. Even if they are intangible rights, they prove, to their owner, rights of financial value. These rights are realized by most of those who deal in international trade, whether at the local or global level. Intellectual property includes a variety of rights and it is not limited to copyright, but related to publishing and mental production. So, although intellectual property rights appeared in the beginning to protect authors and artists, the concept has expanded to include, in addition to literary and artistic property, industrial property, which includes patents, industrial designs, origin marks, trademarks, databases, computer technology, and others .

It is divided it into two main types: industrial property rights and literary property rights. There are many forms and elements of intellectual property, and the most important elements of all are creativity and innovation, which is the most important element that forms the essence of intellectual property (Al- Rahahlah and Al- Khalidi, 2012, p. 34).

The significance of protecting creations and innovations is evident in making competition in the contemporary commercial environment based on knowledge, information and ideas, where creativity, innovation, knowledge and information are transformed into precious economic wealth. This necessitated adequate legal protection for these rights, in domestic and international law. Given this increasing significance of intellectual property rights at the economic level, the lack of protection for intellectual property has become an obstacle to national and foreign investment.

Article Three of the Copyright Protection Law states that:

- a. “The innovative products in literature, arts and science, regardless of their kind, importance or purpose of their production.
- b. This protection includes the products, which are expressed in the form of writing, voice, drawing, photography, or movement in particular.

- 1- Books, booklets, and other written materials.
  - 2- Products that are orally presented such as lectures, speeches and preaches.
  - 3- Theater products, musical and singing plays and gesture acting.
  - 4- Musical products whether numbered or not, or accompanied by words or not.
  - 5- Cinema and audiovisual radio products.
  - 6- Drawings, photography, sculpture, architecture, applied sciences and ornaments work.
  - 7- Explanatory photos, maps, designs and maquettes, pertaining to geography and the land surface maps.
  - 8- Computer programs whether in the source language or machine language.
- c. The protection includes the product title, unless the title was a common expression to indicate the subject of the product.
- d. The literature and art products also enjoy the protection such as the encyclopedia, the selections and collected data, whether they were in an electronically read form or in any other form, and formed innovative intellectual works in terms of their content's selection or order. Also, the groups that include selected parts of poetry, prose, music or other, provided the source of the excerpts and their authors, without prejudice to the rights of the authors relevant to every product that forms part of these groups".

This was confirmed by the Jordanian Court of Cassation, which stipulated the copyright specified in Article Three of the Copyright Protection Law.

It is worth examining the legal nature of copyright and author's right here, where a legal debate arises about the legal nature of the faculty member's right to his writings and innovations.

Some jurists consider it as a financial right, while others see it as a moral right. However, the jurisprudential view has settled that it is a dual aspects of rights, one of which is financial, to compensate the author on his efforts and productions, and also a moral aspect because any innovative work represents the views of the author (or a member of the faculty) whether this work is worthy of his reputation, so he decides to publish it or not to publish it. Consequently, it is not permissible for others to overtake him unless they obtain a permission from him. This permission includes the method, type and duration of benefiting, and the right to authorize whoever wishes to publish his work. Here the scope of the financial aspect related to the publication report becomes clear by passing the right to the public through the right of publication (Al- Saadi, 2016, p.56).

The legal implications of the faculty member's right to innovate vary, including his right to register his works or obtain a patent and the right to monopolize his innovations and to dispose them. Consequently, the forms of legal protection for intellectual property rights vary to national

protection and international protection, and national protection is usually discussed in terms of civil and penal terms, while international protection is discussed in what is stated in international agreements and treaties regarding protection of intellectual property rights.

According to Article 4 of the Copyright Protection Law, which specifies who can be described as an author, it states that: “Is considered an author, the person that publishes the product as being his, whether by using his name on the product, or through any other method, unless there was an evidence to otherwise”.

It is noted that Article No. 5 of the Copyright Protection Law has expanded the definition of an author to include: “Without prejudice to the copyrights of the original product's author, he shall enjoy protection and be deemed an author for the purposes of this law:

- a. Whoever translates the product into another language or transforms it from a form of literature, arts, or science to another form, or summarizes it, converts it, amends it, explains it, comments on it or indexes it, or other ways that display it in a new form.
- b. The performer that presents to the public an artistic work set by others whether this performance was through singing, playing, rhyming, orating, photographing, drawing, movements, steps or ant other way.
- c. The authors of tile encyclopedia, the selections, collected data and the groups covered by protection under this law”.

While Article 6 of the Copyright Protection Law states that: “If a product was innovated to the account of another person, the copyrights will belong to the innovative author unless otherwise agreed in writing”.

### **Section III: The legal nature of protecting the innovations of the academicians and faculty members.**

Similar to the concept of the legal nature of intellectual property rights, determining the legal nature of the faculty member’s innovation right is one of the controversial topics and jurisprudential debate. There are three views in this regard:

The first view considers these rights as personal rights, while the second one regards them as a materialistic right. The third view concludes that intellectual property includes a dual right that combines both the personal and the materialistic rights. (Al- Rahahlah and Al- Khalidi, 2012, p. 43) Determining the legal nature of copyright rights in general, whether it was financial rights or moral rights, was and is still the subject of a wide legal dispute among legal scholars and there is no consensus on this matter as theories and view vary in determining the nature of these rights. One of the reasons of this disagreement and differences may be due to failure of the laws to clearly define the nature of this right, and also because this right includes two elements, each of which has

a special nature that differs from the other, namely the moral aspect and the financial aspect (Haroon, 2006, p. 75).

Violating the intellectual copy right of a faculty member is an unlawful act that holds the violator the responsibility, bears him a criminal liability and obliges him to pay compensation to the faculty member for the damages incurred by him. Jordan, like other Arab and Western countries, has regulated general provisions for civil liability, both of which are contractual and default, and the violator of the right of a faculty member is deemed a civil liability according to its general rules. A faculty member, or his legal successor, is given the right to demand the violator to stop violating, remove its impact and pay compensation for the damage he suffered. Violation of the right of a faculty member in general is a breach of a previous original commitment and this obligation either comes from the contract and then the liability is contractual liability or it comes from the text of the law, and then the liability is default.

The faculty member has the right to ask the other contracting party to compensate him for the damage he has suffered, as a result of his failure to implement his contractual obligations or his delay in implementing those obligations, in accordance with the general provisions. For instance, if a faculty member contracts with a publishing house to print his work within a period of three months and in accordance with some specifications, this contract places a contractual obligation on the publisher. If he fails to fulfill his commitment that he made in the contract, he is held responsible for a civil liability and bears compensation for failure to fulfill his commitments. Therefore, if the faculty member is harmed as a result of the publishing house's breach of the contractual obligations, then must prove the harm according to a rule mentioned in Article 77 of the Civil Code stating that: 'onus of proof lies with the plaintiff and denial shall be supported by oath'.

As for the default, the violation of it, which is stipulated by the law and imposed on everyone, gives the faculty member the right to demand the violator of these legal obligations to pay compensation for the moral and financial damages as a result of this violation.

For instance, the violation of the faculty member's right stipulated in the Copyright Protection Law gives the right to the faculty member (the author) to demand the violator to pay him compensation for the damage he suffered as a result of that violation. The damages here include all material and moral damages other than contractual liability that is limited to damage Physical only as already mentioned (Mustafa, 2009 , p. 189).

### **Part Two: Legal protection or the innovations of the academicians and faculty members in Jordanian law**

The faculty member alone has the right to exploit his author and innovation based on Article 8 of the Copyright Protection Law, which states that: "The author alone:



- a. Has the right to have his product attributed to him, and to mention his name on all the produced copies whenever that product is presented to the public, unless the product was mentioned by chance during a relay of the news about current events.
- b. Has the right to decide upon the publication of his product and to choose the method of publication and date thereof.
- c. Has the right to introduce any amendments to his product whether by changing it, editing it, deleting from it or adding thereto.
- d. Has the right to defend any aggression on his product and to prevent any distortion, modification thereof or any other amendment thereto, or any encroachment thereon that would prejudice his reputation or honor. However, in the event of the occurrence of any deletion there from, change therein, addition thereto, or amendment thereto in the translation of the product, the author shall not have the right to prevent it, unless the translator omitted to mention the location of this amendment, or the translation affected the author's reputation and his cultural or artistic status or violated the content of the product.
- e. The right to withdraw his product from circulation if there were serious and legitimate causes therefore. In this case, the author shall be held liable to fairly compensate the party to whom the rights of financial exploitation were assigned.

The Court of Cassation has stipulated that copyright personal rights remain reserved after his death and even after the transfer of those rights, the author retains the right to claim them and object to any distortion, mutilation or other modification of the work which is harmful to honor and reputation.

Copyright infringement is defined in general terms as: using a work of the product of the human mind, regardless of the method or form, without taking into account the rights of the copyright owner or his public or private successors. The infringement may be by illegally copying, reprinting, recording, or photographing, or by performing the work and conveying it to the public. It could be also by selling, distributing and renting the work, or by importing copies of the work made abroad without the author's permission (Shikhani. 2008, p. 10).

Article 9 of the Copyright Protection Law stipulates that: "The author has the right to financially exploit his product in any way he chooses, and no one but him has the right to exercise this without a written approval from him or his successor. This includes:

- a. The right to print, broadcast and produce his product.
- b. The right to copy his product in all the physical forms including photography, cinema, or recording.

- c. The right to translate his product to another language, to musically adapt or distribute it or effect any modification thereto.
- d. The right to permit the use of a copy or more of his product by people that exploit it in leasing or lending works, and other works relevant to submitting the product to the public.
- e. The right to submit his product to the public through reading, presenting, display, acting, radio or television broadcast, cinema playing or any other method.

Therefore, the right to benefit from it rests with the author or his heirs, as confirmed by Article 10 of the same law, stipulating that: "The author alone has the right to publish his messages, but it is not permissible for him or anyone else to exercise this right without prior permission from the addressee or his heirs if publishing these messages could harm the addressee".

This is what was confirmed by the Court of Cassation stating that if a publisher contracts to print, publish and distribute a book with an author's father in return for a certain commission it collects from the sale price after deducting the costs of printing and publishing, if the publisher does not prove that the copyright has transferred to the father legally, then the contract is with the author's father not as the copyright holder, but as an agent for the author, who owns this right. The author will be the opponent in the lawsuit claiming the balance of the sale price.

In this regard, Article 46 of the Copyright Protection Law stipulates the following: "a. The court may, upon the request of the owner of the right, or any of his heirs or successors, take the following actions concerning a product in which the copyright was violated or any of the rights stated in Article (23) herein, provided that the request includes a detailed and comprehensive description of the product:

- 1- To order the halting of the violation of the product or any part thereof.
- 2- To confiscate the product, its copies, pictures, and any materials used in copying, provided they are not useful for anything else.
- 3- To confiscate the exploitation revenues of the published product through public performance.

Paragraph (b) of the same article stipulates the procedures for submitting the request, stating that "The request may be submitted before, during, or after filing a lawsuit."

Paragraph (c) of the same article also specifies the procedures that the court can take if an infringement is proven: "Upon proving that the person filing the lawsuit is the copyright owner and that his rights have been infringed or that the infringement has become imminent, the court to take any of the measures stipulated in Paragraph A of this Article in a reserved manner to prevent the violation from occurring or in order to maintain a proof related to the violation deed.

Paragraph (d) of the same article specifies the cases of damage resulting from delay by stating that: "In the cases in which the delay may cause irreparable damage to the owner of copyright, or in the

cases involving risks that can be proven with the loss of evidences related to the violation deed, the court may take any of the actions stipulated in paragraph (a) of this Article in a reserved manner, without notifying the defendant and in his absence. The injured parties are notified by the court about the measures taken as soon as they are taken. The defendant may ask for a hearing to hear what is being said during a reasonable period of time after being notified of the measure. The court has to decide in this hearing whether the reserved action was to be confirmed, amended or cancelled”.

Paragraph (e) of the same article also stipulated the submission of an adequate financial guarantee to prevent abuse, stating that: “The request for a reserved action should be accompanied by an adequate financial guaranty according to paragraphs (c) and (d) of this Article to prevent arbitrariness and to guaranty any damages that the Defendant may incur if the Plaintiff's claim was not grounded”.

In order not to harm the defendant as a result of not filing the lawsuit within a specific period, Paragraph (F) of the same article stipulates that: “Based on the request of the Defendant, the reserved actions taken are cancelled before instituting a lawsuit according to paragraphs (c) and (d) of this Article if the lawsuit was not instituted in a period of eight days of the date of issuance of the court order to take the action”. In this case, the defendant shall be compensated as paragraph (G) of the same article stipulates that: “In the cases where the taken reserved action is cancelled according to the paragraphs (c) and (d) of this Article, due to the elapse of the period for instituting the lawsuit or because of the Plaintiff's default, or it was proven that there was no aggression or risk of aggression, upon the request of the Defendant, the court may order a suitable compensation for the damages resulting from these actions”. Likewise, in the event of abuse, where Paragraph (H) of the same article stipulated that: "The court may order the claimant, who arbitrarily asked for the actions stated in this article, to compensate the party against which the action was taken an adequate compensation for the damage he incurred as a result of this arbitrariness”.

In this regard, the Jordanian Court of Cassation decided that: “By extrapolating the provisions contained in Article 46 of the Copyright Protection Law, We find that this article authorized the court (i.e. the specialized first instance court) to take any of the measures stipulated in paragraph (a) in a reserved manner either to prevent the act of infringement from occurring or with the aim of preserving evidence related to the act of infringement. Any decision taken in this regard is a precautionary measure and is subject to the merits of the case which must be filed within eight days from the date of issuing the court order to take the action as stipulated in Paragraph (F) of the aforementioned Article.

The penalty does not stop at this only, but it goes beyond that to destruction and confiscation, as Article 47/a of the Copyright Protection Law stipulates that: “The court may, upon the request of the author or any of his heirs or successors, rule to destroy the product's copies or the picture taken of it, which was illegitimately published and the materials used in publishing it, and it may instead

of destroying them, rule to change the features of the copies, pictures and materials or render them unfit for use. However, if the court discovers that the author's copyright in the product elapses after two years of the date of the judgment becoming absolute, it may rule instead of that to affix the impound to honor the compensations ruled for the author”.

However, it is stated in Paragraph (b) of the same article mentioned above that: “The court may not rule to destroy the copies of any product or pictures taken from it or to change their features if the dispute was about the translation of the product into the Arabic language. The court's order in this case should be restricted to impounding the product, its copies or the pictures taken from it according to the situation”.

Moreover, Paragraph (c) of the same article allows the court to confiscate copies of the work or copies taken from it “within the limits that would be adequate to compensate the author for the damages he incurred, instead of destroying those copies, changing their features or destroying those materials”.

However, buildings are excluded from these procedures as it is mentioned in Paragraph (d) of the aforementioned article which states that: “The buildings and the sculpture, drawings or ornaments and architectural forms on it may not be impounded, and a ruling may not be issued to destroy them, or change their features, or confiscate them for the purpose of preserving the architectural rights of the author whose designs were used for the building and drawings in an illegitimate manner, provided he honors his rights for a fair compensation of that”.

Based on this Act, the Jordanian Court of Cassation decided that a court, when taking measures to protect copyright, is not allowed to prejudice the origin of the right. It stated that "To provide the conditions to take precautionary measures in this application in accordance with the provisions of Article 46 of the Law on the Protection of Copyright and its amendments No. 1992 of the actions that can be taken by the court in order to apply the provisions of this article is not that prejudice to the origin of the right contrary to what went so The Court of Appeal mistakenly made its contested decision".

In this part of the paper, legal protection for the innovations of faculty members will be examined, as it will be divided into three sections: the civil protection for the innovations of faculty members, the penal protection for the innovations of faculty members, and finally the international protection for the innovations of faculty members.

### **Section I: The civil protection for the innovations of the academicians and faculty members.**

The law provides copyright protection throughout author’s life, as Article 30 of the Copyright Protection Law stipulates that: “The period of protection shall apply to the financial rights of the author stipulated herein during the life of the author and for fifty years after his death, or after the death of the last one alive of those who participated in authoring the product if there were more than one author. For the purposes of calculating the protection period, the date of death shall be

deemed to have occurred on January first of the year that follows the actual date of death of the author”.

As for the applied sciences products, Article 32 of the Copyright Protection Law stipulates that: “The protection duration of the applied sciences products shall apply for twenty-five years as of the date of their completion, which is considered January First of the year that follows the year in which the actual completion of the product took place”.

Article 33 of the same law stipulates how the period shall be calculated by stating that:

“a. The product shall be deemed published as of the date of its placement at the disposal of the public for the first time, and its republication is not considered for this purpose, unless the author introduced basic amendments when republishing it due to which it can be considered a new product.

b. If the product comprises a number of parts or volumes published at different times, every part or volume is considered an independent product concerning the date of publication”.

In order to enhance the legal protection of copyright, the law stipulates that protection employees are considered from the judicial police, and therefore they are entitled to take the necessary measures, whether searching, seizures, or otherwise, as stated in Article 36 of the Copyright Protection Law:

“a. The employees of the copyright office at the national library department authorized by the minister are considered judiciary officers during their implementation of the law.

b. In the event that there was any suspicion indicating the occurrence of any violation of this law in any place that is in charge of printing the products, copying them, producing or distributing them, the employees of the copyright office shall have the right to inspect this place, seize the copies and the materials used in committing these infractions and refer them with their perpetrators to the court”.

Moreover, Article 47/a of the same Act states that: “The court may, upon the request of the author or any of his heirs or successors, rule to destroy the product's copies or the picture taken of it, which was illegitimately published and the materials used in publishing it, and it may instead of destroying them, rule to change the features of the copies, pictures and materials or render them unfit for use. However, if the court discovers that the author's copyright in the product elapses after two years of the date of the judgment becoming absolute, it may rule instead of that to affix the impound to honor the compensations ruled for the author”.

The article 47/c stipulates compensation for the author by stating that: “The court may order the confiscation of the product or the copies thereof, and the materials used in producing it and selling them within the limits that would be adequate to compensate the author for the damages he incurred, instead of destroying those copies, changing their features or destroying those materials”.

Consequently, the Court of Cassation decided that Article 47/a allows “the court, based on the request of the author or any of his heirs or his successors, authorized the destruction of the copies of the work or the extracted and collected copy of it that had been illegally published. Instead of destroying them, you should govern changing the parameters of the copies, pictures and materials, or rendering them unusable”.

Furthermore, Article 49 of the same Act stipulates that: “The author, whose rights in his product were violated under this law, has the right to obtain a fair compensation for that, provided that the cultural status of the author and the literary, scientific or artistic value thereof are taken into account when evaluating the said compensation, and the extent of benefit that the aggressor obtained from exploiting the product. The compensation awarded to the author in this case is considered an excellent debt on the net selling price of things that were used in the violation of his right and the sums impounded in the lawsuit”.

Violating the rights of a faculty member in his innovations causes moral damage to his personality, in addition to the material harm that he inflicts, such as when his writings are plagiarized and attributed to someone else, or they are published by a third party in unappropriated way, all these violations may cause financial damage, in addition to the moral damage. The financial damage could be occurred in different forms such as the decrease in sales of copies of his books. In all these cases, the faculty member has the right to request compensation, however what is the basis on which the faculty member relies when such violation on his moral right occurs?

The moral right of the faculty member, as mentioned earlier, is considered one of the rights attached to the personality, and its respect is enshrined according to the law, which indicates that the obligation not to violate this right is a legal obligation imposed on everyone, and not a contractual obligation. Therefore, the basis for compensation request when violating the moral right is not the original contractual liability, but the default or liability for the harmful act.

Therefore, when a faculty member concludes contracts with others, for instance with the publisher, they do not need to stipulate the necessity to respect the moral rights of the innovator, because these rights are initially imposed by law and the publisher’s obligation to respect them is a legal obligation. Hence, the moral right is outside the framework of contracting, which makes the liability on the basis of which the compensation request is based, a liability resulting from a breach of a legal obligation, or a liability for a harmful act.

Accordingly, the responsibility arising from the violation of the moral right is basically a negligent one, because the faculty member clings to the privileges resulting from the moral right, so this is due to his relations with the work and the rights that the law requires respecting and not the wills. According to the general rules of civil liability, the harmed party must prove the damage, and that the court is the one that decides whether the harm is proven or not, in light of the evidence presented to it. The damage resulting from copyright violation has a certain specificity, and to

examine the damage in this regard, it requires to distinguish between the harm resulting from the violation of the financial right, and the damage resulting from the violation of the moral right.

With regard to the damage caused by violating the financial right, the plaintiff (a faculty member) must prove the damage and presents that the violating act leads to financial harm. However, regarding violating the moral right, there is no consensus among jurists and legal scholars on obliging the faculty member to prove the damage suffered as a result of the violation of the moral right.

The civil penalty, if the liability is proven, is compensation. If the liability is realized, with the availability of its elements, the effect on that and the penalty will follow, which is compensation. The Jordanian Civil Code provides two methods of guarantee in Article 269 therefore the compensation could be financial or in any tangible form.

## **Section II: The penal protection for the innovations of the academicians and faculty members.**

Due to the significance of the rights of faculty members and their productions, innovations, and writings, which include moral and financial rights, the law not only decrees civil penalties to protect them, but rather approves some criminal penalties as well. The reason for this is that a faculty member may be subjected to serious violation on his moral and financial rights, which necessitate imposing such criminal sanctions on the violators to deter them and others from violating these rights. These violations may be in the form of illegal copy, scientific theft, or plagiarism and the legal protection for the innovations of faculty members includes preventing violations of this right and respecting the right of its owner.

Therefore, Jordanian law regulates protecting such right and in order to benefit from penal protection, conditions must be met, the most important of which are:

- 1- The work is protected in accordance with the general standards for the protection of works.
- 2- The intended use of the work was not according to a restriction contained in the copyright or related rights.
- 3- The term of protection has not yet expired.
- 4- The act committed constitutes one of the specific crimes.
- 5- The violator has bad faith.
- 6 - The profit objective is not considered a significant element in the assault unless it is explicitly stipulated when the legislator defines the assault in question in the law (Lebzik, 2003 , p. 563-564).

There is no doubt that the penal protection is the strongest protections for the intellectual property rights because it has a strong effect on deterring the violators as it includes the penalties that affect the violator himself in his freedom or his money (Bakri, 2011, p. 31).

The Jordanian Copyright Act specifies the penal penalties for the infringement on the faculty members by stipulating the penalty in Article (51) which states that:

“a. Shall be sentenced to prison for a period of not less than three months and not more than three years, and for a fine of not less than one thousand Dinars, and not more than three thousand Dinars, or to one of these two punishments:

1- Everyone who practiced without a legal deed one of the rights stipulated in Articles 8, 9, 10, 23 of this law.

2- Everyone who displayed for sale, circulation or lease an imitated product, or copies thereof, or broadcast it to the public as being imitated in any manner whatsoever, or entered it to the Kingdom or taken it out of it, knowing it is imitated.

b. In the event of repetition of any of the crimes stipulated in para (a) of this Article, its perpetrator shall be sentenced to the maximum imprisonment sentence and to the highest fine. The court in this case may rule to close down the institution in which the crime was committed for a period of not more than a year, or to stop its licensing for a certain period or indefinitely”.

The penal sanctions are not limited to the infringer, but also include everyone who participate in such acts as Article 55 stipulates that:

“A- A person who commits any of the following acts is considered in violation of the provisions of this law:

1- Circumventing, nullifying, or disrupting any of the effective technological measures.

2- Manufacture, import, sell, display for the purpose of selling or leasing, or possessing any other commercial purpose, or distributing, carrying out propaganda work to sell or lease any piece, device, service, or medium that was designed, produced, or used for the purpose of circumventing effective technological measures, invalidating or disable any of them.

B - For the purposes of this Article, the phrase (effective technological measures) means any technology, procedure, or tracking method such as encryption or copy extraction control, which is used to prevent or limit the performance of unauthorized acts by the rights holders”.

### **Section III: The international protection of the innovations of the academicians and faculty members.**

Intellectual protection treaties define the minimum protection that a state provides if it is among the states that sign a specific treaty, in other words this state sets the appropriate laws as a kind of



its commitment to the treaty requirements (Cook, 2006, p.72). The importance of international treaties because they allow any member country to stipulate conditions, restrictions, exceptions or reservations to the extent permitted by these agreements regarding the protection established for them (Murad, 2003, p. 10).

The Paris Convention for the Protection of Industrial Property was the starting point from which all treaties were launched. The treaty was signed in 1888 and was revised later several times. It includes industrial property rights that include the creation of a union for the protection of industrial property, and the inclusion of patents, industrial designs, trademarks and service trademarks, and the elimination of unfair competition in industrial property (Cook, 2006, p.72).

It is noted that the international protection has been extended to cover the copyright, which includes the innovations of faculty members. The Universal Declaration of Human Rights (UDHR), adopted by the United Nations General Assembly in 1948, affirms the significance of intellectual property rights and includes it as one of the human rights. Article 27/2 stipulates that: “Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author”.

The legal protection for the innovations of the faculty member in international agreements will be examined by investigating the Berne Convention and TRIPS Agreement and how they addressed the innovation rights of the faculty member.

### **Berne Convention for the Protection of Literary and Artistic Works:**

The Berne Convention was adopted in 1886. It deals with the protection of works and the rights of their authors. By 1979, the Convention had been amended seven times, and includes 38 articles in addition to an appendix consisting of six articles pertaining to developing countries (Cook, 2006, p.73).

The Berne Convention includes several essential rights for authors of literary works, including the right to authorize the making of copies of their works, the right to extracts from those works, the right to broadcast their works by wire or wireless, and the right to make adaptation, amendment, or translating works, the right to recite those works in public, the right to protect the work from any distortion, and the right to judicial claim the rights resulting from the enjoyment of protection. In general, copyright protection duration is limited to 50 years after the author’s death while some countries extend the protection to 70 years (Jalal. 2005, p. 38).

### **TRIPS Agreement**

The TRIPS Agreement was signed on 15 April 1994. TRIPS, Trade-Related Aspects of Intellectual Property Rights, is an annex 1C of the Marrakesh Agreement under the World Trade Organization (WTO). It sets minimum levels of many types of intellectual property (IP) protection.

The TRIPS Agreement includes seventy-three articles developed with the aim of liberalizing global trade on the grounds that intellectual property rights are an integral part of the international trading system, with the need to encourage effective and adequate protection of intellectual property rights. Regulating the relationship between the TRIPS Agreement and other intellectual property agreements called for the imperative to create some kind of cooperation between the World Trade Organization and the World Intellectual Property Organization, as an agreement was concluded between them in 1995 (Jalal. 2005, p. 119).

The TRIPS Agreement stipulates that effective action must be taken against any violation of intellectual property rights under this agreement, including urgent solutions to limit violations and to deter further violations. This applies to protecting the faculty member's right for his innovation. Accordingly, the innovations of faculty members enjoy protection in accordance with the TRIPS Agreement, in the countries that signed the agreement, and any violation of these rights leads to accountability of the violator and exposing him to penalty.

### **Conclusion**

The faculty member plays a fundamental role in the process of scientific development through their roles in universities, whether those roles related to teaching, scientific research, or others. There is no doubt that the work of faculty members involves innovations, and these innovations may be violated, and this research paper examines the protection established for faculty members in their innovations, whether in national legislation or international conventions. The main findings of this study are:

- New innovations are resulted from the work of a faculty member at the university. These innovations deserve legal protection.
- Faculty member innovations may be infringed upon by others.
- No provision has been made specifically for the legal protection of the innovations of a faculty member, however it is possible to apply the provisions in the copyright law, the patent law, and other acts related to the protection of intellectual property.
- The Jordanian law regulates the provisions and rules for protecting copyright and other areas of intellectual property. The legislations are related to the protection of intellectual property rights included rules consistent with the TRIPS Agreement, as Jordan signed the TRIPS Agreement.
- The TRIPS Agreement is the agreement that deals with and regulates the international protection of most types of intellectual property.
- The TRIPS Agreement obliges member states to adopt various administrative, customs and border measures and procedures to activate the protection of intellectual property in these countries.



- The TRIPS Agreement includes provisions to protect copyright from unlawful reproduction of various works and innovations, which include the innovations of faculty members.
- The innovations of the faculty member are provided with all forms of national and international legal protection.

### **Recommendations**

- Since the primary purpose of protecting intellectual property rights is to protect the rights of intellectual property owners and encourage them to scientific and intellectual production and innovation, this protection includes what the faculty members create, therefore we recommend adding articles related to this protection to these acts.
- To explicitly stipulate the protection of the innovation right in intellectual property laws to protect it, and to specify who is the innovator, and what are the conditions for innovation.
- Standardizing legal terminology in all intellectual property laws, and defining legal protection for them to deter those who infringe on the creator's rights.
- Establishing adequate legal guarantees to protect the innovations of faculty members in their innovations, in a way that guarantees them the right to all the rights arising from them.
- Defining the concept of a faculty member and setting a legal definition for it, as the relevant laws, regulations and instructions does not define it, and it is specified by the academic rank only.
- Creating an institutional legal system to protect innovations in general and the innovations of faculty members in particular, estimating compensation in the event of a violation on their rights, and training specialists in this field.

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