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Decree Law No. 5 / 1999
On
Intellectual Property Rights

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Decree by Law No. 5 of the Year 1999 with Regard to Intellectual Property Rights

- Following perusal of Article 71 of the Constitution,
- the Penal Code issued by Law No. 16 of the year 1960 and its amending laws,
- the Penal Proceedings and Trials issued by Law No. 17 of the year 1960 and its amending laws,
- Law No. 3 of the year 1961 for the issuance of the Press and Publication Law and its amending laws,
- the Civil and Commercial Pleadings Law issued by decree for Law No. 38 of the year 1980 and its amending laws,
- the Civil law issued by decree for Law No. 67 of the year 1980 and amended by Law No. 15 of the year 1996,
- Law No. 16 of the year 1986 approving the Arab Agreement for the Protection of the copyrights,
- and of Law No. 2 of the year 1998 approving that the State of Kuwait join the Agreement for the Establishment of the Universal Organization for Intellectual Property,
- based on the offer of the Minister of Information,
- and following the approval by the Council of Ministers,
- we issue the decree for the following law:

Section One Scope of Protection Article (1)

Authors of innovated writings in literature, arts, and science shall enjoy the protection of this law regardless of the value of these writings, their kind, the purpose of their compilation, or the way of their expression.

An author is considered the person who creates a composition or to whom it is attributed at the time of its publication, whether this is by the mention of his name on the product or by any other way, unless it is otherwise proven.

Article (2)

The protection shall particularly include the following compositions:

- a. Written compositions.
- b. Compositions given orally such as lectures, speeches, religious sermons, and the likes.
- c. Theatrical compositions and musical plays.
- d. Musical compositions whether accompanied or unaccompanied by words.
- e. Compositions performed by movements or steps and are materially prepared for direction.
- f. Cinematic compositions and radio audio and visual compositions.
- g. Paintings and photographs in lines, or colors, or graph or architectural drawings, sculpture, decorative arts, and engraving.
- h. Photography work.
- i. Applied art work, whether handicraft or industrial.
- j. Illustrative pictures, geographical maps, designs, plans, and three-dimensional work related to geography, topography, architecture, and sciences.
- k. Computer writings such programs, data rules, and the like.
- l. Derived compositions and translations.

The protection also includes the title of the writing if distinguished by an innovative aspect and not a commercial term indicating the subject of the composition.

Article (3)

Whoever, by authorization from the author, translates a composition to another language, summarizes, amends, or explains it, or proceeds to show it in a new form shall also benefit from the protection.

The protection approved in paragraph seven shall not violate the protection enjoyed by the original author of the writing.

However, the rights of the author of the photographic composition do not entail preventing others from taking new photographs of the same photographed object even if these new photographs are taken from the same place and generally in the same circumstances in which the first photographs were taken.

Section Two
Author's Rights
Chapter One
General Provisions
Article (4)

Only the author shall have the right to decide to publish his writing and to determine the way of this publication.

He alone shall also have the right to exploit his writing financially by any means of exploitation and nobody else shall have the right to use this right except by prior written authorization from him or his successor.

Article (5)

The author's exploitation right shall comprise the following:

- a. Copies of the writing in any form.
- b. Communicating the composition to the public by a public performance, theatrical acting, radio broadcasting, television or cinematic show, or by any other means.
- c. Translation of the writing to another language, its amendment, summarization, explanation, or its modification in any other form.

Article (6)

Only the author shall have the right to have the writing attributed to him unless IT is mentioned within a radio or television broadcasting of current events.

The author or his private or universal successor shall have the right to object or to prevent any deletion, change, addition, or any other modification of his writing without his authorization.

An exception from the provision of the preceding paragraph shall be an amendment in the translation of the writing, its modification, or its development into another form unless this entails tarnishing the author's reputation, his honor, or

scientific or artistic standing. In all cases, reference must be made to the content of the translation, the modification, or the development that was amended in the original writing.

Article (7)

The author may not, following the publication of his writing, prevent its version in music, acting, or recitation if this takes place in any private meeting which does not entail any financial proceeds in a direct or indirect manner.

Article (8)

If a person makes one copy of a writing that was published, or if he translates it, quotes from it, or modifies it in any other form for his personal use, the author may not prevent him from doing so.

However, these writings may not be published except with the authorization of their owner and author.

Article (9)

The author may not, following the publication of his writing, prohibit analyses and short quotations if they are meant for critique, education, study, or information provided that the name of the reference and the author are clearly mentioned.

Article (10)

Newspapers, periodic publications, radio, television, or other means of communication may copy, without the writer's authorization, articles concerned with political, economic, or religious discussions which occupy the public opinion at a certain time as long as there is no mention in the copied original explicitly prohibiting its copying.

In the event of copying, publication of a quotation, or others, the reference and the author's name must always be clearly mentioned.

Article (11)

Newspapers, radio, and other means of communication may, without the author's authorization, publish and broadcast for the sake of information the speeches, lectures, and discourses made in public sessions of legislative and administrative authorities and scientific, literary, artistic, political, social, and religious meetings as long as these speeches, lectures, and discourses are addressed to the public.

It is permitted to publish without the author's authorization the public judicial pleadings within the confines of the law.

Article (12)

In the cases stipulated in the preceding two articles, only the author shall have the right to publish the collections of his speeches or articles.

Article (13)

Only the author's heirs shall be entitled to exercise the rights of financial exploitation of the writing in the manner stipulated in this law while observing the following:

- a. If the author has agreed in writing with others regarding the use of his composition, his contract shall be executed in accordance with its provisions.
- b. If the author has recommended to prevent the publication or has specified a date for it or other conditions, his will shall be executed.
- c. If one of the authors of a collaborative writing passes away and he has no heir or trustee, his share shall transfer equally to the remaining authors unless otherwise provided for in a written agreement.

Article (14)

If the heirs of a Kuwaiti author or his successor does not proceed to publish or re-publish the writing and the Minister of Information deems that the public interest requires the publication of the author's writing, also if they refrain for a period of one year effective from the date of his requesting the same by registered letter with confirmed receipt, he may exercise this right following the issuance of an order by the

Higher Court President as to delivering the writing to him for publication, this without prejudice to the entitlement of the author's heirs or successor to a fair compensation.

Article (15)

Performance artists such as actors, singers, instrumentalists, and others shall have the right to have their performance attributed to them in the form they created it and they shall also be entitled to the financial right of exploiting their performance, whether by communicating it to the public or publicly allowing for its original authentication, its copying, or its rental and by publicly allowing its authenticated performance through radio or computer.

Radio organizations shall be entitled to the financial right of licensing the exploitation of their recordings and to prevent the use of their programs without their prior written authorization.

Article (16)

The protection right of the author of a writing in a foreign language and the right of whoever translated this writing to another foreign language shall end for the translation of this writing into Arabic if the author or the translator does not exercise this right within five years from the first publication date of the original or translated writing.

Nonetheless, the Minister of Information may authorize the translation of the writing into Arabic or its publication following the lapse of one year from the first publication date of the original or translated writing, in which event the author or whoever the translation right is transferred to shall receive a fair compensation.

Article (17)

Without prejudice to the provision of the preceding article, the protection of the copyrights to financial exploitation shall end:

First : Upon the lapse of fifty years from the death of the author. This period shall be calculated in collaborative writings from the date of the demise of the last surviving author, this effective from the calendar year of death.

Second: Upon the lapse of fifty years effective from the calendar year of publication with regard to the following writings:

- a. Writings published under a pseudonym or without mention of the author's name unless the author reveals his identity through them or his real name is known to all, then the period shall end according to the provision of the First Clause.
- b. Writings in which the right holder is an artificial person.
- c. Cinematic writings, photographic work, applied arts, computer programs, and data rules.
- d. Writings published for the first time following the demise of their authors.

Third: For performance artists, upon the lapse of fifty years effective from the end of the calendar year when the performance was made and, for producers of cinema recordings or those designated for television or radio, effective from the end of the calendar year when the recording was made.

Fourth: For radio broadcasting organizations, upon the lapse of twenty years effective from the end of the calendar year when the first broadcasting was made.

Chapter Two

Special Provisions for Some Writings

Article (18)

If more than one person participate in the composition of a writing whereas the share of any of them in this collaborative work may not be separated from the share of the others, all authors shall be considered equal owners of the writing unless otherwise agreed upon in writing.

In this case, none of them may exercise the rights entailed upon the author's right except with the agreement of all collaborating authors. If a dispute arises, the Higher Court shall have the jurisdiction to settle it.

Every co-author shall have the right to take preventive and expedited measures upon the occurrence of any infringement of the author's right and he shall have the right to file a lawsuit claiming his compensation for the damage suffered by him because of this infringement.

Article (19)

If more than one person participate in the composition of a writing whereas the share of any of them may be separated, all authors shall have the right to exploit the part with which he contributed separately provided that this does not harm the exploitation of the collaborative writing, unless otherwise agreed upon in writing.

Article (20)

Without prejudice to the right of the author of a literary section in compositions of musical songs, only the author of the musical section shall have the right to license a public performance of all the collaborative writing, to execute it, publish it, or to copy it.

The author of the literary section shall have the right to publish his section provided that he may not dispose of this section so as to become the basis for another musical composition unless otherwise agreed upon in writing.

Article (21)

In collaborative writings performed by movements accompanied with music and in all similar compositions, the choreographer shall have the right to license the public performance of all the collaborative composition, to execute it, or to copy it. Only the author of the literary section shall have the right to dispose of this section provided that it is not used in a composition similar to the collaborative composition unless otherwise agreed upon in writing.

Article (22)

The following persons shall be considered co-authors of a cinematic writing or a writing designated for radio or television:

- First :** The scenarist or originator of the written idea of the composition.
- Second:** Whoever modified the literary writing in a manner which rendered it suitable for this art.
- Third :** The dialogist.
- Fourth:** The music composer if especially composed for the writing.
- Fifth :** The director if demonstrating actual supervision and carrying out a positive work from the intellectual aspect for the realization of any of these writings.
- If a cinematic writing or a writing designated for radio or television is a simplified or quoted version of another preceding writing, the author of this writing shall be deemed a collaborator of the new writing.

Article (23)

The scenarist, whoever modified the literary writing, the dialogist, and the director shall jointly have the right to display the cinematic writing or the writing designated for radio or television despite the objection of the author of the original literary writing or the music composer, this without prejudice to the civil rights of the objector and which are entailed by collaborating in the writing.

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

Article (24)

If one of the collaborators in the writing of a musical composition or a composition designated for radio or television refrains from completing his part of the work or was not able to due to circumstances beyond his will, he shall not have the right to prevent the other collaborators from the use of the part which he had previously completed and he shall be considered an author of what he has completed with all the rights entailed thereupon.

Article (25)

The natural or artificial person in charge of the execution of a cinematic writing or a writing designated for radio or television, responsible for this accomplishment, or making accessible to the author of this writing the material means

necessary for the realization of his direction shall be considered the producer thereof. In all cases, the producer shall be considered a publisher of the writing and he shall have all the publisher's rights.

The producer shall be, during the exploitation period agreed upon, the agent of the authors of the writing or their successors in agreeing upon its exhibition or exploitation without prejudice to the rights of the authors of literary or musical compositions unless otherwise agreed upon in writing.

Article (26)

A collective writing is a writing in which a group participates under the direction of a natural or artificial person whereas the work of each participant may not be separated nor singularly distinguished.

An artificial person is whoever directs the creation of this composition and organizes its writing and he alone shall have the right to exercise the author's rights.

Article (27)

If a writing is created at the account of a natural or artificial person, the copyrights are established for the creator unless otherwise stipulated in writing in the agreement.

Article (28)

In writings which carry a pseudonym or those that do not carry the name of the author, the publisher whose name appears on the writing shall be considered as commissioned by the author with exercising the rights established for him in this law unless otherwise provided.

Article (29)

No person making a picture shall be entitled to exhibit, publish, or distribute the original or its copies without the authorization of the persons whom he portrayed unless otherwise agreed upon in writing.

This provision does not apply if the publication of the picture was made on the occasion of events taking place publicly, was related to officials or public figures, or was authorized by public authorities in the service of public interest.

Nonetheless, it is not permitted in the previous case to exhibit or circulate the picture if this entails tarnishing the honor of the person it represents, his reputation, or his dignity. The person represented in the picture shall authorize its publication in newspapers, magazines, or other similar publications even if the portrayer does not authorize the same unless otherwise stipulated in the written agreement.

These provisions shall apply to pictures regardless of the way they are made, be it drawing, sculpting, or another method.

Chapter Three **Disposal of Copyrights** **Article (30)**

The author may transfer to others the exercise of the exploitation rights stipulated in Articles (4) second paragraph and (5) of this law.

However, the transfer of one of the rights does not entail authorizing the transferee to exercise any other right.

It is conditional for the disposal to be sound that it is written and the right subject to disposal is explicitly specified while stating its extent, purpose, and exploitation period and place.

The author shall refrain from any work which may hinder the material use of the disposed right.

The provisions pertaining to the author's relinquishment of his financial rights shall apply in accordance with the provisions of this decree in a law for performance artists.

Article (31)

The author's disposal of his rights to the writing, whether in full or in part, may be on the basis of a prorated share in the proceeds resulting from exploitation or at random.

Nonetheless, if it is evident that the agreement was inequitable to the authors' rights or has become so due to circumstances occurring following the agreement, the court may, according to circumstances and after weighing the interest of both parties, award the author in addition to what was agreed upon a part of the net profit resulting from the exploitation of the writing.

Article (32)

Every disposal of the rights stipulated in Articles (5) first paragraph and (7) of this law shall be null and void.

Article (33)

The author's disposal of his entire future intellectual production shall be null and void.

Article (34)

Disposal of the ownership of the only original copy of a writing, regardless of its kind, shall not entail the transfer of the copyright over this writing; however, the person to whom the ownership of this copy is transferred shall not be compelled to enable the author to copy, transfer, or exhibit it unless otherwise agreed upon in writing.

Article (35)

Only the author may, in the event of serious reasons, request the Higher Court to withdraw his writing from circulation or to effect amendments thereto despite his disposal of the financial exploitation rights and the author shall in this case compensate whomever the financial exploitation rights were transferred to with a fair

compensation to be paid within a period determined by the court, otherwise all consequences of the judgment shall cease.

Section Three
Proceedings and Penalties
Chapter One
Proceedings
Article (36)

The Judge of Provisional Matters in the Higher Court may, upon the request of the author or his successor or by virtue of a petition, order the following proceedings for every writing published or exhibited without the written authorization of the author or his successor in violation of provisions of Article (5) of this law.

- First :** The proceeding of a detailed description of the writing.
- Second:** To cease the publication, exhibition, or manufacture of the writing.
- Third :** To impound the original writing or its copy and the material used in re-publishing this writing.
- Fourth:** To prove the public performance with respect to rhythm, acting, or address of a writing to the audience and to prevent the ongoing show from continuing or to prohibit it in the future.
- Fifth :** To assess the proceeds resulting from publication or exhibition with the knowledge of an expert commissioned with the same if necessary and to seize these proceeds in all cases.

The Judge of Provisional Matters may order to commission an expert with assisting the execution officer and he may impose on the claimant to deposit an appropriate bail.

The claimant must submit the original of the dispute to the competent court within eight days following the issuance of the order. If he fails to submit within this deadline, the matter shall be deemed as if non-existent.

Article (37)

The person whose claim was ordered refused and the person upon whom the order was issued may submit a grievance to the ordering judge. This shall not prevent the original lawsuit from being brought before the court. A grievance shall be through the usual proceedings for filing a lawsuit and it must be substantiated, otherwise it shall be considered as if non-existent.

In the grievance, a judgment shall be made concurring with, amending, or annulling the order. The judgment may appoint a custodian of the writing subject of the dispute and its mission shall be the re-publication, exhibition, manufacture, or production of the writing provided that the resulting proceeds are deposited with the Court's Treasury. The custody shall end with the agreement of all concerned or by a judicial judgment.

A grievance against an order shall not entail the cessation of its execution.

Article (38)

The Court before which the original dispute is submitted may, upon the request of the author or his representative, rule to destroy the copies or pictures of the writing which was illegally published along with the material used in its publication provided that it is not useful for another job, to change the characteristics of the copies and the material, or to render them unsuitable for work, all this at the expense of the liable party. Nonetheless, if the copyright expires after a period less than two years commencing from the date the judgment is issued and provided that no prejudice is made to the copyrights stipulated in Articles (4), (5) Clause c, and (6) first paragraph, the Court may replace the judgment to destroy or to change the characteristics with a ruling confirming the protective seizure in fulfillment of the compensation awarded to the author provided that the judgment to destroy or to change the characteristics may not be issued if the raised dispute is concerned with the translation of a writing into Arabic in violation of the provision of Article (15) first paragraph and the judgment shall be restricted to confirming the protective seizure of the translated writing in fulfillment of the compensation awarded by the Court to the author.

In all cases, with respect to his debt resulting from his right to compensation, the author shall hold a lien on the net sale price of the things and on the withheld money to be settled to him while only the lien of judicial expenses and expenditures paid for preserving and maintaining these things and for collecting these sums shall take precedence.

Article (39)

The copyright may not be attached but copies of the published writing may be impounded. This judgment comprises the writings whose owner dies prior to their publication unless it is definitively proven that he intended publishing them prior to his death.

Article (40)

Buildings may not be subject to taking in execution nor shall their destruction or confiscation be ruled with the intention of safeguarding the rights of the architectural author whose designs and drawings have been illegally exploited.

Article (41)

Every author suffering an infringement upon one of his rights stated in this law shall be entitled to compensation.

Chapter Two

Penalties

Article (42)

Imprisonment for a period not exceeding one year and a fine not exceeding five hundred Dinars or one of these two penalties shall be the punishment for:

- a. Whoever infringes upon the copyrights stipulated in Articles 4, 5, 6 first paragraph, and 12 of this law.
- b. Whoever sells, offers for sale or circulation, broadcasts to the public in whatever manner, or brings into the country or takes out an imitation writing.
- c. Whoever discloses or facilitates the disclosure of computer programs prior to their publication.

- d. Whoever removes or assists in the removal of the protection which regulates or restricts the public perusal of the writing, the performance, the broadcasting, or the recording.

The Court may rule to confiscate all the instruments designated for illegal publication if they are useful only for this publication, also to confiscate all the copies.

It may also order to publish the judgment in one or more newspapers at the expense of the judgment debtor. If the accused has already been penalized for committing one of the crimes indicated in this article and it is proven that he has committed within five years from the final judgment date one of the preceding crimes, the Court may rule in this crime for a penalty exceeding the maximum legally stipulated limit provided that it does not surpass half this limit and to close the installation used in committing the crime for a period not exceeding six months.

Section Four
Final Provisions
Article (43)

Without prejudice to the provisions of international agreements effective in the State of Kuwait, the provisions of this law shall apply to:

- a. The writings of the nationals of the State of Kuwait which are published within the country or abroad.
- b. The writings of Arab authors nationals of countries members in the Arab Agreement for the Protection of the Author's Rights and which are published in any of these countries.
- c. The writings of foreign authors which are published for the first time in the State of Kuwait.
- d. The writings of authors nationals of countries members in the Agreement of the Universal Organization for Intellectual Rights and which are published for the first time in any of these countries.
- e. The writings of foreign authors nationals of countries which deal similarly with the writings of Kuwaiti authors.

Article (44)

The provisions of this law shall apply to the writings indicated in the preceding article on the date they become effective. As to the calculation of the protection period for these writings, it shall account for the period which lapsed from the specific event date when the period becomes effective to the date this law is applied.

The provisions of this law shall apply to all events and contracts subsequent to the date of its effectiveness even if concerned with writings published, exhibited, or acted out prior to that. As to the contracts which were concluded prior to the application of this law, its provisions shall not apply thereto and they shall remain subject to the legal provisions which were applicable at the time of their conclusion.

Article (45)

The Minister of Information shall commission the employees required for the execution of the provisions of this law and these employees shall have the right to enter printing establishments, book shops, publishing houses, and public places which deal in writings subject to the provisions of this law, this in order to control the event and the material subject of the violation and to draft the necessary reports. They may also have recourse to policemen in carrying out their duties, if necessary.

As to the violations which may be ruled in by the closure of the installation, the Minister of Information or his commissioner may order to close the installation where the violation took place until the Public Prosecution or the Court authorizes it to open or the case is settled.

Article (46)

The Public Prosecution shall handle the investigation, the disposition, and the prosecution in all crimes arising from the implementation of the provisions of this decree by law.

Article (47)

Any text contrary to the provisions of this decree by law shall be annulled.

Article (48)

The Minister of Information shall issue the required resolutions for the execution of this decree by law and he shall also issue a resolution regulating the system of writings deposition, its procedures, the due fees, the establishment of a special register to record the actions taken on the writings subject to the provisions of this decree by law.

Article (49)

Ministers - each in his jurisdiction - shall execute the provisions of this decree by law and they shall enforce it from the date of its publication in the official gazette. It shall also be submitted to the National Assembly.

The Amir of Kuwait
Jaber Al-Ahmad Al-Sabah

The Prime Minister
Saad Al-Abdullah Al-Salem Al-Sabah

The Minister of Information
Yousef Mohamed Al-Sumait

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Explanatory Note for the Project of Decree by Law with Regard to the Protection of Intellectual Property

Literary, artistic, and scientific writings are the fruits of man's intellect, the outcome of his mind, and the mirror of his personality. There is no argument that the protection of the copyrights has become a pressing requirement necessitated by the current cultural growth and the emergence of modern means of printing and publication, this in order to ensure to the authors their rights and to preserve the fruits of their efforts and mental innovation, also to motivate and encourage them to proceed with their artistic and scientific activity.

In view of the importance of the copyright, Kuwait has joined several agreements among which the Arab Agreement for the Protection of the copyrights in 1986 and the Agreement for the Establishment of the Universal Organization for Intellectual Property. It is in light of these considerations and in an effort to perfect the basic legislation in the country that the project of the enclosed law was formulated to grant the copyrights an effective protection supported by national legislative provisions.

The project was keen to have its provisions express the major modern doctrinal concerns and endeavors and to keep pace with modern legislation. The project granted great care to the international agreements for the protection of the copyrights which Kuwait has joined and thus it embraced in its provisions their judgments and took into account the most modern solutions that were arrived at in these international agreements among which the most important are the Universal Agreement for the Copyrights (Geneva 1952) and its various amendments, the Arab Agreement for the Protection of the Copyrights, the treaty of parties concerned with commerce for intellectual property rights, and last the Agreement for the Establishment of the Universal Organization for Intellectual Property which Kuwait has joined by virtue of Law No. 2 of the year 1998, also the reports of the international committee formed in compliance with the provisions of the mentioned agreement, this in order to keep pace with the advanced countries which have embraced these solutions after they had become among the internationally stable principles.

The project has specified in the first section the scope of the protection. However, it did not want to limit the kinds of artistic writings which it protects taking into consideration the future, but it set a general rule for this and gave examples of what is common and in circulation and thus it stipulated in the first paragraph of Article (1) that the writings whose authors enjoy the protection of the law are innovated writings in literature, arts, and science regardless of the value of these writings, their kind, the purpose of their compilation, or the way of their expression and thus they include the known writings and those which may be innovated in the future.

The second of this article also considered an author the person who innovates the composition and also to whom it is attributed at the time of its publication by any means not allowing room for doubt as to recognizing his identity, this being a presumption of law that accepts proof to the contrary through all the legally approved means.

It indicated in *Article (2)* examples of current common and circulated writings whose authors are protected by the law such as computer programs and data rules thus confirming what has been established in international agreements as literary writings.

The provision did not explicitly omit that the protection includes also the composition's title if characterized by an innovative aspect and is not a commercial term indicating the subject of the writing.

Article (3) alludes to writings derived from preceding writings and comprises translated writings and all pictures showing existing compositions in a new form. It endowed them with protection in the event an authorization to undertake them is obtained from the original author.

The third paragraph of this article mentions a restriction with respect to photographic compositions to the effect that the author may not prevent others from taking new photographs of the photographed object. This restriction shall not be deemed a lessening of photographic copy rights, this in view of the protection of the photographic composition requiring the prevention of copying photographs directly from the same photographed composition without the author's authorization but not

preventing that other photographs be taken from the same place even if this is under the same circumstances in which the first photographs were taken.

The project regulated in Section Two the copyrights and the First Chapter of this section tackled the general provisions. *Article (4)* stipulated that only the author shall have the right to decide to publish his writing and to determine the way of this publication, also that he alone shall have the right to exploit it financially while it prohibited others from exercising this right without the prior written authorization of the author or his successor.

Article (6) also stated some of the author's copyrights to his writing and thus stipulated that he alone shall have the right to have the writing attributed to him and that he and his successor shall have the right to object to any amendment others may effect to it without his authorization and it demonstrated the exceptions in response to this.

In return, *Articles from (7) to (11)* provided for the cases in which the author is denied the right to object to the exploitation by others of his writing even if this takes place without his authorization. It is observed that these last cases do not conflict in reality with the author's right to his writing because they do not imply a financial exploitation or infringement upon his copyright but rather agree with the nature of this right which aims to propagate culture in general such as the rhythm or the acting taking place in a private meeting that does not generate any financial proceeds or if the copying is for personal use by the individual, a public library, or a non-commercial authentication house, provided that the copying is restricted to responding to its needs and does not harm the normal exploitation of the writing, or transcribing, quoting, or analyzing the writing with the intention of a critique, study, information, or other provided that the name of the reference and the author are clearly mentioned, also that the author alone shall have the right to publish the collections of his speeches or articles in accordance with the stipulation in Article (12).

After the project had stated the author's rights during his lifetime, it moved to the fate of these rights following his demise and thus Article (13) stipulated the transfer of the financial exploitation rights to his heirs while observing the contracts

he may have concluded in writing with publishing houses or what he had recommended with respect to preventing the publication or specifying its schedule and conditions. In the case of a collaborative writing, it also stipulated the transfer of his share equally to the remaining authors if he has no heir or trustee and there is not written agreement to the contrary.

The project then considered the case if the heirs of the Kuwaiti author did not publish or re-publish the writing they inherited whereas the public interest required the publication of the writing and thus Article (14) has granted the Minister of Information the right to demand from the heirs the publication of the writing by virtue of a registered letter with confirmed receipt. If the author's heirs or successor persisted in refraining from the publication of the writing, he shall have the right to have an order issued by the Higher Court President as to the delivery of the writing to him for its publication, all this without prejudice to the author's or successor's right to a fair compensation.

Article (15) of the project stated the provisions for performance artists such as singers, instrumentalists, and dancers if the practical reality reveals that the share of some performance artists exceeds by far the share of the author of the writing and that some of them are the main reason for public demand on the writing and its popularity. If the author's financial right to his writing is provisional by nature, Articles (16) and (17) of the project have stated the protection period expiry for all kinds of writings. Article (16) stipulated the expiry of the protection of the copyright and the right of whoever translated his writing into another foreign language to the translation of that writing into Arabic if the author or the translator does not exercise this right within five years from the first publication date of the original or translated writing. Nonetheless, the Minister of Information may authorize the translation of the writing into Arabic or its publication following the lapse of one year from the first publication date of the original or translated writing while granting the author or whomever the translation right is transferred to a fair compensation, this in an effort to promote culture and for society to benefit from all creativity and innovations.

The First Clause of *Article (17)* stipulated the general rule in the protection period which shall last throughout the author's life and for fifty years following his death, also that if the writing is the collaborative composition of more than one

author, the period shall be calculated from the date of death of the last surviving author. In both cases, the period shall commence effective from the end of the calendar year when the death occurred. This article also provided in its Second and Third Clauses for another deadline on which the protection period commences for some writings where the project accounted for the public interest and favored it over the copyright in view of the nature of the writing, the circumstances surrounding its publication, or the author being an artificial person. The Second Clause of this article considered the first date of publication to be the time the calculation of the fifty year period commences and following which the exploitation right expires for some writings which are published under a pseudonym or without mention of the author's name unless the author is known to all by his pseudonym or has revealed his identity and thus the provisions mentioned in the First Clause of this article shall then apply.

The same also applies to writings whose right holder is an artificial person and to cinematic writings, photography, applied arts, computer programs, and data rules, or to writings which are published for the first time following the death of their author. The Third Clause also stated that the end of the calendar year when the performance was made shall be accounted as the date to begin the calculation of the fifty year period for the expiry of the protection, with respect to performance artists, and the end of the calendar year when the recording was made, with respect to producers of cinewritings or writings designated for radio or television. The Fourth Clause also mentioned a shorter protection period with respect to programs of radio organizations, this being twenty five years commencing from the end of the calendar year when the broadcasting was made.

The project examined in Chapter Two of Section Two some kinds of writings which require special provisions such as a collaborative writing which is composed by more than one person and where the share of any of them may not be separated from the share of others. Article (18) hence stated that all authors shall be considered holders of equal rights therein unless otherwise agreed upon in writing and it prevented them from exercising composition rights on this writing except with the agreement of all of them, this with the exception of taking preventive and expedited measures and any of them claiming the right to compensation for the damage that may be suffered due to this infringement. It also provided for the jurisdiction of the Higher Court in settling any dispute among them in this regard.

However, if it is possible to separate the share of each of the authors, Article (19) has stipulated that each of them shall have the right to exploit the part with which he contributed separately provided that this does harm the exploitation of the collaborative writing unless otherwise agreed upon in writing.

In view of one of the composition elements in a collaborative writing being more dominant or important especially with respect to the other elements, Article (20) has granted solely to the composer of the musical section in singing musical writings such as the opera and the operetta the right to license, execute, or publish the public performance of all the collaborative writing. It also granted to the author of the literary section the right to exploit his section provided that he does not use it as the basis for another musical writing unless otherwise agreed upon in writing. Article (21) granted the choreographer of collaborative writings performed with movements accompanied by music such as ballet, shows, and athletic games if accompanied by music, the right to license, execute or publish the public performance of all the collaborative work and it granted the composer of the musical section the freedom to dispose of his section provided that he does not exploit it in a writing similar to the collaborative writing unless otherwise agreed upon in writing.

After *Article (22)* had demonstrated who is considered a partner in the composition of a cinematic writing or a writing designated for radio or television, Article (23) has stipulated that the scenarist in this kind of writing, whoever modified the literary writing, and the director shall jointly have the right to exhibit it despite the objection of the composer or music writer, this without prejudice to its rights entailed by his collaboration in the writing. The second paragraph of the article grants each of the composers of the literary and musical sections the right to publish their writing in any other manner unless otherwise agreed upon in writing. Article (24) illustrated the case of one of the collaborators in the composition of one of these writings failing to complete his work and it denied him the right to object to the use by the other collaborators therein of the part which he had previously completed, this in order that his objection, which may be unfounded or trivial, does not cause a delay in the artistic work or entails a great material loss that is not commensurate with the objection reasons.

In view of the production of these visual writings necessitating their exclusive production by the producer rather than the authors holders of the rights thereto, Article (25) defined the producer of the cinematic writing or the writing designated for radio or television as the natural or artificial person who completed it or took responsibility for its completion or whoever made accessible to its authors the material and financial means required for directing it and it then granted him all its publication rights in his capacity as agent for the authors and their successors in its exhibition and exploitation unless otherwise agreed upon in writing.

Article (26) stipulated that a collective writing is a writing in which a group has participated under the direction of a natural or artificial person whereas the work of each participant may not be separated nor singularly distinguished, such as dictionaries, encyclopedias, and thesauruses, in which event the person who guided and organized the creation of this writing shall be considered an author and he alone shall be entitled to exercise the author's rights.

The project in *Article (27)*, with respect to the writing which is created by one person at the account of another, stipulated a judgment contrary to what is stated with respect to the collective writing whereas in a collective writing the work of each of the collaborators in this writing is mixed with the work of the others and cannot be attributed to any of them. Consequently, the project deemed to attribute it to the natural or artificial person who guided and organized this writing. As to the writing made by a certain person, even if under the guidance of another person and at his account, his identity shall remain clear therein and thus the writing is attributed to the creator as a general origin unless otherwise agreed upon in writing.

The project introduced in *Article (28)* a presumption of law to the effect of considering the publisher of writings which carry a pseudonym or do not carry the author's name as agent for the latter in the exercise of his rights thereto.

The project mentioned in *Article (29)* some special provisions for portraying and set a general rule to the effect of not allowing the exhibition or publication of the picture or the distribution of its copies without the written authorization of the person who was portrayed unless the publication of the picture is made on the occasion of events occurring in public, was related to officials or public figures, or was authorized

by public authorities in the service of public interest unless this entails tarnishing the honor of the person it represents, his reputation, or his dignity.

The project tackled in Chapter Three of Section Two the disposal of composition rights and thus provided in Article (30) for the author's right to dispose to others the exploitation rights indicated in Articles (4) second paragraph and (5) of the project and it stipulated for the soundness of the disposal that it is made in writing specifying every right subject to disposal and stating its extent, purpose, exploitation period, and place. The writing here is the basis for conclusion and not merely a means of substantiation and it compels the author in the last paragraph of this article to refrain from any work which may hinder the alienee's exploitation of the disposed right. It also stated in the fifth paragraph the application of the special provisions for the author's relinquishment of his rights in accordance with the provisions of this decree by law on performance artists. Article (31) allowed the author's disposal of his rights in the writing to be on the basis of a prorated share in the proceeds and it dealt with the case of an agreement being inequitable to the authors' rights as a violation of the general contract rules dictated by judicial considerations in view of the author usually being treated unfairly by the publisher or the exhibitor especially if he is a young or new author.

In view of the copyrights indicated above in Articles (4) first paragraph and (6) of the project being among the rights associated with the author's person, the project has thus explicitly stipulated in Article (32) the invalidity of every disposal thereof and Article (33) stipulated the invalidity of the author's disposal of his entire future intellectual production.

If the writing is one original artistic work, the project took note to explicitly stipulate in Article (34) that the author's disposal therein would entail the transfer of his rights thereto to the alibut that he would not have the right to compel the latter to enable him to duplicate or to exhibit an authentic copy therefrom unless they agree upon the disposal in writing.

The project did not omit to grant the author alone in Article (35) the right, in the event of serious reasons, to request from the Higher Court to withdraw his writing from circulation despite his disposal of his exploitation rights, this against

compensating the alienee for material damages which he may suffer, and the author shall pay the compensation awarded by the court in advance within the specified deadline prior to effectively withdrawing the writing. If the author does not pay the compensation within the specified deadline, the effect of the judgment ruling for the withdrawal shall cease and the writing shall go back into circulation.

The project demonstrated in Section Three the preventive proceedings and penalties which guarantee granting the author's right a prompt and efficient protection and Article (36) has thus allowed the author and his successor to request from the Judge of Provisional Matters in the Higher Court to order that all or some of the preventive proceedings be determined for the event of infringing upon his right by publishing or exhibiting the writing without the right holder's written authorization, these preventive proceedings being of two kinds:

First Kind:

These are intended for ceasing the damage entailed by infringement upon the author's rights or stopping the future damage. This kind comprises the following proceedings: the proceeding of the writing's detailed description, the cessation of its publication, exhibition, or manufacture, proving the public performance with respect to rhythm, acting, or address of a writing to the audience, and to prevent the ongoing show from continuing or to prohibit it in the future.

Second Kind:

These are intended for assessing the damage actually incurred from the infringement and for undertaking proceedings for preserving the author's right to remove this damage. This kind comprises the following proceedings: to seize the original composition or its copy and the material used in copying, to assess the proceeds resulting from the publication or the exhibition with the knowledge of an expert commissioned with the same, and to seize these proceeds in all cases. The ruling judge may impose on the claimant to deposit an appropriate bail as security for the seriousness of the request.

This article also requires the concerned to submit the original dispute to the competent court within eight days following the issuance of the order, otherwise the matter shall be deemed as if non-existent.

Article (37) allows for the submission of a grievance against the order issued in the cases stipulated in Article (36) before the ordering judge who may concur with, amend, or annul the order and to appoint a custodian of the writing subject of the dispute.

Article (38) stated some proceedings in which the subject court may, upon submission of the disputed original to it and upon the request of the author or his representative, rule to destroy the copies or pictures of the writing which was illegally published along with the material used in its publication, to change their characteristics, or to render them unsuitable. However, it exempted from this when the author's right expires following a period not less than two years commencing from the judgment issuance date and it permitted the court to rule instead to confirm the protective seizure in fulfillment of the compensation awarded to the author. This exception includes necessarily the case of a writing translated into Arabic in violation of the provision of Article (15) first paragraph in view of this violation not being serious enough to necessitate the judgment of destruction. The second paragraph of the article stipulates that the compensation sum awarded to the author shall hold a lien on the net sale price of the things and on the withheld money to be settled to him while only the lien of judicial expenses and expenditures paid for preserving and maintaining these things and for collecting these sums shall be given precedence.

Article (39) stipulated that the author's right to the publication of his writing may not be attached and the right not to become attached is meant to be the author's financial right. However, it is evident that the copyright may not be attached nor disposed of as it is among the rights associated with the identity. The stipulation that the financial right may not be attached although it is a right which by nature may be disposed of is considered a deviation from the general rules, this in order for the author not to be compelled to unwillingly publish his writing through attachment contrary to what is necessitated by the copyright. However, if the author willingly decides to publish his writing, he shall be exhausting his copyright and only his financial right shall remain represented in the published copies which are owned by him. Hence, this article explicitly stipulated the possibility of attaching these copies. The author's financial right to writings may not be attached if he dies prior to deciding their publication, this for the same aforementioned considerations. If it is definitely proven that the author had intended prior to his death to publish the writing, his heirs may publish it and the creditors may effect the attachment of his copies.

Article (40) also stipulated that buildings may not be subject to taking in execution, destruction, nor confiscation.

Article (41) was keen to stipulate that every author suffering an infringement upon one of his rights stated in this law shall be entitled to compensation.

Chapter Two of Section Three stipulated the penalties and Article (42) specified the penalties ruled by the court as punishment for infringement upon the author's rights.

Section Three, the last section in the law project, includes some dispersed provisions.

Article (43) specified the scope of the effectiveness of the law with respect to writings and it stipulated that its provisions shall apply to:

1. The writings of the nationals of the State of Kuwait which are published within Kuwait or abroad.
2. The writings of Arab authors nationals of countries members in the Arab Agreement for the Protection of the Copyrights and which are published in any of these countries.
3. The writings of foreign authors which are published for the first time in Kuwait.
4. The writings of authors nationals of countries members in the Agreement of the Universal Organization for Intellectual Rights and which are published for the first time in any of these countries.
5. The writings of foreign authors nationals of countries which deal similarly with the writings of Kuwaiti authors.

The project specified *Article (44)* for the aforementioned writings actually published at the time of its effectiveness and it stipulated that its provisions shall apply to them including the rules pertaining to calculation of the commencement of the protection period. As to the pertinent agreements, this article ascertained in its last two paragraphs the effectiveness of the provisions of the project on those concluded following their application but not on those which were concluded prior to their application and on which the provisions shall not apply as they remain governed by the rules applicable prior to that.

Article (45) provided for authorizing the Minister of Information to commission the employees required for the execution of the provisions of this law and to grant them the right to enter places which deal in writings subject to its provisions, also to control the event subject of the violation, and to draft the reports.

Article (46) stipulated the jurisdiction of the Public Prosecution on investigation, disposition, and prosecution in all crimes arising from the implementation of the provisions of this decree by law.

Article (47) stated that the Minister of Information shall issue the resolutions required for the execution of this decree by law and it also allowed him to issue a resolution as to imposing fees on work carried out by the concerned authorities for the protection of the copyrights stipulated in this law.

As to the violations in which the closure of the installation may be ruled, the article permitted the Public Prosecution or the Court to open it or to settle the case.

Article (48) stipulated that any text contrary to the provisions of this law shall be annulled.

Article (49) stipulated that the ministers - each in his jurisdiction - shall execute the provisions of this decree by law and they shall enforce it from the date of its publication in the official gazette and its submission to the National Assembly.

As the law is the instrument of the state in fulfilling the requirements of the society and the interest of the citizens, the Kuwaiti Constitution was consequently keen not to delay the issuance of the laws even in the absence of the National Assembly which is amidst meeting and dissolution cycles, and it provided in Article 71 for the issuance of decrees with the power of laws if an event necessitating expedited measures that cannot withstand any delay takes place, provided that they are not in violation of the constitution or the financial estimates stated in the budget law, this in observance of the country's higher interest in confronting these matters when necessity requires prompt handling.

As the state's interest requires the prompt issuance of a legislation dealing with the protection of intellectual property rights in a manner that does not withstand any delay, the decree by annexed law was prepared in realization of the public interest.