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Legal Nature of Smart Applications

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Abstract: Technologies involving smart applications are progressively assuming a more pivotal role in modern human life. The robust advancements of the internet, mobile technologies, and artificial intelligence have rendered a burgeoning development of smart applications imbued with such emerging technologies. A smart application denotes a program or application that can operate independently, without human intervention; perceive environmental variables, information, and data; and then render an intelligent response consistent with human applications. Similar to a traditional application, a smart application is interpreted as a sequence of programmed instructions that perform particular tasks. However, the instructions in a smart application not only command but also empower it to think and learn like a human through AI algorithms, thus cogitating, conceiving, decision making, and self-evolving.

Keywords: Technologies, Modern Human Life, Artificial Intelligence, Conceiving, Self-evolving.

Introduction: The world has become smarter at present if it has begun to use smart applications in many matters and fields, which it has accelerated in light of technological progress, which has produced smart applications, which are a group of programs that are designed to provide many services to their users that they can use at any time and in any field.

Due to their widespread spread in many fields, we must know their legal nature. Can these applications be considered copyrights or invention programs for their producers? Is it possible to make their user the owner of them, or are they the property of the producer in the absence of a special legal regulation for them? This requires us to refer to jurisprudence.

The importance of the research comes from the desire to know the truth about the topic (the legal nature of smart applications, the legal regulation of virtual ownership), which was the reason behind continuing the research to reach the most just solution.

We relied on an analytical approach that aims to analyze the legal texts and opinions of jurists regarding general rules and then adapt these writings to suit smart applications.

The First Section

The Concept of Smart Applications

We will divide this section into two requirements to understand the precise concept of smart applications. In the first requirement, we will address the parties involved in using smart applications. As for the second requirement, we will discuss the extent to which the characteristic of money applies to smart applications as follows:

The first requirement

The parties involved in using smart applications

For smart applications to appear, many people must participate. There must be a user who buys or uses them and a product that brings them into existence. Accordingly, within the framework of this requirement, we will address those parties, trying to understand the concept of the user of smart applications and the concept of the product as follows:

First: The user of smart applications

The intended user is the person who uses smart applications, purchases the smart application service, or is the person for whom the smart application is designed. He is the person who uses the smart application and the things inside it. (1)

Some may wonder if it is possible to describe the consumer to the user of smart applications; the consumer has many concepts. In the Iraqi Consumer Protection Law No. (1) of 2010, the consumer was

defined in its first article as (any natural or legal person who is provided with a commodity or service to benefit from it) (2). With this definition, we see that the Iraqi legislator has adopted the broad concept of the consumer. The researcher sees through the above that this definition includes all persons, whether their status is natural or legal, and also includes services and movable funds. At the same time, another direction narrowed the concept of the consumer, defined as any person who buys a commodity or uses a commodity for non-professional purposes to satisfy his daily personal and family needs. (3)

First: The producer of smart applications

The producer of smart applications is the person who produces the application and provides the user with all the necessary tools and means to deal with these smart applications, which are most of the time electronic codes. (4)

Second requirement

The extent to which the description of money applies to smart applications

Money, in legal terminology, is everything that is useful to a person and can be monopolized by one person without others (5); article (65) of the Iraqi Civil Code defines money by saying: ((Money is every right that has a material value)), although money in traditional jurisprudence includes two important elements that crystallize the conventional concept of money when combined: the first is the material element in money, and the second is the element of value. If one is available without the other, the description of money does not agree with the thing according to the traditional concept. For example, non-material things with value, such as ideas and innovations, are subject to another legal system, such as copyright, industrial application rights, and other laws. The same is the case when the material element is not available in the thing without the value aspect being available; it becomes outside the scope of money protection. It takes the ruling of abandoned or permissible money, meaning that the traditional view of money was limited to things that can be possessed, owned and dealt with, and thus they defined money as everything Beneficial to man; it is right to monopolize it and not others and be the subject of the right(6).

Dean Carbonnier sees in his book on money that (money is the things considered or viewed as such by the law, and this means that possession is a basic condition for money to become a thing, but he emphasized at the same time that all money is not a thing; because many rights are intangible money such as literary applications and others), meaning that traditional jurisprudence relied on determining the quality of money on the material quality of things to consider their money. Therefore, tangible material things are what the description of money applies to, so the quality of money was not recognized as a moral thing (7).

This matter was adopted by jurisprudence, as it went to deny considering smart applications as money in the legal sense since these applications exist only in virtual space, cannot be possessed in actual possession, and are not considered things in the legal sense, as they are intangible goods and cannot be applications, because it is impossible to possess them physically, because they exist only in a form represented in smart applications (8). Also, the proponents of this opinion relied on another argument: that these applications have no value in the real world to be considered money, as they are limited to the scope of the transaction concluded between them. Accordingly, they are of value and benefit to them only, as they do not have any significant value and can easily disappear (9).

The researcher believes that maintaining the traditional concept of money will lead to the exclusion of all new things that result from industrial and technological progress in the modern era from the scope of money. Suppose the traditional idea of dividing money has withstood the violent shocks it has been exposed to. In that case, it is not denied that a modern concept of money has emerged that the traditional idea could not absorb and subject to its procedures. This money category has emerged due to scientific, technical, and technological developments, which have forced legislators to recognize it in special laws. This is due to the economic value it represents that exceeds the financial value of real estate and movables, and jurisprudence has called this new category intangible money (10). Accordingly, the modern concept of money includes, in addition to material things, non-material things, and some of them call within this expanded framework of the idea of money to adopt the value concept of money, considering that economic and commercial value is in line with the values that the information revolution has produced from new values represented in smart applications and that jurisprudence has adopted this opinion not based on its material entity, but based on its economic value. Hence, the law that refuses to add the attribute of money to something that has monetary value is undoubtedly a law that is completely separate from reality (12). Based on this perception, it is acceptable for money to be an intangible thing whenever it has an economic value, such as smart applications, that must be treated as things in the legal sense. The argument for that is that the rights of smart applications need protection, Saying otherwise makes

people who illegally access the user's account or access his smart assets and steal them not punished by law (13). The third requirement

The location of smart applications within the division of money

A thing is defined as anything with an entity independent of a person (14), and some believe it is any being that a person can use to meet his needs (15).

The law views money or things as the subject of various rights that result from or are related to them. For example, material things that have a material entity perceived by the senses are the subject of property rights, and non-material things that do not have a tangible material entity and are perceived by thought are the subject of moral or moral rights (16).

In an attempt to bring smart things closer to traditional things, jurisprudence did not agree on their legal nature. Some consider them material things, although they do not have a tangible physical entity. Still, they are considered a digital image of a material thing that can be seen with the naked eye. Others considered them moral things due to human effort and thought. Others considered them to have a dual nature. This matter raised controversy over whether smart applications are material things, considered moral things, or have a dual nature (17). Through this section, we will shed light on these opinions as follows:

First: The possibility of counting smart applications as material money

Material money means tangible money from real estate and material movables. Material money is tangible with a financial value and an existence independent of human existence and can be possessed, owned and used. A part of jurisprudence believes that smart applications can be considered material movables. This opinion is supported by many arguments, the most prominent of which are:

1-Smart applications are, in their final form, electronic pulses. They are intended to address the machine, not the human mind, so they are similar to the electrical energy that is included in the category of material money. Therefore, smart applications should be viewed as material things by analogy (18).

2-Smart applications can only be used after being transferred to a material support, whether a disk or a cylinder, in a way that the computer can read or deal with (19).

3- Smart applications can be possessed, but this does not mean they are material possessions. Still, they serve the same purpose of possession, which is that the existence of the thing is limited to the hand of one person without other people, as the user is unique in possessing the smart things that are within his smart worlds and enjoys their advantages without competing with other users as if the user possesses those things, no one else can use them except with his authorization, as the owner of these things enjoys the freedom to use them and monopolizes them alone, and this is what happens most in material money, as its owner enjoys its possession and disposal alone, so he has complete freedom. 4- The property of relative permanence characterizes material money; it remains as long as its material remains, and not using it and staying away from it does not lead to its disappearance. This happens in smart applications; one of its advantages is that when the user leaves the application and returns to it again, he does not start a new beginning, but rather, he keeps all the smart things he obtained and can be used by entering the game at any time. 5- Finally, the proponents of this trend believe that there is a justification produced by reality in counting smart applications as material money, which is that material money can be transferred and possessed from one person to another in the real world and that smart things can also be transferred and possessed from one person to another in the virtual world. It is in exchange for real money or virtual money or virtual money that exists within smart applications only (20), and based on the above and despite the similarities and arguments presented by the supporters of this trend in counting smart applications as material money, another jurisprudential trend believes that it is closer to non-material money and has the same intellectual rights as applications, which we will discuss below.

Second: The possibility of considering smart applications as intangible money

This type of money was not known before; rather, it is a recent birth and emergence imposed by the developments of life at all levels and organized by contemporary laws. In the past, it did not have a high value that deserved to be stolen by someone other than its owner and attributed to himself. Scientific, artistic, and literary creativity in ancient times had no material impact, but it was limited to merely attributing it to its creator by copying, writing, recording, or quick advertising. The goal behind this organization and approval of these rights by all countries is to encourage human beings to innovate and invent (21), and they have given them many terms. Some have called them the rights of artistic, literary or industrial applications, and they are also called moral or literary rights. They have been divided into two main sections: industrial applications and intellectual rights (22). The Iraqi legislator stipulated it in the first paragraph of Article (70) of the Iraqi Civil Code, saying: ((Intangible assets

are those that relate to something intangible, such as the rights of the author, inventor, and artist)) (23). With this text, we see that intangible things relate to intangible things created by the mind and the product of human thought, such as the right of the inventor, artist, and author to the production of their mind.

It can be concluded from the above that intangible assets are those that relate to something intangible. They are not related to something material in itself but rather to intangible things that have a financial value that enables their owner to exploit them economically and obtain the right to use, exploit, and dispose of them so they can be delivered to everyone (24).

Based on the above, some jurists have concluded that smart applications are intangible transfers. This is due to the special nature of these applications as an original mental work that the senses cannot perceive, so it cannot be given a material characteristic (25), as the smart application and the applications inside it are the creation of the human mind or intellect. Still, they take a material form represented in a digital image or electronic symbols, and therefore, they are suitable to be the subject of moral rights (25). The proponents of this trend justified their opinion by saying: Although smart things exist continuously, this continuity is relative and is linked to as long as the computer symbols exist. If the producer cancels or modifies them, they do not exist. In addition, their existence is within the world of smart applications, and they do not exist outside of them; thus, they limit their benefits and usefulness in a specific environment.

The researcher believes the absence of tangible material entities in smart things is due to their nature as moral movables. Thus, the provisions that apply to the moral movable apply to them.

The division of applications into material and non-material funds is important in determining the legal nature of smart ownership. If the thing is intangible, it is possible to separate the right to use and exploit. Consequently, if the producer licenses the application to others, he can give the same application to other users, which is not conceivable for the material thing. In addition, if the thing is intangible, it is possible to distinguish between the duration of its existence and the duration of the right to it. For example, the inventor's right to applications expires after a certain period despite the original remaining. In addition to all of that, the rule of possession in the movable, the document of applications, can only be applied in the field of material movables, and therefore, the non-possessor of the virtual thing cannot claim ownership of the thing even if this claim is in good faith; on the contrary, he is considered an aggressor and is subject to civil and criminal penalties (26). Third: Smart applications have a dual characteristic

Contrary to the above, a jurisprudential trend has considered smart applications to combine the two, as each trend has overlooked one aspect of smart applications. Those who see applications as mental work have not paid attention to the specific physical existence, such as electronic vibrations and electromagnetic waves. However, smart applications have no existence or value except by appearing on calculators or mobile phones in this form. As for the supporters of the second trend who called for the physical existence of smart ownership, they did not pay attention to it as a mental work in which the producer made a huge effort, and without this effort, it would not have appeared (27). Based on the above, smart applications have a dual characteristic, as they are a mental classification that is created to obtain a set of results; after using it, the cognitive effort that the producer made in preparing that application and the state in which it appeared, and this is considered a moral aspect. In contrast, the material aspect is the state in which smart applications appear on the computer or smartphones. Therefore, we cannot consider smart applications as material entities because they are invisible to humans.

On the other hand, smart applications are similar in their characteristics to some electronic elements that have become widespread due to technological progress, such as credit cards, as the latter work by emitting electronic vibrations fixed on magnetic substrates and operate through an ATM. Accordingly, these cards are similar in their work to smart applications in that they combine the characteristics of material and non-material things. Therefore, the traditional division of things into material and non-material cannot accommodate new technological innovations in which the attributes of material things are mixed with non-material things (28).

The Second Topic

Smart Applications are Protected Works

The third millennium produced a new era, the era of information technology. This era had its social, economic, political and legal effects. This development resulted in a noticeable increase in the use of technology based on computer programs and operational and application programs available for use by all individuals at the level of developed and some developing countries. This great progress will not continue unless legal protection is provided to preserve the financial and intellectual effort expended in preparing and producing these smart applications to benefit from their fruits and protect their rights. It has

become likely at present that smart applications are considered works in their digital form, and specifically a form of computer programs as protected works, which requires us to stand on adapting these applications as the most prominent and important example at present of smart applications, as they are protected works, and then we turn to the most important conditions that must be met to protect them and the rights of their authors, in the form of two branches: The first branch to the extent of the application of the nature of the works Software protection on smart applications, as for the second branch of the conditions for protecting smart applications as software protected works.

First requirement

The extent to which the nature of software-protected works applies to smart applications

Information technology has had a great impact in highlighting new forms of innovations that played an important role in the exchange of information through multiple means, which is considered the cornerstone in building the structure of this technology, as digital works had the most influential role in economic and intellectual life alike, some believe that smart applications should be subject to patent rules; because the origin is a group of devices and machines that are used in computers and mobile devices to manage and direct them, to perform specific work or provide a particular service to the user.

This also requires applying the patent to smart applications, which are part of your device, as long as the applications are closely linked (29).

Smart applications are inventions that include new intellectual creativity according to this trend. A new industrial method enables computers and mobile phones to perform specific services. They perform new purposes suitable for their exploitation. Accordingly, smart applications are new inventions that can be applied industrially (30). Some have suggested that smart applications can be accepted as indirect inventions due to the difficulty of recognizing them as direct inventions and protecting them in this way. If these applications are presented as part of the invention or an element thereof, they cannot be deprived of patents (31). Granting a patent requires the availability of all the conditions mentioned above. Are these conditions available in smart applications so they can be protected by patent law? The special conditions for granting a patent may not all be available in smart applications. The novelty condition cannot be available, as it is difficult to prove that these applications are known or used by another person. As for industrial exploitability, it is usually not available in smart applications. The purpose of preparing these applications is not necessarily related to a field of industry. For example, the purpose may be entertainment (32). This leads to the exclusion of smart applications from being covered by patent protection because they do not have any industrial character, which is a necessary condition to say that there is an invention and to obtain a patent (33). As for the condition of innovation, it may be available for most smart applications. This is represented by simply placing any subject in the form of virtual assets or by adding and modifying a specific asset (34). From the above, we see that if the conditions mentioned above are met in smart applications, then it is certain that these applications will be protected through the provisions of the Patent Law. However, this means there is a limited and small opportunity to protect smart applications according to the Patent Law due to the strict conditions for granting a patent. Therefore, this law is not considered the best or most appropriate for protecting smart applications (35). The second requirement

Conditions for protecting smart applications as protected software works

Given that many subscribers pay a lot of money to invest in smart applications and have a strong interest in protecting those investments by protecting their copyrights, many elements in smart applications may protect copyrights. These elements relate to the texts, images and sound required to create a three-dimensional user environment. To explore this, it is necessary to refer to the conditions that must be met in copyright to know how much they apply to smart applications. These conditions relate to innovation and its embodiment in a tangible material form. Whenever these conditions are met, it is possible to apply the copyright law, which gives producers great control over their smart worlds, and this is what we will discuss in this section:

The first section: The element of innovation

The Iraqi legislator in the Copyright Protection Law did not define innovation (36), so the legal protection, according to it, included all works that come out into the material world through means of expression, whether audio, written, drawing, or photography. It is even possible to be through movement only, as long as the author has originality in the method of expression (37). Innovation means the distinctive character of the author's personality that appears in the work or the author's fingerprint on his work. Innovation is also creative expression, and creativity does not mean new production. Rather, it is sufficient for the work to be distinguished from the works that precede it for it to

have originality. Originality is also available about a previously known idea that the author addresses in a new style, presents in a distinctive style, rearranges coordinates and classifies it in a new way that makes it easy to refer to. Thus, any mental effort in which the author's personality appears is considered an innovation that deserves protection (38). To protect a work, regardless of its form, it must be innovative, such that it is clear that the author has added his personality to the idea, even if it is old, and that it is distinguished by his character so that there is an innovation protected by law, and the ruling on whether the work is innovative or not is up to the judiciary (39).

It is inferred from the above that smart applications have an element of innovation in the symbolic images that appear on the screen due to their design, the drawings in them, or the music that accompanies them to attract the attention of their users (40), and the researcher supports this opinion by saying that the condition of innovation is available in smart assets, whether the assets formed a new idea, for example, or the user invented a new method for an already existing idea. The element of innovation in smart applications required by copyright is audiovisual works. Courts have held that smart applications are defined as audiovisual works as long as the video game includes a repetitive sequence of scenes and sounds, which qualifies the application as an original copyrighted work - including non-playable characters, geographical obstacles, parades, sound effects, musical score and architecture created by the developer, which also meets the innovation requirements of copyright. The second section: The emergence of smart applications in a tangible form

Creative ideas can only be protected when formulated in a tangible physical form. Legal protection includes works that appear in the tangible physical world of existence, regardless of their type, method of expression, importance, or purpose (41). Intangible physical existence is consistent with and has been established at the international level when determining and defining the work, which the World Intellectual Property Organization defined as (the method that allows any tangible or mental work to be perceived, including representation, performance, recitation, physical fixation, or any other appropriate method). The basis for the work taking this form is its ability to be transferred to the public and the public's perception of the work through the human sense of the five senses. Thus, the public can perceive and sense it with any sense, whether looking at drawings, touching sculptures, or hearing speeches. Therefore, any mental creativity must take a specific form for its appearance in the world of existence (41). It is not enough for a person to develop an innovative idea for the law to protect it; it is only necessary for these ideas to be formulated in a tangible material form. It is worth noting in this regard that tangible existence is what a person senses by hearing, sight, or even touch (42). By comparing this to smart applications, we find that their basis is that they work on innovation and that the material appearance is in material and electronic support. The condition of the tangible material appearance applies to them in that they are an application that is created based on inputs from algorithms and the diversity of outputs in that they are tangible and observed by the audience through the senses, whether by looking at the symbolic images and characters within smart applications or by listening to the sounds of music or the sounds of those smart characters within them, as they interact as if they were in the real world.

The Third Section: Legitimacy

Suppose special conditions are imposed by the nature of the work protected according to copyright laws. In that case, the general conditions of the protected right must be met in this protected place, and foremost among these conditions is that the thing subject to the right be legitimate and determined by the law, public order, or morals . For example, legal protection cannot be granted to smart applications that deal with encouraging vice or that promote charlatanism, sorcery, and magic because they are contrary to the principles of Islamic law (43). Accordingly, if legitimacy is important in the field of intellectual applications in general, this importance increases in the context of smart applications. They are among the most widespread means at present, which negatively affects the ethics of the generation that was raised on them, as they are among the most important works that are rapidly spreading due to the Internet, meaning that they pose a danger to society in terms of spreading culture positively or negatively because they are offered to all classes of society regardless of age and culture (43). In terms of the legal measures that were put in place to prevent the spread of smart applications that violate public order or are immoral, the Berne Convention granted all countries the freedom to impose these restrictions without obligation (44).

As for the national level, the Iraqi Constitution in force for the year 2005 stipulated in Article (38) that ((the state is the one that guarantees what does not violate public order, morals, freedom of expression by all means, freedom of the press, printing, advertising, media and publishing)) but by referring to the laws related to the protection of intellectual property rights,

as far as we have seen, we did not find a law that imposed this condition as one of the requirements for legal protection of works, and accordingly, any work that violates public order and morals can be excluded by using the general rules in civil law.

Given the importance of this condition, especially in societies that have not reached the required level of cultural awareness, we see it stipulated in the Copyright Protection Law as one of the requirements for granting protection to the work, noting that most laws related to patents do not grant patents to inventions that violate public order and morals (45). Rather, granting legal protection to literary and artistic works is no less important than the patent granted to a new invention in terms of its impact on the social environment. Similar to patent protection laws, we see that intellectual application laws stipulate that protection is not granted to any work if it violates public order and morals.

CONCLUSION

First: Results

1. The absence of the tangible physical entity of smart things is due to their nature as a moral transfer; thus, the provisions that apply to the moral transfer apply to them.

2. Technological development has led to the emergence of virtual communities and increased dealing with them.

3. The basis of smart applications is electronic support, as they are inputs from algorithms, and the diversity of outputs is tangible.

Second: Recommendations

1. The necessity of stipulating the legal means to provide the necessary legal protection for smart applications.

2. The necessity of stipulating the following text in the Copyright Protection Law (providing legal protection for smart applications created ina the electronic environment, whether written in machine or any other language.

3. We see the necessity of the Iraqi legislator issuing special legislation regulating smart applications and transactions between its parties.

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