

**Penal protection for the electronic document
In Jordanian and Iraqi legislation**

Prepared by



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Abstract

The study aimed at shedding light on the criminal responsibility of the electronic document and the related concepts. The study relied on the problem of descriptive approach, which helps to describe multiple aspects of the electronic document, and then the analytical approach to study the legal texts contained in the Jordanian Electronic Crimes Law No. 27 of 2015 and the draft Iraqi Crimes Act of 2012, and then the comparative approach to study the legal system for the criminal protection of the electronic document in both the Jordanian and Iraqi criminal legislation compared to some laws Arab and Western, with the aim of reaching the desired results of the study objective.

We made a number of recommendations, the most important of which is that the Iraqi legislator should regulate adequate criminal protection of the electronic document by providing for the crimes that are committed to it and which are compatible with the intangible nature of such documents, such as electronic mail, e-fraud, By means of information technology, the crime of the illegal use of electronic payment tools in line with other penal legislation, including Jordanian law. Jordanian and Iraqi legislators should also develop more specific procedures for investigating and prosecuting information crimes that differ from conventional crimes.

Keywords: Criminal Protection, Electronic Document, Jordanian Electronic Crimes Law.

Study problem:

The study raises questions about the Jordanian and Iraqi criminal legislation regarding criminal protection for the electronic document, And the statement of the adequacy of the Jordanian and Iraqi legislation plan and some other comparative legislation to criminalize acts that impair the electronic document and demonstrate the effectiveness of the criminalization of this plan.

1. What is the scope of the idea of an electronic document? And how to distinguish it from what may be confused with other rights and interests outside its meaning?
2. What are the most important criminal acts that harm the electronic document?

Study objectives

The study aims to clarify the features of the electronic document and the scope of its protection by explaining the criminal acts that affect it, And a statement of the plan of the Jordanian and Iraqi legislations and some Arab and Western comparative legislations in ensuring criminal protection for him.

The importance of the study

The importance of the study stems from the following points: -

1. The electronic document has a link with protecting consumer rights.
2. Protect electronic document lead to the achievement of stability and security of the legal.

Study methodology

This study follows the descriptive comparative approach in criminal protection established for the electronic document in the Jordanian and Iraqi legislations.

The scope of the electronic document

That the emergence and spread of the electronic editor is related, In many other electronic terms, Used when handling it, And among the most important of these terms is electronic writing, signature and authentication, which are the same as those

found in the traditional document However, this does not mean that they are the same even though they both lead to the same purpose, which is proof.

Terms of the electronic document

First: electronic writing

Writing is one of the first different methods of proof in proving legal actions, and this is due to its nature in terms of its definition, clarity, possibility of survival and continuation, without linking to its writer or location, they are evidence in the event of a dispute between the parties to the agreement and give a great deal of reassurance to the rights holders. (Brahimi, 2015: 107-108)

Conditions that must be met in order for writing to be reliable in legal areas

1. The writing must be legible and clear in order to be reliable
2. . The writing must be permanent
3. It must be difficult to tamper with or alter (Abdel Fattah, 2014: 17)

Second: Electronic signature

That: (a set of technical procedures that allow identifying the person who issued these procedures. (Nuseirat, 2005: 33)

Third: Electronic Authentication (Certification).

It means resorting to a third party that is neutral and independent of the parties, whether it is an ordinary individual, a company, or a party, In order to document the electronic transactions of persons. (Brahimi, 2015: 153)

Fourth: save the information (content integrity)

That the document's content remains the same when it is created is what we mean by preserving the information throughout its lifetime.

UNCITRAL Model Law in Article (10) indicates the conditions that must be met when saving an electronic document, namely:

1. Facilitating access to the information contained therein in a way that enables it to be used by reference to it later.

2. Preserving information, if any, that enables identifying the origin of the electronic document, its destination, and the date and time of its sending and receiving.
3. Preserve the form in which it was created or received.

Distinguish the electronic document from the traditional document

Points of agreement and difference between each of them: -

First: aspects of agreement.

Both of them contain a set of symbols that express an interconnected set of human ideas and meanings.

Both of them may bear the status of an official editor or a customary editor

Second: the differences

An electronic document is abstract, i.e. it has no tangible entity unlike the paper bond.

The paper document is directly readable and the electronic document is not.

The electronic editor differs from the editor in its traditional form that the traditional document is written manually or automatically, as for the electronic document, it is handled by means of computing and communication devices, and it is recorded on a magnetic support that bears a virtual or intangible character.
(Bin Khalifa, 2018: 23)

The extent to which the electronic document is subject to the penal texts for the crime of forgery

1. Elements of the crime of electronic document forgery

Infringing the content of the electronic document, by forging it, is more difficult than forging a paper document. (Rumi, 2007: 88)

Elements of the crime of forging an electronic document are in the following points:

First: the material element in forgery

That there must be three basic elements

1. Presence of an editor.
2. Changing the truth by one of the methods stipulated in the law.
3. That this results in general or special harm, in the present or in the future.

Second: The moral element in forgery

The moral element in the crime of forging information documents is the criminal intent, Considering that this crime is an intentional crime. (Abdul Latif, 2012: 49)

The extent to which the electronic document is subject to the penal texts for money crimes

The extent to which the electronic document is subject to criminal activity and the extent to which criminal protection is achieved for it in accordance with the general rules established for crimes of destruction, Theft, swindling and breach of trust, and in the following branches:

The first section: The extent of the electronic document's subjection to the criminal activity of the destruction crime.

Elements of the crime of destroying bonds

1. The legal pillar.
2. The material element of the crime of destruction
3. The moral element

The extent to which the electronic document is subject to criminal activity in the crime of theft and breach of trust

First: the crime of theft

It is: the use of computer media and Internet networks to take secretly owned money from its owner. (Shawabkeh, 2007: 230)

That is, it steals electronically processed information and data.

There are many corners of her

1. The physical element of the crime of theft within the scope of electronic transactions.
2. The moral element of the crime of theft in the scope of electronic transactions

Crimes stipulated in the Electronic Transactions Law

"Electronic signature and certification crimes"

Electronic signature crimes

Where Article (24) states the following: “He shall be punished with imprisonment for a period of no less than three months and not exceeding three years. Or a fine of not less than (1,000) one thousand dinars and not exceeding (5,000) five thousand dinars, or with both of these penalties each of: -

- a. Create, publish, or provide an electronic authentication certificate with a fraudulent or unlawful purpose.
- b. Provides incorrect information to the electronic authentication authority with the intention of issuing an authentication certificate, stopping its validity or canceling it.

Results

1. It was found that the Iraqi legislator has not enacted any law dealing with crimes of information systems, including crimes committed on the electronic document such as electronic fraud, electronic fraud, electronic theft and others, Rather prosecution and punishment are carried out according to general rules, in contrast to what is stated in other legislation, such as the Jordanian, The electronic document in the Cybercrime Law No. 27 of 2015 addressed these related crimes.
2. The Jordanian legislator has designated the electronic signature and the electronic document with special criminal protection, through the Jordanian Electronic Transactions Law No. 15 of 2015.
3. The procedural dimension of information crimes involves many challenges and problems, the main of which are the need for speedy detection, lest the evidence be lost.
4. The electronic document represents an editor with the power of legal proof, and the recognition of that argument leads to the continuation of electronic transactions and the increase in confidence in them.

Recommendations

1. We hope that the Iraqi legislature will organize sufficient substantive criminal protection for the electronic document, by stipulating the crimes against it that

are compatible with the immaterial nature of these documents, such as electronic fraud, the crime of electronic fraud.

2. We hope that the Jordanian and Iraqi legislators put in place more accurate special procedures for investigating and prosecuting information crime that are different from the traditional crime.

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