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Civil liability for digital content damage (comparative study)

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Abstract. Digital content is one of the results of the modern digital revolution that affects the most accurate and specific personal rights of individuals, as the personal and public information that is collected and shared through the Internet is increasing, which leads to the imposition of a kind of risks and challenges whose harm is extended to a wide, frequent and accelerating scale through the digital field. Which is characterized by the complexity and sensitivity of people, as the digital domain is transnational, multi-dimensional, interconnected, and rapidly spreading among users. The rights related to the circulation of information, including freedom of opinion and expression, the freedom of information circulation, the right to privacy, the right to digital security, and the right to digital privacy, it is not right for people to be harassed under the pretext of freedom of opinion and expression, for every person has the right to embrace a certain belief or A certain thought without being harassed by others as a result of his own ideas or beliefs, provided that they are defined by some necessary restrictions specified by the text of the law, and in a way that preserves the public interest. The right to privacy is also a credibility for personal freedom without the person seriously and unjustly violating the right of another person to the extent that his affairs and conditions are under the knowledge of others, which causes the privacy of others to be exposed to the eyes of the public, and here he is responsible for violating the right of others to privacy. Privacy is a fertile field for individuals to exercise their right to enjoy self-development with others, in a manner that guarantees influence and influence in many areas to increase purposeful human knowledge, but without intruding on the rights of others. Every person has the right to privacy through the digital domain of Internet networks, as every person has the right to protect his data Personality, retention, processing and control over it, and not allowing others to penetrate it. Everyone should benefit from the digital revolution, and the optimal use of purposeful digital content as producers of content, blogs, and services, not just consumers. Therefore, the issue of competencies for the optimal and purposeful use of digital content is part of the indicators of the special dimension of participation in a manner that guarantees critical sense, efficiency, and morality, in accordance with Ensures public use of the digital domain of the Internet, in a way that enhances digital human rights. All digital human rights must be respected, which find their legal basis in positive legislation and international covenants, but they are still vulnerable to violations, especially in light of the increase in personal information circulating for users, which some may misuse and cause serious harm to others, may affect his reputation, or His personal consideration, and sometimes it may be a tool used to blackmail the victim, or bully him and then make him vulnerable to many material or moral damages. Digital content has many aspects, in which it may be a meaningful content and a tool for human development among individuals, and digital content may include a violation of the rights of other people, and expose them to material and moral damages, and this in turn reflects on social peace, and exposes social ties to disintegration, dispersion, and lack of confidence in dealing with people. Others, and here it has

become necessary to put in place legal deterrent rules for people who misuse the digital domain of the wide Internet networks and its various programs. The elements of civil legal liability are available when a specific person uses the digital domain by producing inappropriate digital content on the Internet through which he deliberately offends others in their personal consideration, reputation, or honor, whether the aim is to blackmail the victim, or bully him electronically, Here, the element of error is achieved, and if this error results in damage to the person whose digital rights have been violated as a result, the second element of civil legal liability is formed, and when the causal relationship is available, the three elements of responsibility are when it is available to hold the person responsible for that accountable. Civil liability for digital content damage constitutes an effective system for limiting the damages of violating the digital rights of subscribers through the digital domain. The tools of this liability must be at a high level that corresponds to the damages and risks resulting from that, and all public and private efforts should be combined to limit this, as damages are not Especially, but it has a serious repercussion that results in the disintegration of social ties in a modern way.

Keywords: Civil liability, damage.

INTRODUCTION

First - Introduction to the Research Topic:

The digital environment encompasses numerous positive aspects, including the development of the World Wide Web (internet) and purposeful digital content. However, it has also been intertwined with negative elements exploited by some individuals to create inappropriate content that disseminates their ideas online. Such content is often misaligned with societal norms, values, and ethics, and does not cater to the diverse needs of the community.

The danger of inappropriate digital content lies in its targeted approach towards key segments of society, such as youth, children, and individuals lacking the necessary skills to navigate modern digital tools. This can undermine their confidence, values, and aspirations, isolating them from their reality and confining them to an imaginary digital world that offers no tangible benefits to their community.

Promoters of inappropriate digital content often utilize similar platforms and outputs as legitimate digital content, aiming to confuse and surprise users in various ways. This includes explicit material such as images, videos, or films, as well as content that incites violence in multiple forms. It extends to digital games involving violence, combat, and the use of various weapons, or facilitating the trade of sex and related tools, and even the encouragement of human organ trade. These methods are employed by creators of inappropriate content to achieve their unlawful objectives.

From the aforementioned, it becomes necessary to define the civil legal liability that provides a regulatory framework for accountability to address the harms caused by digital content, particularly when it contributes to the disintegration of familial bonds within society and negatively impacts its values and ideologies.

Many individuals are affected by inappropriate digital content, potentially suffering damage to their bodies, finances, personal reputation, or honor—affecting their legitimate interests.

In such cases, it is crucial to identify the parties involved in the harms caused by digital content, whether these are tangible or intangible damages. This involves outlining the elements of civil liability arising from the errors committed by the digital content creators and any accomplices. It is important to determine the type of harm inflicted on the victim due to the content creator's transgressions beyond legal boundaries and violations of others' rights. Establishing the causal link between the content creator's error and the damage suffered by the victim due to the digital content is essential. Thus, the elements of civil liability are fulfilled against the liable party, ensuring fair compensation for the victim proportionate to the harm suffered, without excess or deficiency. Such compensation should be comprehensive, covering both the losses incurred and the lost gains as a result.

Second - The Importance of the Research Topic:

The importance of this research lies in the fact that digital content, whether appropriate or inappropriate, has become widespread, accessible, and available to everyone. In this context, the audience becomes a vessel for experience and a consumer of digital content. The impact on them, shaped by the ideas and values presented, depends on the effectiveness of the tools used by the digital content creators and the entities supporting them to achieve the intended goals of disseminating such content.

We are currently facing an unprecedented digital onslaught, with modern methods and advanced means, easily accessible and influential on a daily and continuous basis. This poses a significant challenge affecting everyone, highlighting the need for legal frameworks to mitigate the adverse effects of digital content, compensate for the

damages, and engage individuals with sufficient expertise to address such an advanced challenge in terms of impact, influence, and outcomes.

Researching the topic of civil liability for damages caused by digital content enhances awareness among various segments of society regarding the dangers of digital content widely available on social media platforms. Such damages can threaten social security and the cohesion of society within the state.

Community values have been influenced by what is disseminated through digital content, and family bonds have been disrupted as a result. Is there more time to remain passive or neutral in the face of the harm caused by inappropriate digital content? Is there anything more important than familial ties to sacrifice or disregard the damage they face due to the current proliferation of digital content? Even the language used among members of society has deteriorated under the influence of inappropriate digital content.

Third - Reasons for Choosing the Research Topic:

Through this research, we aim to achieve the following objectives:

1. Defining Digital Content: To define digital content, explain its creation process, and identify its various types in order to assess the extent of the resulting impacts.
2. Clarifying the Rules of Civil Liability: To outline the rules of civil liability for damages caused by digital content, identify the faults related to infringement and violations by the creators of harmful digital content, and determine the nature of the damages sustained by recipients of such content. This includes establishing appropriate compensation to redress the harmed parties.
3. Providing Proposals and Recommendations: To offer suggestions and recommendations aimed at mitigating the negative impacts of harmful digital content, thereby ensuring social security and preserving the integrity and stability of the state.

Fourth - The Research Problem:

The research problem is delineated by several key issues, as outlined below:

1. Developing a Code of Social Conduct: How can we draft a social code of conduct comprising binding legal rules for all individuals involved in the creation of digital content, ensuring adherence to safe usage without causing harm or misuse of content in ways that violate the rights of others?
2. Adapting General Legal Rules of Civil Liability: Is it possible to adapt the general legal rules of civil liability to address the damages caused by digital content in a way that ensures compensation for the harm, without denying the injured party their right to fair and complete compensation?
3. Lack of Legal Mechanisms for Content Supervision: There is a deficiency in legal mechanisms for overseeing digital content, which would consist of a set of predefined rules that content users must be aware of and comply with. This would inform them in advance of what is permissible or prohibited for publication, a requirement that should be adhered to by all internet service providers.

Fifth - The Scope and Methodology of the Research Topic:

Regarding the scope of our research, we have examined the rules of Iraqi civil law and some comparative laws, such as the Egyptian, French, and Anglo-American legal systems, along with various jurisprudential perspectives on this matter. Additionally, we have reviewed judicial applications that address the issue of digital content damages.

As for the research methodology, we employed an analytical approach to demonstrate how the legal rules in Iraqi legislation that pertain to civil liability can be adapted to address the damages caused by infringement and violations resulting from the use of digital content. This is compared with the legislation of different countries to develop a legal perspective that may help fill the legislative gaps concerning the damages of digital content and identify the individuals involved in the creation of harmful digital content.

Sixth - Structure of the Research Topic:

To thoroughly address the diverse and complex aspects of our research, and to ensure the identification of the elements of civil liability resulting from harmful digital content, our research is organized into two main chapters. The first chapter focuses on "Defining Digital Content," while the second chapter addresses the "Rules of Liability for Damages from Digital Content."

The conclusion presents the key findings of our research, along with several recommendations and proposals aimed at achieving the desired goal of defining civil liability for harmful digital content.

CHAPTER ONE: DEFINING DIGITAL CONTENT

The definition of digital content, its creation, and the identification of its types are among the most precise and important topics that have a direct impact on the lives of all individuals, as they represent key challenges of digital content and the methods used in its production. In this chapter, we will cover "The Definition of Digital Content" in the first section, "Digital Content Creation" in the second section, and "Types of Digital Content" in the third section, as follows:

Section One: Definition of Digital Content

In this section, we will define digital content, which encompasses various definitions due to its status as a key component of the knowledge economy era and a critical factor in the success of any institution seeking digital expansion and enhanced consumer services. Digital content is an effective tool for achieving goals across various fields, thus necessitating its definition. Digital content is defined as "any content created in the form of digital data within digital media, available in multiple formats such as text files, audio, videos, animations, and images. It also refers to data available for download or sharing within specified digital media, including e-books" [2]

Digital content is also defined as "electronic scientific resources that are prepared, formulated, produced, and published for recipients to engage in research skills and obtain information electronically through creative and collaborative methods within a digital electronic environment to achieve specific objectives" [4]

Moreover, digital content is described as "information available on the internet, which can be downloaded or distributed using electronic media, encompassing all publishable materials in the digital realm, including texts, audio and video clips, infographics, animations, and all types of images" [7]

It is further defined as "any type of digital data in general, including data shared by individuals via electronic platforms, such as video clips, blogs, dramas, maps, and any social media where individuals exchange data, which is digitally stored in intangible electronic formats. All of these are considered forms of digital content" [5].

In common language, the term digital content is used to define the added media value provided by electronic platforms through extensions, documentation, and to identify the approaches and methodologies that stem from it. This term integrates all digital documents that can be stored within a medium or transmitted via an information line electronically, in a format that can be written, auditory, or visual, organized within an electronic environment. Digital content, therefore, encompasses all multimedia digital documents, whether organized or unorganized, on a specific electronic medium" [33].

Based on the aforementioned definitions, digital content is considered any piece of information published through electronic platforms and media. Thus, every tweet shared via electronic means, every video clip uploaded to electronic platforms like YouTube or Facebook, and every update made to these media all contribute to the creation of digital content.

Section Two: Digital Content Industry

The digital content industry involves the mechanisms and steps required to determine the platform, purpose, and target audience for the content. As articulated by businessman Bill Gates in his famous statement "Content is King" in 1996, published in an article on Microsoft's website, he predicted that content on the internet would generate significant revenue similar to television broadcasting. Now, 27 years later, the world is gravitating towards digital content published on internet sites—"digital media"—in various forms that combine images, sound, video files, graphics, and animations. The impact of digital content on audiences has evolved as individuals have contributed to its creation. Digital content is often free; for example, tweets exchanged by social media users, uploaded files, videos, and articles published on platforms are all part of digital content. To produce digital content, a set of essential steps must be followed within a specific, consistent framework (Section One). Additionally, specific mechanisms should be employed in content creation (Section Two).

Subsection One: Content Creation Steps

Here, we will discuss the steps involved in creating digital content as follows:

First—Identifying the Target Audience:

The foundation of content creation lies in identifying the target audience in terms of age, gender, interests, and the financial status of the intended activity. Digital content is made for everyone, not just a single individual. Defining the target audience for digital content enables content creators to proceed with a specific, clear approach, fully understanding the characteristics of the audience receiving the content.

Second—Defining the Objective:

Digital content creators must have a specific goal they aim to achieve through their content. The objective might be purely commercial, with content designed to raise awareness of the creator's business activities or increase their financial revenues. The key is to define the correct purpose for content creation, which should be embodied in the first step taken by the content creator [4]. The danger arises when the content's purpose is illegitimate, exploiting consumers through online shopping, as the majority of social media users engage in commerce—buying, selling, advertising, and promoting through various social media platforms. E-commerce has expanded widely without supervision and is used by everyone.

Third—Selecting the Appropriate Medium:

The appropriate medium for digital content creation is determined once the target audience is clearly defined. The content creator then chooses the suitable medium to achieve the desired goal of the content. The choice of medium is crucial from multiple perspectives during content creation.

Fourth—Choosing the Appropriate Type of Content:

Given the diversity of content types, content creators must select the type that best suits their needs and achieves their intended goals. They might opt for articles, animations, or short video clips, with the choice influenced by the preferences and desires of the target audience.

Subsection Two: Content Creation Mechanisms

When a content creator begins by identifying the digital platform, the intended goal, and the target audience for the content, the mechanisms of digital content creation and the necessary steps become clear, yielding optimal results. These mechanisms and steps are essential for producing digital content, and they include the following:

First—Selecting an Appropriate Topic for Digital Content:

Choosing a suitable topic idea ensures that the content is well-received by the target audience. Once the audience is accurately identified, the next step is selecting the most relevant topic. Digital content must have a defined subject during its creation, which guides the content creator clearly towards achieving the desired outcome.

Second—Preparing the Appropriate Platform for Publication:

Choosing a suitable digital platform for publishing is crucial in the digital content creation process. The choice of platform depends on various factors, including the number of views or the popularity of the social media medium. For example, general platforms that can be used by internet users often display general information containing multiple links. The most prominent platforms offer communication and search services, with the Google search engine being among the most well-known.

Third—Initiating the Digital Content Preparation Method:

When embarking on content creation, it is vital to determine the method for preparing the content. Each type of digital content has its own specific preparation method, distinct from others in terms of type, goal, and subject matter. Here, the content creator's skill is highlighted in setting a clear plan for content preparation. This process is not straightforward, as it directly impacts the content's acceptance, its reach, and the achievement of its objectives [7].

Section Three: Types of Digital Content

Before embarking on the creation of digital content, it is essential to clearly understand the various types of digital content and select the type that aligns with the creator's goals and the intended medium. Therefore, it is important to define and identify the different types of digital content as follows:

Subsection one: Blogging

Before starting the blogging process as a form of digital content, the content creator must have a blog, which is defined as an "electronic diary or a website created to display information over a period of time, organized chronologically based on the date of publication." Blogs can take various forms: some display entries in reverse

chronological order, from newest to oldest, while others allow multiple authors to participate in the blogging process. They also often enable readers to leave comments on the blog. Examples of platforms that include blogging content are Wikipedia, with this type of blog emerging in the 1990s, allowing individuals to express their opinions on a wide range of topics and on a broad scale.

Subsection two: Infographics

This type of digital content involves converting written data and information into images and graphics that are easy to understand. It is a fundamental aspect of creating visual digital content. Infographics are often used to help remind users of information and have been shown to improve comprehension by over 50% among viewers.

Subsection three: Videos

The majority of internet users prefer videos to convey content, as videos offer a range of options for website visitors. High-quality videos tend to be memorable for extended periods, and viewers have the flexibility to control the video length according to their preferences and interests.

Subsection four: E-books

This type of digital content encompasses millions of e-books available in digital format, containing the same elements as traditional books, such as tables of contents, chapters, sections, illustrations, images, data, and references, among others [23]. These e-books are typically created in formats such as PDF or HTML, and can include audio clips or videos. This type of digital content is well-suited to academic research requirements or for individuals seeking scientific information for personal enrichment.

CHAPTER TWO: LIABILITY PROVISIONS FOR DIGITAL CONTENT DAMAGE

Given the absence of specific legal provisions regulating liability for digital content damage in Iraqi legislation, we will rely on the general principles of civil liability under the Iraqi Civil Code No. 40 of 1951, as amended. The liability in this study is based on unlawful publication on internet platforms, and therefore, the content creator must bear full compensation for any damages caused by their content, thereby remedying the harm suffered by the injured party.

Civil liability, as examined here, arises when a content creator commits a specific wrongful act that causes harm to an individual. When the elements of liability—fault, damage, and a causal relationship between them—are present, civil liability is established. Since we are focusing on civil liability for digital content damage, it is crucial to identify the responsibility of each person whose unlawful actions contribute to the harm, starting with the content creator as the publisher, and including all individuals who participate in the damage through actions such as commenting, liking, downloading, or contributing to the content's increased visibility. All these individuals may be implicated in causing harm, whether to a specific person, or to broader values protected within the community or family.

Based on the above, we will explore the legal nature of civil liability for digital content damage in (Section One), the establishment of civil liability for digital content damage in (Section Two), and the determination of the civil protection required for those harmed by digital content in (Section Three), as follows:

Section One: The Legal Nature of Civil Liability for Digital Content Damage

One of the key topics addressed by the civil liability system is the legal nature of this liability, given its evolving and dynamic nature, particularly as it arises within a rapidly developing digital environment that often poses challenges for evidence.

Legally, it is established that liability arising from digital content, if it stems from a breach of a contractual obligation, would constitute contractual liability for all parties involved in the harm. Alternatively, if the harm results from a violation of a pre-existing legal obligation not to cause harm to others, tort liability would apply. This dual nature of liability—contractual and tortious—will be the focus of our discussion in this section, as outlined below.

Subsection One: The Contractual Nature of Civil Liability for Digital Content Damage

Contractual liability for digital content damage arises when there is a contractual relationship between multiple parties. This liability is established when a party breaches a contractual obligation (See: Dr. Yaqub Muhammad Al-Harthy, Civil Liability for Electronic Publishing, 1st ed., Dar Wael Publishing and Distribution, Amman, Jordan, 2015, p. 35.). Such contractual liability materializes when a content creator enters into an agreement with a venue or club to promote events like weddings or night entertainment through images, blogs, videos, or

animations. If the content creator fails to meet the contractual terms related to publication or promotion, resulting in harm to the venue's reputation or to individuals such as by violating their personal privacy through unauthorized publication of family photos or private video clips, this constitutes a breach of contractual obligations. Such breaches could lead to family disruptions, privacy violations, and conflicts within the family unit.

Similarly, if a content creator contracts with a humanitarian organization to cover its activities, they must adhere to the obligation of maintaining the organization's privacy and not disclosing the identities of beneficiaries to the public, thereby protecting their reputation. Any action by the content creator that exceeds permitted boundaries and violates these obligations, such as disclosing private information, results in contractual liability. Such breaches can lead to the disintegration of social bonds among beneficiaries, causing disputes between them and the organization's founders due to defamation.

Therefore, the existence of a contract is fundamental to establishing contractual liability. The contract must have valid and correct elements, whether concluded through traditional or electronic means [28].

Based on the above, contractual liability for digital content creators is established when a party breaches contractual obligations arising from the contract. Contractual obligations may be ongoing and extend beyond the contract's duration, even if the contract is instantaneous, due to the nature of obligations that persist after the contract's performance.

It is noteworthy that certain obligations, such as confidentiality and non-disclosure of information obtained during the contract, continue even after the contract has ended. Any failure to adhere to these obligations after the contract's conclusion constitutes a contractual fault, resulting in liability [16].

For example, if a content creator reveals confidential information obtained during their contract with a social care center for the elderly or abandoned children, they are liable for disclosing such information even after their contract ends. This confidentiality obligation is critical to protecting the privacy of those cared for by the center, and its breach can lead to social disintegration and harm to the individuals involved.

Subsection Two: The Tort Nature of Civil Liability for Digital Content Damage

Every individual has the right to engage in activities of their choice, provided that they do not harm others. Those who inflict harm are liable for that damage. The basis of compensation here is a prior, general legal obligation: to avoid causing harm to others. No person is permitted to exceed legally permissible limits. When an individual's actions cause harm (a wrongful act that exceeds permissible limits) to another, and there is no contractual relationship between the injurer and the harmed party, we are dealing with tortious civil liability [9].

The Iraqi legislator has addressed liability for unlawful acts, or tortious liability, in Article 186 of the Iraqi Civil Code No. 40 of 1951 and its amendments. This article outlines the responsibility of the person directly committing or causing the harmful act, whether intentionally or through negligence.

Similarly, the Egyptian legislator, in Article 163 of the Egyptian Civil Code No. 131 of 1948 and its amendments, specifies the elements of tortious liability. According to this provision, anyone who wrongs another and causes harm is obligated to compensate the harmed party.

The French Civil Code of 2016 also addresses the elements of tortious liability in Article 1240. It stipulates that any action involving wrongful conduct that causes harm to another obligates the perpetrator to compensate the harmed party.

Thus, tortious liability involves actions that result in harm to others, which obligates the perpetrator to compensate the harmed party. When adapting traditional tortious liability principles to digital content harm, this translates into electronic tortious liability within a digital and virtual environment. It is established when a tortious electronic fault causes harm, regardless of its nature, and a causal relationship exists between the digital fault and the resultant harm. The fault here is presumed but not conclusive; the harmed party must prove that the damage was caused by the defendant's fault to hold them liable for digital tortious actions [17].

Digital tortious liability can arise when a content creator infringes on others' digital rights, such as privacy. This occurs if the content creator or their collaborators publish inappropriate content that offends social values, religious symbols, beliefs, or public decency. Such actions harm users or viewers by degrading language, using inappropriate terms, and negatively impacting the familial bonds within the community. Inappropriate digital content often contributes to increased family breakdowns, such as rising divorce rates, due to the discrepancy between the digital and real worlds. When individuals are confronted with the reality they reject, it causes significant damage due to harmful digital content.

Additionally, digital tortious liability manifests when digital content serves as a tool for inciting hatred, sectarianism, and rejection of others from different groups, thereby fueling societal discord and instability. This destabilizes the community and threatens the overall security of the state, leading to the disintegration of societal bonds, loss of safety, and trust in others.

Given these considerations, tortious liability is most aligned with the nature of civil liability for digital content damage. Many cases of liability arising from harmful digital content fall under tortious responsibility. Digital content can be a vehicle for hatred, societal instability, or family breakdowns within the community, or for infringing on others' digital rights without a contractual relationship between the responsible party and the harmed

individual. The damage from digital content is often material or moral, with the latter being more prevalent in harmful digital content. Thus, digital tortious liability is suitable for obtaining fair and complete compensation, both direct and indirect, for the resulting harm [11].

Section Two: Civil Liability for Digital Content Damage

It is evident that civil liability, whether contractual or tortious, arises when its elements are present: error, damage, and a causal relationship between them. In the absence of these elements, civil liability does not exist. To fully address the topic, it is necessary to examine the elements of liability for harmful digital content (Subsection One) and define the scope of responsible parties (Subsection Two), as detailed below:

Subsection One: Elements of Civil Liability for Digital Content Damage

Given the lack of specific legal provisions governing liability for digital content damage, it is essential to adapt traditional civil liability principles to encompass digital content harm, while considering the unique aspects of digital civil liability due to its impact on personal rights.

The elements of civil liability, whether contractual or tortious, include error, damage, and a causal relationship between the two. We will first address the concept of error in the context of civil liability for digital content, then discuss damage, and finally, the causal relationship between error and damage in digital content liability.

First: Error in Civil Liability for Digital Content

The concept of error is fundamental in civil liability (both contractual and tortious). Jurisprudence differs on its definition. Some legal scholars adopt an objective approach, focusing on the behavior of an ordinary person, without considering the specific individual who committed the error, whether they are competent or not. Others emphasize the personal aspect, considering the individual’s circumstances [18]

Human behavior that exceeds legal limits is deemed erroneous. Error can be defined as "deviation from the usual conduct of an ordinary person" or as "breach of a prior legal obligation" in tortious liability. In contractual liability, error is defined as "breach of a contractual obligation, whether it is an obligation to achieve a result or to exercise care" [9]

The legal standard for determining error is objective, based on the conduct of a person in similar circumstances to the one who committed the error, to ascertain the wrongful behavior. Iraqi law does not consider the severity of the error for civil liability [15].

In the context of digital content liability, error involves the actions of digital content creators and their collaborators. For example, using electronic communication tools to publish blogs, videos, or animations that infringe on personal privacy or damage reputations constitutes error. If a content creator agrees to create a personal blog or publish articles on social media but exceeds their contractual obligations, such as using the information for personal gain or blackmailing, this behavior deviates from accepted norms and harms the involved parties. This constitutes a contractual error, rendering the content creator liable for the resulting damage.

Tortious error in digital content liability, which is more prevalent, arises from breaching a prior legal obligation, specifically the obligation not to harm others. A digital content creator is not permitted to publish content that harms others, regardless of the circumstances. The digital realm is open to all, but must not violate individuals' rights or privacy.

Tortious errors in digital content creation can lead to various family problems exacerbated by the current electronic revolution. For instance, publishing content that mocks an individual's physical appearance for the sake of gaining views can cause significant emotional distress and may even lead to suicidal tendencies (The Iraqi Court of Publication and Media ruled that "the defendant committed an error against the plaintiff by defaming his reputation and posting several statements and comments on his social media page that harmed the plaintiff's reputation..." See: Judgment of the Court of Publication and Media, Civil, Civil Division of the Baghdad-Rusafa Federal Court of Appeal, No. 204, dated December 20, 2015, unpublished).

No digital content creator has the right to violate others' private lives under the pretext of freedom of expression. Harmful actions should be legally sanctioned in accordance with the severity of the damage inflicted on the affected individuals.

In the realm of tortious liability, error encompasses two elements: a material component represented by transgression, breach, or deviation from usual behavior, and a moral component characterized by awareness or discernment. It is necessary to determine whether both elements must be present in the error committed by a digital content creator for civil liability to be established.

Article 186 of the Iraqi Civil Code addresses both material and moral aspects of error through concepts of transgression and intent. A content creator may act with intent, meaning they aim to engage in harmful behavior and are aware of its consequences, or they may act with transgression, lacking intent but committing harmful acts through negligence or lack of foresight. Both intentional and transgressive behavior require discernment for tortious liability to apply [13].

Article 191 of the Iraqi Civil Code expands the scope of liability to include those who may not possess full legal capacity. This article obliges individuals, whether competent or not, to provide compensation, thereby imposing primary liability on them. However, it sets secondary liability for guardians, trustees, or caretakers, who are held responsible only if compensation cannot be obtained from the primary liable party's assets.

Thus, if digital content is created by someone who lacks legal capacity and causes harm to others, liability is determined under Article 191 or Articles 203 and 204 of the same code, focusing on compensating damages without affecting the victim's personal assets.

The Egyptian legislator requires both moral and material elements of error for tortious liability to arise, including deviation from usual behavior and the presence of discernment. To provide additional protection for victims, the law includes exceptions for individuals lacking discernment, making their liability conditional upon specific terms as outlined in Article 164 of the Egyptian Civil Code.

In contrast, the French legislator has established through legislation and evolving jurisprudence that individuals with mental disabilities are liable for damages they cause, regardless of their error. The 1968 law confirms that liability applies to those deemed incapable of legal responsibility, focusing on the harm caused rather than fault, ensuring that victims receive adequate compensation.

In digital content damage cases, proving error in contractual liability requires the victim to demonstrate the existence and validity of the contract and the fulfillment of their obligations. In tortious liability, error is a factual occurrence that can be proven through all means of evidence, requiring proof that the responsible party deviated from legally expected behavior. The burden of proof lies with those claiming otherwise [8].

Digital content errors present challenges in proving liability due to the transient nature of online content, which can be removed or hidden. This makes it difficult to establish a stable and direct source of error through social media platforms or anonymous sources [6].

French jurisprudence presumes error in digital content cases, meaning that any harm caused by digital content is presumed to be wrongful, shifting the burden of proof away from the victim. Similarly, Egyptian jurisprudence considers violations of personal rights as presumed errors, as stated in Article 50 of the Egyptian Civil Code, which entitles individuals to seek cessation of the violation and compensation for damages. [29].

In contrast, Iraqi jurisprudence has not clearly addressed digital content damage, maintaining that civil liability for harm via social media is based on proof of error by the victim. This approach imposes a heavy burden on the victim to prove the error (Decision of the Court of Publication and Media – Civil Division – Presidency of the Baghdad-Rusafa Federal Court of Appeal, No. (19), dated April 28, 2016, unpublished.).

In summary, French and Egyptian legal systems have adapted to technological advancements by recognizing presumed error in digital content liability, easing the burden on victims and expanding legal protection. The Iraqi legal system has yet to align with these developments, maintaining a more stringent standard that places a significant burden on victims to obtain fair compensation for harm caused by digital content.

Second: Damage in Civil Liability Arising from Digital Content

Damage is the fundamental basis upon which civil liability (both contractual and tortious) is established. Damage represents the legitimate interest that forms the basis for filing a lawsuit to obtain compensation. Without damage, there is no right to pursue legal action. Accordingly, civil liability and the right to compensation are directly linked to the occurrence of damage. Liability does not exist without damage, even if there is an element of fault.

Damage, as defined in legal theory, is "the harm inflicted upon a right or legitimate interest of a person, whether such interest is material or non-material" [10]. It is also described as "the second necessary condition for the establishment of liability, without which a claim for liability cannot succeed. Damage is the harm that affects a person, which may impact financial or non-financial interests" [14].

Damage can be categorized as material or moral. Material damage refers to financial loss affecting the victim's financial assets or physical health. Moral damage involves harm to non-material interests, such as personal reputation, emotions, feelings, or social status [3]

In the context of digital content, damage occurs when the content creator or associated parties publish blogs or images of a specific individual or disclose personal information that the individual does not wish to be shared on social media. This constitutes a violation of the person's privacy. The basis for a claim for compensation is that the damage must affect a legitimate interest protected by law, and the damage must be actual, meaning it is certain to occur. Harm caused through social media entails actual, confirmed damage, whether immediate or future. Even the loss of opportunity constitutes actual damage, even if the opportunity is only potential, because the loss of opportunity itself is definite. Conversely, potential damage, which may or may not occur, is not compensable unless it actually materializes. Compensation includes both actual damage (present) and prospective damage (future), where the causes have occurred and their effects will unfold over time.

Compensation for future damage, although not yet materialized, is calculated based on its certainty to occur. This is particularly applicable to digital content damages, where the harm inflicted through social media extends into the future as long as the harmful content persists, is circulated, commented upon, and shared across pages. Thus, the damage is ongoing and can intensify over time [17].

It is worth noting that proving damage in civil liability cases involving digital content is less challenging compared to proving fault. The latter involves significant difficulties as it must be established according to traditional rules of civil liability, which are based on proving fault. Without proof of fault or difficulty in proving it, the victim may be denied compensation due to the absence of fault, and thus, the absence of a causal link, leading to no civil liability. The damage must result from direct fault on the part of the liable party for the elements of liability to be met and compensation to be awarded [21].

Electronic damage resulting from digital content occurs within a broad electronic space with numerous characteristics. As such, it is a special type of damage. Therefore, there must be a specialized form of liability addressing this modern form of damage. One proposed approach is to adopt objective liability based on damage without requiring fault. This means that a person is obligated to compensate for the damage caused by their activity, even if that activity does not involve any fault. The goal of objective liability is to remedy the harm caused to others without considering whether the behavior was lawful or unlawful. The principle is to ensure compensation for the damage regardless of fault, consistent with the legal maxim "burden equals risk" [11].

Objective liability, or material liability, or the theory of risk and its implications, encompasses significant doctrinal differences. However, what is important here is that material liability is broader than other theories based on damage. The necessity and legislative shortcomings in the area of civil liability for digital content call for the adoption of this form of liability based on damage without focusing on fault, which aligns with the nature and recent developments of digital damage.

Third: The Causal Link Between Fault and Damage in Civil Liability Arising from Digital Content

The element of causation in establishing civil liability (contractual or tortious) requires that the damage be a direct result of the fault. Therefore, the harmful activity must be the direct cause of the damage suffered by the victim. Under the French Civil Code of 2016, it is mandated that the damage must result from the individual's act in order to fulfill the obligation to compensate.

In contrast, the Egyptian legislator, as outlined in Article 163 of the Egyptian Civil Code (Law No. 131 of 1948, as amended), specifies that "any fault that causes harm to another obligates the perpetrator to provide compensation." This provision indicates that there must be a direct causal link between the fault and the damage; otherwise, there is no liability without such a causal relationship.

Similarly, the Iraqi legislator addresses the element of causation in Articles 202 and 211 of the Iraqi Civil Code. It is stated that anyone who causes damage through their personal actions, the actions of others, or the actions of things, must prove that their fault was the direct cause of the damage.

Accordingly, there must be a causal relationship between fault and damage. The damage should be a natural result of the activity, breach, or trespass. In the context of contractual liability, a breach of contract must be the direct cause of the damage, while in tortious liability, the damage must be a natural consequence of the trespass.

In the realm of civil liability for digital content damage, the causal relationship revolves around the content creator's harmful activity (which includes a breach of contractual obligations or exceeding a prior legal duty). This activity must be the direct cause of the damage suffered by the victim. Without this direct causation, civil liability cannot be established due to the absence of a causal link between fault and damage.

Thus, the damage inflicted on the victim as a result of digital content should be caused directly by the fault of the content creator or those involved in the harm. Consequently, causation is an independent element from fault and damage; both fault and damage may be present without a causal relationship between them.

The victim of digital content damage must prove the fault of the content creator and that this fault is the direct cause of the harm suffered. This establishes the causal link, making the content creator liable for their actions. If the content creator's actions, such as publishing a blog, images, or videos that infringe on personal rights, result in damage, the elements of liability are fulfilled, and the content creator is obligated to provide compensation and remedy the harm caused by their activities.

Subsection Two: The Liability of Persons Involved in Digital Content

Civil liability for digital content involves several parties in terms of their role in causing harm resulting from digital content. The victim seeks compensation within the framework of civil liability, considering that digital content operates in a broad electronic space. The individuals interacting with or contributing to the harmful effects

of digital content are not ordinary individuals but are rather those with technical expertise and knowledge in managing digital activities, i.e., professionals in digital activities. When content creators engage in selling their digital content, they are connected with a group of individuals. These involved parties can be categorized into two groups: those who use digital content and those who operate websites (hosting providers and service providers). This will be further elaborated as follows:

First: Liability of Digital Content Users

Digital content users are individuals who visit websites and social media platforms. They may engage in various activities such as browsing, utilizing, or interacting with digital content, including blogs, audio clips, videos, animations, etc. Therefore, these users must utilize these platforms lawfully and within the legal boundaries and limitations set forth, avoiding any overstepping of permissible limits. These users might be viewers or participants in digital content without creating it themselves. Consequently, they may be held liable for civil damages resulting from their harmful conduct towards others. Harm resulting from digital content constitutes civil liability (contractual or tortious). Website owners may impose terms on users of the digital content published on their sites, and all users are required to adhere to these terms. For instance, a website may host digital content containing social, personal, political, or economic information. In this case, a user may be contractually liable for harmful use of the information contained in the digital content available on the website, constituting a contractual breach subject to legal accountability based on contractual liability principles. [20].

Digital content users must exercise the care of a reasonable person and comply with general rules concerning the proper use, viewing, sharing, and downloading of digital content. They should respect others' rights and avoid infringing upon them under the guise of freedom of expression. Additionally, they must adhere to intellectual property rights and not violate others' privacy, misuse their personal information, or impersonate others.

It is important to note that digital content users should observe ethical values, social norms, and possess a moral and ethical compass. They must also adhere to legal constraints when using digital content. It is not ethically justifiable for users to browse and share digital content that includes information, rumors, mockery, or harassment of others. The care exercised by digital content users should be measured by the standard of a diligent person rather than an average person, as harmful use of digital content can lead to ongoing, escalating, and widespread damage. The digital harm resulting from harmful content has significant impacts on the victim’s life, including the disruption of familial relationships and potential social isolation, which may lead to severe outcomes such as suicidal tendencies. Digital content that involves harm to others provides opportunities for individuals to exert pressure on victims, leading to severe consequences that destabilize social stability. [12]

Civil liability for digital content damage is not confined to the creators of the digital content but extends to all individuals who use the content by sharing it, commenting on it, or interacting with it in any manner, whether through writing, images, videos, etc. Their liability is determined according to civil liability rules, proportionate to their involvement in the harm caused to the victim. This expansion of liability ensures broader protection for the victim and provides appropriate compensation, thus helping to mitigate the phenomenon of harmful digital content.

Second: Liability of Persons Involved in Providing Electronic Services (Hosting Providers and Service Providers)

The proliferation of digital content in the electronic space necessitates the presence of websites that host electronic blogs and various forms of digital content. These sites are responsible for storing, archiving, and facilitating access to this content according to the conditions set by the publisher. Consequently, there are legal regulations governing the use of these services that hosting providers must adhere to when offering electronic services to digital content owners. These websites, serving as digital publication gateways, operate under legal constraints and are not authorized to use the information of digital content owners without prior consent. Unauthorized publication is thus considered a violation of the user's right to digital oblivion concerning their personal information.

Accordingly, website owners have specific roles, and their responsibilities are determined by the nature of their role. If their role is limited to hosting, this involves "any natural or legal person who makes, even without compensation, texts, images, audio, and messages, regardless of their nature, available to the public via the internet" [31].

Therefore, hosting providers play a crucial role, performing technical functions to enable users to browse and benefit from all services and applications of the website, including information storage for users. This role carries significant responsibility for any breach or misuse of this information or unauthorized publication.

It is noteworthy that the hosting provider is not the owner of the website publishing digital content but is rather responsible for hosting the website on the internet and assisting the website owner in its use.

French jurisprudence does not require hosting providers to verify the information contained in digital content published on their sites, limiting their role to technical and administrative functions. They are not responsible for the content published, as they are not capable of deleting or modifying information that may be harmful to others. This approach has been upheld in numerous French court decisions [19].

The French legislator has defined the responsibility of hosting providers in a specific context: they are only obligated to remove content that is harmful to others if ordered to do so by a court. Hence, hosting providers are not required to remove inappropriate content unless ordered by a judicial authority (This is stipulated in Article (43 – 8) of the French Freedom of Communication Law No. (86–1067) of 1986 as amended, which states that "natural and legal persons who undertake free of charge, or for a fee, to store information directly and continuously, and any information capable of being received, are not criminally or civilly liable for the content of this information or service, except if they become responsible for monitoring it by order of the judicial authority and fail to promptly stop the dissemination or publication of this information on websites).

Therefore, hosting providers may be bound by a contract with a person for hosting services under specific contractual terms. In such cases, their contractual liability may arise from any breach of the hosting contract terms, or their tortious liability may be invoked for any harm caused to others if a court order mandates the removal of such harm, though they have failed to comply with the court order.

However, with significant developments in French case law concerning the liability of hosting providers, the judiciary has advanced considerably in this area. French courts have established the responsibility of hosting providers for respecting the personal rights of others and for illegal information on sites they host if they are aware of the harm caused to others by this information (See: Dr. Marwa Saleh Mahdi, Civil Liability for Electronic Publishing, previously cited, p. 70 et seq.).

French jurisprudence has settled on an important principle regarding hosting providers' liability: they are "obligated to respect the rights of others and have the capacity to examine the sites they host, taking all necessary measures to prevent illegal data. They are only exempt from liability if they prove they have fulfilled all their obligations, particularly those related to respecting the rights of others."

In contrast, Egyptian and Iraqi legislators have not regulated the liability of hosting providers, reflecting a lack of adaptation to developments in digital space issues. Consequently, the liability of a website owner arises if they are directly involved in publishing illegal digital content, particularly when they act as the principal publisher under an electronic publishing contract. Thus, the website owner who undertakes the publication is responsible for any resulting harm.

Typically, websites are created based on agreements that include specific terms, such as the exclusion of responsibility for illegal publication or user misconduct. This is based on the premise that website owners are not responsible for monitoring digital content publication on these sites. However, their responsibility is established by the legal obligation to remove illegal publications that cause harm to others.

In practice, websites incorporate features to ban users who engage in illegal publication after being notified of their misconduct. Consequently, website owners, including hosting providers and service providers, must ensure that they inform users not to re-store illegal digital content that harms others.

Section Three: Civil Protection for Victims of Digital Content

When the elements of civil liability (contractual or tortious) are established, it is necessary to address the resultant effects, specifically by compensating the damages incurred by the affected party.

Given the absence of specific legislation defining civil liability for damages caused by digital content and the appropriate compensation, this section will discuss the legal provisions for claims for damages caused by digital content (Subsection One), and outline the nature and forms of compensation resulting from digital content damages (Subsection Two).

Subsection One: Legal Provisions for Claims for Compensation for Digital Content Damage

When digital content includes harmful elements and causes damage, the affected party has the right to file a lawsuit against the responsible party to seek compensation for the harm suffered.

To accept a claim for compensation for digital content damage, certain conditions must be met, and the competent court to adjudicate such disputes must be determined. These conditions are as follows:

First: Conditions for Accepting a Claim for Compensation for Digital Content Damage

According to the definition provided by Article 2 of the Iraqi Civil Procedure Code No. 83 of 1969, as amended, a lawsuit is defined as "a request for an individual's right from another before the judiciary."

A claim for compensation for damages caused by digital content is similar to any other lawsuit seeking compensation for harm, in terms of the parties involved and the conditions required to file the claim. There must be a plaintiff with a personal right who has suffered harm due to digital content, and the defendant may include

the content creator, the hosting provider, the service provider, and users of the websites who contributed to the digital harm through participation, re-uploading, commenting, or adding images, videos, or other harmful digital content.

For the claim to be accepted, there must be a legitimate interest claimed by the plaintiff, and they must have the capacity to pursue the claim independently, as well as standing, meaning the claim must be legally directed and formulated correctly [25].

Accordingly, the victim of digital content must file their claim based on the infringement of their digital rights, which are inherent personal rights but exist in an electronic space. Thus, these rights require protection for every individual. The plaintiff is the one whose rights have been violated, whether those rights pertain to privacy, reputation, or personal dignity, among others. Conversely, the defendant includes the digital content creator and all individuals involved in causing the digital harm, and their liability will be determined according to the principles of civil responsibility.

Second: Determining the Competent Court for Claims for Compensation for Harmful Digital Content

Regarding the subject-matter jurisdiction of courts hearing civil compensation claims, these cases are generally under the purview of the Court of First Instance. However, this does not preclude their consideration by a criminal court if the case involves criminal acts under the Penal Code, which also fall within civil liability. In such instances, the criminal court may address the civil compensation claim as part of the criminal proceedings. This approach offers several advantages, including expedited resolution, reduced time and effort, and alleviation of procedural burdens on the plaintiff (See: Dr. Suleiman Marcus, The Comprehensive Explanation of the Civil Code: Harmful Acts and Civil Liability, previously cited, p. 583 et seq).

In France, the Court of First Instance has general jurisdiction over civil compensation claims. Consequently, all cases arising from damages caused by digital content on social media are adjudicated by the Seventeenth Chamber of the High Court of Paris, which has issued numerous rulings on this matter (See: Dr. Kazem Hamdan Al-Bazouni, previously cited, p. 162 et seq.).

Similarly, Egyptian jurisprudence assigns jurisdiction for claims related to damages from digital content to the Court of First Instance, in accordance with the Egyptian Civil and Commercial Procedure Law No. 13 of 1968, as amended. This law provides general jurisdiction for all claims seeking civil compensation for damages caused by digital content.

In Iraq, the jurisdiction for claims seeking compensation for damages from digital content falls under the Court of First Instance, based on the general authority of civil courts over such matters, according to Articles 29, 30, 31, and 32 of the Iraqi Civil Procedure Law No. 83 of 1969, as amended.

It is noteworthy that a specialized court for publication and media cases was established in Iraq, pursuant to the Supreme Judicial Council's Statement No. 81/C/A of July 11, 2010. This court was created to serve the public interest, following a proposal from the Presidency of the Baghdad/Rusafa Federal Court of Appeals, based on Articles 22 and 35/Second of the Judicial Organization Law No. 160 of 1979, as amended, and Section 7 of the Coalition Provisional Authority Order No. 12 of 2004. The statement clarified that this court was competent in both criminal and civil matters related to publication and media, and was affiliated with the Baghdad/Rusafa Federal Court of Appeals. However, this court was considered temporary, established by the Supreme Judicial Council, and was not formally created by the Iraqi legislator. It was subsequently abolished by the Supreme Judicial Council on March 20, 2017, under Statement No. 65 of 2017. The jurisdiction for handling publication and media cases, including harmful digital content, was reverted to the Court of First Instance and misdemeanor courts within the Baghdad Court of Appeals jurisdiction and other provinces, according to territorial jurisdiction.

Third: Expiration of Claims for Compensation for Damages from Digital Content

According to general rules, the right to file a claim for compensation expires either due to the statute of limitations, which precludes hearing the claim after a certain period, or due to the claimant's renunciation of the right to compensation or settlement with the responsible party.

Regarding digital content damage claims, these follow the same statutes of limitations applicable to other civil claims for damages. The statute of limitations for such claims is determined by the general rules for civil claims.

In France, the statute of limitations for civil claims is established by Article 2219 of the French Civil Code (1804, as amended), which states: "The statute of limitations is a means of acquiring or discharging obligations after a specified period and under conditions determined by law." Article 2262 of the same code stipulates that "All claims, whether real or personal, are subject to a limitation period of thirty years."

However, French law provides a specific statute of limitations in Article 65 of the French Press Freedom Law (1881), which states: "Public and civil actions arising from criminal offenses, misdemeanors, or violations specified in this law are barred by the passage of time after three full months from the day the offense was committed or from the date of the last investigative action or prosecution, if applicable." Therefore, under French law, claims for compensation related to harmful digital content expire after three months from the date the harmful act occurred or from the date of the most recent investigative or prosecutorial action, according to the French Press Freedom Law.

In contrast, Iraqi and Egyptian legislation do not specifically define statutes of limitations for such claims, leaving this to legal doctrine. In both Iraqi and Egyptian law, limitation periods vary depending on the type of civil liability. For contractual liability, the claim becomes time-barred after fifteen years [29]. For tortious liability, the claim is barred three years from the date the harmful digital content was published or from the date the claimant became aware of the harmful content and the identity of the party responsible. In all cases, claims for compensation under tortious liability for harmful digital content are barred fifteen years from the date of publication of the harmful content [29].

It is noteworthy that, prior to its abolition, the Iraqi Press and Media Court frequently applied Article 30/A of the Press Law No. 206 of 1968, which states: "No action may be brought concerning the offenses specified in this law, nor can compensation be claimed after three months from the date of publication." Based on this, the limitation period for claims under the Press Law is three months from the date of publication of the harmful digital content, not from the date of knowledge of it.

Regarding the waiver of the right to compensation as a means of extinguishing a civil liability claim for damages from digital content, once the conditions for civil liability are met and the right to compensation is established, the claimant may waive this right even after initiating legal proceedings (See: Dr. Adnan Ibrahim Al-Surhan and Dr. Nouri Hamad Khater, previously cited, p. 476 et seq). The claimant can waive their right by withdrawing the claim [27]. Additionally, the claimant can also waive their right after a court judgment in their favor, which will result in the dismissal of any future claims [27].

Settlement is another method for ending a legal claim for compensation for damages from digital content. "Settlement is a contract that resolves disputes and terminates litigation by mutual agreement" [24]. A settlement is valid if it meets the legal conditions of validity (consent, subject matter, and cause). It must be made by parties with legal capacity, the subject matter of the settlement must be owned by the parties, and the settlement must be documented either in an official record or in a simple written agreement with personal evidence (witnesses to the settlement). Once a settlement is executed, the parties cannot retract their agreement, and the settlement amount becomes the responsibility of the claimant, leading to the termination of the claim for compensation under civil liability (contractual or tortious) [27].

Subsection Two: The Nature and Forms of Compensation Resulting from Damages to Digital Content

In the context of civil liability, compensation aims to remedy the damage caused by the liability of the wrongdoer to the injured party. Compensation should be commensurate with the damage and not exceed its scope, which is considered fair compensation. It encompasses both actual loss and lost profit, representing full compensation.

Legal scholarship offers various definitions of damage. One such definition is "the payment by the debtor, who is responsible for the damage, to the creditor for compensating the harm incurred due to the harmful act" () See: Dr. Nabil Ibrahim Saad, The General Theory of Obligation: Sources of Obligation, Vol. 1, Dar Al-Jam'ia Al-Jadida, Alexandria, Egypt, 2004, p. 479 et seq).

Regarding the forms of compensation, it may be in kind or monetary. Compensation is based on the existence or absence of damage, without regard to the gravity of the fault. It includes both material and moral damages, with the injured party required to prove the damage according to general evidentiary rules.

Compensation in civil liability pertains to both foreseeable and unforeseeable direct damage in tort liability and to foreseeable direct damage in contractual liability. However, in cases of fraud or gross negligence, unforeseeable damage may also be included in compensation under contractual liability. Material damage can be compensated under both types of civil liability—contractual and tortious—while moral damage is compensable only under tort liability [11].

The Iraqi legislator has provided for compensation for moral damage in the context of unlawful acts or tortious liability but not under contractual liability, as indicated by Article 205 of the Iraqi Civil Code.

Conversely, the Egyptian legislator extends compensation for moral damage to include both tortious and contractual liability, as noted in Article 222/1 of the Egyptian Civil Code.

The French legislator, following the amendment to the French Civil Code in 2016, has restricted compensation for moral damage to the realm of tortious liability. Under contractual liability, compensation is limited to material damage only, as specified in Article 1231/1 of the French Civil Code of 2016.

Ideally, compensation should be determined by the judiciary. However, it can also be established through prior agreement or legal provisions. For damages related to digital content, due to its nature within the electronic sphere, judicial determination of compensation is more appropriate, as it cannot be predetermined and is not explicitly provided for by specific rules. Thus, judicial compensation is more suitable for addressing the damage caused by digital content.

Digital content damage tends to be more widespread, persistent, escalating, and future-oriented. The unlawful dissemination of information that violates digital human rights has no bounds, as internet users are innumerable. Therefore, violations are audible and visible to everyone, and such extensive damage necessitates compensation proportional to its magnitude and dissemination [20].

Here, we will discuss the forms of compensation, both in-kind and monetary, within the context of civil liability for damages resulting from digital content, as follows:

First: In-Kind Compensation for Damages to Digital Content:

In-kind compensation fundamentally involves restoring the situation to what it was before the wrongdoing that caused harm to the injured party. This form of compensation seeks to remove the effects of the damage (See: Dr. Saadoun Al-Amiri, Compensation for Harm in Tort Liability, previously cited, p. 148 et seq).

In the context of tort liability for damages caused by digital content, in-kind compensation may not always achieve the intended objective. Digital content damages include both material and moral harm. For material damages, in-kind compensation might be feasible through the removal or retraction of the unlawful publication and preventing its continued and future dissemination. Here, the compensation is equivalent to the damage, aiming to prevent future harm from the harmful digital content. However, for damages that have already occurred due to unlawful publication and infringement of digital rights, material harm cannot be undone. For example, defamation resulting from unlawful publication of private information or professional secrets cannot be remedied through in-kind compensation. Instead, monetary compensation is required to address the resulting loss and lost profit.

Regarding moral damage, which is common in cases of digital content harm, the damage affects the personal esteem of the injured party and cannot be rectified through material compensation. Moral damage is characterized by its persistence and worsening, impacting the individual's honor, dignity, and social standing. Unlawful digital content that disrupts social relationships cannot be remedied through in-kind compensation, as the damage has already occurred and cannot be reversed. Therefore, monetary compensation is more suitable for addressing moral damage, even though it cannot be fully remedied, it can be mitigated through financial compensation.

The French legislator addressed in-kind compensation in Article 1221 of the French Civil Code and referred to restoring the situation to its previous state in Article 809 of the French Code of Civil Procedure No. 1806 of 1994.

The Egyptian legislator mentions in-kind compensation in Article 171/1 of the Egyptian Civil Code, which corresponds to Article 209/2 of the Iraqi Civil Code. The Iraqi judiciary awards in-kind compensation based on the aforementioned provision.

In-kind compensation is awarded whenever the condition resulting from the damage can be rectified and when it achieves justice. While in-kind compensation is the default, it is not mandatory for the judge to impose; instead, the type of compensation is determined at the court's discretion.

Removing digital content that violates a person's digital rights is considered in-kind compensation. Here, the compensation follows the occurrence of the damage, aiming to prevent its continuation and mitigate its effects.

When the injured party requests the publication of a conviction judgment, it is considered a form of in-kind compensation, as publishing the judgment to establish the civil liability of the wrongdoer achieves the intended goal of removing the damage's effects [11].

Digital content damage often involves non-material harm, which cannot be fully erased or reversed to restore the injured party to their previous state before the damage occurred. Even if the content creator removes or corrects harmful content or pledges to amend their harmful activities, the damage has already occurred, and such actions may be insufficient to remedy the harm caused.

The French legislator addresses the right to reply and correction in the context of internet use under Article 6 of the French Law on Confidence in the Digital Economy No. 575 of 2004, stating that "every individual identified or specified within the scope of internet services has the right to a reply, without prejudice to requests for correction or removal of the publication sent to the service provider."

Similarly, the Egyptian legislator refers to the right to reply and correction in the Egyptian Press Law No. 96 of 1996, which mandates that the editor-in-chief, or any responsible person, must publish corrections for harmful or rights-violating information in newspapers within three days of the request, without monetary compensation, and the reply and correction must appear in the next issue of the newspaper with the same space as the original publication.

The Iraqi legislator also mentions the right to reply and correction in Article 15 of the Iraqi Press Law No. 206 of 1968, which obligates the publisher to provide free publication of the reply from those whose privacy has been violated in the publication, to appear in the next issue.

Based on the aforementioned provisions concerning the right to reply and correction for unlawful publications that violate digital rights through harmful digital content, the injured party can request judicial intervention for reply and correction upon proving the violation of their privacy. Here, compensation is aligned with the nature of the damage.

It is worth noting that a court decision for reply and correction upon the injured party's request might bring attention to the damage suffered, potentially leading to further harm. Consequently, the court assesses the judgment for reply and correction on a case-by-case basis, considering the surrounding circumstances.

In cases where the injured party prefers not to seek the right to reply and correction, an alternative form of in-kind compensation might be a judicial order to prevent the dissemination of harmful digital content or to block the website hosting the harmful content.

Second: Monetary Compensation for Damages from Digital Content:

Given that in-kind compensation may not adequately address the damages caused by digital content, especially when it comes to non-material harm, monetary compensation becomes essential. Since moral damage, which affects personal esteem, reputation, honor, family ties, and sacred values, cannot be remedied through in-kind compensation, and restoring the situation to its pre-damage state is not feasible, monetary compensation becomes more appropriate. In-kind compensation may be possible within the framework of contractual liability, but it is exceptional in tort liability and occurs in very limited cases.

Digital content creators are generally held liable under tort law, with the resulting damages often being moral in nature, in addition to any associated material harm. Given the difficulty of providing in-kind compensation for moral damage, the judiciary typically resorts to monetary compensation to address such harm.

When tort liability is involved, as long as the damage can be quantified or assessed monetarily, monetary compensation is the norm. This compensation can be paid in a lump sum or as periodic payments, depending on the circumstances. This principle is reflected in Article 209/1 of the Iraqi Civil Code, where monetary compensation is the default solution for addressing the issues posed by moral damages that cannot be remedied through in-kind compensation.

Monetary compensation, as determined by the judiciary, should be proportional to the extent of the damage, neither exceeding nor falling short of the actual harm suffered by the injured party. Compensation includes the losses incurred and the lost profits, as outlined in Article 1231/1 of the French Civil Code and corresponding to Article 207/1 of the Iraqi Civil Code, within the framework of tort liability.

Monetary compensation effectively addresses the nature of digital content-related damage in the electronic space. Given that moral damage often prevails in tort claims related to digital content, monetary compensation resolves the difficulties associated with in-kind compensation. In addition to monetary compensation, the injured party may request the right to reply and correction, as deemed appropriate by the court, to provide adequate protection and prevent further violations resulting from unlawful publication.

The rules for obtaining compensation within civil liability (contractual and tort) reveal challenges in covering all damages caused by digital content. While it may be straightforward to pursue legal action against a content creator with identifiable personal information, difficulties arise when the content creator is unidentified, uses fictitious accounts, or operates from another country, leading to issues of legal jurisdiction and conflict of laws.

The widespread and borderless nature of the internet means that digital content-related harm can be extensive, persistent, and escalating. As previously mentioned, high-profile individuals who misuse social media to violate others' rights may complicate the injured party’s ability to identify and hold accountable the responsible party. To address these challenges, mandatory insurance against electronic activity risks could mitigate the effects of harmful digital content. Such insurance, similar to the mandatory car insurance law No. 52 of 1980, could provide a solution to difficulties in obtaining compensation when proving harm and identifying the responsible party is challenging. The competent authority would need to establish regulations for digital content damage insurance, including how to obtain appropriate compensation, determine internet users' contributions to the insurance pool, and address related issues involving all parties responsible for digital content damage.

Additionally, a legal framework could be established to protect individuals harmed by digital content through a compensation fund managed by relevant authorities. This fund would address the damages suffered by those unable to prove the harm or identify the responsible party, thereby ensuring their right to compensation and expanding legal protection. This approach would provide a means to address the issues of obtaining compensation under civil liability rules (contractual and tort) and prevent the loss of compensation rights, with specific conditions outlined for the operation of the digital content damage compensation fund.

CONCLUSION

In concluding this research, we present several findings, recommendations, and suggestions as follows:

First: Results:

1. Digital Content encompasses information available on the internet that can be downloaded or distributed using electronic media. This includes all forms of digital publications, such as text, audio clips, video clips, graphics, animations, and images of all types.
2. Digital Content refers to any segment of information published through electronic platforms and media. Consequently, each tweet shared through electronic means, every video uploaded on social media platforms (e.g., YouTube, Facebook), and any updates to such media represent acts of digital content creation.
3. Digital Content Creation involves mechanisms and steps required to identify the platform, target, and audience for the content. The steps in content creation are: a) identifying the target audience, b) defining the objective, c) selecting the appropriate medium, and d) determining the type of content suited to the purpose.
4. Content Creation Mechanisms include: a) selecting a suitable topic for the digital content, b) preparing the necessary platform for publication, and c) initiating the process of digital content preparation.
5. Content creators should maintain a blog, defined as an electronic diary or website created to display information in a chronological order, which can take various forms. Some blogs display entries in descending order from most recent to oldest, while others allow multiple authors to contribute and enable readers to comment on posts. Examples of blogging platforms include Wikipedia.
6. Infographics represent a type of digital content that "transforms data and written information into visual images and illustrations that are easy to understand." This form of visual content is used to remind users of information and helps enhance readability by over 50%.
7. Civil Liability for Damages from Digital Content is based on the premise of unlawful publication on internet platforms. Therefore, the content creator and all involved parties must bear responsibility for compensating damages resulting from harmful digital content, compensating for the harm inflicted on the injured party.
8. In the absence of specific legal provisions governing liability for digital content damages, traditional civil liability rules must be adapted and applied to cover digital content damages, considering the unique nature of digital civil liability affecting individuals' personal rights.
9. In the realm of civil liability for digital content, fault is manifested through the actions of content creators and their associates who use electronic media to publish blogs, videos, or animations that involve offensive content, infringe on personal privacy, and damage individuals' reputations.
10. Regarding civil liability for digital content damages, fault within contractual liability must be proven by the injured party, who must demonstrate the existence and validity of the contract and fulfillment of obligations. In tort liability, fault is a factual occurrence that can be proven through all means of evidence. It must be shown that the responsible party deviated from legally required conduct, with the burden of proof falling on those who claim contrary to appearances.
11. Tortious Fault in civil liability for digital content is predominantly represented by the breach of a prior legal obligation without a contractual link, where the prior obligation is not to harm others. Digital content creators are not entitled to publish any blog, video, image, or illustration that harms others under any circumstances. The digital world is open to everyone, but not at the expense of others' rights or privacy.
12. French and Egyptian courts have evolved their legislative frameworks to base civil liability for harmful digital content on presumed fault, which does not require proof by the injured party. This approach alleviates the burden on the injured party and expands the legal protection afforded. In contrast, the Iraqi judiciary has not kept pace with technological advances and maintains the requirement for proof of fault, placing a heavier burden on the injured party to obtain appropriate compensation for harm from digital content.
13. Harm via Social Media involves actual and confirmed damage, whether immediate or future. Loss of opportunity is considered actual harm even if it was merely a potential opportunity. While potential harm is not compensable unless it materializes, the harm requiring compensation includes both actual harm (present) and future harm (resulting from causes already in place but affecting future outcomes).
14. In civil liability for digital content damage, the causal relationship revolves around the content creator's harmful activity (which includes breaching a contractual obligation or exceeding a prior legal duty of not harming others). This activity must be the direct cause of the damage suffered by the injured party;

without this causal link, civil liability does not exist due to the absence of causation between fault and damage.

15. Civil Liability for Digital Content Damage is not limited to the content creator but extends to all individuals who use the content by sharing, commenting, or interacting with it in any manner (e.g., writing, images, videos). Responsibility is determined according to civil liability rules, with each participant being accountable based on their contribution to the harm suffered by the injured party. This expansion of responsibility broadens the protection for the injured party and ensures appropriate compensation, thereby mitigating the impact of harmful digital content.
16. Website Owners typically establish their sites under agreements specifying that they are not responsible for unlawful publication or harmful user activities on these sites. This is based on the premise that website owners are not obligated to monitor content publication. However, their responsibility does include the legal obligation to remove illegal posts that contain harmful content.
17. In-Kind Compensation as an alternative to ordering the removal and correction of harmful digital content, which the injured party may not prefer due to its nature of recalling the harm, can be replaced by orders to restrict the circulation of the harmful content or ban the website hosting the harmful content.
18. Since in-kind compensation does not adequately address digital content damage and does not remove its effects—given that moral damage cannot be eradicated and the infringement on personal esteem, reputation, honor, family ties, and sacred values cannot be fully remedied—monetary compensation is more suitable. While in-kind compensation is possible within contractual liability, it is rare in tort liability and occurs only in very limited cases.
19. Monetary Compensation for digital content damage provides a fitting remedy for the nature of harm in the electronic sphere. Given that moral damage predominates in civil tort liability for digital content, monetary compensation addresses the challenges associated with in-kind compensation. In addition to monetary compensation, the injured party may seek the right to reply and correction, depending on the circumstances and with court approval, ensuring sufficient protection and preventing further violations from unlawful publication.

Second - Recommendations and Proposals:

1. It is essential to establish specific legal rules to regulate liability for damages resulting from digital content. These rules should define the process of digital content creation within clear legal constraints that cannot be circumvented. Additionally, there must be a delineation of harmful electronic activities and criteria for when such activities constitute violations of digital human rights.
2. We recommend that the Iraqi legislator develop a code of social conduct outlining the legal use of the internet. This code should prevent the creation of unlawful content, safeguard societal values and relationships, and prevent illegal practices from undermining family cohesion and maintaining public peace.
3. We advise relevant authorities to diligently monitor and regulate publication and media activities within Iraqi online platforms. Recently, there has been an increase in unlawful content that negatively impacts individual values, relationships, and sacred entities.
4. We urge the Iraqi judiciary to strictly enforce penalties for creators of unlawful digital content and ensure that compensation matches the extent of harm caused. All available legal means should be utilized in this regard.
5. We recommend that the Iraqi legislator introduce legal rules that align with the unique nature of harm caused by digital content. Specifically, the legislator should adopt objective liability rules based on the harm element alone, without requiring proof of fault. This approach would alleviate the burden on the injured party and expand legal protection for obtaining compensation.
6. We propose that the Iraqi legislator organize mandatory insurance against harmful digital content incidents. Such insurance would provide legal protection for victims by ensuring appropriate compensation, with the insurance regulations established under specific legal guidelines.
7. We also suggest the establishment of a compensation fund for digital content damages by the Iraqi legislator. This fund should be managed by competent governmental bodies and cover compensation for harmful digital content damages, particularly in cases where identifying the responsible party is challenging.
8. Additionally, we propose the creation of a specialized court for publication and media cases in Iraq. This court should include judges with expertise in digital content damage issues. Specialized courts would facilitate the resolution of disputes related to unlawful internet publishing and social media activities.

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