



## Full Length Review Article

# CRIMINAL LIABILITY ON CRIMINAL PRODUCTS IN CINEMA, TV AND THEATER

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## ABSTRACT

Despite of their increasingly importance and remarkable effects in today societies, media can be used to commit crimes and a place to publish criminal works as called media crimes. Visual media enjoy remarkable and broad status and importance among audiences while in contrary to many countries, their crimes in Iran lack integrated and devised laws which have led into undesired impacts and numerous questions and ambiguities. A complicated problem led into huge legal discussions is to determine criminal responsibilities concerning such crimes. Such question originates from the fact that there are many factors involved in the process of producing media works. Now, one should determine which people have criminal responsibility on media offences and relevant punishments. Different attitudes are provided to answer this question such as the responsibility of all factors, the responsible of offender, the responsibility of director, the responsibility of final supervisor and so on. It seems that none of these attitudes are comprehensive and one cannot take a single and absolute theory; rather, one should determine different factors such type of crime (stealing the scenario, producing unethical works), type of video media (TV, theater, cinema), type of program (live, archive) and to determine the responsible person by considering all above factors.

## INTRODUCTION

Sometimes, apart from posing damages or not, media are committing offences in terms of criminal laws. Sometimes, a scenario performed on the scene includes insults against an official authority. In other cases, a TV program penetrates into private area of people and publishes their familial issues without their permission. Overall, conducting or leaving any criminal action by media is a media offence alongside its penal responsibility. Different studies are conducted on media civil responsibility while there a few studies on media penal responsibility and their agents. Except than press law, there are no laws on penal responsibility of media especially visual media (cinema, TV and theater). Media laws only address overviews and norms and if someone talks about the forbidden of such initiatives, unfortunately there is no executive guarantee for such initiatives. What is the reason of such difference? It is contemplating that criminal statistics by television is highly greater than press. The lack of a certain law on penal responsibility of visual media and not recognition of responsible and accountable persons have all caused that damaged people cannot complaint against visual media and only ask for compensation through a legal petition.

In comic programs by TV, it is sometimes seen that a football player plans to complaint against the agents of a program since the program had mocked how he speaks. Unfortunately, due to lack of a certain law on visual media crimes and unclear responsible, no case comes to a conclusion and these people can only ask for compensation legally. Noteworthy, the exclusive ownership of visual media by government has been a barrier for which a serious need is felt to study penal responsibility of such media in the country. Based on above points, it seems that our media laws need modifications of which some items are provided in present paper.

## Concepts and overview

### Responsibility

In terminology, "responsible" is someone who is asked while "responsibility" means to be committed. Also "responsibility" is mentioned as guarantee, obligation and accountability. In legal terms, responsibility is to be accountable against actions taken for society and others. Others believe that responsibility is personal legal commitment to compensate damages against other people.

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## Penal responsibility

Concerning the definition of penal responsibility, there is no concurrence among lawyers. Some say that it is the capability to do or to leave punishable or corrective actions against those ones who can endure the punishment or corrective initiatives. Others believe that it is a commitment to responsiveness to committed crimes namely enduring the determined punishments for them. The definition one can perceive from the opinions of legal instructors is that Penal responsibility is criminality along with the ability of assignment. In fact, two points should be proved for penal responsibility:

- Criminality
- The ability of assignment

Penal responsibility = criminality + the ability of assignment

Concerning the ability of assignment, one should say that it means the actor has no problem in terms of physical and mental growth and will.

## Media definition

There is no concurrence in this regard and different definitions are provided. In its meeting on November 24, 1971, the Committee of Investigating Technical Terms in France defined media in this way: "media is a communication tool which involves many carriers (i.e. press is a mass communication tool and France Newspaper is a carrier). In defining media, some people say that media is any tool or mechanism which sends a message from sender to receiver. Overall, it seems that media should be seen as a set of techniques and devices capable to transfer communicational, sensational or intellectual messages in certain time to many individuals especially in far distances.

## Media offence (crime)

This is a general offence in which one can see certain conditions of media in committing the crime. Insult, revealing the secrets and initiative against security are crimes that would have a media nature if they are published. Hence, media crime is created by "publication" element. Therefore, media crime has two parts: a general crime and publication in media. For example, media insult consists of two parts:

Media insult = material pillar of insult + publication

Identifying the publication as a necessary element in media crime means that when a material is not published in public, it can be named as media crime. If the agents of movie insult against someone, it is not considered as media insult when the movie is not rendered in public.

## Responsibility in visual media crimes

Media activity is usually the product of a collective operation. In each media and in terms of the nature of their job, many people are involved. For instance, in rendering a movie, many agents are involved: producer, director, writer, artists, cameramen, etc. They are considered as the makers of the movie and Presentation Permit Council (supervised by the government) would issue the relevant permission.

Likewise, there are many agents for making a TV program including director, producer, supervisor, etc. now, the question is that if a crime is committed as the result of media activity, which agents are responsible? In other words, what is the guideline to determine responsible person? Overall, it is difficult to recognize a responsible in all kinds of crimes. However, such problem is double in visual media crimes because that in committing such crimes, many agents are usually involved and, as a result, the question is that who is responsible: producer, director, artist or other agents?

A point considered by media laws in different countries (press, TV and radio Laws) is to determine the tasks, authorities and responsibilities of each involved agent in media operations. For instance, in the law on UK private televisions, article 11(2) is on determining a mechanism to complaint from owners. On this basis, the owner (as the final supervisor) is responsible for all programs and he/she should answer the complaints. Television independent commission which issues owners' permits in UK would monitor on the process of responding the complaints. This commission takes serious all complaints and would treat the owner if the complaint is right. As mentioned before, unfortunately it is not determined that who is responsible for criminal materials published by a visual media.

To determine the responsibility for offences by agents in cinema, television and theater, different theories are provided such as the responsibility of all agents, director, producer, crime material pillar and final supervisor. We believe that although the responsibility of final supervisor confirmed by most legal systems is corrector, it seems that it is not true for all cases and other people should be considered as responsible based on different conditions.

Overall, considering media differences in their programs and varied mechanisms in visual media, one cannot extend one theory to determine the responsible in all media since different people maybe responsible based on the type of committed crime or type of medial impact.

## Determining the responsible based on crime type

In some crimes, it is not possible to consider the final supervisor as responsible due to special nature of crime or legal clarification. In such cases, we have no choice to consider crime material doer as responsible. Some examples are provided below:

### Stealing the scenario by scenarist

There are many cases in which an author has introduced an idea and scenario belonged to someone else as his own work and attracts the opinion of a producer to make that work after negotiations with him. Then, the scenario is represented to Permit Issuance Council and the council finds no problem in scenario and issues the permission to produce the film. Upon rendering the film, it is determined that the scenario has belonged to someone else and scenarist has committed scenario stealing crime. Obviously, in such cases it is impossible to consider producer or others as responsible since no one except than scenarist did know that the scenario has been stolen.

Therefore, in such cases, it is impossible to pose the opinion of “final supervisors’ responsibility” and the scenarist should be accountable and responsible.

### **Taking films from forbidden places**

It is common for filmmakers who need to use a military part in their film. Therefore, they may take films from military locations while it is considered as crime by law. Question: in case of taking films from military locations, who is responsible: cameraman, director or others?

Article 502 of law reads: “if those people who take draws, films or photos from military locations and forbidden places without the permission of relevant authorities are arrested, they can be imprisoned between six months and 3 years.” As mentioned by legal instructors, such crime does not need *mens rea* and it makes no difference whether someone is taking photos for memorial or another motivation. In media activities, the cameraman may not conduct such act willfully rather by the command of his manager or director. However, it should be noted that these cases cannot justify cameraman’s action since he has received commands from a person to whom is not required to obey him in illegal conditions. Their relationship is not like soldier and officer; rather, it is based on interaction. In such cases, the cameramen should be aware of such article and reminds his manager or director. In the case that films are taken from military location (without permission) for a movie or TV report and these films are published namely the movie is rendered and TV report is disseminate, then cameraman is responsible since the law (article 503) clearly consider the person who has taken films as responsible. In such cases, it is impossible to claim against other people except than cameraman.

### **Producing unethical works**

Concerning unethical programs, one should refer to the law on punishing those people who work in illegal audio and video affairs. In fact, this law has clearly determines that in the case of unethical content in an audio or video content, who is responsible? Article 3 (1) reads that main agents of producing unethical audio and video products namely producer (investor), director, cameramen and main artists are punishable. Punishments are also determined for other agents based on article 3(3). Thus, there is a collective responsibility for producing unethical programs by law.

### **Crimes by TV ads**

In this regard, it should be noted that concerning TV ads, a recipe is prepared by Commercial Directorate of IRIB and submitted to ad producers. It is clearly clarified that who is responsible in the case of committing any offence in TV ads. This recipe is devised in two introduction and general principles parts. Introduction consists of paragraphs (A) to (K) and 69 general principles. Clearly, paragraph (c) of the recipe reads: “owner, producers and issuers of advertisements should make their ads by full respect of this recipe. In the case of any complaint by both individuals and businesses, they are responsible against them.”

Therefore, when an offence is occurred in a TV ad and it is published, these people are responsible based on the clear articles of the law.

### **Determining the responsible person based on the program**

In some TV programs, it is not possible to use “the responsibility of the final supervisor” theory due to their special nature. Below, we plan to point out some of these media programs and activities:

#### **Responsibility in Live programs**

Overall, final supervisors are responsible when published material is clear before being exposed for public audiences. It means that final supervisors can be claimed as responsible only in recorded programs since it is only in such case that supervisor can aware the content and prevent its broadcasting. In live programs, due to lack of previous monitoring, a person is responsible who has conducted the material pillar of the criminal act. There are paramount examples in which the host of expert of a live program has insulted someone or in a phone match, the participant has said a criminal statement. Obviously, in such case, committer of the offence is responsible and supervisor of the program cannot be considered as responsible. However, if the supervisor has paved the ground for crime commission or he/she has not prevented program broadcast even though he/she has been aware of the offensive materials, he/she is responsible for participation in the offence.

#### **Media responsibility for narrations especially in news reports**

In TV news reports or reports taken from people, it is sometimes that an authority has insulted someone in an interview and the media has broadcasted it. Question: who is responsible for such offence? Has media any responsibility for statements by others or only offender is responsible? Overall, in broadcasting offensive statements by other people through media (whether live or recorded), media cannot be seen as responsible when it is not proved whether the media confirms such material or not since the media has only paved the ground for other people to express their ideas and opinions. However, it is obvious that if the media publish a material while it knows that they are false and criminal and to publish then, it is responsible here. However, media is only responsible for just publishing not the content (for example, publishing false statements or disturbing public).

#### **Identifying the responsible by media type**

Certainly, any media has certain traits and conditions based on its nature and requirements or it has a different kind of prioritization. Concerning cinema, television and theater, one should say that in the case of committing an offence by their agents (except than what mentioned), in other cases final supervisor should be considered as responsible (the procedure used in France). In this line, guaranteeing free expression and expediency for the survival of media activities, one should not imagine that the responsibility by final supervisor is an indirect one while it is a direct responsibility since the main pillar of media offence is the publication made by him/her.

Below, we plan to determine who the final supervisors are in each video media; in other words, who are responsible in the case of committing offences.

### Television

Initially, it may seem that in television, the producer is final supervisor like cinema and he is criminally responsible for publishing offensive contents by TV. Despite of similarities in tasks of producers in both television and cinema, there are many differences on their performance. For instance, in television, producer only performs the administrative affairs and what asked him and he is not responsible for what published (like cinema). In fact, producer is responsible for production aspects in television and he is only responsible for the quality of the program. Since IRIB is governmental in Iran, it is unfortunately so difficult to determine the responsible concerning IRIB activities is too difficult and no strong study is conducted in this regard. Concerning article 20(c) of "IRIB Articles of Association" which states that Monitoring and Assessing Department is responsible for monitoring on IRIB programs, one can consider the responsible for publishing criminal content as a monitoring manager determined by this Department. In fact, he is the person who issues the command of publication. He is the manager of monitoring and broadcasting since according to his tasks, he must monitor on IRIB produced programs and prevent unethical ones. Therefore, except than crimes mentioned earlier (publishable offences, offences in live programs and so on), in other cases of TV offences, the manager is responsible who monitors media performance according article 20(c) of IRIB articles of association.

There are many cases in which upon producing a serial, its broadcasting is prevented due to its insulting content by supervisors (like Ancient Land serial). We believe that all initiatives by television program makers (producer, director, players, etc.) are based on law and all dialogues and sequences are revised by monitoring agents. Therefore, it is not rational to consider program administrative agents as responsible; rather, since the command is issued by the managers and all initiatives are confirmed by him, in the case of offensive content, he should be responsible and accountable not television program makers. To prevent media offences, one can propose that broadcasting supervisors to be selected from those ones who are sufficiently aware of media laws and offences.

The final point is that concerning criminal responsibility for IRIB corporate responsibility, there were disagreements before 2013. However, based on new Penal Code (2013) in which corporate criminal responsibility is clearly illuminated, there is no barrier in complaining against IRIB (as a corporate responsible).

### Cinema

Since media activities are governmental, two groups monitor movies and they are called as final supervisors:

First: producer as the final decision maker who is known as the owner of the work.

Second: Presentation Permit Council which issues the permission of presentation of films.

**Producer's responsibility:** overall, all movies' agents work under the supervision of producer. He is the legal owner of the film and selects producer and other players and no activity is done without his permission. For instance, producer can command to eliminate or modify a sequence. In clarifying the responsibility of the producer, one should say that the main material element of media offence is what published by producer. Concerning the mental element, one should say that the producer has absolute responsibility so there is no need to prove bad intention. In fact, he has the task for prevent its film if an offence is committed in this film. The basis of absolute responsibility which is close to risk theory in civil law is to support victims and the supervisor or owner of the work must predict damages and should be prepared for its consequences.

### The Responsibility of Presentation Permit Council

Those filmmakers who plan to make a film should submit their scenario to this council to receive legal permits and also they send their film to this council. Overall, when the idea of a film is completed and written in the format of a scenario and then the relevant agents are contracted. Then the film is planned, relevant budget is determined and needed agents are clarified. This is called pre-production step. When all steps were completed and final version of the movie was prepared, it will be submitted to producer to revise it. After confirmation by producer, the work is sent for Council or a private presentation is arranged. Council issues the permission or asks to eliminate some parts. Even, it may ask for changing some parts of film. Finally, a film may be stopped and the Council refuses issuing presentation permission. Article 5 of the recipe on "monitoring on films, slides, videos and presentation permit" refers to this council and its performance. This article reads: "to state on the presentation of any short or long 35mm or 16mm movies and issuing its presentation permission, by considering this recipe, a board is consisted of people based on their specialties and needed information of movie and cinema by Cinema Deputy." Although the responsibility of offence is bored by producer (as the final supervisor), one cannot neglect the responsibility of the Council (both preliminary and higher councils) that paved the ground for offences by their own ignorance and negligence. Noteworthy, the responsibility of the council is not due to offensive content; rather, it is due to improper supervision on movies and issuing the permission of their presentation.

### Theater

One of the manifestations of art in today world with many fans in our country is theater. Theater is tool which can impact proper on culture building among the audiences if it is used well. Although the number of theater audiences is too lower than cinema halls, preciseness in their contents and messages to audiences are the requirements of successful theaters. In our country, Ministry for Culture and Islamic Guidance is responsible for theater (like cinema) and for issuing the permissions.

Any theater which is planned in domestic halls should receive their permits from relevant authorities. In 2000, Higher Cultural Revolution Council approved a recipe titled "the norms of presentation and issuance of permits". According to its article 2(2), "Culture and Islamic Guidance Directorates and Offices are responsible for monitoring on presentation and permissions in provinces and towns respectively." article 4 reads: "relevant boards will be established to monitor on all performances and permissions." Despite of the participation of producer in many presentations, there is necessarily no producer in theater to receive relevant permits and in many cases the director is also producer. In fact, to take relevant permit for a theater, one of the members of the group which can be also an artist would ask for permit as "permit applicant". Afterwards, the Council would recognize the applicant as a contract party and would consider him/her as the owner and supervisor of the theater. Therefore, in theater, final supervisor can be someone who monitors on all agents.

Overall, since theater agents conduct their tasks and all initiatives and decision and even the text are under permission, in the case of offensive content, it is not rational to consider all of as responsible absolutely since they have conducted their legal tasks and their mental element is damaged. However, final supervisor (to whom permission is issued) is responsible since he/she should monitor fully and prevent the publication of offensive materials. Noteworthy, according to article 2(4) of the recipe of "monitoring on presentation and permission", it is not necessary to acquire the permission by a Culture and Islamic Guidance Office for some presentations. This article reads: "monitoring on presentations inside schools, universities and higher education center as well as student festivals and Children and Junior Intellectual Grooming Locus are excluded." We believe that if offences are committed in such presentations, the supervisor is responsible since he/she tasked to monitor of good presentation and to prevent its offensive content. We reemphasize that the responsibility of final supervisor is in offences rather than what mentioned in past pages. Noteworthy, a player may commit an offence like an unethical behavior on theater scene in contrary to approved scenario and without any coordination with other agents. Here, he/she is responsible.

### Conclusion

There are different opinions and attitudes (i.e. responsibility of all agents, the responsibility of material element, the responsibility of director or the responsibility of final supervisor) concerning offences in video media and the fact that whether there are legal corporate responsibilities in addition to personal ones or not. We believe that in video media and due to their nature and requirements, it is not possible to determine a general norm to determine responsible; rather, we should consider different situations for some kinds of crimes. In some cases, we should resort to absolute responsibility theory for owners and final supervisor to defend audience while in many case we should determine the responsible person by committed offence or type of media or program which will be bore by different people. Since the most important challenge in Iranian legal system on media responsibility is the lack of a media comprehensive law, our initial suggestion is that lawmaker believes that its main mission is to defend the rights of people; so, it would take initiative to devise a comprehensive

law and the responsibility of medial crime in determining different hypotheses.

### Suggestions

- An initiative which facilitates determining the responsible person is media privatization. A big barrier is that IRIB governmental to determine the responsible person. Overall, government's attendance in media has made the mechanism for criminal complaint against IRIB difficult. Those who have been hurt by IRIB usually do not know to complaint against which agent in IRIB. Therefore, it is proposed to revise our Constitutional Law in order to pave the ground for private networks. In fact, according to Communication Science Doctrine, it is better that government monitors on media performance while allow them to act freely. In fact, this would facilitate complaints against IRIB to guarantee the rights of audiences.
- Another proposal is the establishment of a council as "Media High Council". It should monitors on the performance of all medial permanently and precisely (audio, video and written media) and provide authorities with its advisory opinions on the performance of medial annually or in special cases (preventive actions).
- Media agents are recommended to use a skillful legal expert in producing movies and use his/her advices in writing the scenario and all steps of production. It is in fact a preventive act and if this legal advisor gets aware of an offence during production, he/she would inform the supervisor and prevent to be broadcasted.

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