

### 3 COPYRIGHT FLEXIBILITIES IN THE ARAB REGION

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#### ABSTRACT

Copyright laws aim to ensure the existence of a balanced system between the rights of creators and the need of users to have access to their creations. This balancing exercise has recently become more difficult for Arab countries, due to the critical economic crisis and the wave of bilateral trade agreements being signed with economically more powerful developed country partners. The focus of this paper is the unbalanced state of the copyright legal environment in Arab countries. It argues that the unnecessarily wide scope of copyright protection might interfere with the level of access and in doing so, presents a number of copyright flexibilities that have been excluded or ignored by national legislators in the Arab region. Legislative amendments and appropriate policies must be implemented in order to provide sufficient incentive for creators, while ensuring that the rights of users are not unduly limited. An extremely strong copyright regime does not necessarily promote sustainable development.

*Keywords:* *copyright flexibilities, Arab countries, access to knowledge*

#### I. COPYRIGHT AND ECONOMIC GROWTH IN THE ARAB REGION

There is no doubt that the Arab region is currently at a turning point in terms of economic reforms. The revolutions that have recently taken place in several Arab countries (the so-called ‘Arab Spring’) have resulted in governments revising their national economic and social policies and strategies. The role of the state, the relationship between stakeholders and public interest, as well as the social dimension of development are questions that are beginning to take centre stage once again.

Intellectual property rights have a significant role to play in economic growth and competitiveness. In economic terms, creative and artistic activities are also economic activities that generate income, create jobs and contribute to the foreign trade of a country. They are usually used as a tool not only to stimulate innovation, but also to protect knowledge goods that enhance human capabilities, which in turn build national capacities for innovation.<sup>1</sup>

During the 20<sup>th</sup> century, intellectual property (IP) policymaking, including copyright, was dominated by the belief that because some protection is good, more protection is always better. This belief manifested itself in a century’s worth of international treaties, national laws and local practices that continuously raised levels of copyright protection. Harmonization was the ostensible justification, but harmonization only occurred in one direction - upwards. The

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<sup>1</sup> Denis B Barbosa, M Chon and Andres M Von Hase, ‘Slouching towards Development in International Intellectual Property’ (2007) 71 *Michigan State Law Review*, 78.

result has been criticised as a one size (extra-large) fits all mode of protection.<sup>2</sup> The beginning of the 21<sup>st</sup> century foreshadowed a new phase in global IP governance, characterized neither by universal expansion nor by reduction of standards, but rather by contextual calibration of the positive and negative implications of intellectual property rights.<sup>3</sup>

The success of an economic system rests on the right economic actors receiving adequate rights. It is generally accepted that granting exclusive rights to knowledge creators aims to promote innovation and the development of culture and education. Nonetheless, the interests of the public remain a vital element in the analysis of intellectual property rights. IP systems around the globe therefore aim to maintain a just and balanced system between the rights of creators to be rewarded and the needs of a society to have access to, and be able to build upon, existing creative works. To promote progress, IP law in general must strike a balance, providing sufficient incentives for innovation without unduly stifling the liberties of end-users.<sup>4</sup>

One of the most controversial challenges facing the Arab world today is how to maintain a balance between the interests of copyright holders and users. The success of copyright regimes must be measured not only by how far creative works are protected, but also to what extent these works are available for the public. This balancing test is assumed to generate optimal social welfare.<sup>5</sup>

Within the Arab region, nine countries are members of the World Trade Organization (WTO)<sup>6</sup> and five others have the status of observer.<sup>7</sup> However, most Arab States have joined the WTO without adequate preparation and thus face a significant lack of expertise in dealing with the resulting obligations. The majority of these countries have recently been involved in negotiations with economically and politically more powerful developed countries.<sup>8</sup> Moreover, some of them have signed bilateral free trade agreements with the United States and the European Union.<sup>9</sup> This phenomenon raises several concerns regarding the protection of intellectual property rights in general and copyright provisions in particular. Trade agreements cannot be tackled in isolation; they are interlinked and have a significant impact on national legislation.

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<sup>2</sup> James Boyle, 'A Manifesto on WIPO and the Future of Intellectual Property' (2004) *Duke Law and Technology Review* 9. Available at: [www.law.duke.edu/journals/dltr/articles/2004dltr0009.html](http://www.law.duke.edu/journals/dltr/articles/2004dltr0009.html) accessed 21 September 2011.

<sup>3</sup> Daniel J Gervais 'TRIPS and Development' in Daniel Gervais (ed) *Intellectual Property, Trade and Development* (Oxford University Press 2007).

<sup>4</sup> Michael W Carroll, 'One Size Does Not Fit All: A Framework for Tailoring Intellectual Property Rights' (2009) 70 No. 6 *Ohio State Law Journal*, 1368.

<sup>5</sup> Margaret Chon, 'Intellectual Property and the Development Divide' (2006) *Cardozo Law Review* Vol. 27: 6, 2813.

<sup>6</sup> Djibouti (1995), Jordan (2000), Kuwait (1995), Mauritania (1995), Oman (2000), Qatar (1996), Saudi Arabia (2005), Tunisia (1995) and United Arab Emirates (1996).

<sup>7</sup> Algeria, Iraq, Lebanon, Sudan and Syria.

<sup>8</sup> Mohammed El-Said, 'Surpassing Checks, Overriding Balances and Diminishing Flexibilities, FTA-IPRs Plus Bilateral Trade Agreements: from Jordan to Oman' (2007) *the Journal of World Investment and Trade* Vol. 8, 243.

<sup>9</sup> Such as the European Union-Tunisia Association Agreement (1998); United States-Jordan Free Trade Agreement (2000); European Union-Egypt Association Agreement (2004); United States-Bahrain Agreement (2004); United States-Morocco Free Trade Agreement (2004); European Union-Algeria Association Agreement (2005); European Union-Lebanon Association Agreement (2006); and the United States-Oman Free Trade Agreement (2006).

Within this context, it is important to analyse the status of the legal environment for copyright protection in the Arab region. What extent of protection do national copyright regimes in the region provide pursuant to copyright provisions? What practices are the best to follow and which ones are to be avoided? What are the implications of bilateral treaties on copyright legislation in the Arab world?

This paper will not provide a detailed and comparative analysis of copyright flexibilities in the Arab region. The focus is rather to discuss a number of copyright provisions that could have both a positive and a negative impact on national regimes<sup>10</sup>, and to formulate recommendations that might assist Arab countries in the effective (and balanced) modernization of their copyright legislations.

## II. STATUS OF COPYRIGHT IN THE ARAB WORLD

Arab states have historically enacted copyright laws and adhered to international conventions related to copyright. Most of these countries have recently modified or codified their national copyright laws.<sup>11</sup> Creative works, whatever their type or mode of expression, are strongly protected by domestic IP regimes. These national laws adopt all the necessary conditions for protection required by international treaty obligations.

As a result, copyright laws in the region set rules for protection that integrate standard provisions found in developed countries. However, a profound analysis of copyright regimes in the Arab region can lead to two observations: first, the scope of copyright protection in some cases exceeds the international legal norms to the point where it may interfere with the level of access in these countries. Second, a number of the copyright flexibilities provided in international treaties and agreements have been either ignored or excluded in recent reforms of national copyright laws.

The first part of this paper will evaluate the scope of copyright protection in the Arab region, before turning to the question of copyright flexibilities, in order to identify some important provisions that may help national authorities to shape an appropriate copyright regime reflecting their domestic needs.

### A. NATURE AND SCOPE OF PROTECTION

Despite their diversity, most Arab countries are civil law countries.<sup>12</sup> Both moral and economic rights of copyright holders occupy a large place in the nature and scope of protection. Moral rights, such as the right to claim authorship and to object to any distortion or other modification that might be prejudicial to the honour or reputation, appear clearly in copyright provisions. Economic rights are treated separately and cover any form of exploitation of a work, such as reproduction, adaptation, broadcasting, public performances and distribution rights.

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<sup>10</sup> For a comparative study of copyright limitations and exceptions in the Arab region see Victor Nabhan, 'Study on Limitations and Exceptions for Copyright for Educational Purposes in the Arab countries' (2009). Available online at <http://www.wipo.int/copyright/en/limitations/studies.html> accessed 21 September 2011.

<sup>11</sup> Thirteen countries out of 21 Arab countries have modified their national copyright law within the last ten years.

<sup>12</sup> The civil law system is generally rooted in authors' natural rights, while the common law tradition reflects a utilitarian view of copyright.

It has been noted, however, that the scope of copyright provisions in several national copyright laws goes beyond minimum international standards. National legislators have adopted the very highest norms - including those that do not even exist in developed copyright systems. Three key indicators showcase this issue: (i) economic rights conferred to the author; (ii) anti-circumvention technological measures; and (iii) terms of copyright protection.

## 1. Breadth of economic rights

Copyright law gives the owner of a copyright a monopoly to do and to authorize others to do the following: reproducing the work in various forms; performing the work publicly; and recording and broadcasting by radio, cable or satellite. These exclusive rights are usually explicitly enumerated in national copyright laws.

The analysis of copyright systems in Arab countries shows that economic rights conferred on the author are far too expansive and sometimes go above and beyond the scope of the rights that are traditionally embodied in international treaties.

(1) *Lending right*: Some national copyright regimes confer on the author a new right which does not exist in the Berne Convention or the Agreement on Trade-Related Intellectual Property Rights (TRIPS). This so-called 'lending right' gives the copyright owner the right to prevent a legitimate possessor from lending protected work without previous authorization from the rights holder. For example, Article 147 of Egypt's Intellectual Property Law (No. 82 of 2002) states that '[t]he author shall have the exclusive right to authorize or prevent any form of exploitation of his work, particularly through ... rental, lending ...'.

The existence of such a right could affect a society's right to have access. Thus, students, for instance, who legitimately buy a copyright-protected textbook, technically cannot lend this book to their colleagues because they would then be in violation of the terms of copyright protection. Moreover, providing right holders with such a right could have negative consequences on access to knowledge by inhibiting the work of libraries.<sup>13</sup> Theoretically, libraries have the obligation to obtain the approval of the author or the rights holder each time a user wants to borrow the work or, at the very least, to negotiate with them before conducting normal lending activities. It is important to note here that copyright regimes in Arab countries have not adopted the public lending rights systems or any other equivalent clauses to compensate authors for the potential loss of sales caused by the fact that their works are available in public libraries.<sup>14</sup>

(2) *Rental right*: The scope of the rental right conferred to the author in several domestic legislations is too broad; it covers all kinds of works and all types of rental. Article 11 of the TRIPS Agreement restricts the rental rights on computer programs and

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<sup>13</sup> Bassem Awad, Moatasem El-Gheriani and Perihan Abou Zeid, '*ACA2K Country Report: Egypt*' (2009) ACA2K project, IDRC, Shuttleworth Foundation and Wits University LINK Centre. Available online at: [http://www.aca2k.org/attachments/154\\_ACA2K%20EGYPT%20CR.pdf](http://www.aca2k.org/attachments/154_ACA2K%20EGYPT%20CR.pdf) accessed 21 September 2011.

<sup>14</sup> The Public Lending Rights [PLRs] allow authors of protected works to be financially compensated for the presence of their works in public libraries. The first public lending remuneration system was implemented in Denmark in 1946. Twenty-eight countries currently have such a system, through which libraries pay fees to rights-holder representatives. Jim Parker, 'PLR – an Update on the International Situation' (2002) 68 the IFLA Council and general conference. Available at <http://archive.ifla.org/IV/ifla68/papers/105e-Parker.pdf> accessed 21 September 2011.

cinematographic works for commercial use.<sup>15</sup> However, a number of copyright laws in the Arab region have extended the rights to prevent renting of all kinds of works and for all types of commercial as well as non-commercial uses.

An example can be found in the federal Copyright Law (No. 7 of 2002) of the United Arab Emirates, which gives the author the right to authorize any form of exploitation of his work particularly by rental in any manner, including through computers, the Internet, communication networks and other means (Article 7).<sup>16</sup> This rental right is conferred beyond international treaty requirements. Such provisions are considered Berne plus or TRIPS plus, and serve to limit the possibility of access to knowledge in these developing countries.

(3) *Droit de suite*: Another finding concerning the economic rights is related to the right of controlling any disposal of the original copy of works. These resale rights, known also as ‘droit de suite’, provide authors with the inalienable right to receive a royalty based on the resale price of an original work. Article 14<sup>ter</sup>(1) of the Berne Convention for the Protection of Literary and Artistic Works leaves its member States the discretion to provide authors with the right to control any disposal of the original copy only for works of arts and original manuscripts.<sup>17</sup>

In practice, however, resale rights are rarely applied to literary works; they are more often implemented for the visual arts, paintings, sculptures, textiles, canvas, etc. Nevertheless, a number of national copyright regimes in the Arab region extend these resale rights to all kinds of works. Article 147(3) of the Egyptian Intellectual Property Law states that ‘[t]he author and his successor shall also have the right to control any disposal of the original copy of the work, and shall consequently be entitled to a certain percentage of not more than 10 per cent of the proceedings resulting from every disposal of that copy’.

The extension of the resale right to all kind of works will impose an additional financial charge on purchasing and selling all types of original works and may prevent people from buying literary and artistic works.

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<sup>15</sup> Article 11 of TRIPS provides that:

In respect of at least computer programs and cinematographic works, a Member shall provide authors and their successors in title the right to authorize or to prohibit the commercial rental to the public of originals or copies of their copyright works. A Member shall be exempted from this obligation in respect of cinematographic works unless such rental has led to widespread copying of such works which is materially impairing the exclusive right of reproduction conferred in that Member on authors and their successors in title. In respect of computer programs, this obligation does not apply to rentals where the program itself is not the essential object of the rental.

<sup>16</sup> Similar provisions exist in the Egyptian IP Law No. 82 of 2002 (Article 147).

<sup>17</sup> Article 14<sup>ter</sup> of the Berne Convention states:

(1) The author, or after his death the persons or institutions authorized by national legislation, shall, with respect to original works of art and original manuscripts of writers and composers, enjoy the inalienable right to an interest in any sale of the work subsequent to the first transfer by the author of the work. (2) The protection provided by the preceding paragraph may be claimed in a country of the Union only if legislation in the country to which the author belongs so permits, and to the extent permitted by the country where this protection is claimed. (3) The procedure for collection and the amounts shall be matters for determination by national legislation.

## 2. Anti-circumvention measures

The digital revolution has witnessed the deployment of technological measures to protect digital works against certain unauthorized uses. According to the WIPO Copyright Treaty, 1996 Contracting Parties must provide ‘[a]dequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors in connection with the exercise of their rights ... and that restrict acts, in respect of their works, which are not authorized by the authors concerned or permitted by law’.<sup>18</sup>

Despite a large number of Arab countries not having signed the WIPO Copyright Treaty<sup>19</sup>, most of the copyright laws in the region have adopted the highest level of protection for technological protection measures (TPMs)<sup>20</sup> by prohibiting the act of circumvention and so-called preparatory activities such as the manufacture, assembly or importation of any device or technology that aims to circumvent any TPMs. These provisions are also applied without distinction, both for works still under copyright and for those that have fallen into the public domain.

Article 181 of the Egyptian Intellectual Property Law, 2002 stipulates that, among other things, the following acts are forbidden:

(5) Manufacturing, assembling or importing for the purpose of sale or rent any device, tool or implement especially designed or made to circumvent a technical protection means, such as encryption or the like, used by the author or the owner of the related right;

(6) Removing, neutralizing or disabling, in bad faith, any technical protection device used by the author or the owner of the related rights.<sup>21</sup>

Generally, copyright laws in developed countries set limits on TPMs to allow users to benefit from copyright exceptions. An analysis of Arab copyright regimes shows that only Bahrain and Morocco have adopted exceptions on TPM circumvention acts for non-profit entities (libraries, archive services, and education institutions<sup>22</sup>). A non-profit educational institution in Bahrain or Morocco circumventing an effective technical protection measure, or importing or renting a device or system to nullify the effective protection measure can neither be prosecuted nor ordered to pay damages if it is acting in good faith.

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<sup>18</sup> Article 11 of the WIPO Copyright Treaty.

<sup>19</sup> Six Arab countries are members of the WCT: Bahrain, Jordan, Morocco, Oman, Qatar and United Arab Emirates.

<sup>20</sup> Technological Protection Measures (TPMs) are defined as any technology, system or component which, within the normal framework of its operation, is aimed at preventing or limiting, regarding works and other protected objects, actions not authorized by the copyright owner, or actions protected by neighbouring rights.

<sup>21</sup> Similar provisions exist in Qatar Copyright Law No. 7 of 2002 (Article 51) and Saudi Arabia Copyright Law Royal Decree No. M/41 of 2003 (Article 21).

<sup>22</sup> Article 64.3 of the Bahrain Copyright Law of 2006 indicates that ‘[a]non-profit library, archive, educational institution, or public non-commercial broadcasting entity, are not subjected to penalties for the performing the TPM circumvention acts described in Article 45 subsections 1, 2 and 3 if it provides the proof that it was not aware or had no reason to believe that its acts constituted a prohibited activity’. Article 65.1 of the Moroccan Copyright Law as amended in 2006, has the same limitation.

In practice, adopting high standards of anti-circumvention provisions in Arab countries might have an effect on the free availability and use of works belonging to the public domain. Rights holders in these countries can protect their works through the use of TPMs, even after the end of the copyright term for an unlimited period of time. In addition, copyright exceptions and limitations, especially those for educational uses, can be bypassed by rights holders employing TPM provisions.<sup>23</sup>

### 3. Term of protection

For most creative works, the Berne Convention and the TRIPS Agreement require the duration of copyright to be, at minimum, 50 years after the death of the author. In many Arab countries, there is a recent trend towards expanding the standard term of protection. In Bahrain<sup>24</sup> and Morocco<sup>25</sup>, the duration of copyright protection has been extended to cover the author's life plus 70 years. Other countries, such as Oman, have increased the term of protection to 95 years for orphan works or works published under a pseudonym; and in some circumstances, this term goes up to 125 years from the year following the creation of the work.<sup>26</sup>

Recent studies indicate that most developing countries, including the Arab States, are net importers of copyrighted material, just as they are net importers of technologies.<sup>27</sup> National legislators should take into consideration that the extension of the term of copyright protection will not always have sustainable social and economic benefits for society.

#### B. COPYRIGHT FLEXIBILITIES

International copyright treaties and agreements, such as the Berne Convention and the TRIPS Agreement, provide for several types of exceptions and limitations of copyrighted works to achieve balanced copyright systems. These provisions include, but are not limited to, the right of performing the work in meetings with students within an educational institution; reproducing an article, a short work or extracts for teaching purposes in educational institutes; and photocopying exclusively for personal use a single copy of protected work.

In the Arab region, copyright laws follow a detailed approach and provide an exclusive list of instances where users may legally ignore the owner's rights. These copyright exceptions and limitations are determined by the national legislature of each country.

In the following section, this paper discusses a number of copyright flexibilities that could be significant to the Arab region and developing countries in general: (i) parallel imports

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<sup>23</sup>Awad *supra*, note 13.

<sup>24</sup> Article 37 of Bahrain Copyright Law No. 22 of 2006 related to copyright and neighbouring rights as amended by Law No. 12 of 2008.

<sup>25</sup> Article 25.1 of the Moroccan Copyright Law No. 2-00 of 2000 as amended by Law No. 34-05 of 2006.

<sup>26</sup> Article 29 of the Royal Decree 65 of 2008 promulgating the law on copyright and neighbouring rights.

<sup>27</sup> Integrating intellectual property rights and development policy, Report of the Commission on intellectual property rights (2002). Available at: [http://www.iprcommission.org/graphic/documents/final\\_report.htm](http://www.iprcommission.org/graphic/documents/final_report.htm) accessed 21 September 2011. *Arab Knowledge Report 2009: Towards Productive Intercommunication for Knowledge*, MBRF and UNDP/RBAS. Available at: <http://www.mbrfoundation.ae/English/Documents/AKR-2009-En/AKR-English.pdf> accessed 21 September 2011.

of protected works, especially of books and educational materials; (ii) the translation provision for work published in a foreign language; and (iii) the possibility of obtaining a compulsory licence for educational purposes.

### 1. Parallel importation

Parallel importation is a copyright flexibility that allows the importation and resale, usually at a lower price and without permission from the copyright holder in the country of import, of a copyright-protected work having been legitimately put on the market of the exporting country.<sup>28</sup> These imported or 'grey goods' are not counterfeit products or illegal copies. The most famous example in the region is the importation at a cheaper price of medical textbooks from India and Malaysia. With the international exhaustion of rights, there is no need for the consent of right holders.

International conventions and multilateral agreements on intellectual property rights have not mandated a particular regime for parallel imports. The TRIPS Agreement has addressed the exhaustion issue in Article 6 by giving WTO members the freedom to opt for national, regional, or international exhaustion. In other words, each country has the right to adopt the international exhaustion of rights, and even if a country allows parallel imports in a way that another country might think violates the TRIPS Agreement, this cannot be raised as a dispute in the WTO, unless fundamental principles of non-discrimination (national treatment and most-favoured-nation principles) are involved.<sup>29</sup>

While Arab countries are often in need of foreign books, especially in the field of science, technology, education and research, parallel importation provisions are not part of most IP laws in the region. Few copyright regimes have adopted specific provisions for parallel importation. Parallel imports of copyright-protected materials are expressly permitted under Egyptian law without any restrictions. Article 147 states that: '[t]he right to prevent a third party from importing, using, selling or distributing his protected work, shall lapse where the copyright owner undertakes to exploit or market his work in any state or authorize a third party to do so'. In other Arab countries such as Morocco, parallel imports are expressly prohibited. Article 10(g) of the Copyright Law provides the rights holder with the exclusive right to forbid or authorize the importation of copies of his or her work from another market.<sup>30</sup>

The parallel importation provision is a viable tool for developing countries to resolve the dearth of affordable works, especially in the field of education. Allowing parallel imports could effectively increase access to educational materials or at least could be sufficient to provide governments with leverage while negotiating with right holders.

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<sup>28</sup> Chris Armstrong, et al. (eds), 'Access to Knowledge in Africa: the Role of Copyright' (UCT Press 2010).

<sup>29</sup> Carsten Fink, 'Entering the Jungle of Intellectual Property Rights Exhaustion and Parallel Importation'. In Carsten Fink and Keith E Maskus, (2005) *Intellectual Property and Development: Lessons from Recent Economic Research*. Washington, DC: The World Bank. (Oxford University Press) 171.

<sup>30</sup> Only one exception to this general rule is provided, in Article 24 of the Copyright Law No. 2 00 of 2000, as amended by Law No. 34-05 of 2006, which authorizes the importation of one copy of a work by a person for private purposes. See Said Aghrib, Noufissa El Moujaddidi and Abdelmalek El Ouazzani, *ACA2K Country Report: Morocco* (2009) ACA2K project, IDRC, Shuttleworth Foundation and Wits University LINK Centre. Available at: <http://www.aca2k.org/attachments/ACA2K%20Morocco%20CR.pdf> accessed 21 September 2011.



## 2. Translation

An important provision for developing countries is found in the Appendix of the Berne Convention (Paris Act) and deals with the right of developing countries to translate, without the owner's permission, copyright-protected works for the purpose of teaching, scholarship or research. The Berne Appendix, in Article II(1), enables lawmakers in developing countries to substitute the exclusive right of translation granted to rights holders for a compulsory licensing system.

The Berne Appendix contains, however, a number of strict requirements and limitations for such compulsory licensing. For instance, Article II(2) requires that the translation of a protected work should be published in a language in general use in the country in question by the copyright holder, or another authorized person, for a minimum period of three years after the first publication of the work. In case of translations into a language which is not in general use in a developed country, the minimum period is one year.<sup>31</sup> In addition, the translation may only be carried out in printed or analogous form. Moreover, Article IV of the Berne Appendix provides that such licences can be granted only if:

[T]he applicant ... establishes either that he has requested, and has been denied, authorization by the owner of the right to make and publish the translation or to reproduce and publish the edition, as the case may be, or that, after due diligence on his part, he was unable to find the owner of the right.

Several Arab countries, such as Yemen, Syria, the United Arab Emirates, Oman and Jordan have availed themselves of Article II of the Berne Appendix (limitations on the right of translation).<sup>32</sup> Article 11 of the Jordanian Copyright Law (No. 22 of 1992 as amended by Law No. 29 of 1999) states that:

Any Jordanian Citizen shall have the right to obtain from the Minister a compulsory licence to translate into the Arabic language any foreign work published in a printed form or any other form and to publish such translation if three years have elapsed since the first publication of the work and that the owner of the right of translation did not publish in Jordan or with his authorization any translation of the work in Arabic or if all the editions of the Arabic translation are out of print.<sup>33</sup>

The Tunisian legislature has recently reduced the minimum period to one year after the first publication of the work.<sup>34</sup>

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<sup>31</sup> Article II(3)(a) of the Berne Appendix.

<sup>32</sup> Algeria, Bahrain and Egypt have not renewed their initial declaration.

<sup>33</sup> Same provisions exist in Qatar Copyright Law No. 7 of 2002, Article 27(a). In Egypt, the translation provision is much easier and does not need previous negotiation or compulsory licence. Article 148 of the Egyptian Intellectual Property Law No. 82 of 2002 deals with translations as follows: '[t]he protection of an author's copyright and the translation rights of his work into another language shall lapse with regards to the translation of that work into the Arabic language, unless the author or the translator himself exercises this right directly or through a third party within three years of the date of first publication of the original or translated work'.

<sup>34</sup> Article 13 of the Tunisian Copyright Law No. 94-36 of 1994, as amended by Law No. 2009-33 of 2009 states that:

Although several Arab countries have translated foreign books into the Arabic languages, and renewed their declaration to do so, some of them have not adopted these provisions in their national copyright legislation – for example, the Syrian Copyright Law, 2001 and Oman Royal Decree No. 65/2008 promulgating the Law on Copyright and Related Rights. As for those who have adopted the translation exception into the Arabic language, the exception still has little or no effect on the local market in practice. Some stakeholders are largely unfamiliar with this exception, while others prefer to ignore it to preserve international relations.

### **3. Compulsory licences**

Compulsory licences entail the possibility for national authorities to authorize a person or company, without consent or against the wishes of the right holder, to exploit a subject matter protected by an intellectual property right. This can be used to correct market failures or anomalies when a copyright-protected work is not available in a country or is available but not at an affordable price. The aim of such a provision is to encourage beneficial access and use of protected works as long as that use does not unfairly undermine the legitimate interests of rights holders.

International treaties confer upon parties the possibility of obtaining compulsory licences for reproducing protected works for the purposes of education under certain conditions. This 'three-step test' entails that protected works should be: (a) used for fulfilling the requirements of education; (b) against payment of fair compensation to the author; and (c) such licence should not contradict the normal exploitation of the work and unreasonably prejudice the legitimate interests of the author or the copyright holders.

The provision for non-voluntary reproduction licences for educational purposes does not appear in some national laws, such as the Moroccan Copyright Law. The absence of such provisions favours the interests of copyright holders at the expense of society. In practice, the compulsory reproduction licence has yet to be used in any of the Arab countries.

### **III. CONCLUSION**

Intellectual property rights have always been represented as a mechanism fundamental to ensuring the needs of both creators (to receive benefit for their work) and the society (to make use of and build upon existing knowledge). This balancing exercise has become more difficult for Arab countries due to globalization and recent economic challenges.

The analysis of the legal environment for copyright protection in Arab countries demonstrates the need for legislative amendments to ensure that the laws reflect the public interest of the citizens of these countries. Economic rights should be properly defined to avoid an unnecessarily wide scope of protection. The term of copyright protection must be revised to fulfil the need of national economies. Copyright flexibilities, such as international exhaustion and translation into Arabic language provisions, should be incorporated within national copyright regimes. Strong copyright protection does not necessarily translate into increased innovation and development. Each country should, in respect of international obligations, adopt

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The Ministry in charge of culture may deliver non-exclusive licence for: (b) the translation of a protected work for purposes of publication in Tunisia, in form of graphic edition or by sound broadcasting or television broadcasting, if it were not previously translated into Arabic language or put in circulation or communicated to the public in Tunisia, one year after its first publication.

a copyright regime tailored to local realities and their particular level of progress and development.

Moreover, Arab States must also adopt appropriate copyright policies to foster creativity without neglecting the end users for access to knowledge. It is always interesting to calibrate where value is added or diminished on both sides. The failure of developing countries, such as those in the Arab world, to take advantage of available flexibilities allowed by international copyright treaties will only hinder current attempts at sustainable social and economic reform.

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## **Legislation**

Bahrain: Copyright Law No. 22 of 2006 as amended by Law No. 12 of 2008

Egypt: Intellectual Property Law No. 82 of 2002, Book three related to copyright and neighbouring rights

Jordan: Copyright Law No. 22 of 1992 as amended by Laws No. 14 of 1998, No. 29 of 1999 and No. 52 of 2001

Kuwait: Intellectual property Law No. 64 of 1999

Morocco: Copyright Law No. 2-00 of 2000 as amended and supplemented by Law No. 34-05 of 2006

Oman: Royal Decree No. 65 of 2008 promulgating the Law on Copyright and Neighbouring Rights.

Qatar: Copyright law No. 7 of 2002

Saudi Arabia: Copyright law issued by Royal Decree No. M/41 of 30 August 2003

Syria: Copyright Law No. 12 of 2001

Tunisia: Copyright law No. 94-36 of 1994 as amended by Law No. 2009-33 of 2009

United Arab Emirates: The Federal Copyright Law No. 7 of 2002

## **Relevant treaties, conventions and trade rules**

Berne Convention for the Protection of Literary and Artistic Works, as amended 1979  
[http://www.wipo.int/treaties/en/ip/berne/trtdocs\\_wo001.html](http://www.wipo.int/treaties/en/ip/berne/trtdocs_wo001.html)

WIPO Copyright Treaty (WCT) of 1996  
[http://www.wipo.int/treaties/en/ip/wct/trtdocs\\_wo033.html](http://www.wipo.int/treaties/en/ip/wct/trtdocs_wo033.html)

WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) of 1994  
[http://www.wto.org/english/tratop\\_e/trips\\_e/t\\_agm0\\_e.htm](http://www.wto.org/english/tratop_e/trips_e/t_agm0_e.htm)