THE COPYRIGHT LAW OF IRAN: AN OVERVIEW OF RECENT DEVELOPMENTS

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Abstract: This article evaluates recent developments in the copyright law of Iran. The focus of the article is the Copyright Bill drafted in 2010 and currently under consideration by the Iranian Parliament. The purpose of the Copyright Bill is mainly to reform the copyright law, provide better protection of the interests of rightholders, and enable Iran to join the Berne Convention and other international copyright agreements in the future. The article first provides a brief background to the existing laws and the history of the Copyright Bill. The text of the Copyright Bill is then analysed in relation to the current copyright law of Iran and the Bill's compatibility with international copyright standards. This article argues that the Copyright Bill is overall a positive initiative that will bring the law in Iran up to date and more in line with the normative framework of the international copyright law. Therefore, if the Bill is enacted after further evaluation and optimisation, it will not only better safeguard the interests of rightholders and users in Iran but also facilitate cooperation, mutual protection, and provision of access between Iran and other countries.

Keywords: copyright law, Iran, copyright reform, copyrights, international copyright law

1. INTRODUCTION

The first and primary legislation regulating copyright in Iran dates back nearly 47 years. It is titled the Act for Protection of Authors, Composers and Artists Rights 1970 (hereinafter the Copyright Act 1970). This legislation does not cover the interests of a number of rightholders, such as performers or producers of phonograms. As a result, the Translation and Reproduction of Books, Periodicals and Phonograms Act (hereafter the Translation Act 1973) was later passed to address this issue.

Subsequent to the adoption of the Translation Act 1973, there were no developments in the area of copyright law in Iran for nearly 30 years. To address the technological developments in the area of computer software, Parliament enacted the Act on the Protection of Rights of Computer Software 2000 (hereafter the Software Act 2000). Later on, the Electronic Commerce Act 2003 attempted to address the rights of authors, recognised in the 1970 and 1973 legislations, in the digital world.[1]

Finally, in 2010, Parliament passed the Law Amending Article 12 of the Copyright Act 1970. Previously, the term of protection for the material rights of an author was 30 years after his or her death.[2] The amended article 12 and its Note now extends the term to 50 years after the death of the author, in line with the minimum requirements of the Berne Convention for the Protection of Literary and Artistic Works 1886[3] and the Agreement on Trade-Related Aspects of Intellectual Property Rights 1994.[4]

The Copyright Act 1970 is far too brief, outdated, and insufficient for the protection of authors' rights, particularly in light of ever-growing technological developments. The legislator's attempts at addressing the gaps in the copyright law have been in the form of the adoption of multiple acts and regulations that remain *ad hoc* and ineffective as a whole. Therefore, the legal framework that protects the interests of rightholders is rather fragmented and piecemeal.

On an international level, Iran has not joined any of the main international copyright agreements. Iran joined the World Intellectual Property Organization (WIPO) in 2001 but is yet to sign any of the WIPO-administered treaties that form the basis of the international copyright regime. Moreover, Iran is a not a member of the World Trade Organization (WTO)[5] and, therefore, has not joined the TRIPS Agreement. In 2014, Iran signed the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled 2013.[6] However, ratification of the Marrakesh Treaty does not directly require the membership to any other copyright treaties.

Many officials, authors, artists, and publishers, among others, have expressed concerns over the inefficiency of the existing copyright laws and have called for better protection of copyrights in Iran.[7] Furthermore, absence

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[1] Electronic Commerce Act 2003, c 3, p 2, s 1 is titled 'Protection of Authors' Right in electronic transactions'.

[2] Act for Protection of Authors, Composers and Artists Rights 1970, art 12 (hereinafter Copyright Act 1970).

[3] Berne Convention for the Protection of Literary and Artistic Works (Berne, Switzerland, 9 September 1886), 1161 UNTS 31 [hereafter Berne Convention].

[4] Agreement on Trade-Related Aspects of Intellectual Property Rights (Marrakesh, Morocco, 15 April 1994), Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 UNTS 299, 33 ILM 1197 (1994) [hereafter TRIPS Agreement].

[5] Iran currently holds an observer position.

[6] The Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired, or Otherwise Print Disabled (Marrakesh, Morocco, 27 June 2013), WIPO Doc VIP/DC/8 [hereinafter Marrakesh Treaty].

[7] 'Presentation of the Draft Bill on Comprehensive Law of Literary and Artistic Intellectual Property Rights to the Government' *Young Journalists Club* (21 April 2014)

of membership to international copyright instruments means that the rights of foreign authors and copyright owners are not protected in Iran. Similarly, Iranian rightholders do not have an actionable claim for infringement of their rights abroad.[8] Publishers have expressed opposing views regarding Iran's membership to international copyright instruments, with some expressing the industry's support for signing the Berne Convention and others calling for priority to be given to the rights of local publishers over foreign publishers.[9]

The main rationales for reforming the current law are an overdue review of the existing legislation, incompatibility of the law with fast growing technological developments, ambiguities regarding the relationship between different Acts, and the inefficiency of the current guarantees and penalties in cases of infringement. In order to address these concerns and with a view to potentially join the Berne Convention and the TRIPS Agreement, the Bill for 'Protection of Intellectual Property' (hereafter the Copyright Bill or the Bill) was presented to the Government in 2010. After receiving the approval of the Government, an updated version of the Bill was presented to and remains before the Parliament for consideration.[10]

This article evaluates the Copyright Bill and compares it, when relevant, to the existing copyright law in Iran. In doing so, the article discusses whether the Bill addresses the shortcomings of the current applicable law. Moreover, reference is made to international copyright law to demonstrate whether the Bill is in line with the internationally agreed upon minimum mandatory standards of copyright protection and will enable Iran to join agreements such as the Berne Convention or TRIPS Agreement.

Following this introduction, the second part of the article provides a brief background to the drafting of the Bill. Part three then provides a more substantial overview of the text of the Bill with a focus on main areas of difference between the Bill and the existing law. Finally, some concluding remarks are made regarding the implication of the Bill, if adopted, for protection of copyrights in Iran and further membership to international copyright agreements.

2. HISTORY OF THE COPYRIGHT BILL

Initially in the mid-2000s, the Ministry of Culture and Islamic Guidance produced a draft bill titled 'The Comprehensive Law for Protection of Literary and Artistic Intellectual Property Rights', consisting of 86 articles. However, this draft bill never reached the Government for consideration. Subsequently, in 2010, the Secretariat of the High Council of Information introduced the draft bill for the 'Comprehensive Law for Protection of Literary, Artistic, and Neighbouring Intellectual Property Rights.' An expert working group commissioned by the Secretariat produced the draft bill. The draft bill highlighted the need to fill the gap in existing legislation on the protection of copyright works. The 2010 draft bill focused on a number of themes including:[11]

1. Expanding the definition of protected subject matter;
2. Clarifying the ambiguities in the existing law;
3. Expanding the scope of the moral and material interests of authors;
4. Particular attention to publishing contracts;
5. Protecting the rights of producers of audio-visual works;
6. Protecting the rights of performers, producers of phonograms, and broadcasters;
7. Civil, criminal, administrative, and customs related guarantees;
8. Compliance with international instruments such as the TRIPS Agreement, to which Iran intends to become a member;
9. Increasing the term of protection of authors' rights;
10. Particular attention to new technologies such as protection of databases and computer-created works;

<www.yjc.ir/fa/news/4818410> accessed 23 April 2017; 'Roundtable on Evaluation of copyright regulations related to software in Iran's laws' (System Group, 20 February 2014) <www.systemgroup.net/intellectual-property/articles/2601> accessed 23 April 2017; Vahid Daman Afshan, 'Copyright infringement in universities' *Scinews* (22 December 2013) <www.scinews.ir/?p=853> accessed 23 April 2017; 'The Draft Bill for the Comprehensive Law on Copyright drafted' *Hamshahri Online* (23 August 2010) <www.hamshahrionline.ir/details/115741> accessed on 23 April 2017; Shahimeh Sadat Hosseini and Dariush Matlabi, 'A Review on the Status of Copyright in Iran's Publishing Industry: Studying Tehran Publishers' Views' (2013) 16(3) Middle-East Journal of Scientific Research 383 (refers to a survey where, out of 100 publishers interviewed, 81 percent expressed the view that Iran's copyright laws are in need of reform).

[8] 'Meeting held to discuss the plan for Iran to join the Berne Convention for international protection of literary and artistic works' (Ministry of Culture and Islamic Guidance, 23 August 2015) <www.mho.farhang.gove.ir/fa/news/183534/> accessed 23 April 2017.

[9] 'Iranian publishers willing to join Universal Copyright Convention of Berne' *Tehran Times* (23 October 2016) <www.tehrantimes.com/news/407591/> accessed 23 April 2017.

[10] 'Deputy Minister of Culture: the Copyright Bill is under review at the Parliament' *IRNA* (20 January 2017) <www.irna.ir/khuzestan/fa/News/82413961/> accessed 23 April 2017.

[11] Hassan Shobeiri (ed), *Draft Bill for the Comprehensive Law for Protection of Literary, Artistic, and Neighbouring Intellectual Property Rights* (Secretariat of the High Council of Information 2010) 12-13.

11. Localising the law according to Iran's religious and legal principles;

12. Maximum utilisation of permitted reservations for developing countries in international agreements, including expanding the limitations and exceptions for purposes of education and research.

However, the draft bill was met with some opposition and objections, and was finally put aside. Approximately a year later, a similar but new bill was drafted under the auspices of the Ministry of Culture and Islamic Guidance, the Intellectual Property Policy Council (an organ of the Ministry of Justice), and the Legal Office of the Islamic Republic of Iran Broadcasting (IRIB). After evaluation in various commissions, the latest Copyright Bill was presented to the Government[12] and later approved in September 2014.[13] As mentioned, the Copyright Bill currently remains in front of Parliament.[14] If passed by the Parliament and subsequently the Guardian Council, it will replace the Copyright Act 1970, the Translation Act 1973, the Software Act 2000, and the relevant sections of the Electronic Commerce Act 2003.[15]

3. AN OVERVIEW OF THE COPYRIGHT BILL

In 2014, President Rouhani presented Parliament with the Copyright Bill as approved by the Cabinet. The Introduction of the Bill highlights four themes that necessitate the reform of the 1970 Copyright Law. Those themes are: the importance of intellectual property rights in international and national regimes; the necessity of protection of authors' rights for knowledge production; the insufficiency and inefficiency of the existing intellectual property laws in Iran; and, the need for reviewing the existing fragmented intellectual property laws.[16]

The Bill consists of six parts. The following sections provide an overview and critique of the different parts of the Bill. Articles or concepts that are left unchanged or are insignificant to the protection of copyright are not discussed.

A. Definitions

Part 1 of the Bill shows an attempt to reconcile the numerous pieces of legislation that relate to different aspects of copyright works. Unlike the 1970 Copyright Act, the Bill defines the rights of performers,[17] producers of phonograms[18] or audio-visual works,[19] and radio or TV broadcasters.[20] The Bill also provides a definition of computer software that is more comprehensive and precise[21] compared to the definition previously provided in the Regulation for the implementation of the Software Act.[22]

Another new feature of the Bill is the definition of cultural expressions. The Bill does not directly address the protection of folklore or traditional cultural expressions and is similar to the Copyright Act 1970 in that regard. Article 3(2) of the Bill states that protection of derivative works or databases that are created using cultural expressions does not affect the protection of those expressions themselves. The Bill, however, does not clarify how those expressions shall be protected. The Copyright Act 1970 also protects creative works created based on folklore or cultural heritage and national art.[23] Therefore, the main difference between the Bill and the existing law lies in its provision of a definition for cultural expressions. The provided definition is rather broad and covers subject matters as diverse as legends, stories, poems, puzzles, proverbs, intangible cultural heritage, songs, melodies, traditional and religious dances, plays, handicrafts, jewellery, and traditional clothing and textiles.[24] This proposed definition provides further certainty on what constitutes cultural expressions with regards to creation of copyright protected derivative works. However, it is unclear whether the protection referred to in Article 3(2) for the expressions themselves is copyright protection or otherwise.

The interface of copyright law and protection of traditional cultural expressions is a complex and contentious issue and its analysis is beyond the scope of this paper. However, it is clear that protecting derivative works created using cultural expression without any reservations might prove contrary to effective protection of those expressions and the communities from which the expression originates. Therefore, a clearer statement of the protection afforded to cultural expressions and its connection to copyright law can inform any existing or future debate and policy decisions regarding misappropriation of such expressions. One way of approaching the issue might be for the legislator to make use of the solution provided in Article 15(4) of the Berne Convention regarding designation of a competent authority for protection of unpublished

[12] 'The Draft Bill for protection of literary and artistic intellectual property rights approved by Government commissions' *Mehr News* (23 July 2014) <www.mehrnews.com/news/2352043/> accessed 23 April 2017.
[13] 'The Government passes the Bill for protection of literary and artistic intellectual property rights' *ISNA* (25 September 2014) <www.isna.ir/news/93070301741/> accessed 23 April 2017.
[14] Protection of Intellectual Property Bill (24 September 2014) [hereinafter Copyright Bill].
[15] Articles 62, 63, and 74 of the Electronic Commerce Act 2003 that discuss the use and infringement of the rights in literary and artistic works in the digital world.
[16] Copyright Bill (n 14), Introduction.
[17] Art 1(16).
[18] Art 1(17).
[19] Art 1(18).
[20] Art 1(20).
[21] Art 1(21).
[22] Regulation No. 24167 for the Implementation of Articles 2 and 17 of the Act on the Protection of Rights of Computer Software 2010, article 2.
[23] Copyright Act 1970 (n 2), art 2(10).
[24] Copyright Bill (n 14), art 1(38).

works which covers many instances of cultural expressions.[25]

B. Copyright subject matter

The list of works recognised as copyright subject matter in the Bill are largely similar to those of the Copyright Act 1970 with a few exceptions, such as 'oral works such as speech, address, sermon'[26] and 'software'.[27]

Similar to the language of Article 27(2) of the TRIPS Agreement with regards to patents, the Bill introduces the concept of exclusion from copyright protection as required by morality.[28] Article 4 of the Bill recognises that original works regardless of their quality are subject to protection unless contrary to sharia. Similarly, Article 5(8) excludes from copyright protection those parts of literary and artistic works that are contrary to modesty and public morality.

Article 5 further excludes from copyright protection subject matters such as political speeches, legislative texts, decisions of courts, and news in line with Article 2 and 2[bis] of the Berne Convention.[29] Article 5(2) repeats the wording of Article 9(2) of the TRIPS Agreement regarding exclusion from copyright protection of 'ideas', 'methods of operation', and 'mathematical concepts' while seemingly venturing into the realm of patent law by also excluding 'discoveries'.[30]

C. Exclusive rights

With the exception of a number of additions, the material interests of the creators of copyright-protected works set out by the Bill are similar to those already recognised by the 1970, 1973, and 2003 legislations. The Bill, however, categorises and defines the rights more clearly[31] and, in doing so, combines and integrates the provisions of those Acts. Article 7 of the Bill recognises for the rightholder the exclusive right to do or to authorise others to do any of these acts: reproduction, publication, distribution, presenting, renting to the public the original or a copy of the work, public display, public performance, radio or TV broadcasting, production of any derivative works including translations, making available and other examples of communicating the work to the public.

The performers' rights recognised in Part 3 of the Bill are mostly in line with the requirements of the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations 1961 (Rome Convention), the TRIPS Agreement, and the WIPO Performances and Phonograms Treaty 1996 (WPPT) regarding fixation, broadcasting, reproduction, distribution, and renting of performances.[32] The same is true concerning rights of producers of phonograms[33] and TV and radio broadcasting organisations.[34] The most noticeable exception is regarding the term of protection recognised for the rights of producers of phonograms and broadcasters. Article 65 of the Bill provides that the term of protection for phonograms is ten years from either the date of publication or fixation. The required minimum term of protection to be granted to producers of phonograms under the WPPT is 50 years from publication or fixation (in the absence of publication) of the phonogram.[35] The same ten-year term of protection is granted to TV and radio programmes computed from the year in which they were first broadcasted[36] while the Rome Convention requires a minimum of 20 years from the end of the year in which the broadcast took place.[37]

The Bill also explicitly mentions two exclusive rights that are absent or not clearly recognised in the existing law. First, rightholders, regardless of the subject matter, have the exclusive right to rent out the original work or copies of it to the public.[38] Second, performers[39] and broadcasters[40] enjoy the exclusive right to transmit their works (live or fixed performances or other programmes) to the public. Considering the definition of the 'public transmission' under the Bill,[41] this exclusive right seems to encompass both the right of communication to the public and the right of making available to the public recognised in international copyright instruments.

Another point of difference regarding the authors' right is the Bill's comprehensive definition of moral rights. The only reference to moral rights in the Copyright Act 1970 was the statement that 'author's moral rights have no place or time limits and are not transferable'.[42] The Bill, by contrast, grants the author the exclusive right to public disclosure of the work, the right to proper attribution, and the right to integrity.[43]

According to the Bill, the first owner of copyrights in a work is the creator[44] and he or she can transfer his or her material rights to others.[45] Articles 42 to 55 of the Bill lay out the law regarding agreements for transfer of rights which is an addition to the existing copyright law.

[25] Berne Convention, art 15(4).
[26] Art 2(2).
[27] Art 2(13).
[28] TRIPS (n 4), art 27(2).
[29] Berne Convention (n 3), arts 2 and 2[bis].
[30] Copyright Bill (n 14), art 5(2).
[31] Art 7.
[32] Arts 56-61.
[33] Arts 62-65.
[34] Arts 66 and 67.
[35] WPPT, art 17(2).
[36] Copyright Bill, art 67.
[37] Rome Convention, art 14(c).
[38] Art 7(5).
[39] Art 58(1).
[40] Art 66(4).
[41] Art 1(29).
[42] Copyright Act 1970 (n2), art 4.
[43] Copyright Bill (n 14), art 8.
[44] Art 33 with the exceptions of works produced under commission or an employment agreement as per art 36.
[45] Art 42.

The Bill follows the 2010 Law Amending Article (12) of the Copyright Act 1970 regarding the term of protection for material interests of the rightholder, which is 50 years after the death of the author[46] or after the creation or lawful publication of audio-visual[47] or orphan works.[48] Photographs and works of applied arts attract a shorter term of protection of 25 years from their creation.[49]

While the Bill consolidates the currently fragmented law on the exclusive rights of copyright owners, the provisions on neighbouring rights can be further expanded to provide a more comprehensive regulatory framework in this area. The rights recognised in the Bill are principally in line with the international copyright instruments on neighbouring rights. However, a more substantive stipulation of those rights will facilitate Iran's accession to those instruments and obviate the need for future law reforms.

D. Limitations and exceptions

The existing law on copyright allows quotations from published works for 'literary, scientific, technical, or educational' purposes and for 'criticism or praise'.[50] Moreover, not-for-profit public libraries, publication archives, and scientific and educational institutions can copy published works for the purposes of their activities in the numbers necessary.[51] Finally, Article 11 of the Copyright Act 1970 deems copying for private and non-commercial purposes permissible.

Part 2 of the proposed Bill expands the scope of limitations and exceptions to creators' rights and provides further instructions for the application of the existing flexibilities. Six main categories of use are permissible under the Bill provided that they are for non-commercial purposes and do not conflict with the normal exploitation of the work and do not harm the legal interests of the author unreasonably.[52] The permissible categories are private use, use for educational purposes, reproduction by libraries and archives, reproduction or broadcasting on the radio, TV, and other means of public transmission for informative purposes, use by persons with disabilities, and transient reproduction as an integral part of a digital process. Furthermore, quotations are also possible under the Bill subject to conditions similar to the ones mentioned in the Copyright Act 1970.[53] These permissible uses do not require the permission or remuneration of the rightholder.

However, when setting out the permissible uses of copyright works, the Bill uses the word "reproduction" which is defined as "making single or multiple copies of a work or parts of it by means such as permanent or temporary electronic storing, printing, photography, photocopying and videoing."[54] Therefore, the type and extent of permissible acts for the stipulated purposes under the Bill is unclear. Distributing reproduced copies of works in accessible formats to the visually impaired logically follows the permissible reproduction. Therefore, the language of the Bill might not seem problematic at first glance. However, the brevity of provisions on copyright flexibilities can create uncertainty and difficulties when it comes to communication to the public, making the reproduced copy available online or exporting it.

Article 17 of the Bill allows "limited" reproduction of a published work for private and not-for-profit purposes. This provision could be amended to clarify the meaning of "limited" in order to ensure compliance with the Berne Convention and to provide clarity for the users. Further instruction can be provided by referring to the permissible number of copies or the percentage of work that can be reproduced.

The permissible uses by educational institutions previously set out by the Copyright Act are expanded in the Bill. Article 18 stipulates that educational institutions can, without the author's permission, reproduce a work for non-commercial educational purposes in reasonable and necessary amounts provided that:

1. The act of reproduction is done once and if repeated, it is on separate and non-related occasions.
2. The source of the work and the name of the author are mentioned on all the copies.

At first glance, this permissible use appears strict and in line with the requirements of the Berne and TRIPS three-step tests regarding flexibilities.[55] However, it is unclear what "reasonable" means concerning permissible reproduction and whether it should be evaluated in relation to the interests of the rightholder or the practice of other educational institutions or other factors altogether. Reading the word "reasonable" together with "necessary" can provide some assistance with the interpretation and application of this provision. However, it would be preferable for the legislator to further specify the scope of this permissible use. Furthermore, the second part of Article 5(1) could prove problematic in practice, as it is not clear what the phrase 'separate and non-related occasions' means regarding multiple reproductions of a published work for educational purposes. The phrase begs the question of whether the requirements relate to timeframes, research and teaching purposes, independence of

[46] Art 27.
[47] Art 28.
[48] Art 30.
[49] Art 27 Note.
[50] Copyright Act 1970 (n 2), art 7.
[51] Art 8.
[52] Copyright Bill (n 14), art 16.
[53] Art 25.
[54] Art 1(26).
[55] Berne Convention (n 3), art 9(2) and TRIPS (n 4), art 13.

educational institutions from one another, other factors or a combination thereof. The same requirement regarding repeated reproductions is included in Article 19 that prescribes the permissible uses for public libraries and archives.

While Article 19 of the Bill allows the reproduction of a published work, it is silent on the issue of making digital copies as well as communicating a copy of the work or parts of it to a user or other public libraries or archives that are also allowed to reproduce copyright works. This provision also does not address the public showing or playing of films or sound recordings.

As mentioned earlier, Iran has signed the Marrakesh Treaty. The exception that allows the use of copyright works for the benefit of persons with disabilities under the Bill appears broad in scope. Article 23 stipulates that exploitation of a published work for the benefit of persons with physical or intellectual disabilities is only permissible when:

1. Using the work in the format originally published is impossible or difficult for persons with disabilities;
2. The work is converted on an incidental basis in a format easily accessible;
3. The conversion is for non-commercial purposes; and
4. The source and name of the creator are properly mentioned.

The broad scope of the exception is beneficial to persons with disabilities in many ways. For instance, it covers any type of disability that renders use of normal print difficult or impossible. The types of accessible formats are not limited and include any format that is 'easily accessible' for the disabled persons. Moreover, unlike some other jurisdictions, remuneration or an initial search for a commercially available accessible copy is not required.

However, the Bill does not specify who is authorised to benefit from this exception. In other words, the Bill does not define the authorised entities (real or legal persons) who are allowed to make use of the exception. This begs the question of whether or not this provision is sufficiently in line with the requirements of the Marrakesh Treaty regarding authorised entities.[56] Providing the definition of an authorised entity in the Bill itself, prescribing a future regulation or decree that would do so, or reference to other legislation could address this issue.

The other potentially problematic aspect of the exception is the lack of clarity regarding the permissible acts. The title of the exception is 'reproduction for the use of persons with disabilities' while the Article itself uses the word 'exploitation' of a published work. Therefore, the nature of the permissible act(s) meaning reproduction, publication, distribution, communication, or making available remains unclear. The Article also does not discuss the scope of the permissible "exploitation" (single versus multiple exploitations or sharing versus exclusive use).

Article 16 of the Copyright Bill uses the language of the Berne and TRIPS three-step test and limits the permissible uses to those which do not conflict with a normal exploitation of the work and the legitimate interests of the rightholder. While Article 23 of the Bill is generally in line with the Marrakesh Treaty, clarifying the highlighted ambiguities will ensure that the exception fully complies with Article 16 and the three-step tests reiterated in the Marrakesh Treaty.

If the Bill is enacted as law, it can enable the authorised entities in Iran to receive accessible works from other countries. The Marrakesh Treaty allows the authorised entities in a Contracting Party that is not party to the Berne Convention to receive accessible works provided that the legislation of the Party ensures that reproduction, distribution, and making available of the accessible works are limited to the beneficiary persons in that country.[57]

Moreover, if passed, the Bill would enable the authorised entities to distribute and make the accessible works available not only domestically but also to other entities abroad. Under Article 5(3)(b) of the Marrakesh Treaty, an authorised entity in a Contracting Party can only distribute accessible works and make them available to other jurisdictions if the state is a party to the WIPO Copyright Treaty 1996 or if it has legislation in place that follows the requirements of the Berne and TRIPS three-step tests.[58] Iran is yet to join the WIPO Copyright Treaty. However, a clarified Article 23 will mean that the Bill meets the requirements of the 3-step tests enabling Iran to make its accessible works available to its neighbouring countries or speakers of the local languages abroad.

Currently, foreign works are not protected in Iran. However, upon joining the Berne Convention and other international agreements, translation of foreign texts will infringe the exclusive adaptation right of a copyright owner. In addition to the 'free' permissible uses of copyright works, translation of published works in certain situations is permitted subject to remunerating the author of the original work. Translation without the permission of the author is possible under Article 26 provided that: [59]

1. After six months of a written request for translation, the rightholder has refused to grant

[56] Marrakesh Treaty (n 6), arts 2(c), 4(2), and 5.

[57] Art 5(4)(a).
[58] Art 5(4)(b).
[59] Copyright Bill (n 14), art 26.

permission or that his or her location is unknown or that the work is orphan;

2. The translation is for educational and research related purposes;

3. The rightholder has not exploited his or her rights to translate the work within three years of publication or that translated copies are scarce;

4. The third party is required to remunerate the rightholder or make a payment to a collective management society[60] or the Ministry of Justice;

5. The name of the author and the original title of the work is properly mentioned on all translated copies.

6. The third party is capable of producing an acceptable translation of the work.

Article 26 of the Bill requires the evaluation of the above conditions by a working group consisting of representatives from the Ministry of Culture, Ministry of Science, Research and Technology and other government bodies.

This exception is a new addition to the set of available flexibilities in Iran's copyright law, as the Translations Act 1973 does not include any exceptions specifically concerning the right to translate a work. While a useful addition, some of the stipulated conditions including the six months waiting period and remuneration of the rightholder might not be conducive to ensuring access for students and researchers. It is also unclear whether sections 1 and 3 of article 26 are to be read together or separately as this would affect the time after which a work can be translated without the permission of the rightholder.

Overall, the limitations and exceptions in the Bill can benefit from further clarification of their scope and coverage. To better protect the public interest and facilitate access particularly for groups such as students or the visually impaired, the type of permissible acts could be expanded or more clearly stated. For instance, the Bill can allow the performance, showing, communication, or adaptation of a work for educational purposes or for private use. Additionally, there is room for expanding the discretion of public libraries and archives regarding the works they hold. Finally, the exception for the benefit of persons with disabilities is too brief and needs to be more clearly set out, especially in the light of Iran's membership to the Marrakesh Treaty. The Bill does not discuss the exclusive right of copyright owners to import a copy of their work or a recording of their performance to Iran. Articles 80 and 81 of the Bill however discuss the Customs' ability to seize infringing copies from being imported into the country. What remains unclear is whether the permissible uses set out in Part 2 of the Bill allow copies of a work to be imported without the permission of the rightholder including a performer. The Bill is also quiet on incidental copying of works particularly of performances, films, or other recordings.

E. Protection of software

The rights of software producers are currently regulated under a *sui generis* system. The Act on the Protection of Rights of Computer Software 2000 and its Regulation No. 24167 currently provide that the creator of computer software has the right to publish, supply, perform, and exploit the software for 30 years after its production. Under the Act, protection for moral rights of creators of software is unlimited.[61] The Act also recognises the possibility of patenting software upon meeting the 'conditions stipulated in the Patents, Industrial Designs and Trademarks Registration Act'.[62]

Part 4 of the Copyright Bill further addresses the fragmentation of copyright laws in Iran and brings the law closer to conforming with the international copyright regime, namely Article 10 of the TRIPS Agreement, by including provisions regarding computer software in the proposed legislation. The key differences between the Bill and the Software Act 2000 are:

1. The addition of incidental copying, copying for troubleshooting, or reverse engineering as permissible uses of software. The 2000 Act only allows reproduction for purposes of creating backup copies or copies for private use provided that they are not used simultaneously as the original copy.[63]

2. Recognition of exceptions to moral interests of the rightholder. This includes improvements or changes by the user or the owner of material rights (when different from the author) when not contrary to the author's right to integrity and normal exploitation of the work.[64]

3. Expansion of the definition of infringements of copyrights in software and the scope of guarantees and remedies available. Regarding infringements, the Bill recognises criminal liability for legal persons and for those involved in organised infringements of rights.[65] Both of these concepts are currently absent in the Software Act 2000 and the software industry has previously expressed dissatisfaction in

[60] The Bill requires the Ministry of Culture and Islamic Guidance and the Ministry of Justice to issue a decree that will lay out the formation of collective management societies and their functions. Copyright Bill (n 14), art 115.

[61] Act on the Protection of Rights of Computer Software 2000, art 1 [hereinafter Software Act 2000]. Regulation No. 24167 for the Implementation of Articles 2 and 17 of the Act on the Protection of Rights of Computer Software.

[62] Software Act 2000, art 2.

[63] Copyright Bill (n 14), arts 70-74.

[64] Arts 75 and 76.

[65] Arts 89-95.

this regard.[66] The Bill also includes measures such as granting an injunction or an order for the disposal of infringing copies as well as the seizure of infringing copies by custom authorities even in the absence of a plaintiff.[67] Currently under the Software Act 2000, an infringement is only actionable by the rightowner.[68]

F. Guarantees and remedies

Part 5 of the Bill expands on the guarantees and remedies available in the Copyright Act 1970, the Translations Act 1973, and the Software Act 2000. The key additions to the law are the introduction of customs enforced measures,[69] increased fines, longer imprisonment terms,[70] and a clear and categorised distinction between primary and secondary infringements.[71] Therefore, the Bill delivers on stronger enforcements mechanisms for better protection of the interests of rightholders which is regarded as one of the main rationales for copyright law reform in Iran.

G. Territoriality and its implications

Article 108 of the Bill limits the application of its provisions to:

1. Works created by authors or performers who are Iranian citizens;
2. Works published or performed for the first time in Iran that have not been previously published elsewhere;
3. Architectural works built in Iran and artistic works attached to buildings in Iran.[72]

Iran is not a signatory to the Berne Convention and the Bill's scope of application means that the rights of foreign authors are not protected in Iran. This is particularly problematic with regards to reproduction and translation of works of foreign rightholders published outside of Iran. Currently, publishers are under no obligation to obtain the permission of foreign authors for translation and subsequent publication and distribution of their works. This not only affects the material interests of the author but also potentially his or her right to the integrity of the work. Unauthorised translations of works mean that the author has no control over the quality, accuracy, or literary nuances of the translation.[73] Under the Bill, translation of a work is subject to a number of criteria including obtaining the permission of the copyright owner. However, since Article 108 only grants an exclusive right to adaptation to Iranian authors or recognises the right for works first published in Iran, the interests of foreign authors or those with works first published outside of Iran remain unprotected.

Despite this territorial limitation, the definitions, rights, and flexibilities set out in the Copyright Bill are mostly in line with the requirements of the Berne Convention, TRIPS Agreement, Rome Convention, and the WIPO Internet Treaties. Therefore, enacting the Copyright Bill as law will pave the way for membership of Iran to these and potentially other international copyright treaties. The Legal Office of the Ministry of Culture and Islamic Guidance has reportedly prepared further bills to facilitate Iran's membership to the Berne Convention and other international intellectual property agreements.[74] Other officials have also expressed willingness for Iran to join the Berne Convention.[75] However, the future of those bills will depend on the decision of the Parliament regarding the Copyright Bill.

4. CONCLUSION

The copyright law of Iran is outdated, fragmented and does not provide clear and effective enforcement mechanisms to protect the interests of rightholders. This article provided an overview of the Copyright Bill and argued that the Bill is a good basis for reform and reconciliation of the existing laws. The Bill's clearer and more comprehensive definitions, scope of recognised rights, and remedies for infringement can guarantee a stronger protection of moral and material interests of the author and copyright owners. Furthermore, expanding the permissible uses of copyright works secures the interests of the users, especially those with disabilities as required by the Marrakesh Treaty to which Iran is a Party. Therefore, the Bill provides a better balance between the interests of rightholders and those of the public.

The Copyright Bill, however, requires further analysis and evaluation to ensure its effectiveness if enacted as law. Areas such as neighbouring rights and the prescribed limitations and exceptions appear to be brief and could benefit from further clarification particularly with regards to permissible acts. This is especially important in light of Iran's plans to join the Berne

[66] 'Roundtable on Evaluation of copyright regulations related to software in Iran's laws' (n 7), 6.
[67] Copyright Bill (n 14), arts 80 and 81.
[68] Software Act 2000 (n 56), art 15.
[69] Copyright Bill (n 14), arts 81-88.
[70] Arts 89-92 and 97.
[71] Arts91 and 92.
[72] Art 108.
[73] *See for example* Poupeh Missaghi, '34 Animal Farms: Literary Translation and Copyright in Iran' *Asymptote* (13 July 2015) <www.asymptotejournal.com/blog/2015/07/13/6419/> accessed 23 April 2017, and Zahra Alipour, 'Is it time to tame Iran's lawless publishing sector?' *Al-Monitor* (24 May 2016) <www.al-monitor.com/pulse/en/originals/2016/05/iran-copyright-infringement-berne-convention.html> accessed 23 April 2017.
[74] 'The Draft Bill for protection of literary and artistic intellectual property rights approved by Government' (n 12).
[75] 'Iran ready to use capacities of Berne Convention, Minister says' *IRNA* (5 May 2015) <www.irna.ir/en/News/81596027/> accessed 23 April 2017.

Convention and other international copyright instruments.

Joining international copyright agreements could potentially temporarily cause a more limited access to copyright works and an increase in the price of cultural goods as well as software. However, globalisation, the prospect of better access to global markets, and stronger protection for rights of Iranian creators abroad will continue to lead Iran towards doing so. The Copyright Bill is a right step towards that goal and shows overall progress and political will for better protection of copyrights in Iran. The benefit of further work on the Copyright Bill that ensures its compatibility with international standards is twofold. Once adopted, it will pave the way for Iran's membership to the Berne Convention and other copyright agreements. Moreover, it will mean fewer amendments to the law are required once such agreements are adopted in the new or far future.

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