

Translation, Copyright, and Copyright Laws in Jordan

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Translators have the right to protect their work. They hold the copyright to the work they produce. Translation is a result of intellectual creation. It is a work of mind and creative content, just like the original work. The main objective of this paper is to give an overview of the copyright laws, and particularly the translation copyright and the rights of the translator. The paper begins by providing the reader with an overview of the meaning of the copyright law, and why it is needed to protect people. Then, the paper discusses the author and the translator copyright. Finally, we also attempt to highlight the copyright laws and the intellectual property in the Hashemite Kingdom of Jordan.

Keywords: copyright, translation, laws, Jordan

Introduction

According to Fishman (2008, p. 6), copyright is a legal device that provides the creator of a work of art or literature, or a work that conveys information or ideas, the right to control how the work is used. It should be noted that the concept of copyright was unknown in the manuscript era, and was slow to develop even when printing with movable type had revolutionized the rate at which copies of a book could be produced (Armstrong, 1990, p. 1).

Copyright deals with the ownership and use of works of literature, music, and art. Its main objective is to enrich our society's wealth of culture and information by instituting a mechanism to protect the mental creation which is called "intellectual property". Indeed, copyright is one of the three types of intellectual property law, along with patents and trademarks. It is a mechanism to keep in check the illegitimate use of authors' expression. Copyright protects only expression, not the idea or fact that is being expressed.

Thus, copyright involves a set of laws made to promote both the creation and access to artistic, literary, musical, dramatic, and other creative works. It aims at a balance between promoting the public interest in the encouragement of the creation and dissemination of works of the arts and intellect, and having a just reward for the copyright holder.

Indeed, copyright is a form of intellectual property that grants its holder the legal right to restrict the copying and the use of the original, creative work, for a defined period of time.

Therefore, the main goal of copyright is to provide an economic incentive to create new works for the benefit of the public. Moreover, copyright, as said, gives the author the ability to restrict access to the work in

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order to charge users and recover his or her initial investment in creating the work. The rationale is that, if competitors or consumers were able to copy and/or use the work without remunerating the author, the author might decide not to create the work in the first place. Still the problem for lawmakers is to determine the appropriate amount of copyright protection. If the law grants more protection than is deemed to be necessary, the public will not have full access to the works that are created, thus reducing the public benefits of those works. If the law grants too little protection, however, fewer works will be created. The proverbial happy medium, in short, must be struck.

Another justification for attention to copyright is what is felt to be the need to protect the moral rights of the author. This concept, which is referred to as “droit moral” due to its basis in French copyright law, stems from the viewpoint that expression is the output of an author’s distinct, individual personality and that authors deserve to be rewarded for their creative output. Moral rights include the right of attribution, i.e., the right to have a work published anonymously or “pseudonymously”, and the right to the “integrity” of the work, a notion which bars the intentional distortion, mutilation, or other modification of a work if that distortion is likely to harm the author’s reputation. Going beyond the right to have his or her name associated with any work that an author-as-individual has created, the right of integrity gives the author control over how work is altered to ensure that it is not used in a way that would distort the author's intention in creating the work and thus injure his or her name.

A copyright holder has the following exclusive rights: (1) to make and sell copies of the work (including electronic copies); (2) to import or export the work; (3) to make derivative work; (4) to publicly perform the work; and (5) to sell or assign these rights to others.

The first copyright law was the *English Statute of Anne*, enacted in 1709. The statute’s full title was “An Act for the Encouragement of Learning, by Vesting the Copies of Printed Books in the Authors or Purchasers of Such Copies, During the Times Therein mentioned”. It granted exclusive rights to authors, rather than to publishers, but it also included protections for consumers of printed works, ensuring that publishers could not control their use after sale. The duration of such protection was limited to 28 years, 14 years plus an optional renewal, after which the work would pass into the public domain.

The problems of international piracy and the lack of protection for foreign authors led to a copyright treaty which was stipulated in 1886: *The Berne Convention for the Protection of Literary and Artistic Works*, which is administered by the WIPO (World Intellectual Property Organization). As the article “History of Copyright Law” (n.d.) tells us that under Berne Convention, copyright is granted automatically to all creative works. That is to say, an author does not have to actively register or apply for copyright to be applied to the work. As soon as the work is fixed, its author is automatically granted exclusive rights to its distribution of the work and any other derivative works until the copyright expires, or the author explicitly disclaims them.

As the article at Wikipedia also informs that according to the Berne Convention all works except photographic and cinematographic ones shall remain copyrighted for at least five years after the death of the author. The interested parties are; however, free to stipulate even longer terms. Even though the copyright law of the country where copyright is claimed shall normally be applied, article 7.8 of the Berne Convention (1979) stated that: “Unless the legislation of that country otherwise provides, the term shall not exceed the term fixed in the country of origin of the work”.

Copyright in Jordan

Historical Overview

Jordan is one of the Arab countries located in the heart of the Middle East. The Jordanian Government system is a hereditary monarchy, and its legal system is based on *French Civil Law* as well as *Islamic Shari'a law*. Jordan was once part of the Ottoman Empire. The legal system during that time from 1516 until 1918 was based on *Islamic Shari'a Law* and the intellectual property laws were based solely on traditional Ottoman law.

In 1992, the Jordanian Parliament passed its first *National Copyright Law* (namely, *Copyright Protection Law No. (22) of 1992*). Article 61 of the current law testifies that intellectual property was protected in Jordan prior to 1992 under the Ottoman copyright law.

Article (61):

The Ottoman copyrights law and any other law or legislation whose provisions conflict with the provisions of this law shall be cancelled. (*National Copyright Law*, 1992, p. 32)

On July 28, 1999, the Berne Convention also went into force in Jordan and it became a member of WIPO. As the article "Berne Notification No. 204: Berne Convention for the Protection of Literary and Artistic Works: Accession by the Hashemite Kingdom of Jordan" (1999) told us:

The Berne Convention as revised will enter into force, with respect to the Hashemite Kingdom of Jordan, on July 28, 1999. On that date, the Hashemite Kingdom of Jordan will also become a member of the International Union for the Protection of Literary and Artistic Works ("Berne Union"), founded by the Berne Convention.

In April of 2000, less than a year after endorsing the Berne Convention, Jordan became the 136th member to join WTO (World Trade Organization). For countries to become a member of an international organization and sign international treaties, they must adhere to a number of prerequisites and minimum requirements. Both WIPO and WTO set provisions related to the protection of intellectual property, provisions that Jordan needed to abide by in order to achieve membership. Despite Jordan's membership in WIPO and WTO in 1999 and 2000 respectively, the country still needed to address and implement a number of provisions related to the protection of performances, phonograms, and broadcast programs.

In 2005, the Jordanian Parliament passed two amendments on the copyright law to address the issues set forth in the special 301 report of 2005; these resulted in the current copyright law¹.

The amendments addressed a variety of issues; among them being the identification of rights associated with producers of phonograms and broadcasting organizations as highlighted in Article 23 of the current law, set out below:

Article (23): Protection of the Rights of Performers, Sound Recordings and Broadcast Programs

A. Notwithstanding the provisions of Article (17) of this Law:

1. A performer may prohibit others from consolidating his unconsolidated performance or reproducing any consolidation of his performance, or broadcasting same through wireless means and conveying it to the public without his consent.

2. The Radio and Television Commission or the owner of the copyright may prohibit others from consolidating unconsolidated broadcast programs, or reproducing any consolidation of same, or wirelessly transmitting or conveying them to the public by television transmission without the consent of the Commission or the owner of the right.

¹ Retrieved from http://www.agip.com/bulletin_news.aspx?id=926&month=4&year=2005&lang=en.

B. Producers of sound recordings or their successors or any person with a legal right related to the sound recordings may allow or prohibit direct or indirect reproduction of their sound recordings or rental of the original copy or other copies to others for commercial purposes.

C. Protection of the rights of performers and sound recordings' producers shall apply to fifty years starting from the first of January of the calendar year following the year during which the performance or consolidation of the recording occurred, as the case may be.

D. Protection of radio programs broadcast by any radio or television establishment shall apply for twenty years to be calculated as of the first of January of the calendar year following the year during which the program was broadcast for the first time. (*National Copyright Law, 1992, p. 14*)

After signing the *Jordanian-Israeli Peace Treaty* in 1994, Jordan became concerned with the overall health of its economy. This concern led the government to focus its efforts on transforming Jordan's economy into one with a decided export orientation. Jordan had received several recommendations from the World Bank to join the GATT (General Agreement on Tariffs and Trade). However, in order to join GATT, Jordan needed to address the provisions of protecting producers and broadcasting organizations, which it only did in the amendment that passed in 2005.

Works Enjoying Protection

In 1992, the *Copyright Protection Law No. (22)* was enacted. This copyright law grants copyright protection to original works of literature, art, and science of any type, purpose, or importance. It covers works of art as may be expressed in writing, sound, drawing, photography, and motion pictures, including books, speeches, plays, musical compositions, films, applied art, three-dimensional works, and computer software.

Procedure stipulates that copyright be filed at the Ministry of Culture. The work protected must be original and involve personal innovation and arrangement. The protection period, for both Jordanians and foreigners, is 30 years after the death of the author. The Ministry of Culture may publish or republish a work subject to copyright protection, if the author or the author's heirs have not published or republished the work within the six months preceding the date on which the Ministry has given notice that the work is to be so published or republished. In the event of publication or republication by the Ministry of Culture, the author or author's heirs are entitled to fair remuneration.

The content of the *The Jordanian Copyright Protection Law No. (22)* appears to be similar to that of the USA and meets the minimum requirements set forth in the Berne Convention agreement. The definition of works enjoying protection can be found in article 13 of the *The Jordanian Copyright Protection Law No. (22)* (1992):

Article (13):

A. Works created in literature, art and science, whatever the nature, or importance of those works, or the purpose for which they were produced, shall enjoy protection in pursuance of this Law.

B. The said protection shall include the works expressed through writing, sound, drawing, photography or movement, and in particular:

1. Books, booklet and other written material.
2. Oral works delivered orally such as lectures, speeches and sermons.
3. Theatrical works lyrical and musical plays and pantomime acting.
4. Musical works whether expressed in notes or not and whether accompanied with words or not.
5. Cinematic and audio and visual broadcasting works.
6. Painting, photography, sculpting, architecture, applied arts and lithographical works.
7. Illustration, maps, design, blueprints and three-dimensional works related to geography and topography.

8. Computer programs whether in the origin language or machine language.

A. Protection shall also include the title of the work unless the title is generic used to describe the subject of the work.

B. Collection of literary or artistic works such as encyclopedias, anthologies, and compiled data, whether in an automatically read form or in any other form, which constitutes unique intellectual works in respect of their selection or arrangement, shall also enjoy protection. Collections containing selected excerpts of poetry, prose, music or other shall also be protected, provided that the sources and authors of same are mentioned without prejudice to the rights of the authors in respect to each work forming a part of the collections. (p. 11)

Copyright duration. Copyright protection begins when a work is actually created. The duration of a copyright is for the life of the copyright owner, with the addition of 50 years following his/her death. There are two categories of exceptions to this standard duration of life plus 50 years (see Articles: 31, 32, 33, and 34 of the *The Jordanian Copyright Protection Law No. (22)* for the year 1992 and its amendments). As it is evident, the exceptions are not stated explicitly, the limit of 50 years being instead merely circumscribed to a certain number of conditions: (1) The author of a work only enjoys copyright protection for 50 years from the date the work was created in the following circumstances: (a) The author or right holder is a corporation, or other type of legal entity which grants some of the same rights as those which apply to natural persons, (b) The work is a cinema or television production, (c) The work is published for the first time after the death of the author, and (d) The work is published under a pseudonym. In this case, if the work's author reveals his/her identity within the protection period then the copyright duration is extended until 50 years following the author's death; and (2) Photographs and applied arts enjoy only 25 years protection period, commencing on the date of their creation.

When the protection period expires, the work enters into the public domain making it legal for all to use, unconditionally.

The Rights of Authors

Moral rights. Within *The Jordanian Copyright Protection Law No. (22)*, there are no sections specifically dedicated to regulating moral rights. These are instead scattered throughout the entire text of the law. Such subtle incorporation of moral rights into the *The Jordanian Copyright Protection Law No. (22)* (1992) is exemplified by Article 8, paragraph d:

Article (8): Author's Exclusive Rights

(d) Challenge any infringement upon his work and prevent any distortion or alteration or any other modification thereof or any other transgression that may harm his reputation and honor. Nonetheless, shall any omission, alteration, addition or any other modification occur to the translation of the work, then the author shall not have the right to prevent same unless the translator fails to note the places of such modification, or should the translation prejudice the author's reputation and cultural or artistic standing or distorts the content of the work. (p. 8)

As can be seen, moral rights cannot be sold or surrendered and require that the work be attributed to its author. In other words, moral rights include the right of attribution, the right to have a work published anonymously or pseudonymously, and the right to the integrity of the work. Moral rights are especially important within the Jordanian context due to its rich tradition, and strong cultural heritage ties. Protecting an author's reputation and honor are amongst the utmost objectives—the main driver for the existence of moral rights within the copyright law.

Economic rights. The new law acknowledges the author's exclusive right to reproduce, present, display, or perform his work and also to "droit de suite". The interpretation of the right to reproduction and representation has been enlarged and modernized so as to adapt the Law to the new ways of communicating and disseminating intellectual works. Thus, the reproduction which is submitted for the author's consent may be in any material form, and his or her right to convey his work to the public covers the means of recitation, exhibition, performance, radio, or television broadcasting, cinematographic production, or any other means. The law establishes the right for the author "to financially exploit his work in whatever manner he chooses" (*The Jordanian Copyright Protection Law No. (22), 1992, p. 9*); these include authorizing persons to utilize one or more copies of his or her work by means of rental, lending or, more generally, any other act serving to make the work available to the public. The relevant article is reproduced below:

Article (9): Author's Right to Grant Others Authorization to Exploit His Work

The author shall have the right to financially exploit his work in whatever manner he chooses. Others shall not be entitled to exercise this right without the written authorization of same or his successors. Such authorization shall include:

- A. The right to print, broadcast and produce his work.
- B. The right to reproduce his work in all material forms including photographic or cinematographic representing or recording.
- C. The right to translate his work to another language, adapt, musically transform it, or carry out any alteration thereof.
- D. The right to grant authorization to utilize a reproduction or a number of reproductions to persons who exploit same through rental, lending and other practices related to presenting the work to the public.
- E. The right to convey his work to the public by reciting, announcing, exhibiting, or performing same or by radio, television, cinematographic broadcasting, or any other means. (*The Jordanian Copyright Protection Law No. (22), 1992, p. 9*)

Importantly, the Law lays down the general principle that the exercise of the right to exploitation of a work by any person other than the author shall be prohibited without written authorization from the author or from his successor in title. Any transfer of economic rights shall be in writing, shall state expressly and in detail every right to be transferred and shall specify the extent and purpose thereof, and the duration and place of exploitation.

Rights of Translation

The Berne Convention addresses the right of translation in Article 8 by granting authors the exclusive right of making and authorizing the translation of their work. The article is reproduced below.

Article (8):

Authors of literary and artistic works protected by this Convention shall enjoy the exclusive right of making and of authorizing the translation of their works throughout the term of protection of their rights in the original works. (*Berne Convention for the Protection of Literary and Artistic works, 1979*)

In fact, it is Article 11 of the *The Jordanian Copyright Protection Law No. (22) (1992)*, reproduced below, that addresses translation rights.

Article (11): Translation, Reproduction and Publication Licenses. (p. 10)

Notwithstanding the provisions of Article (9) of this Law:

- A. Any Jordanian citizen shall have the right to obtain an inclusive license whose title can not be transferred, from

the Minister or the person authorized by him, to translate any foreign work published in a printed form or any other form to the Arabic language and to publish this translation in printed form or any other similar form, provided that three years have elapsed since the first publication date of this work, and that no translation thereof has been published in Jordan in the Arabic language by the owner of the translation right or with his approval or in the case the translated copies have been consumed.

B. Any Jordanian citizen shall have the right to obtain an inclusive license whose title cannot be transferred to others, from the Minister or the person authorized by him, to reproduce or publish any of the following published works according to the following conditions:

1. The laps of three years since the first publication date of any printed work related to technology, natural sciences, physics or mathematics, or after the lapse of seven years since the first publication of poetics, theoretical, musical works, art books and novels or the lapse of five years since the first publication of any other published works.

2. That of no copies thereof have been distributed in the Kingdom to fulfill the needs of the general public or school or university education through the owner of the right of reproduction or with his approval and at a price compatible with the prices of similar works in the Kingdom.

3. That the published copies be sold in accordance with the provisions of this clause at a price equal to or less than the price stated in clause (2) of this paragraph.

A. Translation license provided for in paragraph (a) of this article shall only be granted for the purposes of school or university education or research. Reproduction licenses provided for in paragraph (b) of this article shall only be granted for use in the field of school or university education.

B. Upon the granting of a translation or reproduction license the original author of the work which was translated or reproduced shall become entitled to a just compensation compatible with standards of the monetary rights of the author which are prevalent in voluntary license contracts between people in the Kingdom and between people in the author's country.

C. The conditions and procedures for the granting of licenses provided for in this Article shall be determined in pursuance to a regulation issued for this purpose. (*The Jordanian Copyright Protection Law No. (22), 1992, p. 8*)

As can be seen, Article 11 indicates that any Jordanian citizen has the right to obtain an exclusive license, from the Minister of Culture, to translate any intellectual work. To do so, four stipulations must hold true: Firstly, the original work must have been published at least three years prior to obtaining the inclusive right to translate. Secondly, the original work must have not been published in Arabic in Jordan. Thirdly, such licenses are granted for education and research only. Finally, such licenses are granted as long as the work published is sold at a price compatible with the prices of similar works in Jordan. The law also entitles the original author to receive a just compensation that is compatible with the standards of his or her economic rights.

Conclusions

This paper has attempted to give an overview of the copyright laws and the rights of the translator. It provides insights into the meaning of the copyright law and why it is needed to protect people, to promote the progress of science, and to ensure that new knowledge will be developed. The paper has also attempted to highlight the copyright laws and intellectual property in the Hashemite Kingdom of Jordan. Despite the fact that the law has been in effect since the Ottoman Empire, the people in Jordan are not fully aware of the details pertaining to the law—seeing as it was rarely enforced.

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