

DOCTOR OF PHILOSOPHY- PROPOSAL

1. Proposed Title

Copyright Law and Arab Countries in the Digital Age: A Case Study of Jordan, Egypt and Palestine.

2. Supervisors and Credentials

Principal Supervisor (80%)

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3. Background/ Introduction

3.1 Background to Research Project

I became interested in copyright law when I joined the law firm of Abu-Ghazaleh Intellectual Property in Amman, Jordan, as a member of its e-commerce legal department and when I worked as a project leader for Creative Commons-Jordan. During this time I dealt with different copyright laws that applied across the Arab world when I gave legal advice and performed research for clients. It was during my work that I discovered many copyright laws in the Arab world are unable to address issues arising from digital technology and digital information.

I continued my interest in copyright law when I completed a Master of Laws degree at Columbia Law School in New York City. I researched the importance of copyright for innovation and creativity and how the law can have a significant impact upon the development of societies. This work

persuaded me to undertake a PhD thesis that would allow me to study the current copyright systems in the Arab world and how they need to be restructured to deal with the internet and digital technologies.

3.2 Introduction/ Emergence of Internet and Digital Technologies.

The internet has emerged as one of the most profound social, technical and business phenomena in the history of humankind. It is transforming businesses, altering the way people communicate, and providing humans with access to a wealth of easily accessible information.¹

The technological developments such as the printing press, telephones, nuclear technology, aerospace, environmental technology and computing technology have fundamentally changed society. The most notable changes in recent times that have transformed our daily lives in many respects have been the advancement in digital technologies.² Digital technologies and interconnected networks have an important role to play in developing countries in expanding and improving education, putting knowledge and research outputs into the public domain and facilitating collaborations among tertiary and research bodies.³

Many governments are beginning to realize the benefits of the internet and are eager to transform their countries into e-societies. The Arab world is no exception.⁴ The Arab world is currently pursuing a series of important initiatives to take advantage of the digital revolution. In Dubai, an internet city⁵ and a media city⁶ were built to attract global investors and a highly qualified labor force. In Jordan, an ICT based national development strategy⁷ is being

¹ ITU, Internet for the Arab World (2000) International Telecommunication Union, <<http://www.itu.int/ITU-D/ict/papers/egypt2000/15-e.pdf>> at 21 May, 2008.

² Brian Fitzgerald (ed), *Internet and E-Commerce Law* (1st ed, 2007) 154.

³ T. Pistorius, 'Developing Countries and Copyright in the Information Age' (2006) North West University, <http://www.puk.ac.za/opencms/export/PUK/html/fakulteite/regte/per/issues/2006_2_Pistorius_art.pdf> at 12 April 2008.

⁴ ITU, above n 1.

⁵ See Dubai internet city <<http://www.dubaiinternetcity.com/>>

⁶ See Dubai media city <<http://www.dubaimediacity.com/>>

⁷ See the Ministry of Information and Communication Technologies <http://www.moict.gov.jo/moict/en_index.aspx>

designed and implemented to establish IT industries and services.⁸ In Tunisia, the Five Year Development Plan (Plan) includes “knowledge economy” as a key dimension.⁹ The Plan is elaborated through a large consultation process and policy measures are taken in multiple domains, such as education, research, trade, industry, agriculture, and regional policies with the planned creation of ten technopolices in the coming decade.¹⁰

It is estimated as of March 2008, there are 41,939,200 internet users in the Middle East¹¹ that account for 3.0% of the world’s internet population, with a growth rate of 1176.8% between 2000 and 2008.¹² Interestingly, the number of broadband subscribers in the Arab world grew by 38% in 2006, while the number of those subscribers using DSL access technology grew by 81.9% to 4.3 million.¹³ The initiative for open Arab Internet has stated in a study concluded in 2007 that there is 40,000 Arabic blogs in the Arab world and most of them were created since 2006. The Egyptian bloggers have guided other Arab bloggers.¹⁴ Despite the novelty of blogging in the Arab world, it has become an effective tool for Arab bloggers to express themselves and to reveal both public and personal grievances.¹⁵

Most of the countries in the Arab world introduced the internet to promote economic development and competitiveness; however, they soon realized that the internet made it more difficult for them to control the flow of information both within the country and across international borders. The availability and accessibility of information, as well as the ability to create and

⁸ Jean- Eric Aubert, ‘Promoting Innovation in Developing Countries, a Conceptual Framework’ (2004) World Bank Institute, <<http://info.worldbank.org/etools/docs/library/137729/0-3097AubertPaper%5B1%5D.pdf>> at 25 May 2008.

⁹ Triki Abdelhamid, ‘Knowledge Based Economy in Tunisia’ (2006) Investment Tunisia, <<http://www.investintunisia.tn/document/295.pdf>> at 29 May 2008.

¹⁰ Aubert, above n 8.

¹¹ The list of countries includes in addition to Arab countries, Israel and Iran.

¹² Internet World Stats (2008) Internet World Stats, <<http://www.internetworldstats.com/stats.htm>>at 21 May 2008.

¹³ See AME Info, ‘DSL Forum Acclaim Middle East and Africa Broadband Growing Faster than any Region in the World’ (2007) AME Info, <<http://www.ameinfo.com/116548.html>> at 25 May 2008.

¹⁴ The initiative for an open Arab internet, Implacable Adversaries: Arab Government and the Internet (2006) Initiative for an Arab Open Internet, <<http://openarab.net/en/reports/net2006/intro.shtml>> at 29 May 2008.

¹⁵ Ibid

disseminate information anonymously, has led to a sense of freedom among many Arab internet users.¹⁶

The advent of the internet and new communications technologies has also brought about many challenges to copyright holders. The cost and the speed of reproducing creative works have been greatly reduced, and the quality of reproduced work has been substantially increased.¹⁷ While copies made at home by individual users did not matter much in the past, due to their non-commercial nature and limited financial impact, the distribution of these copies online has now imposed significant costs on copyright holders.¹⁸ Like the printing press and broadcast technology, the digital revolution represents a third profound set of challenges for those engaged in the creation and distribution of original works of authorship and the consumer products that allow these works to be perceived, reproduced, altered and distributed. It also forces lobbyists, legislators, jurists, and scholars to rethink the legal regime governing these activities and industries.¹⁹

Intellectual Property Rights (IPRs) are the legal sinews of the information age; they affect everything from the patterns of international development, to the communication architecture of the internet.²⁰ Much of the digital content distributed through the internet or available for viewing or downloading at an internet location is protected by copyright²¹. Copyright law has emerged as one of the most forceful means of regulating the flow of ideas and knowledge-based products.²² Copyright is at the centre of our society. Social networking, government, digital content production and consumption, education, and research all relies on copyright. The ultimate goal of copyright is to encourage creativity, productivity, innovation and development. Copyright should also

¹⁶ Open Net Initiative, 'Middle East and North Africa regions', Open Net Initiative, <<http://opennet.net/research/regions/mena>> at 28 May 2008.

¹⁷ Peter K. Yu, 'Digital Copyright Reform in Hong Kong: Promoting Creativity without Sacrificing Free Speech', the University of Hong Kong Journalism and Media Studies, <<http://jmsc.hku.hk/cms/images/stories/jmscdigitalcopyright.pdf>> at 25 May 2008.

¹⁸ Ibid

¹⁹ Peter Menell, 'Envisioning Copyright Law's Digital Future' (2002) SSRN, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=328561> at 25 May 2008.

²⁰ See James Boyle, 'A Manifesto on WIPO and the Future of Intellectual Property' (2004) 9 *Duke Law and Technology Review* 10.

²¹ Fitzgerald above n 2.

²² Armstrong and Ford (2005) <<http://www.common-science.org>>, at 25 May 2008, quoted in Pistorius, above n 3.

encourage creative expression on a wide array of political, social and aesthetic issues²³ as a vital component of a democratic civil society.²⁴

Copyright's empire has expanded aggressively in the past few centuries, and it now dominates a vast terrain of information practices. From relatively humble origins in the regulation of book-printing monopolies, copyright's sphere has grown to encompass a wide range of activities involving the production, reproduction, distribution, and use of information.²⁵ In recent years, a growing call for a new paradigm for copyright law has emerged, one that moves away from property and ownership rhetoric towards considerations of human rights, development policy and ensuring access to knowledge.²⁶

Internet users in Arab countries are using new types of media via the internet like YouTube, MySpace, Facebook, and Wikipedia, and these platforms continue to raise significant challenges for copyright. The important question is whether copyright laws and policies in the Arab world have led to creativity, innovation, productivity and development? The challenge for Arab countries is to adopt a mix of legal and non-legal copyright polices to design an appropriate model to deal with the digital revolution. If Arab countries want to develop their knowledge-based economy and to become a regional hub for information communication technologies, they need to examine carefully their copyright systems, however, the question is what kind of model is needed and on what basis?

The objectives of my proposed research are to:

- Analyse and document the different copyright systems that are available in the Arab countries;
- Document what has influenced the current Arab copyright laws and shaped their developments;
- Evaluate the requirements for the development of an effective copyright model for creativity, innovation and productivity within developing countries and in particularly Arab countries;

²³ Neil Weinstock Netanel 'Copyright and a Democratic Civil Society' (1996) 106 *Yale School Law Journal* 283.

²⁴ *Ibid*

²⁵ *Ibid*

²⁶ See Mary Wong, 'The Next Ten Years in Copyright Law: an Asian Perspective' (2007) SSRN, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1017144> at 29 May 2008.

- Study the developments taking place in the developed world in connection with digital copyright, and critically examine how they can be implemented in Arab countries;
- Examine the non-legal measures that can be taken in response to the challenges presented by digital revolution (e.g licensing, technological protection measures, alternative compensation systems, education and industry codes of practice); and
- Study the initiatives and movements that are taking place worldwide such as open source and free software, open access, open research publication and creative commons, and their relevance and importance from a legal and copyright perspective to developing countries²⁷, particularly in Arab countries.

²⁷ See for example the limited research done in this area: Jennifer Papin- Ramcharan and Frank Sodeen, 'Open Source Software: A Developing Country View', Kirk Amant (ed) *Handbook of Research on Open Source Software: Technological, Economic, and Social Perspectives* (2007) 93; AlfredA Dudley- Sponaule, Sungchul Hong, and Yuanqiong Wang, 'The Social and Economic Impact of OSS in Developing Countries', Kirk Amant (ed) *Handbook of Research on Open Source Software: Technological, Economic, and Social Perspectives* (2007) 102; Daniel F. Olejko, 'Charming a Snake: Open Source Strategies for Developing Countries Disillusioned with TRIPs' (2007) 25 *Penn State International Law Review* 855.

4. Program of Research and Investigation

4.1 Research Problem

My research will consider the following:

#	Question	Analysis
1.	What is the current shape and status of copyright laws in Arab countries with special emphasis on three categories of countries: A. High level copyright protection (Jordan) B. Middle level copyright protection (Egypt) C. Low level copyright protection (Palestine)	A collection and description of the current copyright laws in these Arab countries, and the history that influenced their development.
2.	How can copyright foster the creativity and innovation of developing countries particularly Arab countries?	An examination of the importance of the role of copyright for education, research and developments needs of Arab countries.
3.	How can copyright laws be changed and enhanced to meet the legitimate needs of these countries especially in the digital age?	Critical analysis of the proposed amendments to copyright laws in the developed world and internationally, and to what extent they can be implemented in developing countries particularly Arab countries.
4.	How can Arab countries benefit from alternative copyright approaches of free and open source software, creative commons and open access?	Examine the potential of these movements in the Arab world, their applicability, and explain the obstacles that may hinder their enforceability.

4.2 Selection of the Nominated Countries

Palestine, Jordan and Egypt are part of the Levant region. Choosing these countries will allow me to have a panoramic view of how copyright laws exist in Arab countries and what shaped their development. Also, these countries have different economic, political and legal situations. Studying these countries will allow me to develop a copyright model that may be applicable to other developing countries that are going through a similar stage of development.

4.3 Individual Contribution to the Knowledge

This section is not applicable as this research does not form part of any other project or any other research collaboration.

5. Design of the Proposed Research

5.1 Methodology and Research Plan

My research plan consists of the following:

5.1.1 Collection of Primary Legal Materials

The first stage of my research will involve collecting copyright laws of developing countries mainly Arab countries. That will include but is not limited to collecting Arabic and English translations of copyright laws of Jordan, Egypt and Palestine and laws that regulate the activities of publication industries. I will also collect corresponding laws from other jurisdictions including, but not limited to, United States (U.S.), Canada, United Kingdom (U.K.), Australia, New Zealand, South Africa and France. Collecting Arabic case law is a critical component of my project since it would allow me to suggest reforms for copyright laws and judicial approaches in Arab countries. I will also collect decided cases from other relevant jurisdictions.

5.1.2 Collection of Secondary Legal Materials

The collection process will be an ongoing one since there is a large volume of secondary materials written on the subject of digital copyright in general and intellectual property and developing countries in particular. The secondary materials will be collected from both print and electronic sources. A Literature review will be carried out, including the following subjects:

- How copyright laws need to be restructured to deal with the internet and digital technologies;
- Technical issues related to the internet and its services;
- Intellectual property laws in developing countries and development,
- Copyright laws in Arabic countries;
- International copyright treaties;
- National copyright systems inability to handle copyright issues in web 2.0 environment;

- Copyright reform proposals in response to the digital revolution.

5.1.3 Analysis and Argument

The third stage of my research will involve my assessment of the materials collected in the first and second stage. I will assess the articles and journals written either in Arabic or English that discuss copyright laws in developing and Arab countries. The following issues will be considered:

- The importance of copyright regimes in developing countries particularly Arab countries for creativity, innovation and development;
- The extent to which the current copyright regimes in Arab countries are responsive to internet and digital technologies;
- The level of copyright protection needed in developing countries particularly Arab countries; and
- The level of copyright protection needed for the internet to remain open and innovative.

5.1.4 Final Write Up Phase

The fourth stage of my research will involve writing my research project, which will be an ongoing process that will take much of my whole research time. I expect to complete this in accordance with the attached completion sheet.

5.2 Collaborative Arrangement

No collaborative arrangements have been made with industry, or other private, public or non-government organisation.

5.3 Timeline for Completion of PhD

Refer to the attached timeline for completion of the PhD.

5.4 Preliminary Literature Review

5.4.1 Role of Copyright in Developing Countries

What role do IPRs and particularly copyright play in developing countries? What is the importance of copyright for developing countries in the digital age? The first question was addressed a long time ago, but we need to reconsider it in relation to the digital age.

In the 1960s, third world intellectuals and educators argued that the protection of intellectual property rights was, in itself a form of imperialism and neo-colonialism²⁸. They added that:

“copyright not only confers no benefits on the citizen of a developing country, it actually stands in the way of development itself, by making books more expensive and by preventing of a well-founded publishing industry“²⁹.

This argument has not changed much since that time, as evident by one commentator who has argued recently that:

“It is commonly perceived particularly from the western perspective that in developing countries strong law is needed to enforce intellectual property rights to ensure sustainable economic and technological development of the economics of the developing countries as well as to ensure efficient and effective protection of their intellectual property works”.³⁰

Another commentator has argued that:

“.....TRIPS which represents a watershed in the formation of norms to guide the international protection of intellectual property is a product of the western world or appropriately described as the “first world”. The dominant interests protected by TRIPS were not primarily intended for developing countries. However the structure of the existing international trading system is such that intellectual property protection has been linked to trade. Any country wishing to take advantage of the benefits of reduced tariff and non – tariff measures in the system is obliged to implement the norms of TRIPS”.³¹

²⁸ John Feather, ‘Copyright in Developing Countries: Necessity or Luxury?’, (1993) 25 *International Information and Library Review*.

²⁹ Ibid at 22

³⁰ Weerawit Weeraworawit ‘Why do Developing Countries Fail to Use IP as a Tool for Development?’ (A paper presented at the 5th Annual Asian IP Law and Policy Day, New York City (26 March 2008).

³¹ E.S Nwauche, ‘Intellectual Property Rights, Copyright and Development Policy in a Developing Country: Options for Sub Saharan African Countries’ (A paper presented to the Copyright Workshop at Zimbabwe International Book Fair, Zimbabwe (30 July 2003) <www.kopinor.org/content/download/1777/13422/file/zibf.pdf> at 10 May 2008.

Why is copyright law important for developing countries in the digital age?
Why is participating in the digital age important for developing countries in the first place?

Although copyright laws are territorial, in their various domestic guises it commonly protects a wide range of tools, which are vital to the education, health, and the technical literacy of developing countries. Copyright law applies to the infrastructure of communications systems, such as software and hardware, which are essential for participation in the digital world.³²

No one said it better than the U.K. Commission report that described the digital revolution and its relevance to developing countries,

“.....The arrival of the digital era provides great opportunities for developing countries to access information and knowledge on the one hand, but on the other hand poses some new and serious threats to access and dissemination of knowledge, particularly the real risk that the potential of the internet in the developing world will be lost as rights owners employ technology to impede public access through pay-to-view systems”.³³

It is submitted that every nation on the planet has its own past, creative work and can benefit from exploitation of it. WIPO and other international organizations have constantly argued for the importance of copyright and IPRs regimes in ensuring that developing nations commercially exploit and benefit from their own past and creative work. This seems to not be happening as IPRs have been used by the developed nations alone to protect merely their interests and exploit the resources of poor developing nations that are extremely in need of them. I will examine the specific cases of Jordan, Egypt and Palestine, but before doing so, I will give a general overview of copyright laws in the Arab region.

5.4.2 Copyright Laws in the Arab Region

³² Symposium review, 'Locking up the Bridge on the Digital Divide- A consideration of the Global Impact of the U.S Anti-circumvention Measures for the Participation of Developing Countries in the Digital Economy' (2004) 20 *Santa Clara Computer and High Technology Law Review*.

³³ Commission on Intellectual Property Rights, 'Integrating intellectual Property Rights and Development Policy' (2000), <http://www.iprcommission.org/papers/pdfs/final_report/CIPRfullfinal.pdf> at (18 April, 2008)

Copyright laws in the Arabic countries differ to a large extent, but they can be categorized under three distinct groups. The first category is the countries with a low level of implementation and these include Sudan³⁴, Yemen,³⁵ Palestine³⁶ and Iraq.³⁷ The other group is the middle level implementation and this includes those that made amendments to their copyright laws in nineties and have a medium level of copyright protection, and they are: Lebanon,³⁸ Tunisia³⁹ Qatar,⁴⁰ Egypt,⁴¹ Algeria,⁴² Saudi Arabia,⁴³ and the United Arab Emirates (U.A.E).⁴⁴ The last group is the countries with a high level implementation and it includes countries that entered into Free Trade Agreements (FTAs) with the U.S. and as a result they updated or are soon to update their copyright laws significantly to be in conformity with their treaty obligations and they are: Morocco,⁴⁵ Oman,⁴⁶ Jordan,⁴⁷ and Bahrain.⁴⁸

There are 15 countries out of 20 of the Arab countries that have joined the Berne Convention for the Protection of Literary and Artistic Works of 1886 as

³⁴ The Copyright Protection Act of 1979, <<http://www.agip.com>> at 25 May 2008

³⁵ The Unified Intellectual Property Rights Law No 19 of 1994 was waiting an implementing regulation to be issued, but this did not happen, <http://www.agip.com/country_service.aspx?country_key=70&service_key=C&SubService_Order=1&lang=en>

<<http://www.agip.com>> at 25 May 2008

³⁶ The only laws which are still applicable in Palestine are the Copyright Act of 1911, and the Law of Copyright and Authorship for 1924, <<http://mugtafi.birzeit.edu>> at 25 May 2008.

³⁷ The Coalition Provisional Authority has amended the Iraqi Copyright Law No 3 which dates back to year 1971. The above mentioned law is called the Law No.3 of 1971 for the Protection of Copyright, <<http://www.agip.com>> at 25 May 2008.

³⁸ Artistic and Literary Ownership Law No 75 of 1999 <<http://www.agip.com>> at 25 May 2008.

³⁹ Law No 36 in respect of Literary and Artistic Property of 1994 <<http://www.agip.com>> at 25 May 2008

⁴⁰ Law No 7 of 2002 for the Protection of Copyright and Neighbouring Rights

<<http://www.agip.com>> at 25 May 2008.

⁴¹ Royal Decree No M/41, issued on 30 August 2003 <<http://www.agip.com>> at 25 May 2008.

⁴² Order Act No 03- 05, dated 19 July 2003 for Copyright and Neighbouring Rights.

<<http://www.agip.com>> at 25 May 2008.

⁴³ Law No 82 of 2002 for Protection of Intellectual Property Rights <<http://www.agip.com>> at 25 May 2008.

⁴⁴ Federal Law No (7) of 2002 Pertaining to Copyright and Neighbouring Rights

<<http://www.agip.com>> at 25 May 2008.

⁴⁵ Law No 2-00 for Copyright and Neighbouring Rights <<http://www.agip.com>> at 25 May 2008.

⁴⁶ Sultanial Decree No 37/2000- for the Protection of Copyright and Neighbouring Rights <<http://www.agip.com>> at 25 May 2008.

⁴⁷ Law No 22 of 1992 as amended <<http://www.agip.com>> at 25 May 2008.

⁴⁸ Bahrain Copyright Law No 22 of 2006 <<http://www.agip.com>> at 25 May 2008. Kuwait, United Arab Emirates and Qatar have started negotiating with the U.S to enter into similar FTAs. <http://en.wikipedia.org/wiki/United_States_free_trade_agreements> at 2 June 2008.

amended (Berne Convention) ⁴⁹ and only 5 countries out of them have joined the World Intellectual Property Organization (WIPO) Copyright Treaty of 1996 (WCT) and WIPO Performance and Phonograms Treaty of 1996 (WPPT), and these include: Bahrain, Jordan, Oman, Qatar and the U.A.E.⁵⁰ Economic and political reasons heavily influenced their decision to update their IPRs and enter into these types of treaties.

It is very important to stress in the mean time that Arab countries are mainly civil law countries and largely influenced by the French legal system and not the common law.⁵¹ There is always confusion as to the role that Islam has to play in the Arab world. Islamic Laws only play a major role in martial and family matters particularly marriage, divorce, and inheritance. Many of the laws in the Arab region are taken indirectly from France (Napoleon and secular laws) as they are adopted with slight differences from Egyptian laws. The reason for that is because Egyptian scholars went to study law in France, and when they came back they drafted laws that are similar to the French Legislations based on their education and experience.

How Arab countries perceive copyright laws and what is the required level of copyright protection from a developing country perspective?

One commentator has argued that:

“Westerners believe that copying is a desire to “free ride” on value calculated abroad in order to leverage economic gain. However, Middle Eastern are likely to see domestic copying as not merely desirous but actually necessary for their own survival, and also as a means of exacting revenge for the West’s relentless commercial conquest of the region”⁵²

Another commentator has mentioned that:

⁴⁹ These include: Algeria, Bahrain, Egypt, Jordan, Lebanon, Oman, Qatar, Saudi Arabia, Sudan, Syria, Tunisia, UAE, Morocco, Libya, Comoros, Yemen and Djibouti
<<http://www.agip.com>> at 25 May 2008

⁵⁰ Please visit WIPO’s website <<http://www.wipo.int/treaties/en/ip/wppt/>>
<<http://www.wipo.int/treaties/en/ip/wct/>> at 25 May 2008.

⁵¹ Except Sudan which legal system is based on the English common law and Islamic law. Gaza also adopts the common law while the West bank legal system is Civil Law; this is due for historical reasons.

⁵² John Carroll, ‘Intellectual Property Rights in the Middle East: A Cultural Perspective’ (2001) 11 *Fordham Intellectual Property Media and Entrainment Law Journal*.

“Western intellectual property rights are, to a great extent, presently unrecognized in the Middle East. The reluctance to enforce intellectual property law stems from at least two interconnected frames of reference. First, the West is perceived to have emasculated the Middle East since the times of the crusades through colonialism until now, contributing to the decline of Islam at each turn. Second, Western culture is generally thought to be immoral and corrupt; so, if Middle Eastern governments were to acknowledge that Westerners were entitled to enforceable intellectual property rights, they would be giving governmental, and thus religious, sanction to sacrilege. Islam strongly animates political and commercial life throughout the Middle East to a degree that Westerners have difficulty appreciating”.⁵³

The same commentator has argued in another article that:

“Developing countries are being led into a highly complex multilateral/ bilateral web of intellectual property standards that are progressively eroding not just their ability to set domestic standards, but also their ability to interpret their application through domestic administrative and judicial mechanisms.”⁵⁴

It is submitted that all these claims must be evaluated; the problem with much of what has been written is that they come from western writers and there is no real evaluation of the exact situation from the perspective of Arab countries.

5.4.3 Jordanian Copyright Law (High Level Protection)

Can Jordan’s copyright law serve as a good example for other Arab countries that are considering updating their copyright laws? This is because Jordan has entered into all of the major copyright treaties and has signed an FTA with the U.S. I will first give an overview of the Jordanian IPRs system and examine what has shaped its development then try to answer the question.

On 11 April 2000 Jordan became the 136th member of the World Trade Organization (WTO) after negotiations that lasted for two years. The Jordanian parliament ratified the treaty on 24 February 2000. Achieving such a goal in a limited period of time was hard and major economic and legislative reforms were made in that regard to bring the Jordanian foreign trade regime

⁵³ Ibid 13-14

⁵⁴ Peter Drahos, ‘Bits and Bibs: Bilateralism in Intellectual Property’ (2001) 4 *Journal of World Intellectual Property* 6, 803

into conformity with the WTO requirements.⁵⁵ Many important amendments and draft laws were introduced particularly in the field of IPRs.⁵⁶ These laws include: Patent Law No 32 for 1999,⁵⁷ Trademark Law No. 34 for 1999,⁵⁸ Industrial Design and Model Law No 14 for 2000,⁵⁹ Plant Varieties Law No 24 for 2000,⁶⁰ Geographical Indication Law No 8 for 2000,⁶¹ Unfair Competition and Trade Secret Law No. 15 for 2000,⁶² and the Protection of Layout-Designs of Integrated Circuit Law No 10 for 2000.⁶³ Also other amendments were made to many other laws as well,⁶⁴ but their mere discussion is beyond the scope of this research proposal.

The U.S. has markedly increased aid to Jordan since the mid- 1990s to help it strengthen its economy, maintain domestic stability and pursue normalization of its relation with Israel.⁶⁵ Jordan was the first Arab country to sign an FTA with the U.S. and there were several economic and political reasons that led the U.S. to negotiate such an agreement with Jordan.⁶⁶ It should be noted that article 4 of the United States-Jordan Free Trade Agreement (USJFTA) that deals with IPRs is the largest among all the articles of the USJFTA. The

⁵⁵ See the Jordanian foreign trade policy website <<http://www.jftp.gov.jo/main.htm>> at 14 April 2008.

⁵⁶ Ibid.

⁵⁷ Please visit Jordan's Foreign Trade Policy Website <<http://www.mit.gov.jo/portals/0/tabid/537/patent%20regulation.aspx>> at 14 April 2008.

⁵⁸ Please visit Jordan's Foreign Trade Policy Website <<http://www.jftp.gov.jo/Docs/Trademark%20Law.pdf>> at 14 April 2008.

⁵⁹ Please visit Jordan's Foreign Trade Policy Website <<http://www.jftp.gov.jo/Docs/Industrial%20Designs%20and%20Models%20Law.pdf>> at 14 April 2008.

⁶⁰ Please visit Jordan's Foreign Trade Policy Website <<http://www.jftp.gov.jo/Docs/Plant%20Variety%20Law.pdf>> at 14 April 2008.

⁶¹ Please visit Jordan's Foreign Trade Policy Website <<http://www.jftp.gov.jo/Docs/Geographical%20Indications%20Law.pdf>> at 14 April 2008.

⁶² Please visit Jordan's Foreign Trade Policy Website <<http://www.jftp.gov.jo/Docs/Unfair%20Competition%20&%20Trade%20Secrets%20Law.pdf>>

⁶³ Please visit Jordan's Foreign Trade Policy Website <<http://www.jftp.gov.jo/Docs/Integrated%20Circuits%20%20Law.pdf>> at 14 April 2008.

⁶⁴ These include for example: Custom Law, General Sales Tax Law, Law on Unifying Fess and Taxes, Safeguard on National Production, Non- Jordanian Investment and Consular Fees Law. See Jordan's foreign trade policy website <<http://www.jftp.gov.jo/main.htm>> at 14 April 2008.

⁶⁵ Since 2003, Jordan's total assistance package has averaged over \$ 762 million per fiscal year; see also Foreign Affairs, Defence, and Trade division 'The U.S Foreign Assistance to the Middle East: Historical Background, Recent Trends, and the FY 2008 Request' <<http://fas.org/sgp/crs/mideast/RL32260.pdf>> at 14 April 2008.

⁶⁶ See Bashar H. Malkawi, 'The Intellectual Property Provision of the United States- Jordan Free Trade Agreement: Template or not Template (2006) 2 *Journal of world Intellectual Property*, 213- 329.

USJFTA contains certain provisions that protect trademarks and geographical indications,⁶⁷ copyright and related rights⁶⁸ and patents.⁶⁹ The USJFTA concentrates on enforcement of IPRs, including the availability of injunctions, damages and other remedial measures.⁷⁰

Jordan joined the Berne Convention on 28 July 1999, WCT on 27 April 2004 and the WPPT on 24 May 2004.⁷¹ As a result of all of that Jordan introduced new amendments to its Copyright Law No 22 of 1999. In particular Jordan's Copyright Law was amended on several occasions responding to the challenges presented by the digital technologies and the internet. Lists of the main amendments that have been made until now are as follows:

- 1) Protected computer software;⁷²
- 2) Extended the right of copyright owner to include the right to control the online distribution of digital material;⁷³
- 3) Included civil and criminal liability for the removal or alteration of Electronic Rights Management Information (ERMI⁷⁴),⁷⁵ and
- 4) Included provisions on prohibiting the circumvention of technological protection measures (TPMs).⁷⁶

Despite of all these developments, the International Intellectual Property Alliance (IIPA) in its February 2008 report included Jordan on the IP monitored watch list since piracy is still considered as a serious problem in

⁶⁷ See Article 4 of the USJFTA- Copyright and Related Rights (10-16)

<<http://www.mfa.gov.jo/uploads/textagrusjofta.pdf> >15 May 2008.

⁶⁸ See Article 4 of the USJFTA- Trademarks and Geographical indications (6-9).

<<http://www.mfa.gov.jo/uploads/textagrusjofta.pdf> >

⁶⁹ See Article 4 of the USJFTA- Patens (17-20).

⁷⁰ See Article 4 of the USJFTA- Enforcement of Intellectual Property Rights (24-28)

<<http://www.mfa.gov.jo/uploads/textagrusjofta.pdf> >

⁷¹ See WIPO's website <<http://www.wipo.int/treaties/en/>>

⁷² See article (3) (b) (8) of the amended Jordanian copyright law for 1992, the law is available at the National Library of Jordan website <<http://www.nl.gov.jo/>>

⁷³ See article (9) (f) of the amended Jordanian Copyright Law for 1992, See National Library of Jordan's website <<http://www.nl.gov.jo/>>

⁷⁴ ERMI "is a technology such as digital watermarks that includes details about the copyright owners and terms and conditions of use of the copyright materials" Australian Government, Attorney- General's Department, Electronic Rights Managements (2005), <http://www.ag.gov.au/www/agd/agd.nsf/Page/Publications_Electronicrightsmanagement-Factsheet-March2005>

⁷⁵ See article 54 of the amended Jordanian Copyright Law for 1992, See National Library of Jordan's website <<http://www.nl.gov.jo/>>

⁷⁶ See article 55 of the amended Jordanian Copyright Law for 1992, See National Library of Jordan's website <<http://www.nl.gov.jo/>>

the country and there are no proper enforcement measures.⁷⁷ Interestingly enough the IIPA in its 2007 report urged the U.S. government to initiate immediate dispute settlement consultations under Article 16 and 17 of the USJFTA to bring Jordan into compliance.⁷⁸ These requests were not given much attention in the 2008 “Special 301 Report” and the office of the United States Trade Representatives (USTR) did not mention Jordan in any of its lists.⁷⁹

USJFTA requires Jordan to undertake and commit to regulatory changes that go beyond what Jordan agreed to in its accession to the WTO, WPPT and WCT. One Jordanian legal scholar has argued that:

“The provisions are one sided and they do not represent the interests of Jordan and they tend to favor the U.S. and its big corporations that own intellectual goods and want to protect their interests as much as possible”.⁸⁰

It is submitted that this is an obvious conclusion to make and a mere look at the provisions of the agreement will reveal its unfairness. However, the Jordanian scholar did not analyse the real reasons which lead Jordan to draft such restrictive provisions. Questions that arise include: Is this a general pattern with all other FTAs signed between the U.S. and other developing countries or Arab countries? What are the real reasons that lead Jordan to agree on such arrangements? Are there more appropriate alternatives than the “strong copyright model” as consistently requested by the U.S.? What is the role that a negotiator from a developing country has to play?

Jordan wanted to benefit as much as possible from joining the USJFTA as it wants to obtain a preferable treatment on its exported goods to the U.S market. To reach that goal Jordan had to amend its IPRs regime and this was the compromise that it had to make. It is submitted that other FTAs signed between the U.S. and other Arab countries contain extensive articles that deal

⁷⁷ IIPA Special 301 Report on Jordan (2008) IIPA, <http://www.iipa.com/2008_SPEC301_TOC.htm>

⁷⁸ IIPA Special 301 report on Jordan (2007) IIPA, <<http://www.iipa.com/rbc/2007/2007SPEC301JORDAN.pdf>> at 16 April 2008.

⁷⁹ Although it mentioned other Arab countries on the watch list and these include: Algeria, Egypt, Kuwait, Lebanon, Saudi Arabia and Lebanon, USTR, 2008 Special 301 Report (2008) <http://www.ustr.gov/assets/Document_Library/Reports_Publications/2008/2008_Special_301_Report/asset_upload_file553_14869.pdf> at 15 May 2008.

⁸⁰ Malkawi, above n 66

with all forms of IPRs that are not much different from the Jordanian one.⁸¹ They even go further than the USJFTA in demanding higher level of copyright protection particularly in connection with extending copyright term to be 70 years (instead of 50) after author's death.⁸²

Jordan and the U.S. also issued a Joint Statement on Electronic Commerce; the statement discusses many issues related to electronic commerce.⁸³

It is submitted as I will explain later that the Jordanian copyright law needs to be studied carefully to make sure in its current format it allows Jordanians to benefit as much as possible from the digital revolution and what it can offer.

5.4.4 Egypt Copyright Law (Medium Level Protection)

The applicable intellectual property law in Egypt is the Law No. 82 of 2002. It is a comprehensive IPRs law that deals with patents, utility models, integrated circuits, confidential information, trademarks, geographical indications and copyright. The law repealed the Copyright Law No 354 of 1954 as amended and introduced new sections on copyright and neighbouring rights (Book 3). Book 3 of the said law consists of 50 articles that deal with copyright issues (articles 138-188).⁸⁴ The Egyptian Prime Minister issued later an implementation Decree No. 497 of 2005 that was effective on 29 March 2005.⁸⁵ Egypt is currently a member of the WIPO Convention since 21 April 1975, and the Berne Convention since 7 June 1977, but not yet a member of

⁸¹ See article 14 of the US Bahrain FTA
<http://www.ustr.gov/Trade_Agreements/Bilateral/Bahrain_FTA/final_texts/Section_Index.htm>

See article 15 of the US Morocco FTA <<http://www.moroccousafta.com/ftafulltext.htm>>

See article 15 of the US Oman FTA

<http://www.ustr.gov/Trade_Agreements/Bilateral/Oman_FTA/Final_Text/Section_Index.html>

⁸² For example see article 14/4/4 (a-b) of the US Bahrain FTA

<http://www.ustr.gov/Trade_Agreements/Bilateral/Bahrain_FTA/final_texts/Section_Index.htm>

⁸³ The Statement also request Jordan to provide high protection of IPRs for e-commerce. The US- Jordan Joint Statement on Electronic Commerce
<http://www.jordanusfta.com/documents/joint_statement_on_e-commerce.pdf> at 12 April 2008.

⁸⁴ The law is available

<http://www.agip.com/country_service.aspx?country_key=30&service_key=T&SubService_Order=2&lang=en#> at May 30, 2008.

⁸⁵ See IIPA 2006, special report on Egypt (2006),

<<http://www.iipa.com/rbc/2006/2006SPEC301EGYPT.pdf>> at 30 May 2008.

the WCT and WPPT.⁸⁶ Egypt is also a member of the WTO since 30 June 1995.⁸⁷

The Egyptian IPRs law offers copyright protection to artistic and literary works.⁸⁸ The term of protection is the author's lifetime plus 50 years.⁸⁹ Article 141 of the law recognizes computer software as one of the categories of work that are protected.⁹⁰ Article 171 (section 9) gives third parties right to do the following: "temporarily reproducing work subsequent to or during the digital transmission of the work; or during exercising an act aiming at receiving a digitally stored work; and within the framework of normal operation of the device used by the right holder".

Article 181 (5 and 6) provides for the first time criminal penalties only (imprisonment and a fine) that prohibit circumvention of TPMs.⁹¹ IIPA criticised article 181 (5 and 6) since it is not compatible with the wording of WIPO treaties particularly WCT and WPPT.⁹² There is no mention in the law

⁸⁶ See WIPO- Administered treaties

<http://www.wipo.int/treaties/en/ShowResults.jsp?search_what=C&country_id=53C>

⁸⁷ See Egypt's page at WTO <http://www.wto.org/English/thewto_e/countries_e/egypt_e.htm> at 30 May 2008.

⁸⁸ Article 140

<http://www.agip.com/country_service.aspx?country_key=50&service_key=C&SubService_Order=3&lang=en> at 30 May 2008.

⁸⁹ Article 160

<http://www.agip.com/country_service.aspx?country_key=50&service_key=C&SubService_Order=3&lang=en> at 30 May 2008.

⁹⁰ This is not the only time that computer software were protected by the Egyptian copyright law, the Law No. 29 of 1994 protected computer software as well. But it treated it for the first time as a "literary work" and extended the term of protection from 20 years to 50 years. See Ladas and Parry, Egypt- Amendment to Copyright Law (1994), Ladas and Parry LLP, <http://www.ladas.com/BULLETTINS/1994/0694Bulletin/Egypt_CopyrightLawChange.html> at 23 May 2008.

⁹¹ Article 181 of the law provides as follows: "Without prejudice to any severer penalty provided for in any other law, any person committing one of the following offences shall be penalized by imprisonment for not less than one month and a fine of not less than five thousand Egyptian pounds, and not exceeding ten thousand Egyptian pounds, or either of both penalties: -

Fifth:

Manufacturing, assembling or importing, for the purpose of sale or rental any apparatus, means or device designed or prepared for manipulating technical protection used by the author or holder of neighboring rights, such as encoding or otherwise.

Sixth:

Removing, impairing or mutilating, in mala fide, any technical protection used by the author or holder of neighboring rights, as encoding or otherwise.

<http://www.agip.com/country_service.aspx?country_key=50&service_key=C&SubService_Order=3&lang=en>

⁹² See the criticism by IIPA 2003 Special 301 report (2003),

<http://www.iipa.com/rbc/2003/2003SPEC301EGYPT.pdf> 106 at 23 May 2008.

of alteration of ERMI.⁹³ The law contains a compulsory license provision for copying and translating materials that is not limited to literary work, but extends to all sorts of work including computer software.⁹⁴ The law also contains criminal penalties for infringement of a sentence not less than 'one month imprisonment' and a fine of 'Egyptian Pounds (EGP) 500 to 1000 (US\$ 905 to \$1,810)',⁹⁵ that was not considered compatible with the Trade Related Aspects of intellectual Property (TRIPS) Agreement.⁹⁶ The IIPA special report of 2008 recommended Egypt to remain on the priority watch list and recognized mostly that the main problem is with the enforcement of copyright.⁹⁷ The USTR in its 2008 report moved Egypt from the priority to the watch list in recognition of its protection of the pharmaceutical industries, but stressed in the meantime that serious concerns remain, about Egypt's IPRs enforcement regime, particularly copyright enforcement and entertainment software.⁹⁸

On 27 January 2007, Egypt signed an EFTA (with Switzerland, Iceland, Liechtenstein, and Norway) in Davos, Switzerland. The main objective of the Agreement is to achieve the liberation of trade in goods in conformity with Article 31 of the General Agreement on Tariff and trade (GATT) of 1994. Article 23 of chapter 3 of the EFTA⁹⁹ talks about the protection of IPRs and refers to Annex 5 that determines the required level of protection.¹⁰⁰ It is submitted that Annex 5 does not oblige Egypt to offer a higher level of IPRs protection than what is available under its current laws. Egypt is obliged to comply with the obligations set out in the multilateral IPRs agreements particularly the WTO, Paris Convention of 1883 for the protection of Industrial

⁹³ Ibid

⁹⁴ Article 171

<http://www.agip.com/country_service.aspx?country_key=50&service_key=C&SubService_Order=3&lang=en>

⁹⁵ Article 181

<http://www.agip.com/country_service.aspx?country_key=50&service_key=C&SubService_Order=3&lang=en>

⁹⁶ IIPA above n85.

⁹⁷ USTR, special 301 report (2008),

<http://www.ustr.gov/assets/Trade_Sectors/Intellectual_Property/Special_301_Public_Submissions_2008/asset_upload_file141_14486.pdf> at 23 May 2008.

⁹⁸ IIPA above n97.

⁹⁹ Article 23 consists of 5 articles

<<http://secretariat.efta.int/Web/ExternalRelations/PartnerCountries/EG>> at 23 May 2008.

¹⁰⁰ See the Annex,

<http://secretariat.efta.int/Web/ExternalRelations/PartnerCountries/EG%20%28Folder%29/Annexes/EG_FTA_Annex_V.pdfv> at 23 May 2008.

Property (Paris Convention), and the Berne Convention and other agreements as well.¹⁰¹

5.4.5 Palestinian Copyright Law (Low Level Protection)

Palestine is an interesting case study, this is because it had the earliest intellectual property laws in the Arab world, but now it lags much behind especially in terms of copyright protection.¹⁰² The reason for that is because Palestinian copyright laws go back to the Othman Empire (1299-1923) and the British mandate for Palestine (1920-1946), and they have not been amended since then. Among the laws that are still applicable are the Law of Copyright and Authorship No 46 of 1911 and the Law of Copyright and Authorship of 1924.¹⁰³ The Copyright Law of 1911 is made up of three parts, the first part deals with copyrighted materials (Articles 1-28), part 2 deals with foreign works (Articles 29-30) and part 3 contains supplemental provisions (Articles 31- 35).

The Law of Copyright and Authorship for 1924 consists of only 4 articles that deal mainly with the penalties that are inflicted upon infringements of copyright. Since August 1997, Palestine has requested to be an observer member of the WTO, but has not been given this opportunity.¹⁰⁴

It is submitted that the current Palestinian copyright law fail to address the latest development in technology and do not provide any protection for copyrighted materials in cyberspace.

5.4.6 Copyright and the Digital Age

¹⁰¹ See article 2 and 3 of Annex V <http://secretariat.efta.int/Web/ExternalRelations/PartnerCountries/EG%20%28Folder%29/Annexes/EG_FTA_Annex_V.pdfv> at 23 May 2008.

¹⁰² Trademarks and patent laws were amended. Trademarks are protected in the West Bank according to the Trademark Law No 33 of 1952 and in Gaza in accordance with the Trademark Law for 1938. As for patents, they are protected in the West Bank by the Patent Law No 22 of 1952, and in Gaza in accordance with Patent Law no 56 of 1939. Please visit the Palestinian Investment Promotion Authority <<http://www.pipa.gov.ps/jpr.asp>> at 29 May 2008.

¹⁰³ Also there is Copyright Law of 1862 and the Copyright Law and Musical Authorship of 1906. All Palestinians laws are collected by Birzeit Institute of law, <<http://muqtafi.birzeit.edu/en/>> at 23 May 2008.

¹⁰⁴ The legal opinion presented by the Palestinian government to be an observer member at the WTO, <http://www.met.gov.ps/epp/EPPI/EPP_WYO_Work/4.pdf> at 29 May 2008.

Do copyright laws have the same relevance in cyberspace as they used to have in the real space? How do copyright laws need to be restructured in the digital age? What are the amendments that took place internationally that deal with copyright issues in the digital age? How did they find their way into national copyright laws? Can these amendments be introduced in developing countries? What should be observed when taking into account the particular consideration of developing countries in the digital age and how copyright laws must be structured?

Opinions have been split between those who regard copyright as inappropriate and irrelevant in the digital online environment, to those who see it as capable of adapting to encompass the new technological paradigm.¹⁰⁵ It is submitted that copyright still plays an effective role in the digital age contrary to some observations¹⁰⁶ and there have been many amendments that have taken place internationally and nationally to deal with copyright issues in cyberspace.

The first important international standards in relation to copyright and the digital age were found in WCT and WPPT, commonly referred to as the "Internet Treaties" of 1996. These treaties have been drafted to update the previous treaties mainly the Berne Convention that failed to address the latest developments in technology. Below is an overview of what has been achieved on the national level to deal with the digital revolution.

In U.S., the Congress wanted to implement the Internet Treaties that it was a party to¹⁰⁷ and for that reason the Digital Millennium Copyright Act (DMCA) was enacted by the Congress. The law amended title 17 of U.S. Code to extend the reach of copyright over the internet, and at the same time limited the liability of online service providers (OSP) from copyright infringements that can take place through their designated systems.¹⁰⁸

¹⁰⁵ Fitzgerald, above n2, 156

¹⁰⁶ See Eben Moglen, 'Anarchism Triumphant: Free Software and the Death of Copyright', the Commodification of Information, Copyright and Commodification: Broad Trends, Niva Elkin-Koren (ed), *The Commodification of Information* (2002), 107. P. Bernt Hugenholtz 'Code as the Law or the End of Intellectual Property as we know it', IVIR <www.ivir.nl/publications/hugenholtz/maastricht.doc> at 15 May, 2008.

¹⁰⁷ The U.S was a member of the WCT and on March 6, 2002 and the WPPT on May 20, 2002, please visit WIPO's website <<http://www.wipo.int/treaties/en/>> 30 May 2008.

¹⁰⁸ The Digital Millennium Copyright Act, 17, USC, 1989, <<http://www.copyright.gov/legislation/dmca.pdf>>

The European Union (EU) issued many Directives to deal with the digital revolution, some of them relate particularly to copyright while others are more general and deal with variety of issues related to e-commerce.¹⁰⁹ Each member state is required to implement the Directive through its national law. The Directive on the harmonization of certain aspects of copyright and related rights in the information society (EU Copyright Directive of 22 May 2001) was passed to implement the WCT.

In Australia and as a result of the Internet Treaties and the Australia- United States Free Trade Agreement (AUSFTA), the Copyright Act of 1968 was amended on a number of occasions to deal with the digital revolution, and some of these amendments include: the protection of ERMI, extension of the term of copyright for many materials, and prohibiting circumvention of TPMs.¹¹⁰

In a nutshell, these are the developments that took place in the developed world and the international arena as well. Are these amendments enough to make copyright fully compatible with the digital age? Can copyright in this format alone answer questions presented on daily basis by the complexity of the daily advances of technologies that human beings witness? Let me examine that under a separate heading.

5.4.7 Rethinking Copyright Laws in Arab countries in the Digital Age

The Arab Human Development Report of 2002, published by the United Nations stressed the need for establishing incentives to support greater creativity and innovation in the Arab world via IPRs protection.¹¹¹ The report did not examine in depth what is the required level of IPRs protection and whether there is a need to rethink Arab's copyright laws in the digital age. I will give an overview of how prominent IP scholars and commentator believe

Wikipedia's Article on the DMCA, available at <<http://en.wikipedia.org/wiki/DMCA>> at 14 April 2008. See also David Nimmer, 'Copyright Sacred Text, Technology and the DMCA (1st ed, 2003). 329-383.

¹⁰⁹ See the Directive on Electronic Commerce (2001/31/EC), <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0031:EN:HTML>> at 16 April 2008).

See also Arno R Lodder, European Union E-commerce Directive Article Comment, SSRN <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1009945> at 16 April 2008.

¹¹⁰ Fitzgerald, above n2, 189

¹¹¹ The Arab Human Development Report, (2002) <<http://www.pogar.org/publications/other/ahdr/ahdr2002e.pdf>> at 10 May 2008.

that copyright has changed in the digital age and how it must be restructured to deal with the digital revolution.

Professor Lawrence Lessig in his highly acclaimed book, "Free Culture" argued mainly that intellectual property and copyright law constrain cultural production by taking valuable creative works out of the public domain, and recommends revising intellectual property law to ensure that future artists, scholars, and fans have access to cultural products while still enabling creators to financially benefit from their own efforts for a limited period time¹¹²

Niva Elkin Koren argued that copyright regime has:

".....Transformed from a relatively narrow set of rights necessary to guarantee incentives to create new works, into a claim for the protection of owner's expectation to maximize their profits and utilize every economic potential to their work".¹¹³ She further adds that:

".... if copyright returned to serving its original purpose, it may well be able to provide an adequate basis for cultural reaction and social dialogue. It may be that copyright law should be adjusted to undertake such new roles in the information economy."¹¹⁴

Professor Jessica Litman has observed that:

"The first task then, in revising copyright law for the new era, requires a very basic choice about the sort of law we want. We can continue to write copyright laws that only copyright lawyers can decipher, and accept that only commercial and institutional actors will be likely to comply with them, or we can contrive a legal structure that ordinary individuals can learn, understand and even regard as fair".¹¹⁵

Professor William Fisher has argued that we need a more fundamental reform of the copyright system and particularly we need to establish an alternative compensation system in which creators of content will be compensated by governments in proportion to the amount of their products consumed¹¹⁶.

¹¹² Lawrence Lessig, *Free Culture: How Big Media Uses Technology and the Law to Lock down Culture and Control Creativity* (2004) <<http://www.free-culture.cc/remixes/>> at 15 May 2008. See also, Boyle n 20.

¹¹³ See Niva Elkin- Koren and Neil Weinstock Neranel, *The Commodification of Information* (2002) 79-106.

¹¹⁴ Ibid

¹¹⁵ Jessica Litman, *Digital Copyright*, (2001) 179.

¹¹⁶ William W. Fisher II, *Promises to Keep*, (2004) 199-256.

Professor Brian Fitzgerald has also observed that:

“As we enter an era of unprecedented knowledge and cultural production and dissemination we are challenged to reconsider the fundamentals of copyright law and how it serves the need of life, liberty and economy of the 21st century”.¹¹⁷

Professor Peter K. Yu recognizes that the solution to the problem of copyright law in the digital era does not rest solely with copyright reform, but there are many other effective alternative non-legislative proposals that need to be addressed as well, and they include: licensing, TPMs and compensation systems. He also adds that:

“... A copyright reform cannot be based on a leap frog of faith; it has to be based on a careful empirical assessment of the local needs, interests and goals”.¹¹⁸

Professor James Boyle believes that copyright policy in the digital age should be neutral to encourage innovation; and he has argued that:

“Copyrights were intended to last only for a limited time, to regulate texts, not criminalize technologies, to facilitate rather than to restrict access. Even the droits d'auteur tradition was built around the assumption that there were social and temporal limitations on the author's claims; natural right did not mean absolute right”. He adds that:

“... In the name of authorial and inventive genius, we are creating a bureaucratic system that only a tax-collector or a monopolist would love”.¹¹⁹

One commentator has also suggested that we should design legal and regulatory regimes in such a way that they foster informational autonomy, diversity, and (to some extent) information quality¹²⁰

Some copyright scholars have even gone further in claiming that:

“... If we stop defining copyright in terms of reproduction, we will have to rethink it completely, indeed, we will need a new name for it, since copyright will no longer describe it”¹²¹

¹¹⁷ Brian Fitzgerald ‘Copyright 2010 : The Future of Copyright Law’, Copyright Law, *Digital Content and the Internet in the Asia – Pacific* (2008) 173

¹¹⁸ Yu, above n17

¹¹⁹ Boyle, above n20 , 10

¹²⁰ Urs Gasser and Silke Renst, ‘From Shakespear to Dj danger Mouse: A Quick Look at Copyright User Creativity in the Digital Age’(2006) Berkman Center for Internet and Society, <http://cyber.law.harvard.edu/publications/2006/From_Shakespeare_to_DJ_Danger_Mouse> at 20 May, 2008.

¹²¹ Litman, above n 115.

Professor Pamela Samuelson in a recent study has given us a good survey of copyright issues that need to be reconsidered in the digital age including: formalities, copyright notices, deposit, orphan work, exclusive rights, reproductions rights, derivative works, fair use, term of protection, public domain, infringements, secondary liability, remedies and damages.¹²²

Despite all of the research work that has been done in that area, there is nothing substantial and comprehensive. All of what has been said is pretty much scattered ideas that do not help policymakers and legislators in rethinking copyright in the digital age and draft appropriate copyright models that are responsive enough to challenges presented by the digital revolution. It is also important to say that all of these suggestions deal with the issues from a developed country perspective and does not take into consideration the situation of developing countries particularly Arab countries and how they should structure their copyright laws in the digital age.

Many questions remain to be answered in the mean time including:

Whether copyright laws in Arab countries in their current format are able to provide adequate access to educational materials to stimulate creativity, innovation, productivity and development? What is the needed protection level for authors in the digital age from a developing Arab country perspective? Is that the same as envisaged by the international copyright treaties? What should be the scope of the reproduction right in the digital age? What is the position of temporary reproduction in Random Access Memory¹²³ (RAM)? All these questions and many others will be the focus of my research project.

5.4.8 Research on Digital Copyright Law and Arab Countries

To date there has been limited research that has been written in English on Arab copyright laws that examines their importance to future development and how they must be restructured to deal with the digital revolution.

¹²² Pamela Samuelson, 'Preliminary Thoughts in Copyright Reform' (2007) SSRN, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1002676> at 20 May 2008.

¹²³ "RAM is the area where a computer stores programs that you are currently running and data that you are currently working on", Tec FAQ, <<http://www.tech-faq.com/ram.shtml>> at 2 June 2008.

The plethora of literature regarding Jordan's IPRs has been drafted primarily by economists and not by IP lawyers and scholars.¹²⁴ The majority of literature has focused either on FTAs¹²⁵, Jordan's Pharmaceutical sector¹²⁶, TRIPS and the Arab world¹²⁷, and e-commerce and the internet¹²⁸

¹²⁴ Hamed El-Said and Kip Baker, *Management and International Business Issues in the Middle East*, (1st ed, 2001).

¹²⁵ Mohammad Nasour, 'Fundamental Facts of the United States- Jordan Free Trade Agreement; E-commerce, Dispute Resolution, and Beyond' 27 *Fordham International Law Journal* 742. (general study that gives basic outline to the provisions of the FTA without particular analysis of these provisions and to what extent they might be helpful or unhelpful for the country), Bahar H. Malkwai, 'The Intellectual Property Provisions of the United States-Jordan Free Trade Agreement: Template or not Template' (2006) 9 *Journal of World Intellectual Property* 213-229 (the author gives an outline of the provisions of the USJFTA in connection with Intellectual property, and argues that in its current format does not serve as a good template for other Arab nations since it does not protect traditional knowledge or folklore expressions and future agreements must emphasize cultural protection to guard Arab countries' domestic audio visual sector).

See also on FTAs, David Price, 'The U.S Bahrain Free Trade Agreement and Intellectual Property Protection'

(2007) 7 *Journal of World Intellectual Property* 829- 850 (the author argues that the Bahrain's FTA will impact significantly on the other Gulf states by establishing the new regional benchmark for intellectual property to which other states will be pressures to accede), Paul G. Johnson, 'Shoring U.S. National Security and Encouraging Economic Reform in the Middle East: Advocating Free Trade with Egypt' (2006) 15 *Minnesota Journal of International Law*. 457. Peter Drahos, 'Bits and Bobs: Bilateralism in Intellectual Property' (2001) 4 *Journal of World Intellectual Property* 791-808 (the authors argues that Jordan's FTA contains several TRIPS plus provisions that are "more extensive protection" that is conferred by TRIPS standards). Ahmed Zahny, 'The Egyptian Free Trade Agreement, Challenges and Prospects'(2001) 16 *Arab Law Quarterly*.

¹²⁶ Hamed El Said, Mohammed El-Said, 'Trips- Plus Implications for Access to Medicine in Developing Countries: Lessons from Jordan- United States Free Trade Agreement' (2007) 10 *Journal of World Intellectual Property* 438-475 (the author argues that the JUSFTA was not useful in terms of the development of the Jordan's Pharmaceutical sectors and proves based on pure interviews that contrary to some Americans who argued that it attracted foreign investments and improved the innovative capacity of local generic manufacturers).

¹²⁷ Mohammed El -Said, 'The Road from TRIPS- Minus, to TRIPS- Plus: Implications of IPRs for the Arab world' (2005) 8 *Journal of World Intellectual Property* (the authors examines how Jordan, Bahrain and Morocco, in less that a decade, moved from TRIPS-minus to TRIPS plus and how that might restrain their ability to implements their agreements and circumvent their negotiation power multilaterally).

¹²⁸ Valentina M. Donini, 'Bridging the Gap: privatization Policy, Internet and E-commerce in Jordan'(2006) *European University Institute*, <http://cadmus.iue.it/dspace/bitstream/1814/6317/1/RSCAS_2006_37.pdf> at 11 May 2008. (the author did not provide anything new in regard to e-commerce and the legal infrastructure in Jordan. It merely states the law and takes the provision of the Jordanian e-transaction law and compares it to the laws that have been drafted in U.A.E and Tunisia (e-commerce laws). There is no mention of the importance of copyright laws to developments of Jordan and Arab world). See also, Soumitra Dutta and Mazen E. Coury, 'ICT in the Arab World' (2002) *World Economic Forum*, <http://www.weforum.org/pdf/Global_Competitiveness_Reports/Reports/GITR_2002_2003/Arab_World.pdf>at 15 May 2008). Jeker Hamna Anwar, Mearl Cabral and Faiza Farooq Mannan, and Virginia La Torre 'E- Transaction Law and Online Dispute Resolution: A Necessity in the Middle East' (2006) 20 *Arab Law Quarterly*.

Mahmoud Al-Kandri, 'Infringements of Copyright and Trademarks in Electronic Commerce: a Kuwaiti and Comparative Approach'(2002) 17 *Arab Law Quarterly*, Samer M Qudah, 'Legal

Other works that deal with IPRs and Arab countries¹²⁹ concentrate particularly on how Sharia and Islamic jurisprudence protect it.¹³⁰

There is also other research written by economists and translators on copyright based industries in the Arab countries¹³¹, the performance of Arabic book translation in specific Arab countries¹³², the role of Small and Medium Enterprises (SMEs) as copyright owners and copyright users¹³³, software piracy¹³⁴ and trademarks protection in the Arab countries.¹³⁵

Insights on the Dubai Electronic Transaction and Commerce Law' (2002) 17 *Arab Law Quarterly*. Marwan Ibraheem and Hisaham Tahat, 'Regulating Electronic Contracts in Jordan' (a paper presented to the 21 BILETA conference: globalisation and harmonization in technology law, Malta (April 2006). <<http://www.bileta.ac.uk/Document%20Library/1/Regulating%20electronic%20contracting%20in%20Jordan.pdf>> at 2 June 2008. Rami Olwan, 'Contracting and Proving Contracts in Cyberspace (2002) (in Arabic) 26 *Kuwait Law Journal*. Rami Olwan, 'Conflicts Over Domain Names' (2005) (in Arabic) 22 *Sharia and Law Journal* 239-327. Rami Olwan, Critical Review of the Proposed Palestinian Electronic Commerce Law (2006).

¹²⁹ See Essam Altamimi, 'Current U.A.E Copyright and How it Compares and Contrast with WTO's TRIPS Agreement and the Berne Convention'(1999) 2 *Journal of World Intellectual Property* 371-391.

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¹³² Najib Harabi, 'Performance of Arabic Book Translation: Industry in selected Arab Countries: Egypt, Lebanon, Morocco, Saudi Arabia and Syria' (2007) MIPRA, <http://mpr.ub.uni-muenchen.de/4385/1/MPRA_paper_4385.pdf> at 11 May 2008.

¹³³ Ahmead F. Ghoneim, 'Intellectual Property in Arab Countries: SMEs as Copyright Owners and/or Copyright Users' (2003) CIPE, <<http://www.cipe.org/pdf/publications/fs/ghoneim.pdf>> at 12 May 2008.

¹³⁴ Samir. N Hamade, 'the Legal and Political Aspects of Software Piracy in the Arab world' (2006) IEEE xplore, <<http://ieeexplore.ieee.org/iel5/10728/33849/01611583.pdf?isnumber=33849&prod=CNF&arnumber=1611583&arSt=+137&ared=+142&arAuthor=+Hamade%2C+S.N>> at 11 May 2008 (the study is very basic and is quite general without any analysis of the situation of piracy in the Arab world, furthermore, the author argues on tougher copyright laws and enforcement measures based on political preferences).

It is also important to note that there is a great deal of research that has been written on access to medicine in developing countries¹³⁶ and compulsory licensing.¹³⁷

In contrast, the vast amount of research that deals with digital copyright work in this field has focused only on the interests of the developed nations and no particular consideration has been given to the interests of the developing nations¹³⁸ particularly the legitimate concerns of the Arab countries.

Accordingly, the analysis and commentary regarding copyright laws in Arab countries is of importance to a great deal of sectors in the region and will help in giving a clear picture of the role of copyright laws for development of Arab countries; and how these laws need to be restructured in the digital age. My research will address this gap and will provide an in-depth analysis of the following identified issues.

- Arab countries and copyright laws;

¹³⁵ See Amir H. Khoury, 'The Development of Modern Trademark Legislation and Protection in Arab Countries of the Middle East' (2003) 16 *Transnational Lawyer Review* 249.

¹³⁶ See for example, Rosa Castro Bernieri, 'Intellectual Property Rights in Bilateral Investment Treaties and Access to Medicines: The Case of Latin America' (2006) 9 *Journal of World Intellectual Property* 548–572.

¹³⁷ See for example, Tshimanga KONGOLO, 'Compulsory License Issues in African Countries' (2004) 7 *Journal of World Intellectual Property* 185–199. Sandra Bartelt, 'Compulsory Licensing Pursuant to TRIPs Article 31 in the Light of the Doha Declaration on the TRIPs Agreement and Public Health' (2003) 6 *Journal of World Intellectual Property* 283-310.

¹³⁸ Among the limited research work see, T. Pistorius, 'Developing Countries and Copyright in the Information Age' (2006) North West University, <http://www.puk.ac.za/opencms/export/PUK/html/fakulteite/regte/per/issues/2006_2_Pistorius_art.pdf> at 12 April 2008.

Symposium Review: 'Locking up the Bridge on the Digital Divide- A Consideration of the Global Impact of the U.S Anti-Circumvention Measures for the Participation of Developing Countries in the Digital Economy' (2004) 20 *Santa Clara Computer and High Technology Law Review* 941 (similar approach arguing that technological measures may not be helpful for developing countries to realize the full potential of the digital technologies and the internet networks). Peter Drahos, 'Developing Countries and International Intellectual Property Standard Setting' 5 (2002) *Journal of World Intellectual Property*, 765 (argues that IP standards settings has been dominated predominately by the west (US and EU) and hence developing countries can expect very few concessions on intellectual property issues in either a bilateral and multilateral context, and they should look for self-help). See also Clemente Forero- Pinda, 'the Impact of Stronger Intellectual Property Rights on Science and Technology in Developing Countries' (2006) 6 *Journal of World Intellectual Property* 808-824, (the author argues stronger protection of intellectual property rights has extended from the developed countries, affecting pharmaceuticals, biodiversity and ethnic knowledge). John Feather, 'Copyright in Developing Countries: Necessity or Luxury?' (1993) 25 *International Information and Library Review*, 15-25 (the author argues that copyright is indeed necessary to developing countries and is not regarded as luxury, he reaches this conclusion based on the benefits which copyright could bring to all of those who generate, handle and use books in developing countries) .

- digital copyright; and
- relationship to development and developing countries.

5.4.9 Conclusion

The future of internet, digital technologies and copyright is as yet unwritten. Many experts and scholars suggest that the existing copyright systems need to be reformed, but most commentators do not give specific and comprehensive legislative recommendations. My thesis will contribute to the process of building a responsive and flexible copyright regime for the 21st century, which will assist in stimulating creativity, innovation, and productivity for developing countries and in particular Arab countries.

My PhD project aims to challenge and provide alternatives to the strong protectionist copyright regime advocated by the U.S., Europe and international organizations regarding copyright in the digital age. This protectionist regime is evidenced in the bilateral FTAs which are currently signed between the U.S and Jordan, Morocco and Oman.

The project will examine the importance of copyright in the digital age and how Arab countries, particularly Jordan, Egypt and Palestine should rethink their copyright systems to accommodate international developments taking place in connection with the digital revolution.

This research project will be of interest to academics, lawyers, economists, and policy makers in general. It is hoped that it will inform copyright legislators in Arab countries as to the best copyright models that suit their local and specific needs. The information obtained from this proposed study could contribute to the development of best practices and policies related to copyright in developing countries.

The original subject matter of this proposal is worthy of study at the PhD level. My practical background and my deep interest in copyright law will enable me to pursue my chosen subject successfully. The PhD program is an excellent venue for honing my research interests, expanding my critical skills and will provide me with the opportunity to make a significant contribution to the emerging field of copyright law in developing and Arab countries.

5.5 Coursework

I am currently taking the retrieval skill research course that is obligatory to take.

6. Research/ Ethics Statement

This research does not involve humans, animals, genetically modified organisms or biosafety.

7. Intellectual Property Checklist/ Statement

Not applicable.

8. Healthy and Safety Statement

Not applicable.

9. Contextual Bibliography/ References

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