

COPYRIGHT LAW IN PALESTINE: AN OVERVIEW

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ABSTRACT

Copyright protection in Palestine is under the Palestinian Copyright Act 1911 (Act 45) and Arab Copyright Convention 1981. The Palestinian Copyright Act 1911 has not been amended since enacted in 1911. This causes a lack of protection of copyright works in the digital environment. Hence, this paper aims to identify and explain the provisions contained in the Palestinian Copyright Act 1911 (Act 45) related to the digital area and highlight issues related to it. This paper concludes that there are issues related to copyright in the digital environment in Palestine which requires regulation by the Palestinian Copyright Act 1911.

***Keywords:** Copyright, Palestinian Copyright Act 1911, digital, Palestine.*

Introduction

The expression “copyright” refers to “the act of copying an original work which, in respect of literary and artistic creations, may be done only by the author or with the author’s permission. In certain languages, copyright is referred to as authors’ rights” (WIPO 2016). Countries are interested in protecting copyright through copyright laws and international copyright agreements to ensure adequate protection for copyright, in which the state of Palestine was one of them (WIPO 2016).

Regulation of Copyright in Palestine is under the Palestinian Copyright Act No 45 for 1911 (the Act 1911). Hence, this paper aims to discuss the 1911 Act and issues related to the digital environment under the 1911 Act. The discussion includes the history of copyright law in Palestine, regulator of copyright in Palestine, the provisions of the Act 1911, issue of copyright in the digital environment in Palestine, and issues of copyright protection for computer program and database under Act 1911.

This paper employs a library-based method which uses primary and secondary resources. The primary data are the Palestinian Copyright Act 1911, Bern Convention for Copyright, WIPO Copyright Convention, WIPO Convention for Performance and Phonogram, and TRIPS Convention. The secondary data are books, articles, master and PhD thesis and governmental documents and reports. Besides, this data will be analysed through descriptive and analytical methods.

1. Palestinian Copyright Act

a. Historical Background.

Palestine has been part of the Ottoman Empire for more than 400 years, and it ended in 1917 after the British occupation of Jerusalem (Tristan Dunning. 2019). The legislation that implemented initially on the

ottoman empire was the Islamic Law, and then it was replaced with the regulations (Tanzimat) for a different legal field (Birzeit 2017). On the other hand, the invention of the printing machine increased knowledge production, which was invented by Johannes Gutenberg in the 15th century in Germany. This invention spread rapidly in Europe, and it was introduced to the Ottoman State after around 300 years from Europe. The states in Europe started to make regulations for copyright after the increase of printing works. The first copyright law was the state of Anne 1710. Whereas the Othman empire started to enforce regulation around the year 1850, in which the first law endowing authors with copyright is the statute of (Encümen-i Daniş). After that, the copyright law was enacted in 1910 (Hakkı Telif Kanun Layihası), and this law was applied in Palestine until 1917 (Buket 2014).

In 1917, Palestine fell under the British Mandate or the British occupation after the loss of the Ottoman Empire in the First World War, and as a result of that, specifically in the year 1924, a British royal decree issued to apply the British Copyright Act of 1911 [Act 45] to Palestine. Also, the Copyright Act 1911 amended in 1924, which this amendment was related to penal provisions in Palestine (Michael 2012). The British Copyright Act remained in effect until Israeli occupation in Palestine in 1948. Still, it was a partial occupation for Palestine, where the West Bank and Gaza Strip remained unoccupied. The West Bank attached to the Kingdom of Jordan and the Gaza Strip put under Egyptian administration until 1967 in which the Ottoman Copyright Law was the relevant law for copyright during the period between 1948 to 1967 (Ihab 2003).

In 1967, Israel occupied the West Bank and Gaza Strip and other Arab territories. On the other hand, this occupation suspended the implementation of all laws and replaced them with strict military orders (United Nations Security Council Resolution 242, 1976). This legal status remained until 1994 when an agreement was signed between Israel and the Palestinian Freedom National Organization which established the Palestinian Authority in the West Bank and Gaza Strip ("Oslo" Agreement 1993). After this agreement, most military orders that were issued during the period of the Israeli occupation were cancelled. The laws that were enforced before the Israeli occupation were again used (Reinstatement of Laws 1994) which include the Copyright Law of 1911 and is enforced until now (Mohammad Erekat 2019).

The State of Palestine joined the Arab Copyright Convention in 1981 through the Palestinian Freedom Organization, as this agreement regulates the subject of copyright and related rights, and stipulates many provisions for copyright protection. Hence, this agreement and the Palestinian copyright law constitute the legal framework for copyright in Palestine

b. Regulator of Palestinian Copyright Act 1911.

Palestinian Ministry of Culture is the primary regulator of copyright in Palestine, which specializes in all branches of intellectual property. Also, there are other bodies assist the Ministry of Culture in achieving its goals such as Palestinian National Library which established with the support by Ministry of Culture, and the Palestinian Publisher association (Vivian 2020).

The intellectual property department in the Palestinian Ministry of Culture specializes in copyright. This department prepares initiatives to enhance copyright protection. The most important of these initiatives according to the strategy of the Ministry of Culture 2017- 2022 are the initiative to continue work to obtain full membership in the WIPO organization, the initiative to safeguard the law of the Palestinian intangible heritage, the Palestinian Copyright Law Initiative, the National Law Library, and the Works Deposit System (Palestinian Ministry of Culture, 2016).

The Palestinian Copyright Law initiative aims, in particular, to present the copyright law to the Palestinian Council of Ministers which has the function to refer it to the President of the Palestinian Authority. The President may then issue it through a decision of law (Palestinian Ministry of culture 2016) because the legislative council in Palestine has been suspended since 2007, after the outbreak of the Palestinian division between Fatah and Hamas. After that, the laws have been issuing by the decision of law through the President of the Palestinian Authority, as these laws should be essential (Minister of Justice

v The Public Prosecution 2018). However, copyright law has not been issued yet, given that it is not among the priorities of the Palestinian national policy agenda (Palestinian Ministry of Culture, 2016).

2. Provisions of Palestinian Copyright Act 1911

The Palestinian Copyright Act 1911 [Act 45] aims to protect original literary, artistic, dramatic and musical works expressed in a material form, through the statement of rights of authors towards their works. This Act also provides the duration of the protection granted to them, exceptions thereof, methods of litigation against any infringement of copyright and the penalties resulting from those violations, and other provisions aimed to grant copyright protection (Palestinian Copyright Act 1911). The Palestinian Copyright Act consists of 37 articles divided into three chapters; the first chapter deals with copyright inside the country, the second chapter deals with copyright outside the country, and the third chapter deals with additional provisions for this Act. The Copyright Act 1911 amended in 1924 with another Act related to Palestine which consists of three articles and aimed at laying down provisions arising out of the application of the 1911 Act in Palestine and fundamentally amending the penalties for infringement of copyright (Palestinian Copyright Act 1911).

Palestinian Copyright Act 1911 defines copyright as “the sole right to produce or reproduce the work or any substantial part thereof in any material form whatsoever...”. Also, it defines publication concerning any work “the issue of copies of the work to the public...” (Palestinian Copyright Act 1911 Article 1).

The exclusive right of the author to produce, distribute, and publish the work is not permanent, as the law specified the period for copyright protection throughout the life of the author and fifty years after his death. Therefore, any act to reproduce, publish and distribute the copyright of the author for trade without the permission of the author is considered an infringement of the copyright and a crime under the provisions of this law. Nevertheless, there are exceptions to copyright that allow copyright users to use copyright in some instances which are as follows; the fair dealing with any work for private study, research, criticism, review, or newspaper summary, the making or publishing of paintings, drawings, engravings, or photographs of a work of sculpture or artistic craftsmanship, if permanently situated in a public place or building, The publication is a collection, mainly composed of non-copyright matter, bona fide intended for the use of schools, the publication in a newspaper of a report of a lecture delivered in public, unless the report is prohibited (Palestinian Copyright Act 1911 Article 2, 3).

In the event of any violation of copyright, the author has the right to use all ways of litigation granted by the law, such as issuing a warning order to stop copyright violation, seizing counterfeit copies, resorting to a lawsuit for compensation for failure and damage caused to the author as a result of the violation. This is in addition to his right to initiate a criminal case against the aggressor. However, these legal ways should be taken against the infringer before the end of three years after the infringement happened. Besides, the defendant in the damage compensation lawsuit can defend himself by proving that he did not know that his actions constituted an infringement of the copyright (Palestinian Copyright Act 1911 Article 6).

The 1911 Act stipulated penalties for violators of copyright. Still, in Palestine, the Act 1924 [Act 15] which amended the penalties contained in the 1911 Law is related to Palestine in particular, as it specified a fine to be imposed on the aggressor for the first time. If he repeated the infringement, he may be fined or imprisoned for two months, and the currency of fine replaced with Palestinian pound (Palestinian Copyright Act 1924 Article 3).

The text of Palestinian Copyright Act 1911 contains a set of provisions related to the infringement of copyright in construction engineering. It also provides the copyright’s right to transfer its right or part of it to another person. It obligates authors to send copies to the British Museum and specific libraries to deposit the works of writing (Palestinian Copyright Act 1911 Article 9,15). The Act dealt with the authoring work in which more than one person participates in addition to the authoring employee who creates the authoring work while he is working (Palestinian Copyright Act 1911, Article 5, 16). The Act laid down

details related to the unpublished work whose author dies, and the government publications in which the copyright returned to the United Kingdom. The law also prohibited the import of any copies of a work that enjoys protection under the copyright law in the Kingdom (Palestinian Copyright Act 1911 Article 17).

Palestinian Copyright Act 1911 regulates provisions related to mechanical instruments from which sounds are produced, as it stipulates "copyright shall subsist in records, perforated rolls, and other contrivances through which sounds may be mechanically reproduced, in like manner as if such contrivances were musical works" (Palestinian Copyright Act 1911 Article 19). The photographs have protection under the copyright law and the period for protection is fifty years, as the photograph includes "photo-lithograph and any work produced by any process analogous to photography" (Palestinian Copyright Act 1911 Article 21).

The Palestinian Copyright Law of 1911 organizes a set of provisions to achieve copyright protection. These provisions are mainly related to the protection of copyright in the traditional form without the digital form, through the adoption of criminal and civil protection for copyright, specifying the exclusive copyright, exceptions to it, its duration, how it is transmitted, and dealing with several issues related to this right. Besides, there are other provisions related to some classified works that were widespread at the time the law was passed, such as those related to mechanical machines. The provisions contained in the Copyright Law need to be developed due to their old age and due to the emergence of new forms of copyright (Bilal Adullah 2018).

3. Issues of Palestinian Copyright Act 1911

The Palestinian copyright act 1911 regulates matters related to copyright, but there are some issues identified concerning this Act which needs to be researched further. The issues are as follows:

a. Copyright in the digital environment in Palestine

The 1911 Act is too old. So far, no amendments have been made to this Act. As a result, the said act is lack of protection for copyright in the digital environment, because the digital environment emerged after the time of enacting the Copyright Act. Besides, the technologies are developing rapidly and continually in which this has caused many countries to amend their Copyright Act to cover copyright works in the digital environment (Bilal 2018). On the other hand, the international conventions that concern with copyright such as TRIPS convention, WIPO copyright convention and WIPO performance and phonogram treaty stipulate that all works that received protection under copyright laws received the same protection when they change to the electronic frame. These conventions also obliged all state parties to enact this provision in their copyright laws (WIPO Copyright Treaty 1996).

Copyright works that change from the traditional form to the electronic form receive copyright protection. This means that all copyright works published on web sites and pages receive copyright protection, as it is not permissible to download, distribute or re-copy them without the author's permission or in other than exceptions in the copyright law. In addition to that, protection includes copyright that is created electronically from the original version. On the other hand, copyright works in the digital environment should have the conditions of originality and fixation, as the case for copyright in the traditional form (WIPO 2016).

The legal protection for copyright in the digital environment is not sufficient, and there is a need for another protection that is called as technological protection for copyright which aims to enhance the protection for copyright in the digital environment. The technological protection means the measure that is used to prevent the copyright user from accessing and copying the copyright works in the digital environment (Iftikhar 2013).

The Copyright conventions stipulate that all states parties to the conventions should text technological protection for copyright and text legal protection to protect this technological measure from

violations (Iftikhar 2013). Nevertheless, the state of Palestine did not join to any copyright treaties and did not amend the copyright to cover the digital copyright works (Mohammed 2016).

Palestinian copyright law needs improvements to give protection for copyright in the digital environment. In particular, it should stipulate copyright protection in the event of conversion of copyright into digital form and text technological protection for copyright in the digital environment and legal protection for it. Also, the state of Palestine should join the international conventions for the copyright to enhance the protection of copyright in the digital environment.

b- Copyright protection for the computer program in Palestine:

The technology has become an integral part of human life, and this indicates the urgent need to protect digital works of all kinds, especially computer programs, where computer program need protection for continued development and investment in the production of computer programs (Nadezda and Dragica 2017). There is a debate in this regard about whether computer programs will be protected under copyright laws or patent laws. Nevertheless, the position of international agreements in this regard has suggested the protection of computer programs is within copyright protection laws (TRIPS Convention 1994 Article 10).

A computer is a machine consisting of physical components (hardware) such as (a hard disk and a monitor) and a unphysical components (software) represented on electronic system that accepts and processes user inputs (data) under the control of a series of instructions called programs to generate the required outputs commonly referred to as information (Fred 2014).

The program is a series of instructions written in a language (such as BASIC) that the computer recognizes to perform a specific task on the device. The programs can be easily separated into a set of code intended to address various types of computer system problems. Computer programs are also expressed in a more comprehensive term which is computer software. Computer programs are classified into System software like Microsoft windows, application software like web browsers, and software programming tools like Java (Usman et al., 2016).

The TRIPS convention and WIPO copyright convention stipulate that all states parties should give computer program protection under copyright acts (TRIPS convention 1994 Article 10. WIPO copyright treaty 1996 Article 4). Most states also stipulate that computer program received protection in their copyright Acts before joining this convention. On the other hand, the computer program that received protection is the programs that distinguish of originality and fixation (Irina 2019).

The Palestinian copyright Act does not stipulate protection for the computer program, and this has caused a risk of copyright infringements in a computer program without any liability against the infringer. Therefore the Palestinian Copyright Act should improve and stipulate protection for a computer program (Mohammed 2016).

c- Copyright protection for the database in Palestine.

Databases are arranged groups of data that are mostly stored on a computer or other electronic devices, as these devices provide access to this data at any time, and this data is also made in a systematic arrangement according to the principles established by the programmer application or manufacturer. Databases are displayed through programs designed to display data through many systems, especially the database management system (DBMS) as one of the most famous database systems. These programs also allow users to create their databases, such as Microsoft Access (Deborah and Charles 2015).

The simplest type of database is the personal database in which the data is organized into rows and columns that are used to record data, which is specific to one user such as Microsoft Excel. The most common and complicated category is Database management system like centralized database in which the information is collected in a central location that users can access from anywhere. There is also a distribution Database in which the data is distributed in different places, unlike the first type, where these data linked to each other using specific links (Abhishek and Dharminder 2014).

Information and data are different from the database, as they are called raw data because they have no context and do not constitute a personal product and are usually not protected within the copyright. To be protected, they must pass through the processes of collection, analysis and arrangement to put it in a specific context and a specific pattern, and they should relate to each other (David 2014).

The Berne Convention for Protection of Literary and Artistic Works, TRIPS Agreement and the WIPO Copyright Agreement stipulate databases as one of the covered works protected by these agreements, and the state parties must stipulate it in their domestic Copyright Acts. Also, these agreements have agreed that the databases do not conflict with any other copyright right related to the materials used (Berne Convention for Protection Literary and Artistic Works Article 2). On the other hand, countries that stipulated copyright protection database in their laws require in general the conditions of originality and fixation to grant copyright protection for database. Still, the originality condition is differently used among countries (Tabrez & Sourav 2012).

The Palestinian Copyright Act 1911 does not text database as one of the works that receive protection under it like other copyright works related to the digital environment. In short, the Palestinian Copyright Act needs improvements to enhance copyright protection in the digital environment, especially the database.

Conclusion

The Palestinian Copyright Act 1911 is the British Copyright Act of 1911 with the addition of some amendments related to its application in Palestine, which has been in effect since 1924. The Palestinian Ministry of Culture is responsible for supervising and developing this law. The Palestinian Copyright Law regulates many issues related to the provision of copyright protection through many special provisions such as the definition of copyright and acts that constitute a violation of copyright and the protection established for copyright. There are also special provisions related to some works which receive protection under this act.

The Palestinian Copyright Act has not been amended since its approval. Meanwhile, technological development and the emergence of the digital environment have led to transfer traditional copyright works into electronic works and the emergence of other types of copyright in the digital environment that were unknown in the past. This paper discussed issues related to the protection of copyright for tradition works that are changed to electronic works, Computer programs, and databases. It was highlighted that there is no protection for these matters in the Palestinian Copyright Act 1911. Hence, there is a need to improve this Act to regulate these aspects. In addition to these issues, there are other issues related to copyright in the digital environment in Palestine that should be regulated by the Palestinian Copyright Act 1911.

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