Notre Dame University

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Faculty of Political Science, Public Administration

and Diplomacy

Copyright Protection for Computer Programs

M.A. Thesis in International Law

By

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Submitted to the Faculty of Political Science, Public Administration and Diplomacy

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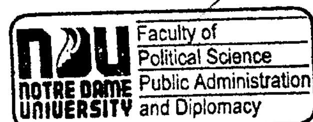

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Abstract

Globalization, nowadays, has reshaped many or most of the legal concepts humans thought of as indispensable. It has turned the globe into a small village, cutting down boundaries, and opening up channels which were inconceivable just a few years back. Free movements of knowledge, thought, inventions, technologies, creations, and ideas have become available to humanity.

This research investigates, therefore, the scope of copyright protection of computer programs and their impact.

There is no doubt that the modern technology use stretches the law which is sometimes slow to react. One legal problem has been the manner in which law has been attempting to adapt existing legal paradigms to deal with the problems posed by technological transfer and development.

The aim of this research is to shed light on the current problems facing copyright protection for computer programs and the influence on international trade and economics in an attempt to stop computer programs copyright infringements by modernizing and developing copyright laws.

Protection of Intellectual Property (IP) rights, legal constraints on owners and traders in these rights as well as wheeling and dealing of these rights have spawned specialized legislation, judicial and administrative departments, private commercial registries and protective agencies. Law firms have expanded to provide more attorneys handling Intellectual Property expertise.

Copyright legislation is part of the body of law known as "Intellectual Property", which protects the interest of the creators by giving them property rights over their works, in order to further stimulate human intellectual creativity, make the fruits of such creativity available to the public, and ensure that international trade in goods and services protected by intellectual property rights is allowed to flourish on the basis of a smoothly functioning system within harmonized national laws.

Computer programs are a good example of the type of works which are not included in the list contained in the Berne convention, but which are undoubtedly included in the notion of a "production in the Literary, scientific and artistic domain" as described in Article 2 of the convention. Indeed, computer programs are protected under the copyright laws of a number of countries, and under the TRIPS Agreement.

On March 17, 1999 the Lebanese Parliament approved the new proposed copyright law. The law N°75 was published in the Official Journal N°18 dated April 3, 1999 under the title "Literary and Artistic Property".

We should bear in mind that Lebanon is signatory to the Berne convention for the protection of literary and artistic work's , one of the major international copyrights treaties , which sets out ground rules for the protection of copyright at a national level.

Furthermore, the new act or the modern copyright law (Act 1976)[1] of the United States is considered at the moment the best act concerning copyrights in comparison with other acts such as the British law (Copyright, Designs, and patent act of 1988) French code, and the German law.

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[1] The Copyright Act of 1976 is a part of United States Copyright Legislation. It is considered as the primary basis of copyright law in the United States. This Act spells out the essential rights of copyright holders. It became a Public Law on October 19, 1976.

The IP field is extremely diverse and complex, and also very legalistic. Volumes and volumes have been written about each one of the various IP rights, and IP laws vary significantly from one country to another.

I will try, therefore, through this research, to show the importance of Intellectual Property which involves the encouragement of creativity and innovation. The protections of computer programs are analyzed on the national and International level, for the purpose of defining the problems and infringements hoping to adapt existing copyrights law to deal with new technological problems.

For this purpose, this research is divided into six chapters and a conclusion. The first three chapters seek to clarify Intellectual Property basics and what IP rights means. In chapters four and five, I shall refer to some national copyrights law such as Lebanese, United States, British, French, and to the main international conventions on copyrights, pointing out their rules and regulations as well as the conditions for a state to join them. Chapter six will be about copyrights protection of computer programs and infringements, and the problem posed by technological development.

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Chapter I

Intellectual Property

Intellectual Property (IP) means tangible property rights in works created by a person's intellect. These rights can be protected if the works are novel, unique, or otherwise original, and include copyrights, trademarks, service marks, patents, designs, trade secrets, traditional indigenous knowledge, and appellations of origin.

The term "property" is something of value, either tangible, such as land, or tangible, such as patents and copyrights. Consequently, this term is controversial. Intellectual property laws[2] and enforcement vary widely from jurisdiction to jurisdiction in various countries. There are inter-governmental efforts to harmonize between them through international treaties such as the GENERAL AGREEMENT ON TARIFFS AND TRADE (GATT) 1994 which is administered by the WORLD TRADE ORGANIZATION (WTO)[3] , Agreement on TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS (TRIPS)[4], while other treaties may facilitate registration in more than one jurisdiction at a time. Disagreements over medical and software patents and the severity of copyright enforcement have so far prevented consensus on a cohesive international formulation and application.

The content of this chapter goes further than a simple introduction to the subject of intellectual property in which the various forms of intellectual property are

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[2] MILLER, Arthur Raphael, and DAVIS, Michael H., *Intellectual Property: Patents, Trademarks, and Copyright*, West Wadsworth, New York, 2000, p. 290.

[3] The World Trade Organization (WTO) is an international organization established by the GATT Treaty. It was considered as the regulatory body for enforcing compliance.

[4] The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) is an international agreement administered by the World Trade Organization (WTO). It contains the GATT provisions for protection of Intellectual Property.

briefly described. The chapter also addresses some of the basic principles underlying this area of law, examines the nature of intellectual property law and discusses some crosscutting themes that transcend boundaries between individual forms of intellectual property rights. Some practical considerations are also dealt with briefly at this stage such as the essential rationale for intellectual property and its importance in a commercial sense. The focus of this chapter is therefore to give the reader a feel for intellectual property law[5] and to introduce some of the important issues, laying the foundations for the more detailed study which follows.

A. Understanding IP rights[6]:

Intellectual property[7] is a product of the creative mind, and as such, it is distinct from the usual notions of physical property: land, buildings, vehicles, and clothing which are all tangible property.

An intellectual creation, until it is presented in a tangible form, cannot be sensed by someone other than the creator, and it has value only to the creator. For many centuries, intangible property rights in creations were not recognized or protected by law.

The willingness to recognize property rights in creation is a fairly new concept in relative terms to tangible property rights, which have been long recognized and well developed in the law. Moreover, this concept was first recognized in European

[5] McJOHN, Stephen M., *Intellectual Property: Examples and Explanations*, Aspen Publishers, 2006, p. 317.

[6] SHIVA, Vandana, *Protect or Plunder?: Understanding Intellectual Property Rights*, Zed Books, 2001, p. 68.

[7] WIPO Conference, *Worldwide Forum on the Arbitration of Intellectual Property Disputes*, March 3 and 4, 1994, Geneva, Switzerland.

and North American countries and in the countries influenced by those political powers.

What is viewed by Western powers as infringement of these rights is in fact not a crime in countries where creations are considered to be the right of the people as a whole. Legislation has been passed in many of these countries, but enforcement of IP rights remains a very difficult problem because of the popular view against recognition of intangible property rights.

B. Defining traditional forms of IP:

Patents, copyrights, and trademarks were the first intellectual property rights to be recognized in law. Because these rights have a longer tradition, most people think of them first when considering IP issues. These three intangible property rights are quite distinct, and yet they have several common factors.

B.1. Patent:

A patent is "a statutory privilege granted by the government to inventors and to others deriving their rights from the inventor, for a fixed period of years, to exclude other persons from manufacturing, using or selling a patented product or from utilizing a patented method or process[8]" Although a patent is commonly referred to as monopoly, it is not truly so, the owner of a patent may be prevented from exploiting the grant by other laws (such as national security laws or unfair competition laws) or by contractual agreement.

Patents may be obtained for inventions in every field of technology, whether products or processes, as long as they are "new involve an inventive step, and are capable of industrial application[9].

[8] The role of patented in the transfer of technology to developing countries, p.9 (UN doc sales n°65. II. B.1, 1964)

[9] Agreement on Trade-Related Aspects of Intellectual property rights, Article 27, para. 1 (1994)

An invention is a new if no other inventor has obtained a patent for the same invention; it involves an inventive step if the "subject matter" of the invention was not obvious at the time the invention was made to a person to having an ordinary skill in the art to which said subject matter pertains; and it is capable of industrial application if the product or process is one that can be used in industry or commerce.

Most countries, accordingly, grant three basic kinds of patents:

- **Design patents** are granted to protect new and original designs of an article of manufacture
- **Plant patents** are granted for the creation or discovery of a new and distinct variety of a plant.
- **Utility patents** are granted for the invention of a new and useful process, machine, article of manufacture, or composition of matter.

B.2. Copyright:

A copyright is an incorporeal statutory right that gives the offer of an artistic work for a limited period the exclusive privilege of making copies of the work and publishing and selling the copies.

- A copyright is titled to certain "pecuniary rights" and in most countries, certain "moral rights" for a specified period of time. These rights belong to the authors of any work that can be fixed in a tangible medium for the purpose of communication, such as literary, dramatic musical or artistic works: sound recordings, films, radio and TV broadcast, and computer programs. Unlike a patent, a copyright does not give its owner the rights to prevent others from using the idea or the knowledge contained in the copyrighted work, it only restricts the use of the work itself. That is, anyone can use the information in

the work to make, use, or sell a product but they will be limited in the way they may use a particular copy.

- **Pecuniary right:** Economic or pecuniary rights are legislative or judicial grants of authority that entitle an author to exploit a work for economic gain. Historically, there were only two channels for doing so. One was through the printed medium (a work was printed and then distributed through book shops, music stores, poster shops) and the other was through an entertainment establishment. Today, as a consequence, most of the nearly 100 countries that grant copyrights protect two kinds of pecuniary rights: the right of reproduction which in many jurisdictions also includes the rights to exhibit and disseminate a work and the right of public performance. An example of the pecuniary protection granted in a typical statute is found in section 15 of the German copyright law:

  I. The author shall have the exclusive right to exploit his work in material form; the right shall comprise in particular:

     1. The right of reproduction
     2. The right of distribution
     3. The right of exhibition

II. The author shall further have the exclusive right to publicly communicate his work in nonmaterial form, the right shall comprise in particular:

1. The right of recitation, representation and performance
2. The right of broadcasting
3. The right communicating the work by means of sound of visual records
4. The right of connecting broadcast transmissions.

- **Moral rights:** The personal rights of authors to prohibit others from tampering with their works are called moral rights. These rights are independent of the author's pecuniary rights, and in most states that grant moral rights, they continue to exist in the author even after the pecuniary rights had been transferred.

B.3. Trademarks:

A trademark is a mark that is used in commerce to identify a product or service as having been made or provided by the owner of the trademark and to distinguish the trademark owner's product or service from the products or services of other traders[10].

The use of a trademark in commerce is all-important. In many countries, the use of a trademark alone, without registration, can create IP rights in the trademark. If a trademark may not qualify for registration because it is not sufficiently distinctive, it may achieve distinctiveness through use in commerce and therefore become qualified for registration. In some countries, such as the United States, a trademark registration

[10] Lanham Trademark Act , in United States code, title 15 , p. 1127

will not issue until proof of use in commerce is given. Many countries require the trademark owner to submit proof of use during the term of the registration or at the time of renewal. In most countries, a trademark that is not used in commerce is subject to cancellation, and a third party who is interested in using the same or a similar trademark can file a request for cancellation.

C. Defining non-traditional forms of IP:

Intellectual Property today is bursting traditional boundaries in a frenzy of evolution and exploitation. Wherever value is perceived in an intellectual creation, someone is seeking exclusive rights in it. In the absence of protection for those exclusive rights, in effect, without the creation of at least a limited monopoly, intellectual pursuits and endeavors would become public property, which may be welcomed by dreamers, although completely without merit for entrepreneurs. How far IP rights may be stretched is limited in two ways: the capacity of the creative human intellect, and the willingness of society, legislators, and courts to recognize the property value in diverse creative endeavors[11].

The awareness of IP rights is constantly evolving, and IP rights today are expanding to protect trade secrets, trade names, brand names, indigenous knowledge, domain names, website screens, business methodologies, and distinctively marketable tastes, smells, and sounds. Virtually, any intellectual pursuit that yields a product of value to the marketplace should be thought of as intellectual property. Society and the law will catch up, and probably sooner than later as the international trend is toward the liberalization of IP rights.

[11] Shippay , Karla C. , international intellectual property rights, world trade press , 2002 p .12

D. The role and value of IP in international commerce:

The recognition of intellectual property rights is an important key to converting creativity into a marketable product with positive cash flow. Creativity is essential to economic growth. Consumer sales depend on attractive, efficient, safe, innovative, and dependable products and services, and these qualities are built on intellectual property. The IP rights of a business are among its most valuable assets. The protection of those IP rights can promote creativity, distinguish a business and its products or services, and increase its profitability and endurance.

Intellectual property is well known when it becomes so recognized by the public at large as it attracts a large number of consumers and continues to grow in consumer acceptance. Consumers most frequently purchase goods and services based on recognition of the brand. They will line up sometimes for days to buy tickets to the latest movie in a famous series. Millions of dollars are collected in pre-release sales of books written by the most popular authors.

In countries where an extremely high percentage of the population is living in poverty, IP rights over such properties as medicinal innovations and culturally distinctive art, music, dramas, and stories of the people can raise significant funds. The value placed on these rights is tremendous, so that representatives of developing countries have been sent regularly to international conferences and forums to seek recognition of this form of IP.

Consumers demand the new and original plus market dynamics leave plenty of room among the famous for your IP to raise to the top. An excellent illustration of the

power of IP can be observed in the general popularity of store brands. The popularity of generic and store brands has been rising for decades. Generic products appear on shelves and racks in many retail outlets throughout attractive packaging. Consumer response has been favorable, particularly for products where the price differential is substantial and the product quality is comparable or less important. As a result, generic brands have taken on a significant share of the market[12].

The value of the company's IP rights is a substantial asset for it. Each IP right should be valued periodically by a knowledgeable appraiser or accountant. The value of each IP right belongs in balance sheet. Although valuation is best left to professionals, one should be aware of the typical valuation methods and the special factors that make IP valuation different from appraisals of tangible property. A person knows his business and his industry, whereas his appraiser or accountant may be unaware of some of the complexities that are likely to affect the value of his IP rights. You will need to provide your appraiser or accountant with information about your business and industry in order to obtain as accurate an assessment as possible.

Experts in valuation have developed formulas to assess the value of tangible and intangible property. The methods of valuation applied typically differ depending on whether the valuation is being made for purposes of selling the property, obtaining a secured loan, fixing estate value, declaring taxable or dutiable revenues, or some other purpose.

[12] Smith, Daniel, *The Effects of Brand Extensions on Market Share and Advertising Efficiency*, Journal of Marketing Research, Vol. 29, N° 3, pp. 296-313.

Unfortunately, all of these methods are somewhat unsatisfactory, and usually factors have to be added to the calculations to account for special circumstances existing in the industry, trade, or business. One will need to work closely with the accountant and appraiser to reach a figure that estimates the worth of the IP rights. The figure eventually arrived at should be adjusted periodically to account for changes in the value of IP, as business and market expands or contracts.

Chapter II

IP Rights' Owner and Authorized User

Commercial transactions involving IP rights occur between the owner of the rights (who may not be necessarily the creator or inventor) and another party. The identity of the other party depends on the type of transaction. The owner may sell copies of the IP created to other traders in the industry or to the public at large, all of whom are considered consumers of the IP. The owner may also sell, exchange, license, or otherwise transfer the IP rights themselves to another party. If the owner transfers the ownership rights in the IP entirely, there is a new owner. The transfer transaction is usually in the form of an assignment[13], and the former owner is called an assignor[14] while the new owner is an assignee[15]. If the owner transfers rights to use the IP only, the arrangement is referred to as a license[16], and the owner is then a licensor while the other party is a licensee or authorized user.

A- The owner:

Copyright is the exclusive right to copy a creative work or allow someone else to do so. Only those seeming the author's permission can own copyright in the work.

[13] An assignment is the transfer of property ownership rights, including title, interest, and benefits in the property, from the owner (the assignor) to another individual or legal entity (the assignee), who then becomes the owner of the property rights.

[14] The assignor is the owner of a property right who transfers that ownership right to another party (the assignee).

[15] An assignee is the person or legal entity who is granted a property ownership right previously held by another party (the assignor).

[16] A license is an agreement by which the owner of intellectual property rights (the licensor) authorizes another party (the licensee) to use the intellectual property in exchange for royalties or other compensation and with the restriction that the owner retains full ownership rights in the intellectual property. A license may grant exclusive use for a particular time, territory, or trade, or it may be nonexclusive.

The author may transfer all or part of the copyright to someone else. Copyright protection exists from the time the work is created and fixed in some tangible form. The copyright immediately becomes the property of the author upon fixation. In the case of a work having more than one author, the authors are co-owners of the copyright, unless there is an agreement to the contrary. In the case of a work made for hire, the employer, not the employee, is presumed to be the author [17].

- **The owner as creator:** A creator generates IP, whether in the form of material that can be original, copyrighted, trademarked, or simply protected as trade dress, trade secrets, or otherwise. The creator may be an inventor, artist, author, playwright, songwriter, musician, performer, sports figure, or movie producer. Two or more parties who have contributed to a creation and its form of expression are co-creators, and they can obtain joint ownership. Joint ownership usually results in each party holding an equal share, unless the parties have otherwise agreed by contract. In the absence of contractual provisions, each coauthor may use the IP without the permission of the others, but each must also account to all of the other owners and must equally share the profits derived from the IP.
- **The owner as employer of the creator:** If you are employed for purposes of generating IP for the use of an employer, you usually give up all ownership rights in the IP to the employer[18]. Similarly, if you are employed as a freelance or independent contractor, the employer commonly owns the rights to the IP created. The employer also takes on the risks of ownership, such as responsibility for defective products and for production of materials that are

[17] Macintyre Ewan , Business law , 1st edition , Longman , 2001 , p.726
[18] Leaffer Marshall , Understanding copyrights law , university of Indiana , 3rd edition Lexis Nexis,1999p . 193

not commercially viable. Even a freelance creator, as opposed to an employee, can pass some of these expenses and risks to the employer.

- **The owner as assignee:** Acquisition of IP rights[19] means that all of the rights in the IP are transferred to assignee, including title and ownership rights, exclusive use rights, and the right to license or transfer the IP to other persons. He holds the right to make copies and to prevent others from infringing on his/her IP rights. The transaction is usually called an assignment, and the former owner is the assignor while the new owner is the assignee. The acquisition of IP rights has become a significant factor in the selection of business partners in today's world.
- **The goals of the owner:** The owner of copyright has usually two goals: The first goal is to secure exclusive rights to the IP and to achieve this goal, the author needs to do two things: first, he/she must ensure that his/her IP is unique and distinct from the IP of others; second, he/she must consistently protect his/her IP from infringement by others and from becoming generally used by the public. A second goal of the IP owner is to create or acquire commercially viable IP. To attain this second goal, he/she must have an understanding of the market for the creation, as well as some sense of business ownership and risk. Similar goals apply regardless of whether the owner is the creator of the IP. The owner will want to have unique, marketable IP. For example, if he/she is an employer, he/she will want his/her employees to develop work-for-hire IP that is novel, unique, and valuable within the marketplace.

[19] Christopher, May, *Intellectual Property Rights: A Critical History*, Lynne Rienner Pub, 2005, p. 188.

B. The authorized user:

A license is a contract made between two parties: the licensor (who is the owner of IP rights) and the licensee (who is the user of IP). In a license, the licensor transfers some but not all of the IP rights to the licensee. A licensee of IP is typically authorized to use the IP within the terms of the license contract. In other words, the licensee does not own all rights in the IP but may exercise only those rights permitted by the license contract. The licensee may be entitled to exclusive or nonexclusive use of the IP within a certain territory, for a specified period of time, or in respect of certain types of manufactured products.

The licensor of IP rights retains ownership rights, and the licensor's good will and reputation is closely tied to the use of IP rights. The licensor should never allow the licensee to protect and register the IP rights because the ownership rights must stay with the licensor.

C. Authorship and ownership of copyright:

As copyright is a property right, this raises important questions about ownership and the mechanisms for exploiting copyright. Authorship and ownership are, in relation to copyright, two distinct concepts, each of which attracts its own peculiar rights: the author having moral rights, and the owner of the copyright possessing economic rights. Ownership flows from authorship; the person who makes the work is normally the first owner of the copyright in the work, provided that he has not created the work in the course of employment, in which case his employer will be

the first owner of the copyright[20]. The owner of the copyright in a work may decide to exploit the work by the use of one or more contractual methods. Alternatively, the owner may assign the copyright to another that is transfer the ownership of the copyright to a new owner, relinquishing the economic rights under copyright law. One point to bear in mind is that a third party can carry out certain acts in relation to the whole or a part of a work protected by copyright without the permission of the owner of the copyright in the work and without infringing the copyright in the work, for example, by performing one of the acts falling within the provisions concerning "fair dealing" which state that fair dealing in respect of a literary or artistic work for the purposes of private study, research, criticism or review, or news reporting does not constitute a violation of copyright, or because the act is not restricted by the copyright. There is little that the owner of the copyright can do about these limitations and exceptions to copyright protection apart from denying access to the work itself, for example, by refusing to publish the work.

In this part, the thesis explores two closely related themes. First, the concept of authorship, as it is understood in copyright law. Second, the most important consequences that flow from being named as author of a work: namely, ownership of copyright and the various exceptions to the general rule.

a. Works of authorship:

The author of a work is the person who creates it[21]. In terms of some types of works this will be self-evident: for example, the author of a work of literature is the

[20] Abou – Ghazaleh , intellectual proprety laws of the arab countries , n.p,n.d p. 411

[21] Copyright, Designs and Patents Act 1988. Unless otherwise stated, statutory references are to the Copyright, Designs and Patents Act 1988.

person who writes it; the author of a piece of music is its composer. The author of a compilation is the person who gathers or organizes the material contained within it and who selects orders and arranges that material. The author does not have to be the person who carries out the physical act of creating the work, such as putting pencil to paper.

a.1. Authorship of literary, dramatic, musical, and artistic works:

The author of literary, dramatic, musical, and artistic work is the person who creates it. No further guidance is given in the 1988 Act[22] as to what this means. The only exception to this is to be found in crown copyright that indicates that the author needs not necessarily be the person who fixes or records the work (although this will usually be the case). The lack of statutory guidance as to the way the author is to be construed in this context does not matter that much given that there are few problems in identifying who is the author of a literary, dramatic, musical or artistic work.

Having said that problems have occasionally arisen in determining whether a person involved in the production of a literary, dramatic, musical, and artistic work is to be regarded as an author or creator. The way this question is answered is similar to the way the originality of a work is determined. Basically, in order for someone to be classified as an author, it is necessary for them to be able to show that the labour, skill, and effort that they contributed to the work is of the type that is protected by copyright: that it would be sufficient to confer originality on that relevant work[23]. The

[22] The Act 1988 is an Act of the Parliament of the United Kingdom. It reformulates the statutory basis of copyright law and creates an unregistered design right.
[23] As the type of labour that confers originally is the same as that which enables someone to be classified, in copyright law terms, as an author, reference should be made to the earlier discussions on this topic.

upshot of this is that it is unlikely that a stenographer, an amanuensis, or a person who merely photocopies or traces a work would ever be considered as an author. This is because the labor expended in relation to the work fails to bring about a material change in the resulting work. However, if the person exercised a degree of creative labor in producing the work, even if only a very small amount, it is more likely that they will be treated as an author.

The originality requirement, the mere fact that a person expended labor in the creation of a work will not necessarily mean that the resulting work is original if it is the wrong type of labor. This means that although a person may play an important role in the production process, he/she may not be treated as an author. In the case of a book, for example, while the copy-editor, the jacket designer, and the typesetter all play an important role in giving shape to the final product, they will not be treated as authors of the resulting literary work. Similarly, copyright law[24] has few problems in categorizing the person who wrote a play as its author. In one case it was held that a person who had suggested the title, the leading characters, a few catchwords, and the scenic effects for the play had not contributed sufficiently to the play to justify him/her being treated as a joint author.

Where the contribution made by someone is at an abstract level, such as the idea for a play or a book or a structure of a computer program, the contributors are unlikely to be treated as an author of the resulting work. The more specific the contribution, however, the more likely is that the person in question will be treated as an author. Consequently, it was held that a person who developed an idea for a house

[24] Marshall, Leaffer, *Understanding Copyright Law*, University of Indiana, 3rd Edition, Lexis Nexis, 1999, p. 428.

design that he had explained in detail to a technical draftsman was joint author of the plans that the draftsman subsequently produced. Similarly, a political figure who dictated his memoirs to a friend, read every word, and altered parts of the manuscript was held to be joint author of the resulting book.

a.2. Computer-generated works:

In the case of literary, dramatic, musical or artistic works that have been computer-generated, the creator is the person by whom the arrangement necessary for the creation of the work is undertaken. While the meaning of this provision has yet to be tested, it seems that it might include the person who operates the computer, as well as perhaps the person who provided or has programmed the computer[25].

In certain situations, it may not be possible to ascertain who is the author of a literary, dramatic, musical or artistic work. This may be because the name of the author is not attached to the work and it is not possible to ascertain authorship by other means. In other cases, an author may wish that his/her work be published anonymously, under a false name or a pseudonym. As the author acts at the focal point around which many of the rules of copyright are organized, this creates a number of potential problems. To remedy this, the Act 1988[26] includes the notion of "unknown authorship". A work is a work of unknown authorship if the identity of the author is unknown and it is not possible for anyone to ascertain his or her identity by reasonable inquiry. Having no copyright holder means that there is no one who has the right to restrict copying of the work.

[25] www.copyright.org.au/pdf/acc/reporter_tocs/tocs
[26] The Act 1988 is an Act of the Parliament of the United Kingdom.

a.3. Joint authorship:

Collaborative research and creation is often a fruitful and productive way for authors to work[27]. Copyright recognizes this mode of creation through the notion of joint authorship. A number of important factors, such as the way the work can be exploited, flow from a work being jointly authored[28]. While joint authorship is normally associated with literary, dramatic, musical, and artistic works, it is possible for all works to be jointly authored. As described earlier, the 1988 Act[29] specifically provides that films are treated as works of joint authorship between the principal director and the producer, unless they are the same person. The 1988 Act[30] also extends the concept of joint authorship to a broadcast where more than one person is taken as making the broadcast, namely, those providing or taking responsibility for the contents of the program and those making the arrangements necessary for its transmission. No special definition of joint authorship is applied to sound recordings, cable programs, or published editions.

A work is a work of joint authorship if it is a work produced by the collaboration of two or more authors in which the contribution of each author is not distinct from that of the other author or authors. A work is a work of joint authorship if it satisfies three conditions.

First, it is necessary to show that each of the authors contributed to the making of the work. The test for whether a person has contributed to the creation of a work is

[27] Gormer Robert , copyright cases and materials , Columbia university , 5th Lexis 2000 p.278

[28] A joint owner can sue an infringer independently and can also bring an action against another co-owner.

[29] The Act 1988 is an Act of the Parliament of the United Kingdom.

[30] The Act 1988 is an Act of the Parliament of the United Kingdom.

the same test as is used to determine whether someone is an author of a work: in the case of authorial works, that is, whether the labour they expended in producing the work was sufficient to confer originality on the resulting work[31]. While to be a joint author it is necessary for an author to have contributed to the work, joint authorship does not require that the respective contributions be in equal proportions.

The second requirement that must be satisfied for a work to be one of joint authorship is that the work must have been produced through a process of collaboration between the authors. This means that when setting out to create a work, there must have been some common design, cooperation or plan that united the authors. So long as the authors have a shared plan of some sort, there is no need for them to be in close proximity to collaborate. Indeed, it is possible for the collaboration to take place over long distances.

Thirdly, for a work to be jointly authored the respective contributions must not be distinct or separate from each other. In more positive terms, this means that the contributions must merge to form an integrated whole. For example, if the contributions of two authors merged in such a way that no one author is able to point to a substantial part of the work. If, however, one author wrote the first four chapters of a book and the other author wrote the remaining six chapters, instead of the resulting book being a joint work, the respective authors would have copyright in the particular chapters they wrote.

b. Works of ownership:

[31] In one case, a classically trained musician who acted as orchestral arranger for a rock was held to be joint author of a number of arrangements which included orchestral passages linking the verses and choruses; with respect to one song, where the contribution comprised merely a piano accompaniment, the court held it was only just sufficient to qualify.

The Copyright, Designs and Patents Act 1988[32] states the basic rule that the author of a work is the first owner of the copyright. This will apply in a good number of cases, for example to persons creating works for their own pleasure or amusement, independent persons not employed under a contract of employment and even to employed persons if the work in question has not been created in the course of their employment[33]. However, there are some exceptions to this basic rule, and where a literary, dramatic, musical or artistic work is made by an employee in the course of his employment, the employer would be the first owner of the copyright subsisting in the work subject to any agreement to the contrary. In Noah[34] v Shuba, it was held that the copyright in a work created by an employee in the course of his employment could still belong to the employee on the basis of a term implied on the ground past practice. If the employee's name appears on the work or copies of the work, there is a presumption that the work was not made in the course of employment.

The ownership of the copyright subsisting in anonymous works can present problems, as there is no author available or willing to give evidence as to the ownership. If a work is a work of joint authorship, unless they are employees acting in the course of employment, the joint authors will automatically become the joint first owners of the copyright in the work.

The main difficulty with the ownership provisions concerns the employer/ employee relationship and the meaning of, within the scope of employment . There will be many situations where it will be obvious that the work has been made by an employee in the course of his employment, for example a sales manager who, during

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[32] The Act 1988 is an Act of the Parliament of the United Kingdom.
[33] Miller Arthur , intellectual propriety , cleaveland university , 3rd edition , west group 2000 p.377
[34] Noah is a producer, musician and solo artist, born on January 19, 1975 in California. Noah received Master Degree in music composition from Mills College in Oakland, California.

his normal working hours, writes a report on the last quarter's sales figures for the board of directors of the company he/she works for. However, difficulties arise if an employee has created a work at home related to his job or creates a work not related to his / her job during working time.The question posed will be , what is the status of this work ? Are they considered as works created within the scope of employment ? The courts have set certain criteria in order to consider a work created within the scope of employment . These criteria that should be available in order who consider the work created within the scope of employement are :

1.whether the work was of the type of employee was hired to perform ,

2.whether the creation of the work in question occurred " substantially " within the authorized time and space limits of the employee's job

3.whether the employee was actuated , at least in part by a purpose to serve the employers purpose[35]

Because of the difficulty of predetermining the status of a person carrying out work for another, it is preferable, if there is any doubt whatsoever, to provide contractually for the ownership of copyright subsisting in anything produced by the worker.Of course, in terms of the relationship between employers and employees, there is the additional factor of the obligation of confidence owed by one to the other. The law of confidence may help the employer prevent the subsequent use of commissioned material by the employee , regardless of the question of copyright ownership[36].

[35] Miller Arthur , intellectual property Cleveland university 3rd edition,west group 2000, p.377.
[36] LOGUE, John, *The Real World of Employee Ownership*, ILR Press Books, 2001, p. 177.

Chapter III

Issues Affecting IP Rights Internationally[37]

It is important to recognize and respect the culture of other people when one develops IP rights. Cultural differences will affect whether the IP will be accepted, gain in value, and bring an increase in market share. The mark introduced in connection with the goods or services, the book, art, or music chosen to create, or the invention to develop must have attraction to the culture where it would be marketed.

Culture determines what is acceptable in daily life, work, health care, and recreation[38]. Many subcultures are likely to exist within a country because the rate of cross-border travel is on the rise, populations are mobile, and people in all corners of the globe are discovering how other people live through the ever-expanding web of mass media.

Cultural awareness is important when one first begins to develop his/her creation, since acceptance in the marketplace is what gives the IP its commercial value.

A. Cultural recognition:

Once the creation is developed, cultural awareness will next come into play with the decision on how to commercialize the creation and where to protect and enforce IP rights. At this point, cultural recognition of IP rights becomes as important

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[37] Herrington, Wayne W., *Intellectual Property Rights and U.S. International Trade Laws*, Oxford University Press, 2006, p. 215.

[38] Walker, Charls E., *Intellectual Property Rights and Capital Formation in the Next Decade*, Univ Pr of Amer, 1988, p. 111.

as cultural preferences. While paying attention to cultural preferences in marketing the creation, one must also be acutely aware of whether the people in those markets accept and respect the private ownership of IP rights.

Cultural recognition of ownership rights in IP will affect the author's decisions on how to protect the IP rights and how much cost will be involved in enforcement. In countries where IP laws are just developing, the concept of IP is new and enforcement of IP rights against infringement could be difficult and expensive. In countries where IP laws are well developed and commercialization and capitalism are also extremely strong, one may have to spend substantial funds protecting the IP from piracy[39]. As an IP owner, part of the responsibility may be to educate potential buyers and clients on the importance of respecting IP rights. It is also important to develop cost-effective strategies to prevent or at least minimize infringement of IP rights.

B. Trends toward globalization and uniformity:

National differences in the treatment of IP rights are indirect barriers to trade. For this reason, many nations of the world have banded together to try to harmonize their handling of IP rights. Many of the international and regional trade treaties- GENERAL AGREEMENT ON TARIFFS AND TRADE (GATT)[40], NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA)[41]- include provisions requiring member countries to harmonize the registration and protection of IP rights. In addition, landmark conventions of national representatives have resulted in

[39] Any activity undertaken with intent to infringe on another's IP right or to acquire that right improperly.

[40] A multilateral trade treaty that has been negotiated by member countries in progressive meetings beginning in 1987 and continuing every few years. The major goal of GATT is to harmonize trade requirements and reduce trade fiction and barriers among the member nations.

[41] An agreement between Canada, Mexico, and the United States finalized in 1993 to eliminate trade barriers among these countries. NAFTA requires these countries to make certain provisions and to establish certain forums for the protection of IP rights in cross border transactions.

IP-specific treaties, such as the Nice convention[42], the Berne Convention[43], the Paris Convention[44], the Madrid Convention[45], and the Patent Cooperation Treaty[46].

In addition, many countries are now recognizing the value of IP rights to their own populations. Accordingly, they have instituted educational campaigns among the people in addition to strict enforcement measures to raise awareness of IP rights not only of foreign companies but also of nationals.

As trade barriers continue to fall and awareness of the value in IP rights continues to rise, the trend toward global harmonization of IP laws and regulations is likely to continue. There are some who argue that if a person is allowed to claim and enforce IP rights, trade is stifled by a monopoly. The counter argument is that without IP protection, creativity would be stifled for lack of commercial gain, which will in turn hurt the economy. The concept confronting our global leaders is to achieve harmonization of IP laws and regulations in such a way as to have the effect of facilitating cross-border trade and maintaining respect for IP rights.

The trend toward globalization of IP rights is being pushed forward by two factors: private business and the information age. These factors are in conflict with each other, and the need for a solution is growing exponentially. Private business seeks to retain its monopolistic hold over IP rights, while free exchange of

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[42] The Nice Convention is one of several multi-national treaties that establish an international classification system to make the identification and indexing of IP registrations feasible and more efficient among the member states.

[43] An international agreement that was originally concluded at Berne, Switzerland, in 1886 by representatives of participating countries to provide for the recognition and treatment of rights in intellectual property among the signatories.

[44] A treaty by which the member countries have agreed to harmonize their treatment of various types of industrial property rights, including trademarks, service marks, and patents.

[45] An international agreement joined by various countries by which their nationals can submit registrations obtained within their own country to a central registry for recognition in all member countries. Each member country may accept or reject the mark registration.

[46] An international agreement signed by member states in 1970 to provide for efficient and uniform patent protection. A single PCT application must be field with a central registry, and then national filings must be made in each member country.

information, particular on the internet, is a rising demand among consumers. As a result, enforcement of IP rights by existing legal measures is becoming more difficult and more expensive. Likewise, the difficulty and expense of educating consumers to respect IP rights is increasing because the ability to exchange and pass on information has become so easy.

C. Role of politics and regulatory laws[47]:

Political events will inevitably affect the markets and economy of a country. Government instability can devastate a country's markets, while a stable government can be a great asset.

Poverty tends to create political turmoil within a country, while a strong and expanding economy tends to have a calming effect. Government regulation of private business, whether minimal or invasive, is most likely a permanent feature because political and economic stability are tightly tied together[48].

Political influence over international trade is in part exercised through direct and indirect trade barriers imposed by countries to regulate cross-border and domestic trade and competition. The political climate of a country has particular significance because IP treatment can be an indirect trade barrier. If IP protection is unavailable or too difficult to obtain, foreign companies will be less interested in cross-border transactions and local nationals will be unable to protect their rights within their own country, thereby adversely affecting trade. Furthermore, a country without sufficient trademark protection often gains a reputation for harboring infringers, and with such a reputation it will require a substantial public relations effort to reverse it.

[47] Landes, William M., *The Economic Structure of Intellectual Property Law*, Belknap Press, 2003, p. 26.

[48] Verspagen, Bart, *Economic and Legal Issues in Intellectual Property*, Journal of Economic Surveys, Volume 20, Issue 4, September 2006, pp.607-632.

As a global trader, one must stay in touch with political trends. The IP strategy should reflect the political situation in various countries. One will need to decide whether one has a market for IP? How one can protect the IP? And whether one might lose some value in the IP if one fails to protect it despite present difficulties.

The author is responsible for knowing the laws in any country where he/she uses or exploits IP rights even as those laws are changing. In many countries, IP laws are bound tightly with unfair competition laws, and acts of unfair competition. Infringement are often punished as crimes. Means of enforcing IP rights, including settlement negotiation, civil suits, and criminal prosecutions, are all subject to regulatory laws.

Regulatory laws relating to IP rights are in a state of flux throughout the world today. Many countries are conforming their laws and regulations to uniform international standards[49]. New forms of intellectual property, particularly those related to computers and electronics, have given rise to new legal issues, requiring the development of new regulatory laws to set standards and provide protection. It is essential that you know and understand the legal implications and boundaries of commerce in one own country and abroad.

An attorney who is well versed in international IP law can offer valuable advice and assistance in creating a strategy for global IP protection. The attorney can also inform the author about the effect of newly enacted laws, modified regulations, and impending legislation.

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[49] Basedow, Jurgen, *Intellectual Property in the Conflict of Laws*, Paul Mohr Verlag, 2005, p. 216.

D. **Internet Issues:**

The internet has evolved into a tremendous marketing and sales tool, allowing consumers and companies to transact business near and far without having to establish branch offices or stores, hire personal sales agents, or otherwise incur overhead expenses of keeping local contacts. In the IP context, however, the Internet is considered public domain. If one puts material on the Internet, he/she has to be certain to protect it by first, monitoring the usage, and second, securing the usage on the Internet against unauthorized copies.

The Internet has made information transfer so easy that holders of IP rights are now lobbying for controls against a growing number of infringements[50]. The difficulty is twofold. First, companies are unable to monitor and enforce effectively their IP rights on a system that is exceedingly large and increasing daily. Second, the public often fails to understand and respect the IP rights of others when access to information exchange is so effortless.

Several international task forces are at work on proposals to protect IP rights on the Internet. A number of countries have taken the lead in enacting at least provisional legislation to handle infringement claims. Courts in national and international forums have begun deciding cases generally in favor of enforcement.

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[50] Rosenoer , Jonathan , cyber law ,Stanford university , 1st edition , springer , 1997 .p.7

Chapter IV

Copyright Law

A. Origins and development of copyright law:

The development of copyright law in England[51] was shaped by the efforts of mercantile interests to obtain monopoly control of the publishing industry similar to those of the guilds that were instrumental in shaping patent and trademark law. The history[52] of copyright law is largely the story of judicial and statutory reactions to the resulting monopolistic restraints. In addition to the interest of publishers having a monopoly over the production of books similar to the interest of medieval guilds having control over the production of new technology, the development of copyright law also was uniquely influenced by those with an interest in controlling the content of new works of authorship. The most significant interest of this character was the church, which sought to restrict the dissemination of anticlerical and reformation publications.

This interest, however, has left few important legacies; by far, the most enduring influence on the development of copyright law was that of the publishers themselves.

During the late seventeenth century, the control that the publishing groups exercised over the printing of books was challenged by authors and others wishing to share in the commercial rewards of publishing. In 1710, British Parliament enacted the Statute of Anne, which purported to limit the formerly perpetual rights held by

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[51] Silke Von Lewinski, *International Copyright Law and Policy*, Oxford University Press, 2007, p. 67.

[52] LEAFFER, Marshall, *Understanding Copyright Law*, Matthew Bender & Co, 2005, p. 74.

publishers to a period of years. Thus, copyright law has been shaped since at least 1710 by practices and laws intended to limit as well as to create monopolistic copyright protection.

American copyright law came to distinguish between the "common law" right of an author to his unpublished creations, and the statutory copyright that might be secured upon publication. Until recently, therefore, an author had a perpetual right to his creation, which included the right to decide when, if, and how to publish the work, but that common law right terminated upon publication at which time statutory rights became the sole rights to which the author was entitled. This distinction was altered by the Copyright Act of 1976[53], which shifts the line of demarcation between common law and statutory copyright from the moment of publication to the moment of fixation of the work into a tangible form.

Although Congress need not exercise the constitution power at all, if it does, it must do so within the wording of the clause. The subject matter of copyright protection is somewhat loosely circumscribed by the use of the words "Authors" and "Writings". As will be seen, the word "writings" has been very broadly construed, so as to include even such things as sculpture, videotape, notated or recorded choreography, and computer programs. On the other hand, the U.S. Supreme Court has invalidated an attempt to enact trademark legislation because trademarks are not writings.

Copyright, at least in Anglo-American jurisprudence, never has developed a procedure of administrative examination before registration as is true of both patent

[53] The Copyright Act of 1976 is a part of United States Copyright Legislation.

and trademark law. Instead, copyright has developed the doctrine that expressive works are entitled to protection without examination and, in fact, largely without registration. Prepublication protection would have been impossible, in common law, if prior examination was required since one of the purposes of protection was the author's privacy. Registration is significant to modern American copyright law but the basic doctrine of this country's copyright law is to protect authors.

After this overview of the origins and development of copyright law, the thesis will examine the historical background of the United States and European laws on copyrights, then the Lebanese law.

B. Historical background of the United States and European law on copyrights:

The United States copyright law governs, legally, the enforceable rights of creative and artistic works in the United States. In the United States, copyright law, which is authorized by the U.S. Constitution[54], is considered as a part of federal law.

a. The U.S. law on copyrights for computer programs:

The U.S. Congress practices first its power in order to establish copyright legislation with the Copyright Act of 1790[55]. The Act guaranteed the exclusive right to publish "maps, books and charts" for a term of fourteen years, with the right of renewal for one additional fourteen-years term if the author is still alive. The act didn't adjust other kinds of writings, like newspapers or musical compositions. The majority of writings were never registered between 1790 and 1799.

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[54] The Constitution of the United States is a system of fundamental laws of the United States of America. The Constitution was drawn up by 55 delegates to the Constitutional Convention in Philadelphia during the summer of 1787 and ratified by the states in 1788. The Constitution defines distinct powers for the Congress of the United States, the president, and the federal courts.

[55] The Copyright Act of 1790 was the first federal copyright act to be instituted in the U.S., though most of the states had passed various legislation securing copyrights in the years immediately following the Revolutionary War.

Copyright law has been modified several times since to include new technologies such as music recording. U.S. courts have interpreted this clause of the Constitution in order to show two things: first, the ultimate purpose of copyrights is to encourage the production of creative works for the public benefit; second, the interests of the public are primary over the interests of the author when the two conflict.

In 1988, the United States signed the Berne Convention which entered into force on March 1, 1989. The United States is also a party to TRIPS, which requires compliance with Berne provisions, and is enforceable under the WTO conflict resolution process. In order to meet the treaty requirements, protections were applied to architecture and some of the moral rights of visual artists.

Copyright protection was historically provided by a dual system under both state and federal laws. Federal law has provided what was called "statutory copyright" and the laws of each state would provide what was called "common-law copyright"[56]. Congress abolished, in 1976, all state copyright laws by announcing a federal preemption of state laws.

The preemption, which is the purchase of or right to purchase property in advance of or in preference to others is complete in all aspects of copyright protection. It covers protection so that a work that falls generally in the subject matter of copyright must either qualify to be protected under federal law, or it cannot be

[56] Common-law copyright is the legal doctrine which contends that copyright is a natural right and creators are therefore entitled to the same protections anyone would be in regard to tangible and real property.

protected at all. State law cannot provide protection for a work that federal law does not protect.

The objective of copyright law is to encourage the creation of as many works of art, literature, music, and other "works authorship" as possible, in order to benefit the public. The United States recognizes no absolute, natural right for an author to prevent others from exploiting or copying his work. The copyright laws give authors limited property rights in their works, but for the ultimate objective of benefiting the public by encouraging the creation and dissemination of more works.

b. The European law on copyrights for computer programs:

Efforts to harmonize copyright law in Europe can be dated to the signature of the Berne Convention for the Protection of Literary and Artistic Works on 9 September 1886: all European Union Member States are considered the signatories of the Berne Convention, and compliance with its dispositions is now necessary before consent. In order to harmonize copyright laws with the decision to apply common standard for the copyright protection of computer programs, the first important step adopted by the European Economic Community[57] established in the directive on the legal protection of computer programs in 1991.

The fulfillment of Directives on copyright has been more controversial than for many other subjects, as can be seen by the EU Copyright Directive. Copyright laws[58] vary traditionally between Member States, especially between common law

[57] The European Economic Community is one of the three pillars of the European Union created under the Maastricht Treaty. It was an independent supranational economic organization founded in 1957 by the Treaty of Rome. It is due to be completely absorbed by the European Union in 2009 if the Treaty of Lisbon comes into force.
[58] MACMILLAN, Fiona, *New Directions in Copyright Law*, Edward Elgar Pub, 2005, p. 120.

jurisdictions and civil law countries. Modifications in copyright law have also become linked to protests against the globalization and WTO (World Trade Organization).

C. Historical background of the Lebanese law on copyright:

Copyright is the exclusive right to produce copies and to control an original literary, musical or artistic work granting by law, for a specified number of years (in Britain, usually 70 years from the death of the author, composer, etc, or from the date of publication if at a stage later).

The Lebanese Parliament approved the new proposed copyright law on March, 1999. It was a long-awaited copyright protection law after four years of heated and stalling conflict. On June 14, 1999, the law became operative and addressed the protection of artistic and literary intellectual property. The new law revokes and replaces those relevant provisions of the Law N° 2385 dated January 17 1924 However, the 1924 law remains in effect with regards to those subjects not doubt with in provisions of the new law.

The copyright Law of Lebanon affords a sound basis for copyright protection for U.S. works and sound recording, including stiff penalties for copyright infringement, stiff penalties against cable pirates, confiscation of illegal products and equipment, the closure of outlets and businesses engaged in pirate activities. The law also provides right holders with a broad communication to the public right.

The new copyright law will most likely intensify Lebanon's chances of a smooth consent to the World Trade Organization (WTO), a process that Lebanon

began earlier. Many of the provisions of the new law are, finally, designed to be compliant with the requirements of the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS)[59], as it deals with copyright and related rights, which agreement Lebanon will be bound by its provisions to once it ratifies to the WTO.

The copyright law covers all human intellectual productions created before and after its establishment (Articles 2 and 98)[60]. The law refers, specifically, to the following categories of works, by way of example:

a- All forms of printed matter and other literary, artistic and scientific written works. Authors, producers and publishers of printed matter must send five copies of these printed works to the Ministry of Culture and Higher Education (Article 99)[61].

b- Audio, visual, photographic, musical and dramatic works.

c- Verbally delivered works such as lectures and speeches.

d- Works of choreography and mime acting.

e- Works of drawings, sculpture, engraving, decorating, weaving and lithograph.

f- Architectural drawings and pictures.

g- Computer programs.

h- Plastic art.

[59] In 1994, most countries, including Canada and the United States, signed another significant treaty dealing with international trademark law. This agreement, called the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), strengthened legal protections for trademarks around the world.

[60] Article 2 stipulates the following: "The protection of this Law shall apply to every production of the human spirit be it written, pictorial, sculptural, manuscript or oral, regardless of its value, importance or purpose and the mode or form of its expression".
While the article 98 stipulates that "All works, whether published or not, created before the entry into force of this Law, shall enjoy the period of protection prescribed in this Law provided that they have not fallen into the public domain by the effective date of this Law. The period of protection that has lapsed before the issuance of this Law shall be deducted from the period of protection provided for in this Law".

[61] Article 99 stipulates: "Any author, producer or publisher of any book or publication must send, free of charge, to the Ministry of Culture and Higher Education five copies of the said work".

i- Maps, designs, plans and three-dimensional geographical, topographical, geometrical and scientific works.

j- Auxiliary works such as translations, adaptations, modifications and group selections/arrangements (Article 3)[62].

Works specifically excluded from the protections of the law are: daily news bulletins; laws, decrees, resolutions and their translations judicial rulings public speeches thoughts, data and pure scientific facts; and all works of arts of folkloric heritage (Article 4)[63].

The above-mentioned types of works will benefit from the protections of the law if their authors are Lebanese residing anywhere or nationals of a state member of the Berne Convention for the Protection of Literary and Artistic Work or the WIPO Convention or nationals of a state member of the Arab League[64], even if it is not a member of the Berne or WIPO conventions, provided that the state offers reciprocity to Lebanese authors or audiovisual producers with domicile or a head office in Lebanon or any state member of the Berne or WIPO conventions (Article 12)[65].

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[62] Article 3 states that: "The following derivative works shall be subject to the provisions of this Law and shall be protected as original works without prejudice to the rights in the original work: translations, adaptations, transformations and arrangements of music; collections of literary or artistic works and compilations of data, whether in machine-readable or other form, provided that they are authorized by the copyright holder or his public or private successors and that by reason of the selection and arrangement of their contents they constitute intellectual creations".

[63] Article 4 stipulates the following: "The following shall be excluded from the protection provided by this Law: daily news; laws, legislative decrees, decrees and decisions issued by all public authorities and official translations thereof; judicial decisions of all kinds and official translations thereof; speeches delivered in public assemblies and meetings. The authors of speeches and presentations shall enjoy the sole right of collecting and publishing such lectures and presentations; ideas, data and abstract scientific facts; artistic folkloric works of all kinds. However, works inspired by folklore shall enjoy protection".

[64] The Arab League is a regional organization of Arab States in the Middle East and North Africa. It was formed in Cairo on March 22, 1945 with six members: Egypt, Iraq, Jordan, Lebanon, Syria, and Saudi Arabia. Yemen joined as a member on May 5, 1945. It currently has 22 members.

[65] Article 12 states that "The protection of this Law shall apply to the artistic and literary works of the following: Lebanese authors, wherever they reside; non-Lebanese authors who are nationals of, or resident in, a State party to the Berne Convention for the Protection of Literary and Artistic Works or

Covered works will be additionally protected, even if the above nationality requirements are not met:

- They are not published in Lebanon for the first time;
- They are published for the first time in any state member of the Berne or WIPO conventions;
- They are published for the first time outside of Lebanon and any state member noted above, provided that they are also published in Lebanon or a relevant state member within 30 days of publication in the other country.

Lebanon's new copyright attempts to meet these requirements, in providing for precautionary measures, civil damages, remedies and criminal penalties. First, the law addresses the issue of precautionary measures. Where it is mentioned that an infringement of copyright or related rights might occur, the law allows the Judge of Urgent Matters, the President of the Court of First Instance and/or the Public Prosecutor[66], at the request of the concerned party, to take all necessary precautionary measures to prevent the occurrence of a violation (Article 81)[67]. The Judge of Urgent Matters also has wide powers in the event of a violation to take such measures as seizure of the violating materials, taking stock of the violating materials while maintaining them in the defendant's custody and injunctions (Articles 82-83)[68]. The

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the Universal Copyright Convention; authors who are nationals of any State that is a member of the Arab League but which is not party to the above-mentioned Conventions, provided reciprocal treatment is applied; producers of audiovisual works who have their headquarters or habitual residence in Lebanon or in any State party to the Berne Convention for the Protection of Literary and Artistic Works or the Universal Copyright Convention".

[66] A public prosecutor is an officer of a state charged with both the investigation and prosecution of crime.

[67] Article 81 states: "Where there is ground for suspecting an imminent infringement of copyright or a related right, the holder of these rights or his public or private successors, in particular the associations or companies for the collective administration of rights, shall have the right to take all necessary provisional measures to prevent such infringement".

[68] Article 82 states that "The judge of expedited matters, the president of the court of first instance or the public prosecutor may temporarily seize material constituting evidence of an infringement of copyright or a related right and shall leave it in the custody of the defendant". While the article 83

law also addresses the issue of civil damages and provides that any person who violates an author's rights or related rights must pay equitable compensation as determined by the court based on the commercial value of the work, the damage caused, profits lost by the author and gains acquired by the violator (Article 84)[69].

Finally, the law prevents the importing of any pirated recordings and works that enjoy legal protection in Lebanon. This is most likely in reply to the enormous support Lebanon received from software and other technology companies seeking to invest in Lebanon but fearful of the unusually high rate of unregulated piracy in the region in general. Various sources suggest that up to 90% of software in Lebanon is pirated. Moreover, according to the International Federation of the Phonographic Industry (IFPI)[70], the piracy rate for sound recording in Lebanon is estimated at 50% and can be as high as 70% for international productions. Pursuant to the new law, any such works will be seized wherever they are found (Article 91)[71]. To this end, the law allows policemen, civil officers, and Copyright Protection Department's officers to identify infringing works, take samples and seize items when essential (Article 92)[72].

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stipulates: "In case of infringement of copyright or a related right, the holders of these rights may have recourse to the competent judicial authority and seek the cessation of the infringement and the prevention of any future infringement".

[69] Article 84 states that "Any person who infringes copyright or a related right shall be required to pay fair compensation to the right holder for the material or moral injury and damage incurred. The amount of such compensation shall be determined by the court based on the commercial value of the work, the damage and lost profit incurred by the right holder and the material profit realized by the infringer. The court may order the seizure of the subject matter in dispute and the equipment and devices used to commit the infringement".

[70] The International Federation of the Phonographic Industry (IFPI) is the organization that represents the interests of the recording industry all around the world. Its office is based in London.

[71] Article 91 stipulates the following: "It shall be strictly prohibited to import, consign to a warehouse or a free zone or transit sound recordings, or works that are imitations of sound recordings or works enjoying legal protection in Lebanon. Such sound recordings and works shall be seized wherever they are found".

[72] Article 92 states that "The persons mentioned below shall have authority to identify, inventory and sample suspect objects. These persons shall be: police and customs officers and employees of the Intellectual Property Protection Office sworn in to that effect. These employees shall perform their duties pursuant to an order or a mandate issued by the public prosecutor or the Intellectual Property Protection Office and they shall notify the Office of all violations of the provisions of this Law that

In doing so, they must complete a report that includes specific information delineated in the law.

Given the inadequacy of this law, it remains to be seen how useful the Lebanese government and the judicial authorities will be at enforcing the provisions of this law. To date, enforcement of the law has been minimal and has been limited to a few surprise raids and fines against infringing music and computer stores. The hope is, however, that this new copyright law will help encourage foreign investment in Lebanon, open the door to technology transfer, and ultimately increase international confidence in Lebanon as it tries to rebuild itself to its pre-war status as a leading business center in the Middle East.

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come to their attention. Sworn-in employees of the Intellectual Property Protection Office shall have police powers with regard to the implementation of the provisions of this law".

Chapter V

The Main International Conventions on Copyrights

The importance and value of Intellectual Property Rights have been recognized in various international, regional, and bilateral treaties, agreements, and conventions[73]. Recognition and protection have been primarily afforded to copyrights, patents, and trademarks. Often, the protective provisions are fairly general and each member country is permitted to limit or somewhat modify the terms as specifically employed within its territory. For this reason, international norms are not necessarily applied uniformly. However, at a minimum, global traders can rely on these systems for the recognition of Copyright Rights under foreign jurisdictions. The centralized registries by which Copyright owners can obtain relatively fast and cost-effective protection for their rights in multiple jurisdictions.

The U.S. is now party to the two leading international copyright agreements, the Berne Convention and the Universal Copyright Convention. In many instances, the U.S. had no copyright relations with these countries before becoming a party to Berne.

The Berne Convention, the TRIPs accord, the WCT and the Universal Copyright Convention all combine imposition of supranational substantive rules[74] with the principle of national treatment. The supranational substantive rules address both the subject matter protected and the rights afforded.

[73] www.ase.tufts.edu/ten/property/patents.asp

[74] Supranational substantive rules are the rules that define rights and duties.

The treaties further reduce the likehood of highly disparate results in transnational protection by providing for certain exceptions to the rule of National Treatment. Most significantly, both documents state that where the duration of protection is shorter in the country of origin than in the forum country, the shorter period prevails. Curiously, neither treaty clearly designates which law, that of the country of origin or of the forum, generally governs the ownership and transfer of rights under copyright[75]; but these issues, at least in some instances, may fall outside the national treatment rule.

A. **Berne Convention:**

The Berne Convention for the Protection of Literary and Artistic Works is an international agreement about the recognition and harmonization for copyrighted works, which was adopted in Switzerland, in 1886.

The Berne Convention for the Protection of Literary and Artistic Works confers rights on owners of literary and artistic works that are protected by copyright. It requires member countries to enact national legislation in compliance with the international standards set forth in the Convention. The Convention has been periodically amended to extend copyright coverage as new technologies develop[76].

In all Convention member states, a copyright arises in a work at the time it is fixed in a tangible medium, regardless of whether the owner seeks a copyright registration. The Berne Convention can be invoked by any member state to protect the

[75] An exception is Berne, making the law of the country where protection is claimed the governing legislation regarding certain questions of ownership and transfer of rights in cinematographic.

[76] RICKETSON, Sam, *International Copyright and Neighbouring Rights: The Berne Convention and Beyond*, Oxford University Press, 2006, p. 41.

copyright owner's economic rights (such as rights of reproduction, public performance, display, distribution, adaptation, and translation) as well as moral rights (such as rights to object to distortion, mutilation, or other modification of the work prejudicial to the owner's honor or reputation).

B. TRIPS Agreement[77]:

One of the most important trade agreements to be concluded in the last decade was the Agreement Establishing the World Trade Organization (WTO)[78], and annexed to it was a pact with an equally long title: the Trade-Related Aspects of Intellectual Property Agreement, known as TRIPS. These agreements took effect on January 1, 1995. WTO, TRIPS have effectively become the international standard for intellectual property protection.

The provisions of TRIPS closely relate to the treaties and conventions that have been administered by WTO and its predecessor agencies for many years. For this reason, a cooperation agreement was signed between WIPO and the WTO, requiring these two agencies to work together to implement and administer TRIPS.

The purpose of TRIPS is to reduce trade barriers by promoting within the member nations the adoption of effective and adequate legal measures and procedures for the protection of all intellectual property rights. Rather than requiring specific, uniform procedures, TRIPS merely requires that the member countries meet certain

[77] Gervais, Daniel, *The TRIPS Agreement*, Sweet & Maxwell, 2007, p. 39.
[78] Alpana, Roy, *A new Dispute concerning the TRIPS Agreement*, The Journal of World Intellectual Property, Volume 10, Number 6, November 2007, pp. 476-484, Blackwell Publishing.

minimum and fundamental standards of protection, leaving each nation free to determine its own method for implementing the TRIPS provisions.

The TRIPS Agreement affects international traders in a fashion similar to the Paris and Berne Convention. In fact, TRIPS serves to strengthen the rights of those two conventions, both of which are incorporated by reference into TRIPS. Traders are indirectly and favorably affected as countries modernize their laws for the protection and enforcement of IP rights. These affects are being felt in all corners of the globe because TRIPS has been so widely accepted as part of the WTO Agreement.

C. <u>Other major multilateral treaties related to copyright:</u>

As mentioned earlier, neither the Berne Convention nor the Universal Copyright Convention cover sound recordings[79]. This is primarily because many countries other than the U.S. do not believe that the making of a sound recording comprehends sufficient originality of authorship, as opposed to technical expertise, to qualify for copyright protection. A separate treaty was initiated: the Geneva Phonograms Convention to protect rights of reproduction, public distribution, and importation of sound recordings. This treaty also operates on the principle of national treatment, leaving it to member countries to protect sound recordings either by means of copyright, or a specific right, unfair competition, or criminal sanctions.

The 1996 WIPO Performers and Phonograms Treaty updates the Geneva Phonograms Convention, notably by clarifying the application of the phonogram

[79] However, they nevertheless can be covered by these conventions. For example, since the U.S. does protect sound recordings under copyright law, foreign sound recordings in the U.S. are afforded Berne subject matter protection unilaterally.

producer's exclusive reproduction right in any manner or form including digital media. With respect to performers' rights, the treaty elaborates on the rights set forth in the TRIPs agreement to prevent the fixation, reproduction and broadcasting and communication to the public of their live performances. The WPPT also provides for a performers' and producers' right of remuneration for broadcasting and communication to the public.

D. Bilateral copyright arrangements:

Before the U.S. joined the Universal Copyright Convention in 1955 UCC, bilateral copyright agreements provided the predominant basis of overseas protection of U.S. works, and, correspondingly, of U.S. protection of foreign works. The U.S. 1909 Act[80] authorized protection for alien authors if the foreign nation granted nondiscriminatory or reciprocal protection to U.S authors; the President was to determine by proclamation that the foreign state was accorded such a protection.

Following U.S. adherence to the UCC, bilateral arrangements receded from the U.S. international copyright scene. There were almost no states with which the U.S. had bilateral arrangements and who were not also UCC members. Now that the U.S. is a Berne member, even fewer bilateral agreements remain important as the sole point of attachment. In fact, only one country, Vietnam, and one territory, Taiwan, are known to rely on a bilateral agreement as a point of attachment.

Beginning in the late 1980s however, the U.S. signed many bilateral trade agreements containing intellectual property rights provisions. These agreements

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[80] The 1909 Act is a landmark statute in United States Statutory copyright law.

required signatories to amend their domestic copyright and neighboring rights laws to raise the minimum levels of protection and enforcement. In particular, as Eastern Europe and the former Soviet Union moved to democratic governments and market economies, bilateral agreements were signed by the U.S. with virtually every country in that region in exchange for preferential trade benefits.

The bilateral route offers some attractions. First, as noted, it ensures protection for U.S. works prior to the foreign state's adherence to a multilateral treaty. Second, it may in fact secure a greater degree of protection than available under a multilateral treaty, especially in the case of trade agreements that raised the UCC or to 1980 or 1990 levels of protection and enforcement. As of 1999, the U.S. had entered into bilateral copyright and trade arrangements with IPR (Intellectual property Rights) obligations with at least 30 nations[81].

[81] MAZONDE, Isaac, *Indigenous Knowledge Systems and Intellectual Property in the Twenty-first Century: Perspectives from Southern Africa*, Codesria, 2007, p. 97.

Chapter VI

Copyright protection of computer programs[82]

Copyright law has a history of development that can partly be explained by reference to technological change. Examples of advances in science that have been in the past addressed by copyright law include photography, sound recordings, films and broadcasting. The Copyright, Designs and Patents Act 1988[83] was an attempt to keep facing forward developments in technology coupled with an intention to enact legislation, that would cover all aspects of technology.

However, new technology is not restricted to computer systems. Other technical advances have been made that need to be examined in the light of copyright law. Two points are worth mentioning at this stage: First, computer technology is not new, universal programmable computing machines have existed for over 50 years; secondly, the vast majority of new technical developments involve computer technology, even if the developments themselves do not appear at first sight to be connected with such technology.

There is no doubt that the new technology stretches the law which is sometimes slow to react. One problem has been the manner in which it has been attempted to adapt existing legal paradigms to deal with the problems posed by technological development.

There is one great difference between computer programs and other works protected by copyright that sets them apart. Conventional works of copyright are

[82] GAZE, Beth, *Copyright Protection of Computer Programs*, Federation Press, 1991, p.178-179.
[83] Unless otherwise stated, statutory references are to the Copyright, Designs and Patents Act 1988.

passive. They await our attention to be read, viewed or listened to. Computer programs, on the other hand, are active, they do things, and they manipulate symbols, transform, modify and retrieve digitally stored information. Even though we now have substantial experience of dealing with computer technology, it continues to cause problems, and not just in terms of substantive law.

Computer software is a phrase that, like many phrases in the computer industry, is incapable of precise definition, but it is usually taken to include computer programs, databases, preparatory material and associated documentation such as manuals for users of the programs and for persons who have to maintain the programs[84]. It can also include all other works stored in digital form, interfaces, programming languages and software tools to be used in developing software systems.

Computer programs are considered in detail in this chapter in terms of the extent and scope of their copyright protection[85] as well as the effects they produce. Particular issues are the look and feel of computer programs in the context of non-literal copying, the decompilation of computer programs, back-up copies, copying and adapting computer programs in manners consistent with their lawful use.Other areas of interest considered are satellite broadcasting, copying technology, scientific discoveries, genetic sequences formulae and, finally, electronic publishing in relation to the Internet and multimedia[86].

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[84] DREXL, Josef, *What is protected in a Computer Programs?*, VCH Publishers, 1998, p.98-99.
[85] Holliday, Linda, *Protecting Computer Software*, Louisiana Bar Journal, August 1984.
[86] HARRIS, Thorne, *The Legal Guide to computer software protection: A practical handbook on copyrights, trademarks, publishing, and Trade secrets*, Prentice Hall Ptr, 1984, p.154-155.

A. Computer programs: basic position:

The Copyright, Designs and Patents Act of 1988[87] does not attempt to define computer program. This is probably sensible and at least allows the courts to develop the meaning of the phrase in the light of future technological change. In the Irish case of News Datacom Ltd v Satellite Decoding Systems, it was accepted that a smartcard decoder for use with scrambled satellite television broadcasts was a computer program.

It may sometimes be difficult to distinguish between hardware and software, such as where a computer program is permanently hard-wired in a microprocessor in the form of microcode or micro programs. The view in the USA is that such programs or code still fall within the meaning of computer program for the purpose of copy right law.

The Copyright, Designs and Patents Act of 1988[88] does not elaborate upon the meaning of originality in respect to computer programs. However, the European Directive on the legal protection of computer programs describes originality in terms of a program being the author's own intellectual creation. This approximates to the requirement under German copyright law that a work be the author's personal intellectual creation and appears to be more stringent than the UK's test[89] of originating from the author.

The two most important acts restricted by copyright in relation to computer programs are those of copying and making an adaptation. Other acts may be relevant in the context of a computer program. Innovation and competition within the

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[87] The Act 1988 is an Act of the Parliament of the United Kingdom.
[88] The Act 1988 is an Act of the Parliament of the United Kingdom.
[89] LAI, Stanley, *The Copyright Protection of Computer Software in the United Kingdom*, Hart Pub, 2000, p. 212-215

computer software industry could be unjustifiably inhibited. The problem of finding a balance between conflicting interests has taxed even the European Community in its search for a balanced Directive on copyright protection for computer programs.

As with any other literary work, the copyright in a computer program is infringed by making, without the copyright owner's license, a copy of the program or of a substantial part of it[90]. Substantiality is an issue of quality and therefore the copyright subsisting in a computer program can be infringed if the essence of the program is copied, even if the part copied is relatively small quantitatively. Arguably, even a tiny part of a program could be regarded as substantial as the program probably will not function, at all, or properly, without it. However, a better approach is to consider whether the part taken was the result of a least a minimal amount of skill on the part of the programmer.

In Cantor Fitzgerald[91] International v Tradition (UK) Ltd, it was suggested that every part of a computer program could be a substantial part of the program. The reasons for this were that syntactic errors will prevent the program from being compiled and semantic errors will prevent the program from running at all or will produce the wrong answer[92]. In other words, even very small parts of a computer program are important to the operation of the program. It will not run or run properly without them or if they are present but contain errors.

[90] Copyright, Designs and Patents Act 1988 section 16: there was an arguable case that substantial part of the original program for converting BASIC into C had been copied. The second program had 43 line similarities out of a total of 9000 lines, although there were structural similarities and the same errors were present in both programs.
[91] Cantor Fitzgerald is a financial services firm specializing in bond trading, asset management and brokerage services. It was founded by Bernard Gerald Cantor and John Fitzgerald in 1945. It remains one of 21 primary dealers permitted to trade U.S. government securities directly with the Federal Reserve Bank of New York.
[92] The Australian case of Autodesk Inc v Dyason RPC 575 provides some authority for this proposition. In that case, it was held that a 127 bit look up table used with a dongle (a device plugged into a computer port and used to enable a computer program to be run) was not a computer program but was a substantial part of a computer program.

Claimants alleging copying of parts of their programs may have difficulty in convincing a judge that a substantial part has been taken because of some judges' lack of technical knowledge. Judges in cases involving complex technology rely to a greater of lesser extent on the evidence of expert witnesses. That being so, it is important that expert witnesses are objective and do not act as advocates.

In relation to literary works, copying is defined as a reproduction in any material form; including storage in any medium by electronic means and making copies which are transient or incidental to some other use of the work. Thus, loading a computer program into a computer's volatile memory (RAM) is copying. That is why a license is required to use a computer program, in contrast to most other forms of works for which use in private does not involve an act restricted by copyright. There should not be any difficulties concerning existing and future media in or on which a computer program is stored.

The finished code of a computer program is the culmination of a long process involving the creation of a number of preparatory works. For example, the analysts and programmers working on the development of a new program usually will produce specifications, flowcharts, diagrams, layouts for menus, screen displays, and reports and other materials. Prior to the amendments made to the Act by Copyright (Computer Programs) Regulations 1992 in the United Kingdom in compliance with the Directive on the legal protection of computer programs, all these materials would have been protected in their own right as literary or artistic works as appropriate.

The separate protection of preparatory design material as a literary work conflicts with the wording of the Directive which states that the term computer programs shall include their preparatory design material. For example, it is not

permissible to make a back-up copy of a computer manual unless the other permitted acts generally available for literary works allow it.

Preparatory design material will include works that would previously have been considered to be artistic works, such as flowcharts and other diagrams[93]. For example, there is no requirement for an artistic work to be recorded. Infringement and the permitted acts are not precisely the same for literary and artistic works.

B. The software's developer's exclusive rights:

The author of a copyrighted work is entitled to preclude or recover for any unauthorized copying of her work. Under the copyright law, copying includes several specific rights exclusive to the copyright holder, including the distribution and the preparation of derivative versions of the protected work. The copyright holder can recover compensatory or statutory damages upon establishing a case of infringement. The copyright owner may also obtain injunctive relief to prevent further incursions upon the copyright holder's rights.

A preliminary injunction enjoining a copyright infringement serves the public interest by furthering the goals of individual effort and fair competition. Although, it is in the public interest to encourage the competition and the development of new computer programs, it is not in the public interest to permit the marketing of a program that infringes on the intellectual property rights of another.

It is the individual expression of the function that the software program is designed to undertake, that is, the program's actual source and object code[94], which is

[93] An electronic circuit diagram was held to be a literary work as well as an artistic work in Anacon Corp Ltd v Environmental Research Technology Ltd (1994).
[94] HARISON, Elad, *Structure and Interpretation of Computer Programs*, MIT P Edition, 1985, p.59-60.

protected by the copyright law. The source and object code reflect the author's personal choices in choosing instructions, arranging the order of commands, etc., and represent her/his unique and individual expression as to how to use the computer's capabilities to accomplish the subject task.

In addition to protecting the literal source and object codes, however, the copyright law also protects, that is, their overall structure or organization, much the same as it protects the overall plot of a novel. There are various judicial approaches for determining whether the protected non-literal elements of a software program have been infringed in the development of a subsequent program.

Unprotectible material, such as basic ideas or unoriginal material is filtered out by the court at each level, and the remaining creative expressions are compared with the competing program to determine whether the later work incorporates some protectible albeit non-literal aspect of the original work.

First, in order to provide a framework for analysis, we conclude that a court should dissect the program according to its abstractions test. Second, poised with this framework, the court should examine each level of abstraction in order to filter out elements of the program, which are unprotectible. Filtration should eliminate from comparison the unprotectible elements of ideas, processes, facts, public domain information, merger material, scenes affaire material, and other unprotectible elements suggested by the particular facts of the program under examination. Third, the court should then compare the remaining protectible elements with the allegedly

infringing program to determine whether the defendants have misappropriated substantial elements of the plaintiff's program[95].

Because software programs are highly functional in nature, however, when the alleged infringer has not copied the original program verbatim, it is often difficult to determine whether she is simply deploying her own expression of the same underlying idea or if she has pirated the copyright holder's overall structure, organization, or approach to the basic task. When faced with non-literal copying cases, courts must determine whether similarities are due merely to the fact that the two works share the same underlying idea or whether they instead indicate that the second author copied the first author's expression.

While much of the software copyright infringement litigation centers around unauthorized copying and or distribution, as indicated above, the software copyright holder is also protected against the unauthorized preparation of derivative programs based on her/his work, much the same as the author of a copyrighted novel is protected against the publication of an unauthorized sequel. The seventh circuit explored the question as to whether specific license terms authorized engagement in that particular exclusive right. The plaintiff copyright holder had been hired to prepare a report on the state juvenile detention system, but when he refused to make certain changes to his/her final report, the defendant agency hired another expert to complete the work. Plaintiff, who retained the copyright to the report, thereafter brought his copyright infringement suit on the grounds that the revised report constituted an authorized derivative work.

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[95] Under the doctrine of externalities, often referred to in a non-computer literary setting as scenes a faire...Copyright protection is denied to those expressions that are standard, stock, or common to a particular topic or that necessarily follow from a common theme or setting. For these reasons, certain content of an allegedly infringed program that might have been dictated by external factors may not be subject to copyright protection.

C. Literal copying of computer program:

Copying of a computer program can be literal, where the program code itself is copied, in which case the two programs are written in the same computer programming language. Alternatively, copying can be non-literal, where elements of the program such as its structure, sequence of operations, functions, interfaces and methodologies are copied without the program code itself. The two programs may be written in the same language or in different computer programming languages. The law's recognition of non-literal copying is important because otherwise it would be too easy to stop copyright protection of computer programs[96]. Literal copying occurs where a person copies an existing program by disk to disk copying or by writing out or printing the program listing, perhaps to key it into another computer at a later date. In either case, the person making the copy may make some alterations to the copy. This may be to disguise its origins or to enhance the program, for example, by including some additional functions.

Literal copying is relatively easy to test for infringement. The following case was the first to consider seriously the issues relating to literal copying of computer programs and it laid down some important precedents for software copyrighting.

In IBCOS Computers Ltd v Barclays Mercantile Highland Finance Ltd, the second defendant, a computer programmer called Mr. Poole, designed a suite of programs for accounts and payroll. He owned the copyright in the programs and eventually developed a MK 3 version. Then, with another person, he set up a firm, PK Computer Services, to provide software for agricultural machinery dealers. When Mr. Poole left the company, he signed a note recognizing that the company owned all the

[96] SHERMAN, Cary, *Computer Software Protection Law*, Bna Books, p. 71.

rights in the software which contained the MK3 suite of programs. Mr. Poole was then engaged by the first defendant to write similar software. Both suites of programs were written in variants of the same programming language and there was a degree of literal similarity between them.

Not only were the individual programs protected by copyright, but also the suite of programs was protected as a compilation, being the result of sufficient skill and judgment. From the defendant's point of view, there were some unfortunate coincidences. Both suites of programs contained many common mistakes in the comment lines. Both suites contained the same redundant code. In the mind of Jacob J[97], and in the absence of any plausible explanation from Mr. Poole, this proved that there had been disk to disk copying[98]. Jacob J said that copying was a question of fact and could be proved by showing that something trivial or unimportant had been copied.

The issue of substantiality was considered and Jacob j stressed the importance of expert evidence in this respect. Furthermore, Mr. Poole was in breach of confidence, the source code to the claimant's program being confidential. He had also signed a note when leaving PK Computer Services which contained a covenant in restraint of trade. However, Mr. Poole was not in breach of the covenant which was constructing narrowly by Jacob J.

D. Non-literal copying of computer programs:

With some works of copyright, it is an easy matter to distinguish between the literal and non-literal elements. For example, with a work of literature, perhaps in the

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[97] Jacob J is an American theatre owner, operator and producer.

[98] Mr. Poole had argued that the similarities were the result of programming style, but this failed to impress the judge.

form of an historical novel, the literal element comprises the words, sentences and paragraphs as expressed in print, while the non-literal element can be said to consist of the detailed plot, sequence of events, characters and scenes. In some cases, the author of the novel will produce written materials or diagrams expressing these non-literal elements subsisting in the finished novel. However, in the absence of such materials, it is clear that taking the non-literal elements can infringe.

Non-literal copying is not a problem restricted to computer programs. The courts in the USA have also suggested separating unprotected ideas from protected expression, including non-literal elements.

Copyright must not be limited to a comparison of the code of the original and alleged infringing programs. If that were so, copyright law would be easily defeated[99]. It would simply be a matter of rewriting the program in a different computer programming language or, provided changes are made to variable names, remark lines, line numbering, using the same programming language. In other words, it would be a simple matter to defeat copyright by making a duplicate of the original program to which a number of cosmetic alterations could be applied. The USA was the first in the field in developing tests for non-literal copying of computer programs, and before looking at the position in the United Kingdom it will be instructive to look at litigation in the USA. Of course, US copyright law is not exactly the same as that in the UK, though there are many similarities and most of the basic principles are common. It should be noted that copyright law in both jurisdictions has a common ancestor, the Statute of Anne 1709 in England.

[99] For an argument that the law of passing off may provide some protection to computer programs, in particular screen displays.

E. Making an adaptation:

In terms of the Copyright, Designs and Patents Act 1988[100], the word "adaptation" has some very special meanings, depending on the nature of the work concerned, and should not be taken in its usual sense. Making an adaptation does not simply mean the same as modifying a work. The restricted act of making an adaptation applies only to literary, dramatic and musical works. Of the original works, artistic works are not covered by the act of making an adaptation. Therefore, if a person represents an existing drawing by producing a list of co-ordinates, he/she is not making an adaptation of the drawing and does not infringe upon the copyright in the drawing unless the list of co-ordinates can be considered to be a copy of the drawing[101]. If the drawing contains information to be used in the manufacture of an article, it may also be deemed to be a literary work.

An adaptation is made when it is recorded in writing or otherwise. Writing is defined as including any form of notation or code, whether by hand or otherwise, regardless of the method by which, or medium in which it is recorded. This definition is very broad and should present no problems in the context of making an adaptation.

a- In relation to a literary work other than a computer program or a database, or in relation to a dramatic work, infringement takes place in:

- The translation of the work, or

- The conversion of a dramatic work into a non-dramatic one or, as the case may be, of a non-dramatic work converted into a dramatic one;

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[100] The Act 1988 is an Act of the Parliament of the United Kingdom.
[101] If the existing work is a sculpture and a person produces a set of co-ordinates describing its form, that will infringe because a dimensional shift has occurred which brings into play.

- A version of the work in which the story or action is wholly conveyed by means of pictures in a form suitable for reproduction in a book, or in a newspaper, magazine or similar periodical.

b- To a computer program, means an arrangement or altered version of the program or a translation of it.

c- To a database, means an arrangement or altered version of the database or a translation of it.

d- To a musical work, an arrangement or transcription of the work.

A translation would typically include a work of literature or a play that has been translated, for example, from French to English. But, when literary works include computer programs, the word takes on a special meaning in relation to computer programs: "a translation then includes a version of the program which is converted into or out of a computer language or code or into a different computer language or code, other than run in the course of the program"[102].

The dramatic/ non-dramatic conversation covers situations such as where a biographical book or a true story is dramatized or, alternatively, where the script for a play is written as a novel. For example, in *Corelli*[103] *v Gray*[104], the defendant was found to have written a dramatic sketch by taking material from the claimant's novel[105]. To change a cartoon or other graphical means of portraying a story into a written work does not fall within the meaning of making an adaptation; it may,

[102] These words were repealed by the Copyright (Computer Programs) Regulations 1992.
[103] Corelli is an Italian tenor active in opera. He was noted for his charismatic stage presence and physical attractiveness as well as his powerful voice.
[104] Gray Davis is an American politician. He is a Democrat, often known as a moderate. He was awarded a Bronze Star for his service as a Captain in the Vietnam War.
[105] www.swanturton.com/articles/JKCFormatFortunes.aspx

however, fall within the meaning of copying. The rational for this apparent inconsistency is that, presumably, to convert a story told mainly by pictures to a written work requires a great deal of skill, effort and judgment and all that is really taken is the plot or the idea underlying the pictorial work. The wordsmith has many gaps to fill in. On the other hand, to draw pictures depicting a written work leaves less to the imagination of the artist in terms of the telling of the story, although, of course, he/she will have free rein to express that story in his/her preferred way. The Act presumably considers artistic license to be more constrained than literary license.

As far as musical works are concerned, arrangements and transcriptions of existing works are adaptations and will infringe that copyright if copyright subsists in the existing work. An example of an arrangement is where a piece of music written for one instrument is rewritten so that it is suitable for another. If there is a sufficient amount of skill and judgment involved in the arrangement, it too might attract its own copyright, although the permission of the owner of the copyright in the first piece of music would be required before the arranged piece could be exploited[106].

The doing of any of the other restricted acts, in relation to an adaptation, is also an act restricted by the copyright in a literary, dramatic or musical work. So that making an adaptation of an adaptation also infringes copyright if done without the permission or license of the copyright owner. For example, if Albert writes a novel in English and Barry, without Albert's permission, translates the novel into French, Barry is making an adaptation and infringes Albert's copyright in the original novel. Finally, if Duncan translates Barry's French version of the novel into German, Duncan

[106] Apart from infringing the copyright owner's rights, the moral rights of the author must be considered. By the Copyright, Designs and Patents Act 1988, the author of a musical work has a right not to have his work subjected to derogatory treatment. Treatment in relation to a musical work does not include an arrangement or transcription involving no more than a change of key or register.

infringes copyright by making an adaptation of an adaptation. In addition to the economic rights, Albert's moral rights might be infringed by the above actions, for example if he is not identified as the author.

Now that an adaptation includes an arrangement or altered version of a program, this should cover the situation where a program is manually rewritten in a different computer programming language. The meaning of translation may also extend to a manual translation. There seems to be no reason why translating a computer program cannot be done manually by using a knowledge of grammatical rules and a dictionary of commands and functions. This is highly analogous to translating a work of literature from one natural language into another which is, of course, making an adaptation.

F. Decompilation of computer program:

The decompilation right[107] allows a lawful user of a copy of a computer program expressed in a low-level language:

- To convert it into a version expressed in a higher-level language;
- To copy it incidentally in the course of so converting the program[108].

While it is up to the legislatures of individual Member States to choose their own form of wording to give effect to a Directive, the differences between the language of the modifications made by the Copyright Regulations 1992 and that of the Directive, which is expressed in terms of reproduction of the code and translation of its form, a much wider rubric, are unfortunate. The Directive does not use the terms low-level

[107] So described in the Directive Article (6), though it is an exception to infringement and not a right as such.
[108] Copyright, Designs and Patents Act 1988 section 50B (inserted by the Copyright Computer programs Regulations 1992).

language and high-level language, nor are they defined in the Act. Although someone wanting to gain access to information about the program's algorithm or its detailed workings would almost certainly want to convert from a low-level language version to a higher-level languages version, the Directive is more generous, allowing translation, adaptation, arrangement or alteration. The decompilation right as enacted does not expressly cover the conversation of a binary object code program into hexadecimal code[109]. This would be within the exception as expressed in the Directive[110].

The conditions that must apply for decompilation to be permitted by section 50B of the 1988 Act are stated in section 50B (2) as follows:

- It is necessary to decompile the program to obtain the information necessary to create an independent program which can be operated with the program decompiled or with another program;
- The information so obtained is not used for any purpose other than the permitted objective.

The purpose of decompilation is to obtain, typically, interface details. For example, Ace Software may wish to develop a new word-processing program. Ace will need to know details of various computer operating systems so that it can work in the computer's operating environment. Ace must determine how the operating system uses the computer's memory so that its new program can run properly. Also, to stand any chance of being successful, the new program must be compatible with existing programs. Ace's new program must be able to accept word-processed files produced using other word-processing programs; it would be even better if Ace's new program

[109] Hexadecimal code is something which is commonly known as performing a hex dump, as there is no higher-level language involved at that stage.
[110] However, this could fall within the normal fair dealing exception in the Copyright, Designs and Patents Act 1988 section 29. This is still available for acts not caught by the meaning of decompilation.

could accept files from other types of program such as a spreadsheet program or a graphics program. Not only does the exception allow decompilation for the purpose of creating a new compatible program, it also allows, in principle, the creation of new competing programs.

The decompilation permitted act, in essence, gives a right to information concerning interfaces so that interpretability can be achieved. It does not give a right to take the interface itself. For example, if an interface is expressed in a number of lines of computer code, that code, provided that it meets the requirements for copyright protection, may not be copied because of this permitted act.

Once the information is acquired by the process of decompilation, any interface code written must be done so as not to infringe copyright. This may be difficult in the extreme when the interface detail is in the form of a protocol and no design freedom is permissible. It may be that in such circumstances the courts may be prepared to excuse infringement on policy grounds, otherwise the decompilation permitted act would be defeated. However, it is far from certain that the courts would so decide, given their reluctance to override a statutory provision.

Importantly, the decompilation right cannot be prohibited or restricted by any term or condition in an agreement. Any term in a license agreement purporting to do this is void, unless the agreement was entered into before 1 January 1993. As a result, a considerable number of standard form software licenses were amended.

Apart from the decompilation exception, fair dealing for the purposes of research or private study still exists in relation to computer programs.

Therefore, it may be permissible for a person to list, copy, inspect and study a program in use for the purposes of understanding the operation of the program and the techniques represented within it for research, including commercial research, and private study. However, the prospective author of an academic journal article cannot disassemble the computer program in order to include an extract of the program expressed in a higher-level language. That does not fall within the permitted objective of decompilation and is outside the residual fair dealing exception.

Conclusion

The content of this thesis goes further than a simple introduction to the subject of intellectual property in which the various forms of intellectual property, such as patents, trademarks and copyrights, are briefly described. It addresses some of the basic principles underlying this area of law, examines the nature of intellectual property law and discusses some cross-cutting themes that transcend boundaries between individual forms of intellectual property rights.

I have examined how legal actors with different interests and resources interact through their communicative activities and how these interactions, using structural rules and resources, shape the copyright law regarding computer programs.

The oldest and most well-established characteristic of intellectual property agreements is that of national treatment, which can best be understood historically. When the first intellectual property treaties were proposed in the nineteenth century, different countries, at different levels of economic and cultural development, favored different coverage treatment, and terms. Because it appeared impossible to reach an agreement on the level of protection that should be guaranteed by all signatory countries, a compromise was reached. The undemanding approach of national treatment has been the stated rubric of international intellectual property treaties even as, in fact, they depart from that approach in favor of agreement upon transnational minimum terms.

This work also analyses the scope of copyright protection for computer programs.

The work presents the case for the adoption of infringement methodology emanating from the courts in the United States, resulting in a narrower scope of protection. The work makes a careful evaluation of the efficacy of the various prevailing tests for infringement of copyright in software and their progenies, suggesting an improved formula and advocating the utility of limiting doctrines to assist in the determination of substantial similarity of particular non-literal software elements, user interfaces and screen display protection. It also contains an explanation of copyright defenses, permitted acts, database protection and the copyright-contract interface in the context of computer software.

Copyright protection has gained a grip in Lebanon, with the judicial injunctions against widespread broadcast piracy. Progress in legal reform, including establishment of a new copyright law to meet world standards is extremely slow. Meanwhile, piracy dominates the market. Placing Lebanon on the special watch list could stimulate greater forward momentum signally strong U.S. interest in improving intellectual property protection throughout the Middle East.

The U.S. government urges the Lebanese government to press forward with its recent proposal to draft a law regulating the cable television industry and to mount an aggressive campaign against pirates. The U.S. needs also to underscore for Lebanon the urgent need to reform the judicial process, to press ahead with broadcast licensing, and to revive the copyright law reform process, now immobilized before a parliamentary committee.

Lebanon has taken major steps in improving his laws regarding the protection of intellectual property. The new Copyright Law of 1999 is a very important

economical achievement for the country and an important step towards modernizing by complying with International Standards.

But still, the new copyright law does not meet all the enforcement obligations imposed by the TRIPS agreement.

For example, Article 25 of the copyright law of 1999 violates WIPO and TRIPS treaties as well as Berne convention.

Article 25 states that non-profit-making educational institutions, universities and public libraries may, without the authorization of the author and without obligation to pay him compensation, reproduce a limited number of computer programs for the purpose of lending them free of charge to students and university people, provided that they possess at least one original copy of the work and provided that the Ministry of Education, the Ministry of Culture and Higher Education and the Ministry of Technical and Vocational Education subsequently issue decrees determining the copying mechanism, the categories of computer programs that may be copied and the number of copies allowed. Students may make one copy for their personal use.

It shall also be permitted, without the authorization of the author and without obligation to pay him compensation, to use a limited part of any legally published work for purposes of criticism, argumentation or citation or for an educational purpose, provided that the part used does not exceed what is necessary and customary. However, the name of the author and the source shall always be indicated, if the name of the author is included in the work.

The software exception created by Article 25 of the copyright law of 1999 violates Article 9 (2) of the Berne Convention. It is not limited to certain special cases, but appears to allow unauthorized copying for any purpose, it conflicts with a normal exploitation of the prejudices the legitimate interest of right holders, by threatening to eliminate completely a market that many copyrights owner already serve on extremely generous terms. While many modern copyright laws include specific exceptions for the copying of computer programs under narrowly defined circumstances, and/or exceptions allowing the copying of certain Kinds of works (but almost never computer programs, except for "back up" purposes) for "personal use",

The last sentence of Article 25 provides, " the student shall have the right to make one copy for his personal use". This clause does not state whether the student must first have a license to use the software before being allowed to make a copy. It is not clear of this provision is intended to allow a student to make a copy of any computer program regardless of whether he is entitled to use of such program.

Therefore, Article 25 of the 1999 copyright law must be deleted in order to make this law compliment with the international treaty obligations (Berne Convention, Paris 1971 text, TRIPS, and WIPO copyright treaty).

However, further attempts will be required to assure that these legal changes are meaningful in a practical sense. A copyright office should be empowered to administer rights of copyright and neighboring rights, including receiving deposits, rulemaking, and compulsory licensing.

Workshops examining WTO requirement and complaint legislation are useful for legislators and other rulemaking bodies. Seminars directed to private

sectors, and industry representatives are important, as are public awareness campaigns explaining general rights and responsibilities created under new legislation.

Although the jurisprudence of software licensing and distribution continues to evolve, the foregoing cases suggest a few guideposts. Software licenses are best expressed in terms of the exclusive rights enumerated in the Copyright Act. Moreover, mass-market licenses should provide a reasonable time and opportunity for review before assent thereto will be inferred and should impose terms that are commercially reasonable, especially where the consumer public is concerned. Finally, with respect to any limitations upon a license's ability to use commercially distributed software, such restrictions should be constructed with both the copyright law and distinguishable state law rights in mind. Adherence to these and similar parameters should provide greater certainty and other benefits for both software developers and the general public.

The software sector is an important sector in the Lebanese economy. The Lebanese are known to have the necessary know-how, professionalism, and high quality products and services. But the software industry is suffering from economic slowdown, market narrowness, intense local and regional competition, brain drain, lack of a coherent IT policy and incentives from the Government, and a high piracy rate.

In order to improve, therefore, the application of laws regarding copyright, the Government should try to build and develop the skills of local partners so that developers are encouraged to use Microsoft technologies.

The application of copyright laws remains though timid, and the professionals do not really feel its effects. However, banks, financial institutions, and large companies are so often concerned about their reputation that they would very unlikely consider using illegal software, although the high cost of programs may render illegal copying more tempting for some. In any case, the programs are so complicated and require so much support that it is very difficult for them to be pirated.

For that, in Lebanon, for example, the lack of political wills remains the main reason copyright laws are not enforced. There is a strong feeling that government authorities have not decided to implement the law in a tough manner after its adoption in 1999, for reasons that remain unknown.

Assuming the government decides to apply the law, information and training to all people involved in the law protection process are vital in order to increase the effectiveness of the legal system. Judges, detectives, members of the police, custom agents, and most importantly members of the copyright department at the Ministry of Economy have to improve and update their knowledge for a better cooperation with the lawyers in charge of piracy cases.

The Lebanese market should more and more appreciate the value of computer technologies. It should decrease taxes on IT products and it should also encourage software companies to provide very high quality software and service.

Furthermore, as a matter of fact, due to Bureaucracy and complexity of any new development in technology, all governments in the world, sometimes are slow to

react when dealing with problems posed by this new technology , especially computer programs, which have a negative impact on economy in general.

Therefore, to keep facing forward developments in technology, governments and parliaments should create sub-committees attached to their committees of legislation, which should embody specialists in modern technology, who can afford plain explanations with simple words to the members of the committee of the parliament and to cabinet members, addressing the new invention in the line of technology whenever exists, to make them understand its concept and all its ramifications, in order to issue new laws, within a reasonable period of time to contain and to solve any problem could be posed by this new technology.

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Appendix I

Law on the Protection of Literary and Artistic Property

(No. 75 of April 3, 1999)

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Chapter I
Definitions

1. For the purpose of applying the provisions of this Law, the meaning of the terms and expressions hereinafter shall be as follows, unless otherwise indicated in the context. These definitions apply also to related rights.

"Performance of work" means the execution of a work through exhibition, playing music, reciting, narrating, acting, dancing or any other means whether directly or through any means or device.

"Public performance" means a performance which is given in a place or places where the number of persons present exceeds the members of one family and their direct acquaintances.

"Broadcasting" means the transmission of the work for public reception by wireless means including transmission by satellite.

"Computer program" means a set of orders expressed in words or symbols or in any other form which when entered into a matter readable by a computer shall enable the computer to perform or execute a certain task or give a certain result.

"Phonogram/sound recording" means every fixation by any physical means of the sounds of a performance or of other sounds, whether resulting from the performance of a work or not, other than a fixation incorporated in an audiovisual work.

"Reprographic reproduction" means making copies from the original of a work by means other than printing, such as photocopying, and includes enlarged or reduced copies of the work.

"Related rights" means the rights that performers, producers of phonograms, television and radio broadcasting organizations and publishing houses enjoy.

"Work" means every work within the meaning of Articles 2 and 3 of this Law.

"Collective work" means a work in which more than one natural person participates under the initiative and supervision of a natural person who, or legal entity which, undertakes to publish it under his/its own name.

"Audiovisual work" means every work consisting of a set of consecutive images related to each other, whether accompanied by sound or not, and that gives the impression of motion if displayed, broadcast or transmitted with special devices.

"Work of joint authorship" means every work created by more than one author on condition that the said work does not constitute a collective work.

"Producer of sound recording/phonogram or audiovisual work" means the natural person who, or legal entity which, takes the initiative and responsibility for producing the audiovisual work or sound recording/phonogram.

"Author" means the natural person who creates a certain work.

"Reproduction" means making one or more copies of any work by any means or in any form, including a permanent or temporary recording on phonogram records, tapes, disks, electronic memory, and this also includes issuing a copy in two dimensions of a three-dimensional work, or a copy in three dimensions of a two-dimensional work.

"Copy" means the product of any copying, recording, printing, or photocopying of the original work.

"Publication" means making copies of the work or of the sound recording/phonogram available to the public in reasonable quantities with the consent of the author or the producer of the sound recording/phonogram, by means of selling, renting, or any other means of property transfer or acquisition of a copy of the work or the sound recording/phonogram or of the right to use them. The word "publication" also means making copies of the work or sound recording/phonogram available to the public by any electronic means.

The performance of a dramatic, dramatico-musical, cinematographic or musical work, the public recitation of a literary work, the communication by wire or the broadcasting of artistic or literary works, the exhibition of a work of art and the construction of a work of architecture shall not be considered publication.

A sound recording/phonogram is not considered published if received by any device, or means or if broadcast.

"Communication to the public" means making the work available to the public by wire or wireless transmission of sounds and/or images, in such a way as to allow the public to hear or view the work at a distance from the broadcasting center.

This includes making the work available to the public by wire or wireless means (like the internet) in such a way that every person may access it from a place and at a time chosen by them.

Chapter II
Protected Works

2. The protection of this Law shall apply to every production of the human spirit be it written, pictorial, sculptural, manuscript or oral, regardless of its value, importance or purpose and the mode or form of its expression.

The protection of this Law shall apply, among other works, to:

– books, archives, pamphlets, publications, printed material and other literary, scientific and artistic writings;

– lectures, addresses and other oral works;

– audiovisual works and photographs;

– musical compositions with or without words;

– dramatic or dramatico-musical works;

– choreographic works and pantomimes;

– drawings, sculpture, engraving, ornamentation, weaving and lithography;

– illustrations and drawings related to architecture;

– computer programs whatever their language and including preliminary work;

– maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science;

– any kind of plastic art work whether intended for industry or not.

3. The following derivative works shall be subject to the provisions of this Law and shall be protected as original works without prejudice to the rights in the original work:

– translations, adaptations, transformations and arrangements of music;

– collections of literary or artistic works and compilations of data, whether in machine-readable or other form, provided that they are authorized by the copyright holder or his public or private successors and that by reason of the selection and arrangement of their contents they constitute intellectual creations.

4. The following shall be excluded from the protection provided by this Law:

– daily news;

– laws, legislative decrees, decrees and decisions issued by all public authorities and official translations thereof;

– judicial decisions of all kinds and official translations thereof;

– speeches delivered in public assemblies and meetings. The authors of speeches and presentations shall enjoy the sole right of collecting and publishing such lectures and presentations;

– ideas, data and abstract scientific facts;

– artistic folkloric works of all kinds. However, works inspired by folklore shall enjoy protection.

Chapter III
Copyright Holder and Terms of Protection

5. The author of any artistic or literary work shall, as a result of the creation of the work, have an absolute property right over his work and shall reserve all his rights without having to follow any formalities.

6. In the case of a joint work in which each contribution consists of an integral part of the work as a whole, all the contributors shall be considered coauthors and co-owners of copyright in the work. However, if it is possible to distinguish the contribution of each author from the others, each of the joint authors shall be considered the author of his own contribution.

In a joint work, none of the coauthors may, in the absence of any written agreement to the contrary, exercise copyright without the consent of the other authors.

7. In the case of a collective work, the natural person who, or legal entity which, took the initiative to create the work and supervise its execution shall, in the absence of any agreement to the contrary, be considered the copyright holder.

8. In the case of a work created by natural persons working under a work contract for a natural person or legal entity in the course of performing their duties or professional obligations, the employer shall, in the absence of any agreement to the contrary, be the copyright holder and shall exercise the rights provided for in Article 15 of this Law.

9. In the case of an audiovisual work, the producer shall, in the absence of any agreement to the contrary, be considered the copyright holder.

10. In the case of anonymous and pseudonymous works, the natural person who, or legal entity which, published the work shall be considered the author. However should the identity of the author be revealed, he himself shall exercise these rights.

11. The person whose name is shown on a literary or artistic work in the commonly known way shall, unless proved otherwise, be considered the author.

Chapter IV
Criteria of Eligibility for Protection

12. The protection of this Law shall apply to the artistic and literary works of the following:

– Lebanese authors, wherever they reside;

– non-Lebanese authors who are nationals of, or resident in, a State party to the Berne Convention for the Protection of Literary and Artistic Works or the Universal Copyright Convention;

– authors who are nationals of any State that is a member of the Arab League but which is not party to the above-mentioned Conventions, provided reciprocal treatment is applied;

– producers of audiovisual works who have their headquarters or habitual residence in Lebanon or in any State party to the Berne Convention for the Protection of Literary and Artistic Works or the Universal Copyright Convention.

13. The protection of this Law shall apply to:

– literary and artistic works first published in Lebanon;

– literary and artistic works first published in a State party to one of the above-mentioned Conventions;

– literary and artistic works first published outside Lebanon and outside the States party to one of the above-mentioned Conventions, provided that they are published in Lebanon or in a State party to the above-mentioned Conventions within 30 days of their publication in the other country.

Chapter V
Rights Enjoyed by Copyright Holders

14. The copyright holder shall enjoy economic and moral rights.

15. The copyright holder shall have the exclusive right to exploit the work commercially and, accordingly, shall have the right to authorize or prohibit the following:

– any copying, printing, recording and reproduction of the work in any manner or form including photography, cinematography, sound or visual recordings of any kind or any other form;

– any translation, adaptation, alteration, transformation, summarizing, reworking of the work or rearrangement of the music;

– the sale, distribution or rental of the work;

– the importation of copies of the work manufactured abroad;

– the public performance of the work;

– communication to the public of the work by wire or wireless means, whether through hertzian waves or the like or through coded or uncoded satellites, including the rebroadcast of normal television or radio broadcasts or satellite transmissions by any means of diffusion of sounds and images.

16. The economic rights of the author shall be considered as movable rights and may be transferred in whole or in part.

17. Any contract for the exploitation or assignment of economic rights shall, whatever its subject, be drawn up in writing, otherwise it shall entail nullity of the contract. It shall set out in detail the rights covered by the contract and indicate the time and location. The contract shall also require that the author gets a percentage of the exploitation revenues and assignment proceeds. If such a contract does not set a time limit, it shall be valid for 10 years only from the date of signature of the contract.

18. The assignment in whole of future works shall be considered as void.

19. The assignment by the author of any of his rights must be limited in all cases to that right only and copyright contracts shall be construed in a restrictive manner.

20. The author and composer of a song shall have equal rights in that work, unless agreed otherwise.

21. Independently of the rights provided for in the previous Article and even after the assignment of the said rights, the author shall enjoy the following moral rights:

– the right to disclose the work and to determine the way and method of such disclosure;

– the right to claim authorship of the work and to have his name mentioned on every copy of the work each time the work is used in public;

– the right to use a pseudonym or to remain anonymous;

– the right to object to any distortion, mutilation or modification of the work which would be prejudicial to his honor, reputation, fame or artistic, literary or scientific position;

– the right to rescind contracts for the assignment of economic rights even after their publication if rescission is necessary to safeguard his person and reputation or is due to a change in his beliefs or in the circumstances, provided that third parties are compensated for damage resulting from such rescission.

22. It shall not be permitted to assign or attach the moral rights of the author but the said rights may be transmitted by testamentary disposition or inheritance laws.

Chapter VI
Exceptions

23. Without prejudice to the provisions of Article 24 of this Law, any natural person may, for his personal and private use, copy, record or make a single copy of any work protected under this Law without the authorization or consent of the copyright holder and without having to pay him any compensation, provided that the work has been legally published.

The use of a copy copied or reproduced inside a company or at any other work place shall not be considered as personal and private use.

24. The exception provided for in the previous Article shall not apply if it is prejudicial to the other rights and interests of the copyright holder. In particular, it shall be prohibited to:

– execute an architectural work in the form of a complete or partial construction;

– copy, record or reproduce any work of which a limited number of original copies are published;

– reproduce the whole or a significant part of a book;

– record or transmit compilations of data of all kinds;

– record or copy computer programs unless the record or copy is made by the person authorized by the copyright holder to use the program and for the purpose of making a single copy for use in the case of loss or damage of the original copy.

25. Non-profit-making educational institutions, universities and public libraries may, without the authorization of the author and without obligation to pay him compensation, reproduce a limited number of computer programs for the purpose of lending them free of charge to students and university people, provided that they possess at least one original copy of the work and provided that the Ministry of Education, the Ministry of Culture and Higher Education and the Ministry of Technical and Vocational Education subsequently issue decrees determining the copying mechanism, the categories of computer programs that may be copied and the number of copies allowed. Students may make one copy for their personal use.

It shall also be permitted, without the authorization of the author and without obligation to pay him compensation, to use a limited part of any legally published work for purposes of criticism, argumentation or citation or for an educational purpose, provided that the part used does not exceed what is necessary and customary. However, the name of the author and the source shall always be indicated, if the name of the author is included in the work.

26. It shall be permitted, without the authorization of the author and without obligation to pay him compensation, to copy or reproduce articles published in newspapers and magazines or short excerpts of a work, provided that it is done solely for educational purposes and within the necessary limits of such purpose. If the names of the author(s) and the publisher appear on the original work, they shall be mentioned in each and every use of the copy of the article or work.

27. Non-profit-making public libraries may, without the authorization of the author and without obligation to pay him compensation, make an additional copy of a work to be used in case of loss or damage of the original work, provided that they possess at least one copy of the original work.

28. It shall be permitted, by decision of the Minister of Culture and Higher Education, without the authorization of the author and without obligation to pay him compensation, to copy, reproduce or record an audiovisual work of special artistic value in order to keep it in the Ministry's archives, in case the copyright holder unfairly refuses to authorize the making of the said copy.

29. It shall be permitted, without the authorization of the author and without obligation to pay him compensation, to copy, reproduce or record a specific work for use in judicial or administrative proceedings and within the limits required by such proceedings.

30. The media shall be permitted, without the authorization of the author, without obligation to pay compensation to the author, and within the limits of fair practice, to use short excerpts of works that are displayed or heard during current events in the course of reporting such events in the media, provided that the name of the author and the source are mentioned.

31. The media shall be permitted, without the authorization of the author and without obligation to pay him compensation, to publish pictures of architectural works, visual artistic works, photographic works or works of applied art, provided that such works are available in places open to the public.

32. It shall be permitted, without the authorization of the author and without obligation to pay him compensation, to display or perform a work in public during the following occasions:

– official ceremonies within the limits required for such ceremonies;

– activities carried out by educational institutions during which teachers or students use the work, provided that the audience is limited to the teachers, students, students' parents and persons directly involved in the activities of the said educational institution.

33. It shall be permitted, without the authorization of the author and without obligation to pay him compensation, to display an artistic work in museums or in exhibitions organized inside museums provided that the museum owns the tangible material that contains the work and that such display is not prejudicial to the legal interests of the author.

34. It shall be permitted, without the authorization of the author and without obligation to pay him compensation, to copy or reproduce an artistic work for the purpose of publishing it in catalogues intended to facilitate the sale of the work, provided that such copying or reproduction is not prejudicial to the legal interests of the author.

Chapter VII
Related Rights

35. Producers of sound recordings, radio and television broadcasting organizations, publishing houses and performers such as actors, musicians, singers, members of musical groups, dancers, artists of puppet shows and circus artists shall be considered as holders of related rights.

36. Producers of sound recordings shall enjoy protection in the following cases:

(a) if the producer of the sound recording is Lebanese or a national of a State party to the Rome Convention 1961—International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, done at Rome on October 26, 1961;

(b) if the first fixation of sound is undertaken in a State party to the above-mentioned Convention;

(c) if the sound recording is first published in a State party to the above-mentioned Convention. If the sound recording is first published in a country that is not party to the Rome Convention and published afterwards, within 30 days of the first publication, in a State that is party to the said Convention, the said sound recording shall be considered as first published in the State party to the Convention.

37. Performers shall enjoy protection in the following cases:

(a) when their performance is undertaken in Lebanon or in a State party to the Rome Convention;

(b) when their performance is fixed in a sound recording protected under Article 36 of this Law;

(c) when their unfixed performance is fixed in a sound recording through a program protected under Article 38 of this Law.

38. Broadcasting organizations shall enjoy protection in the following two cases:

(a) if the headquarters of the organization is in Lebanon or in a State party to the Rome Convention;

(b) if the program is broadcast via a transmission device in Lebanon or in a State party to the Rome Convention.

39. Without prejudice to the provisions of Article 15 of this Law, performers shall have the right to authorize or prohibit the following:

– the broadcasting or communication to the public of their unfixed performance unless the broadcasting or communication is a rebroadcast of a previously authorized broadcast;

– the fixation or recording of their unfixed performance on any tangible material;

– the copying, sale or rental of any recordings containing an unauthorized fixation of their performance;

40. Performers participating in a joint work or show shall elect by relative majority one person to represent them in the exercise of their rights stated in Article 39 of this Law.

41. Producers, who are authorized by the performers to undertake the first fixation of an audiovisual work on any tangible matter, shall have the exclusive right to copy, distribute, sell and rent the audiovisual work they have produced and communicate it to the public.

42. The radio and television companies, establishments and corporations referred to in Article 38 of this Law, shall have the right to authorize or prohibit the following:

– the rebroadcasting of their programs by whatever means;

– the showing of their television programs in places where entrance is permitted upon payment of an entrance fee;

– the recording of their programs on tangible material for commercial purposes;

– the copying of unauthorized recordings of their radio and television programs.

43. Producers of sound recordings shall have the right to authorize or prohibit direct and indirect copying as well as the rental of such recordings for commercial purposes.

44. Performers shall have the right, during their lifetime, to claim authorship of, and to object to any alteration or modification of, their performance. This right shall pass to the heirs of the performer after his death.

45. Publishers of written or printed works shall have the right to authorize or prohibit the copying of such works by means of photocopying or commercial exploitation.

46. Any agreement on related rights shall be concluded in writing.

47. The exceptions set forth in Articles 23 to 34 of this Law shall apply to the rights provided for in Articles 35 to 45 of this Law.

48. The protection of related rights shall not affect any of the rights in respect of original and derivative works protected under this Law. Any interpretation of any of the rights granted under this Chapter shall not affect the rights of the original author.

Chapter VIII
Terms of Protection

49. The term of protection granted under this Law to the economic rights of the author, shall be the life of the author and 50 years after his death, to be computed from the end of the year in which the death has occurred.

50. In the case of a work of joint authorship, the term of protection shall be the life of the joint authors and 50 years after the death of the last joint author, to be computed from the end of the year in which the death has occurred. Should one of the authors die without leaving heirs, his share shall pass to the co-authors or to their heirs, unless stated otherwise.

51. In the case of collective and audiovisual works, the term of protection shall be 50 years to be computed from the end of the year in which the work has been made available to the public or, failing such event, 50 years from the making of such work, to be computed from the end of the year in which the work has been completed.

52. In the case of anonymous or pseudonymous works, the term of protection shall expire 50 years after the work has been lawfully made available to the public.

However, if the pseudonym adopted by the author leaves no doubt as to his identity, or if the identity of the author of an anonymous or pseudonymous work is disclosed before the expiration of the 50-year period starting from the end of the year in which the work was lawfully made available to the public, the provisions of Article 49 of this Law shall apply. In the case of posthumous works or works published in the name of a legal person, the term of protection shall be 50 years to be computed from the end of the year in which the work was published.

53. All moral rights of authors or performers shall enjoy perpetual protection that shall not be subject to prescription. They shall be transmitted to third parties by testamentary disposition or under inheritance laws.

54. All economic related rights of performers shall enjoy protection for a period of 50 years to be computed from the end of the year in which the performance has been carried out.

55. The term of protection granted to producers of sound recordings shall be 50 years, to be computed from the end of the year in which the first fixation of sound on tangible material has taken place.

56. The term of protection granted to broadcasting organizations shall be 50 years, to be computed from the end of the year in which the broadcasting of their programs has taken place.

57. The term of protection granted to publishing houses shall be 50 years, to be computed from the end of the year in which the first publication has taken place.

Chapter IX
Collective Management Associations and Companies

58. Authors and holders of related rights or their universal or particular successors may assign the management of their rights and the collection, in whole or in part, of royalties due to civil associations or companies formed among them.

59. Assignment shall be made by way of a written power of attorney drafted before a notary public and explicitly stating all the rights the management of which are assigned to the association or company.

The power of attorney shall be limited in time and may include all or part of the present or future works of the author or the holder of related rights. If there is ground for doubt, all the works shall be considered as covered by the power of attorney.

60. Any association or company willing to undertake the collective management of rights must, before carrying out any activity, deposit with the Ministry of Culture and Higher Education a legal attestation certifying the constitution of the association according to the Law of Associations, or a certificate of registration of the company with the competent registrar, in addition to the following documents:

– a copy of the Articles of Association;

– the name and address of the director in charge;

– the number of authors and holders of related rights that have assigned the management of their rights and the collection of their royalties to the association or company;

– a copy of the proxies granted to the association or company by the authors, the holders of related rights or their universal or particular successors;

– the term of the proxies;

– the mode of distribution of the royalties collected;

– the annual budget of the association or company.

61. The associations or companies for the collective management of rights shall be subject to the authority and control of the Ministry of Culture and Higher Education and they shall provide the Ministry with all necessary records and account books for ministerial control.

62. Each association or company must appoint a certified accountant to audit its records and submit an annual report to the General Assembly. However, the association or company must obtain an annual report from another certified accountant.

63. Each association or company must hold at least one general assembly a year to vote on the report of the president, the financial reports, the balance sheet of the previous year and the budget of the following year.

64. Pursuant to the legislation regulating the legal profession, each association or company must appoint a lawyer from the Bar as its legal consultant.

65. If the association or company commits a serious infraction or in the event of a repetition of a legal or regulatory infraction, the Minister of Culture or Higher Education may refer the file to the public prosecutor for action.

66. The Council of Ministers shall, within three months of the publication of this Law in the official gazette and upon the recommendation of the Minister of Culture and Higher Education, issue a decree prescribing the mode of establishment and functioning of the said associations and companies and the manner in which the Ministry of Culture and Higher Education shall monitor their activities and establish violations.

67. The associations or companies for the collective management of rights shall have the following responsibilities:

– to arrange contracts with the parties using the work and to determine the royalties to be collected;

– to distribute the royalties collected among the eligible parties;

– to take all administrative, judicial, arbitral and amicable measures to protect the legitimate rights of their clients and to collect royalties due;

– to obtain from the users of the work all necessary information for the computation, collection and distribution of royalties.

68. The associations or companies for the collective management of rights shall not have the right to refuse to arrange contracts under Article 67 of this Law with the users of the works without a legitimate reason.

69. The user of the work must submit to the association or company a list of the exploitations that he has undertaken such as the copying, sale, rental or television or radio broadcasting of the work and he shall indicate the number of copies, the number of public displays of the work or the number of television or radio broadcasts.

70. Companies and associations shall not have the right to refuse to administer the rights of an author or collect the royalties owed to him without a legitimate reason.

71. Each company or association must submit an annual report to the authors that have empowered it to administer their rights and collect royalties owed to them so that the authors can express their opinions as to the amounts collected, the method of collection and distribution and other administrative issues. The association must take these comments into account when formulating or modifying its methods of collection and administration.

72. The authors, the holders of related rights and their representatives shall have the right to examine the accounts of the company or the association to which they are affiliated whenever they deem it necessary.

73. The authors and the holders of related rights which have empowered a specific association or company to administer their rights and collect their royalties must inform the association or the company in writing of the works they have published or those they intend to publish after the date on which they have authorized the company or the association to administer their rights and collect their royalties.

74. Collected amounts shall, at least once a year, be distributed among right holders in proportion to the actual use of their works.

75. The power of attorney may be cancelled by the author, the holder of related rights or the association or company provided that there is a legitimate reason for such cancellation and that the other party is served notice three months before the end of the year. The cancellation shall have effect as of the end of the year in which the other party has been served notice of the intention to cancel.

Chapter X
Deposit

76. Works, sound recordings, performances, and radio or television programs shall be deposited with the Intellectual Property Protection Office at the Ministry of Economy and Trade.

The deposit shall constitute a presumption as to the ownership by the depositor of the work, the sound recording, the performance or the radio or television program. Such presumption may be refuted by all available means.

77. Copyright holders, holders of related rights or their particular or universal successors who wish to make a deposit must submit to the Intellectual Property Protection Office an application signed by them or their agent containing the following information:

– the title and the type of work, sound recording, performance or radio or television program;

– the name, title and address of the author or the holder of related rights. If the author or the holder of related rights does not make the deposit personally, the foregoing information must be given in respect of the depositor as well;

– if the depositor is a person other than the author or the holder of related rights, the type of document on the basis of which the depositor has submitted the application for deposit;

– where necessary, the name and address of the person responsible for the physical execution of the work (the printer, the molder, etc.).

The application for deposit must be accompanied by:

(a) if the applicant is a person other than the author or the holder of related rights, a copy or a summary of the document on the basis of which the deposit is made (power of attorney, assignment, contract or agreement...);

(b) three copies of the work or the subject of the related right. In respect of pictures, oil paintings, water colors, statues, works of architecture or other works having only one original, a photographic or non photographic reproduction of the work in three dimensions shall be provided showing the shape and form of the work in whole and in detail.

78.—(1) The application for deposit shall not be accepted unless it is accompanied by the prescribed fee set out in this Article.

(2) The fees charged by the Intellectual Property Protection Office shall be as follows:

– deposit of a printed work, LBP 50,000;

– deposit of a motion picture, video film or sound recording, LBP 175,000;

– deposit of a daily or periodic publication, (for one year) LBP 75,000;

– deposit of a picture, drawing, map, post card, photograph or daily or periodic publication, (1 copy), LBP 25,000;

– deposit of any other material not mentioned above, LBP 50,000;

– recordation of a contract of deposit with the Office, LBP 50,000;

– facsimile copy of a certificate of registration, LBP 25,000.

79. The application for deposit shall be registered at the Intellectual Property Protection Office. A certificate shall be delivered to the applicant mentioning the information stated in the application and it shall be accompanied by one of the three copies deposited with the Office.

The certificate shall be dated, sealed and signed by the head of the said Office. The first certificate shall be granted free of charge and the Office shall charge the prescribed fee referred to in the previous Article for subsequent requested copies of this certificate.

80. Any contract concluded with regard to any work, sound recording, performance or radio or television program registered at the Intellectual Property Protection Office may also be recorded with the said Office.

Chapter XI
Provisional Measures, Damages and Sanctions

81. Where there is ground for suspecting an imminent infringement of copyright or a related right, the holder of these rights or his public or private successors, in particular the associations or companies for the collective administration of rights, shall have the right to take all necessary provisional measures to prevent such infringement.

For this purpose, the judge of expedited matters may take all decisions authorized by the law, in particular, ex-parte decisions, in order to ensure the protection of the right or the work that is likely to be infringed and all the other works owned by the author or the holder of related rights. The judge of expedited matters may impose coercive measures to enforce his decisions. In addition, the president of the competent court of first instance or the competent public prosecutor shall have the right to take the provisional measures referred to above.

82. The judge of expedited matters, the president of the court of first instance or the public prosecutor may temporarily seize material constituting evidence of an infringement of copyright or a related right and shall leave it in the custody of the defendant.

83. In case of infringement of copyright or a related right, the holders of these rights may have recourse to the competent judicial authority and seek the cessation of the infringement and the prevention of any future infringement.

84. Any person who infringes copyright or a related right shall be required to pay fair compensation to the right holder for the material or moral injury and damage incurred. The amount of such compensation shall be determined by the court based on the commercial value of the work, the damage and lost profit incurred by the right holder and the material profit realized by the infringer. The court may order the seizure of the subject matter in dispute and the equipment and devices used to commit the infringement.

85. Irrespective of whether the work has fallen into the public domain or not, shall be liable to imprisonment for a term varying from one month to three years and/or to a fine varying from LBP 5 to 50 million, any person who:

– fraudulently puts or instructs another person to put a false name on a literary or artistic work;

– fraudulently imitates the signature or the logo of the author with intent to mislead the buyer;

– knowingly imitates a literary or artistic work;

– knowingly sells, possesses, offers for sale or makes available an imitated or a plagiarized work.

The sanction shall be doubled in the event of a repetition of the offence.

86. Any person who, knowingly and with intent to make a profit, infringes or attempts to infringe copyright or related rights provided for in this Law shall be liable to imprisonment for a term varying from one month to three years and/or to a fine varying from LBP 5 to 50 million. The sanction shall be doubled in the event of a repetition of the offence.

The competent court may order the closure of the premises, the commercial establishment or the radio or television station that infringes copyright for a period varying from one week to one month and the destruction of all unauthorized copies and all the equipment and the devices used to produce such copies. The court may also order that its decision be published in two local newspapers at the expense of the defendant.

The provisions of Article 200 and subsequent Articles of the Penal Code shall be taken into account when applying this Article.

87. Any person who manufactures or imports for purposes of sale or rental, offers for sale or rental, possesses for the purpose of sale or rental, sells, installs or rents any device, equipment or machine manufactured in whole or in part to receive illicitly any radio or television broadcast or transmission destined to that section of the public that receives the said broadcast or transmission on payment of a set fee, shall be liable to imprisonment for a term varying from one month to three years and/or to a fine varying from LBP 5 to 50 million. The sanction shall be doubled in the event of a subsequent offence.

88. Any person who arranges or facilitates for third parties the reception of the transmission or broadcast referred to in the previous Article shall be liable to imprisonment for a term varying from one month to three years and/or to a fine varying from LBP 5 to 50 million. The sanction shall be doubled in the event of a subsequent offence.

89. With regard to the foregoing violations, legal action may be instituted by the public prosecutor ex officio or at the request of the person suffering damage or the president of the Intellectual Property Protection Office.

90. The court shall communicate any judicial decision issued with regard to the foregoing infringements to the Intellectual Property Protection Office within 15 days of the date of the decision.

91. It shall be strictly prohibited to import, consign to a warehouse or a free zone or transit sound recordings, or works that are imitations of sound recordings or works enjoying legal protection in Lebanon. Such sound recordings and works shall be seized wherever they are found.

92. The persons mentioned below shall have authority to identify, inventory and sample suspect objects. These persons shall be: police and customs officers and employees of the Intellectual Property Protection Office sworn in to that effect. These employees shall perform their duties pursuant to an order or a mandate issued by the public prosecutor or the Intellectual Property Protection Office and they shall notify the Office of all violations of the provisions of this Law that come to their attention. Sworn-in employees of the Intellectual Property Protection Office shall have police powers with regard to the implementation of the provisions of this Law.

Suspect articles may be seized, inventoried and sampled wherever they are found. A report must be drawn up of all sampling and inventorying and it must contain the following information:

1. the name, surname, title and place of residence of the employee who has drawn up the report;

2. the authority that has issued the order and the date it was communicated to the employee;

3. the date, time and location of the operation;

4. the name, surname, nationality, place of residence and profession of the person on whose premises the operation was carried out;

5. a detailed list of the suspect articles stating their number, kind and specifications;

6. the signature of the person in whose possession the articles or goods were found and if he refuses to sign, his refusal shall be mentioned;

7. the signature of the officer who has drawn up the report.

The proprietor of the goods shall have the right to mention in the report all the information and reservations he deems necessary and to obtain copies of the report and inventory if an inventory has been drawn up separately. Civil action or penal proceedings must be filed with the competent court within 15 days of the date of the report otherwise the whole operation will be considered as void.

93. The court may, at the request of the plaintiff and before rendering its final judgment order the seizure of all or some of the articles stated in the report and inventory. In such case, the court may order the plaintiff to deposit with the court, prior to the seizure, a guarantee fixed by the court based on the value of the articles to be seized.

The order shall designate the employee mandated to carry out the seizure, the place where seized articles will be kept and the official receiver of such articles appointed by the court.

94. The officer who has carried out the seizure shall immediately draw up a report in two copies, one of which should be delivered to the person whose goods have been seized. The report shall be drawn up as prescribed in Article 92 and it shall be accompanied by an inventory of the articles seized. The person whose goods have been seized, shall sign both copies and if he refuses or fails to sign, his refusal or failure shall be mentioned in the space provided for the signature.

95. The person whose goods have been seized must be provided with the following documents:

1. the order of seizure;

2. the document that establishes the deposit of the guarantee with the court if the court orders the deposit of such guarantee;

3. the inventory of the articles seized;

4. the report of seizure.

96. If the Intellectual Property Protection Office carries out an investigation at the request of the person suffering damages, it shall charge him a LBP 100,000 fixed fee.

97. The judgment rendered with regard to the above-mentioned proceedings shall provide for the imposition of the following complementary penalties:

1. the judgment shall be posted at the places designated by the court and it shall be published at the expense of the defendant in two local newspapers designated by the court that has rendered the judgment;

2. if the losing party represents a newspaper, a magazine or a radio or television station, the judgment must be published in this newspaper, magazine or radio or television station in addition to the two newspapers mentioned above.

Chapter XII
Transitional and Temporary Provisions

98. All works, whether published or not, created before the entry into force of this Law, shall enjoy the period of protection prescribed in this Law provided that they have not fallen into the public domain by the effective date of this Law. The period of protection that has lapsed before the issuance of this Law shall be deducted from the period of protection provided for in this Law.

99. Any author, producer or publisher of any book or publication must send, free of charge, to the Ministry of Culture and Higher Education five copies of the said work.

100. Articles 137 to 180 inclusive of Decision No. 2385, dated January 17, 1924 (amended), and Articles 722 to 729 inclusive, of the Penal Code shall be repealed.

101. This law shall be published in the official gazette and it shall have effect two months after its publication.