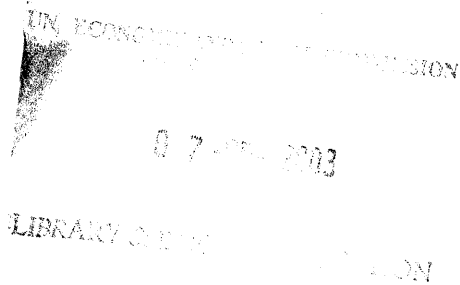


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## INTERNATIONAL COPYRIGHT ISSUES IN BUSINESS AND EDUCATION - RECOMMENDATIONS FOR WESTERN ASIA



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While the World Intellectual Property Organization (WIPO) addresses intellectual property and copyright issues through the creation of new conventions, individual member nations retain their own copyright laws. In some cases, laws of individual countries diverge from the WIPO conventions. Meanwhile, some countries are either not a member to those treaties or are parties to earlier versions of the conventions which do not address digital or online issues. As world-wide computer networks have proliferated and technology has advanced, so too has the need for understanding international aspects of copyright and intellectual property laws in business and education in order to secure the investments of businesses and educational institutions. This talk provides an overview of the issues at the forefront of international copyright. Furthermore, the intellectual property implications of the implementation of e-commerce and e-education in West Asian countries are outlined along with recommendations to assure legal compliance across borders.

As the digital revolution has engulfed the world, the result has been a growing need for an international understanding of copyright issues. The Internet is a "borderless" medium in which materials can be transmitted quickly and in high quality across wide geographical spaces. Computer technologies allow easy reproduction and distribution of copyrighted materials through e-business, e-education, and e-everything. Taking advantage of the digital revolution requires that one be willing to place materials online for many to view, use, and in some cases misuse. But before placing materials online, businesses and universities must consider multiple issues. For a few examples: What can legally be placed online? In what format can materials be placed online? Are the materials placed online protected from reproduction by others? Where should the materials first be published to provide as much protection as legally possible? These and many other considerations fall in the category of issues covered by various copyright laws. With so many questions and concerns, the need for an understanding of copyright issues is clear. This brief paper will consider some copyright issues pertaining to the online uses of materials.

Before considering these specific issues, one might ask: Why do we as a society need copyright? In one sense, copyright began as a means of insuring that items would eventually enter the public domain. Copyright provided for a short-term monopoly in order to maintain an incentive for the publication and distribution of a work, while at the same time placing a limit on the extent and length of time that the monopoly would last. Now, as the World Intellectual Property Organization states, "Copyright and its related rights are essential to human creativity, by giving creators incentives in the form of recognition and fair economic rewards."<sup>1</sup> Copyright can be understood as a compromise between the economic interests of those producing the works, and the public good. By removing the fear of unauthorized copying and distribution of one's works, copyright serves as an incentive to creativity.

While copyright indeed protects creativity, it is important to understand that copyright only protects the concrete expression of that creativity. In other words, copyright protects the product of one's creativity, including such items as books, maps, pictures, and designs. Copyright does not protect ideas, mathematical concepts, names, procedures (although these can be protected by other means), or factual data. In some cases, however, these items can be protected by patent and trademark laws, which are separate from copyright law. These principles were confirmed by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement)<sup>2</sup> formulated by the World Trade Organization. This paper does not address issues unrelated to copyright, but rather will concentrate on what copyright does protect.

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<sup>1</sup> World Intellectual Property Organization, Copyright Facts, <http://www.wipo.org/copyright/en/faq/faqs.htm>

<sup>2</sup> World Trade Organization, TRIPS Agreement, Article 9, section 2, [http://www.wto.org/english/tratop\\_e/trips\\_e/t\\_agm0\\_e.htm](http://www.wto.org/english/tratop_e/trips_e/t_agm0_e.htm). The TRIPS Agreement is Annex 1C of the Marrakesh Agreement Establishing the World Trade Organization, signed in Marrakesh, Morocco on 15 April 1994.

With copyright in mind—and specifically, international aspects of copyright on the Web, there is much to consider. Initially, one must challenge many misconceptions about online materials use. A common misconception is that the Internet is a copyright free zone in which anything can be placed in order to disseminate information to a wide audience. A second misconception is that items placed on the Web are automatically a part of the public domain, and that anyone can make use of them. No laws have ever been written to substantiate these claims<sup>3-4</sup>. Just as it does in the real world, copyright also extends to the virtual world. Thus, the first guideline offered by this paper is to acknowledge that one *cannot* make use of materials that others have placed on the Internet without taking copyright issues into account.

But what exactly on the Internet is copyrighted? A general rule of thumb is that everything on the Web is copyrighted, even if it does not contain the copyright symbol. Many countries such as the United States and some European countries do not require the copyright symbol in order to secure copyright protection.

Other countries do indeed have additional requirements beyond the copyright symbol in order to secure copyright protection. But it should be noted that according to the Universal Copyright Convention, if works “bear the symbol, ©, accompanied by the name of the copyright proprietor and the year of first publication placed in such manner and location as to give reasonable notice of claim of copyright” then the work *must be protected* by copyright in that nation for that nation to be a party to the convention<sup>5</sup>. Therefore, it is advisable to provide at least the minimal required copyright information to your users on Web sites so that they are aware of the copyrighted nature of your materials, and for you to secure international copyright protections.

Many countries *do not* require that a copyright be registered in order for the copyright to take effect. In some countries simply creating the work—regardless of whether it is published-- extends copyright protection to that work. The copyright law of Yemen offers one such example<sup>6</sup>. Nevertheless, one still should register any copyrights for materials which one thinks could be subject to violation by someone else. The rationale is that such registration is often required in order to defend the copyright. The date of the registration can serve as proof of creation date, and firmly establishes the rights to the work. The registration process will vary from country to country and can range from simply filling out a form to filing of multiple copies of the work.

What kinds of materials can be placed online? It is possible to place almost anything online in almost any format that you desire, but that does not automatically mean that you can or should put it online. If images, audio, or other intellectual works are in the public domain, then they may be placed online for others to use. There are many more materials in the public domain than most people are aware of. In many countries, products of the government are considered public domain. In Egypt, national folklore is deemed public domain<sup>7</sup>. If a material that one wishes to use is copyrighted, then there are several options. One can begin by creating and copyrighting one’s own materials, or one can seek permission to use the materials of someone else. A strong network of international and national collective management organization exists. These organizations control licensing of most works--from classic literature to modern musical performances, allowing use of copyrighted materials for a fee.

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<sup>3</sup> Brad Templeton, 10 Big Myths about Copyright Explained, (2002), <http://www.templetons.com/brad/copymyths.html>

<sup>4</sup> Janet S. Parrack, Get the 411 on Copyright and the Internet, (2001), [http://www.reading.org/publications/rty/archives/apr\\_411.html](http://www.reading.org/publications/rty/archives/apr_411.html)

<sup>5</sup> Universal Copyright Convention as revised at Paris on 24 July 1971, Article III, paragraph 1.

<sup>6</sup> AGIP-Copyright Law of Yemen, Article 7, <http://www.agip.com/laws/yemen/c.htm>

<sup>7</sup> AGIP-Copyright Law of Egypt, Article 138, section 7, <http://www.agip.com/laws/egypt/c.htm>

Examples include: the International Confederation of Societies of Authors and Composers (CISAC)<sup>8</sup>; the International Federation of Reprographic Reproduction Organisations (IFRRO)<sup>9</sup>; for Europe, the Association of European Performers Organizations (AEPO)<sup>10</sup>; and in the United States, the Copyright Clearance Center (CCC),<sup>11</sup> among others. In those cases where one wishes only to link to non-commercial materials of others that are already available online, it is often the case that a well written letter of request will be all that is required. In other cases, commercial entities such as Lexis-Nexis have placed large repositories of information on the Web that can be accessed for a fee<sup>12</sup>. In general, one can expect to pay some form of fee in order to use the material creations of someone else online.

When one creates materials for use on the Web for any purpose, those materials should be protected once they are placed on the Web. Therein lie a multitude of issues that will be addressed in the remainder of this paper. The first problem is in what country to publish the materials. In other words, when the materials do become available on the Web, in what country will the copyright on that Web site be established? Not every country has the same copyright regulations and protections. For parties of the Berne conventions, a minimal set of guidelines exist across borders. But in order to receive the fullest protection within countries having rights beyond those in the WIPO conventions/treaties, one may publish the work in the countries with those extended rights first. On the other hand, those countries that are not parties of the Berne conventions may not provide any protections beyond those within that specific country. In such cases it is important to understand the rights in those countries before making your materials available to that region<sup>13</sup>.

Independent of country of origin, as more materials are placed online and e-commerce grows, personal information including financial and health records are stored in databases that can be accessed over the Internet. The misuse of these data has become an issue for citizens concerned about privacy of their personal information<sup>14</sup>. At a minimum, Web sites involved with e-commerce or e-education should include privacy statements indicating how the information will be used. Legislation to ensure that the companies publishing the Web sites do not use the information for purposes other than outlined in their privacy statements and meet some form of ethical standard should be passed.

Once you have published your materials, the length of time for which the items are protected by copyright will also vary. The current Berne Convention as updated by the Paris Act, July 24, 1971, as a general rule, provides for a copyright protection of 50 years following the death of the work's creator, some countries that are party to the convention actually have protection that extends beyond that time frame. One of these countries is the United States<sup>15</sup>. This extended time frame applies for works that are first published in that country. Also, works such as photographs are not protected in the same manner as other works. For example, in Lebanon, among other countries, photographic works or works obtained by a method similar to photography are protected for only 50 years from the date of

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<sup>8</sup> <http://www.cisac.org/web/content.nsf/Builder?ReadForm>

<sup>9</sup> <http://www.ifrro.org/>

<sup>10</sup> <http://www.aepo.org/>, under construction

<sup>11</sup> <http://www.copyright.com/>

<sup>12</sup> <http://www.lexisnexis.com/academic/solutions/default.asp>

<sup>13</sup> A full listing of parties to the various WIPO conventions can be found at <http://www.wipo.int/treaties/documents/english/pdf/e-berne.pdf>. Information on copyright in most countries can be found at <http://clea.wipo.int/clea/lpext.dll?f=templates&fn=main-h.htm&2.0> whether they are a member to the WIPO convention or not.

<sup>14</sup> Electronic Privacy Information Center, <http://www.epic.org/privacy/>

<sup>15</sup> Sonny Bono Term Extension, Title 17, chapter 3 of the U.S. Code, <http://www.copyright.gov/title17/>

their publication<sup>16</sup>. Some countries also vary with respect to the length of time that royalties must be paid for the use of the materials. Furthermore, other countries that are not party to the conventions may protect works for less time, and therefore, making the items available in those regions may come into question. Thus, the length of time that a creation/publication is protected by copyright varies by the form that the property takes and the place in which copyright is considered.

In each country, the types of protection offered will also vary. Although all nations that are parties to various conventions will have a basic level of protection—as is required for becoming a party to that convention—some countries may offer a means to utilize materials through principles such as fair use and copyright exemptions, which is the case in the United States;<sup>17</sup> or limitations on rights allowing certain uses, as is the case in Japan<sup>18</sup>, Egypt<sup>19</sup>, and others. These uses were created as a means of overcoming barriers created by copyright that might interfere with the public good in activities such as education and journalism. The TEACH Act in the United States recently extended such exemptions to online educational uses in that country<sup>20</sup>. While these regulations allow for limited use of copyrighted materials for specific purposes in these countries, it is important to understand that one may also make use of materials copyrighted in these countries in a similar fashion if this is also legal within your country of origin.

In addition to limitations on rights, some countries extend additional rights beyond those used in other countries. Thirty-nine countries are currently party to the WIPO Internet Treaties that include the WIPO Copyright Treaty (WCT) adopted in Geneva on December 20, 1996<sup>21-22</sup>. Presently, no Middle Eastern countries are party to this treaty; nor has the European Union become a party as yet. But it is still early, as the first parties only adopted the treaty in May 2002. This treaty extends many protections to computer programs and to compilations of data, among many other items. Through this treaty, presentation of facts in a database format can lend copyright protection to the compilation, provided that there is sufficient originality in design and composition. Furthermore, such data can be password protected and made subject to a licensing agreement that would in many countries afford even more protection of the data, through various digital rights management regulations.

The best method to insure that one complies with various copyright laws is to know what is covered by various copyright laws. Several resources are available that outline the copyright laws of many countries. The Collection of Laws for Online Access (CLEA) provided by WIPO gives almost any intellectual property document you could want<sup>23</sup>. The Business Software Alliance (BSA) Middle East promotes a safe and legal online world and lists key concerns in intellectual property<sup>24</sup>. Abu-Ghazaleh Intellectual Property (AGIP), an Arab organization for global services also provide a wealth of legal

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<sup>16</sup> AGIP- Copyright Law of Lebanon, Article 153, <http://www.agip.com/laws/lebanon/c.htm>

<sup>17</sup> Title 17, chapter 1, sections 107-112 of the U.S. Code, <http://www.copyright.gov/title17/>

<sup>18</sup> Author's Rights and Neighboring Rights in the Japanese Copyright Law, [http://www.cric.or.jp/cric\\_e/csj/csj4.html](http://www.cric.or.jp/cric_e/csj/csj4.html)

<sup>19</sup> AGIP-Copyright Law of Egypt, Article 171, <http://www.agip.com/laws/egypt/c.htm>

<sup>20</sup> TEACH Act, U.S. Public Law 107-273, <http://www.copyright.gov/legislation/pl107-273.html#13301>

<sup>21</sup> WIPO Copyright Treaty and Agreed statements Concerning the WIPO Copyright Treaty, <http://www.wipo.int/clea/docs/en/wo/wo033en.htm>

<sup>22</sup> WIPO Copyright Treaty contracting parties, <http://www.wipo.int/treaties/documents/english/pdf/s-wct.pdf>

<sup>23</sup> <http://clea.wipo.int/clea/lpext.dll?f=templates&fn=main-h.htm&2.0>

<sup>24</sup> <http://www.bsa.org/middleeast/index.phtml>

information for the Middle East<sup>25</sup>. There is also direct access to some laws online. Title 17 of the United States code covering copyright is available from the United States Copyright Office Website<sup>26</sup>.

In addition to the laws of individual countries, international conventions are of primary importance when conducting global commerce and education. Several online resources outline the various copyright conventions and treaties. The United Nations Educational, Scientific, and Cultural Organization (UNESCO) Website maintains a listing of the latest convention in French, Spanish, and English on their Website<sup>27</sup>. Complete texts of all conventions of the World Intellectual Property Organization are available on their Website with regards to copyright and related rights as well<sup>28</sup>. The WIPO Internet Treaties can also be found on this site. As WIPO states, "These treaties are part of the WIPO Digital Agenda, which sets out a series of guidelines and goals for WIPO in seeking to develop practical solutions to the challenges raised by the impact of new technologies on intellectual property rights."<sup>29</sup> Currently, only 39 countries are parties to the WIPO Internet Treaties as discussed earlier. By becoming a party to these conventions by adopting the required legislation, countries can extend certain rights onto a global scale.

As introduced in this paper, in order to promote e-commerce and e-education in Western Asia, it is important that countries develop copyright laws to protect the materials created and published in that country. Furthermore, these laws should be periodically updated to take into consideration materials published with new technologies and new conventions and treaties dealing with intellectual property. Once the laws are created, it is important to uphold them and to pursue violators within the country. By upholding laws, one can help to insure that other countries will do the same. An aid to upholding copyright laws from violators in other countries is to become a party to various international conventions and treaties as discussed in this paper. Without laws that protect the intellectual property resulting from individual's hard work, it will be difficult for e-commerce and e-education to flourish.

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<sup>25</sup> <http://www.agip.com/index.htm>

<sup>26</sup> <http://www.copyright.gov/>

<sup>27</sup> <http://www.unesco.org/culture/laws/copyright/>

<sup>28</sup> <http://www.wipo.org/copyright/en/index.html>

<sup>29</sup> Ibid

