



An analysis of copyright protection in Saudi Arabia

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Abstract

Purpose – This paper aims to explore the copyright laws of Saudi Arabia, illustrating the provisions governing the law. It seeks to outline Saudi Arabia copyright law within the framework of the international copyright protection, which include the Berne Convention and the TRIPS agreement.

Design/methodology/approach – The paper is a thorough scrutinizing of the legal provisions of the Saudi Copyright Laws in regard to protected works, author's exclusive rights, lawful use of copyrighted works and the exceptions, mandatory licenses, duration of protection, provisions of infringements and penalties. The highlighted issue is concerning the exceptions in regard to public interest, particularly relating to education purposes.

Findings – The paper finds that the Saudi Arabia Copyright Laws have met the requirement of the international copyright laws. The conditions for mandatory license and the 12 exceptions which permit lawful usage of copyrighted work under the copyright law without seeking the permission of the author are also in line with the international copyright laws, as public interest is the paramount consideration in exercising these exceptions.

Originality/value – There is lack of study on copyright law in the Saudi Arabia *per se*. Therefore, this study on the Saudi Arabia copyright laws seeks to fill in this gap and to provoke further discussion on this issue. It should be useful to the academic community, particularly in the Saudi Arabia and the Gulf Cooperation Council countries.

Keywords Education, Copyright law, Saudi Arabia, Mandatory licensing, Public interest, World Trade Organization, TRIPS, Berne Convention, Protected works, Author's rights

Paper type Research paper

Background of the study

The Kingdom of Saudi Arabia (KSA) is among the few countries in the world which still embraces the absolute monarchy system. The Basic Law 1992, which frames out the KSA constitutional framework, declares that the KSA is a monarchy ruled by the sons and grandsons of King Abdul Aziz AlSaud. The Basic Law also clearly states that the *Quran* is the constitution of the country, which is governed by the *Shari'a* (Islamic Law). The King has wide powers and his limitations are only the *Quran* and *Sunnah* (tradition) of the Prophet Muhammad. The King can issue three types of orders; the royal order, royal decree and orders based on his capacity as the head of Executive (Al-Jarbou, 2011). All three orders have the effect of becoming laws. The Basic Law stress upon the Islamic identity of the KSA as a state and society, far more than any other country (Al-Mehaimeed, 1993). Thus, religion has a profound effect on politics, social behavior and business (Rice, 2004). It can be seen that the KSA is the only country in the world that applies the strict implementation of the Shari'a[1]. Therefore, it can be concluded that although lifestyle in the kingdom is ultramodern and high-tech, KSA is an extremely conservative country and many of its citizens choose to preserve their religious values and ancient traditions (Rice, 2004).



However, despite being an ultra-conservative country, its oil wealth has given KSA leverage in international affairs. From being an isolated country, it has figuratively exploded onto the world stage and became one of a world major financial power (McHale, 1980). The country's international relations have also become global and important.

One of the main reasons why KSA is chosen in this study is because of the dearth in literature about KSA in regard to intellectual property. Second, the unique characteristic about its system of government and the strict observance of *Shari'a* that could be labeled as an ultra conservative country, but yet dynamically conform to the international mechanisms. This is evidenced by the fact that the KSA was the first country in the Gulf Region to implement its copyright law in 1989.

This paper focuses on the KSA Copyright Laws which is under the responsibility of the Ministry of Culture and Information (the "Ministry"). Copyright protection in the KSA is promulgated by a Royal Decree. It refers to the Copyright Law 1424 (issued by the Royal Decree No. M/41 dated 2 Rajab 1424, corresponding to 30 August 2003) (the "Copyright Act"). The regulations, which elaborate on the rules and provide more specific requirement are often issued by government agencies. In this case, the Copyright Law Implementing Regulations ("Implementing Regulations") was issued by the Ministry in 2004 and amended by the King in 2005. As mentioned earlier, the KSA is the first country in the Middle East to have a copyright law in 1989. This law is however, superseded by the 2003 copyright law, just before the KSA accession to the World Trade Organization (WTO) in December 2005.

The paper analyzes the legal provisions of the KSA Copyright Law in regard to protected works, author's exclusive rights, lawful use of copyrighted works and the exceptions, mandatory licenses, duration of protection, provisions of infringements and penalties, to confirm they are in line with the spirit of the international copyright laws. This paper addresses the role of the international copyright laws in shaping KSA Copyright Law. The paper further investigates how the KSA Copyright Law fit within the international copyright protection, especially on the limitations and exceptions to the authors' exclusive rights relating to public interest and educational purposes.

The copyright law and the KSA

The KSA's involvement in the intellectual property instruments at international level is quite recent. Formerly, society in developing countries did not consider intellectual property as an important aspect which had a substantial impact either on society itself or on development (Adolf, 2001). This is also the reason why most developing countries did not see it as important to enact laws in this field (Hughes, 1988). According to Price (2011), the major influence of development of copyright laws in the Gulf Cooperation Council (GCC) was external influences and pressures from developed countries for frameworks to protect their copyrightable, rather than a pro-active local appreciation of the importance for comprehensive copyright protection.

KSA is a party to the Berne Copyright and Paris Industrial Property Conventions since 11 March 2004 and a member of WTO since 11 December 2005. There are four main Intellectual Property Laws in KSA; namely the Law of Trade Names 2010, the Law of Patents, Layout Designs of Integrated Circuits, Plant Varieties, and Industrial Designs, the Copyright Law 2003 and the Law of Trade Marks 2002. There are also 17 intellectual property related laws and 21 implementing rules and regulations.

The 2003 KSA Copyright Law was updated to conform to the provisions of the WTO's agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), which was an important step towards the Kingdom's accession to the WTO. The TRIPS agreement incorporated all the provisions relating to conditions for access under the Berne Convention.

The heart of this study is on KSA Copyright Law. Copyright law protects the work of authorship from the time that it is created (Primo Braga, 1995). The core rationale of both national and international systems of copyright protection is to maintain a balance between the entitlement of authors (or other intellectual content owners) to exclusive right of their works, and the public interest in using these intellectual and cultural works (Abdulla, 2008). The purpose of international instruments is to establish common recognition of rights and responsibilities among countries, and at simplifying the global application of copyright laws in accomplishing communal goals (Sterling, 2005). Thus, WTO has major influence in shaping the KSA Copyright Law, especially in the accession process and the consequent scrutiny by WTO members of an applicant's domestic intellectual property regime (Price, 2011). This is evidenced by the 2003 KSA Copyright Law which superseded the 1989 law in order to meet the requirement of TRIPS agreement. Hence, the KSA Copyright Law has been influenced by foreign and international trends and developments.

Provisions governing copyright protection

The aim of this paper is to examine several legal provisions in the KSA Copyright Act in order to determine whether they are in line with the spirit of international copyright protection. These will cover the protected works (Article 2), author's moral rights (Article 8), author's financial rights (Article 9), exceptions regarding lawful use of copyrighted works (Article 15), mandatory licenses (Article 16), scope of protection (Article 18), duration of protection (Article 19), provisions of infringements (Article 21) and penalties (Article 22).

Protected works

All intellectual works, whether literary, scientific or artistic enjoy the protection under KSA Copyright Laws and Implementation Regulations if they are permitted for circulation in the KSA[2]. Foreign intellectual works shall enjoy protection in accordance with the principles of international agreements to copyright to which KSA is a party, on the basis of the principle of national treatment[3]. Article 2 of the Copyright Law has listed 12 types of protected original works in the fields of literature, art and sciences. These are:

- (1) written materials like books, booklets and others;
- (2) verbally delivered works including lectures, speeches, poetry, songs and the like;
- (3) dramatic works, plays, shows and similar representations;
- (4) broadcasting works;
- (5) drawings, works of plastic arts, architecture, decorative art and artistic embroidery and the like;
- (6) sound and audio-visual works;
- (7) applied art works;

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- (8) photographic works and the like;
 - (9) illustrations, geographical maps, designs, plans, sketches and sculptured works related to geography, topography, architecture and science;
 - (10) three dimensional works of geography, topography, architecture and science;
 - (11) computer programs; and
 - (12) title of a work, if it is of creative nature, and not a common expression indicating the subject matter of the work.

Article 3 of the KSA Copyright Law states that the law also protects derivative or related works such as works of translations, modification, illustration, editing or other forms of alteration, creative encyclopedias and anthologies as well as collection of works and expressions of folklore. Databases are also included, provided they are creative in the arrangement and selection of their subject matter. However, Article 3 also provides that copyright protection of these derivative works shall not jeopardize the protection enjoyed by the authors of the original works. Basically, the scope of protection as illustrated above as well as the extension of protection of derivative works replicates the range of protection offered by Berne Convention[4].

As seen above, the scope of copyright protection is very wide. Despite that, as a party to Berne Convention, the list above is not intended to be exhaustive[4]. The law also provides several categories that are excluded from protection, which are also in line with Berne Convention exclusion of protection. These are the laws and judicial judgments, decisions of administrative bodies, international agreements and all official documents, as well as its translation; publication in newspapers, magazines and periodicals or broadcasted in daily news or news-like events; and also ideas, procedures, work methods, concepts of mathematical sciences, axioms and abstract facts[5].

Duration of protection

The basic rule under the Copyright Law is that the duration of copyright period for the author's work is for his lifetime plus 50 years after his death[6]. Different durations apply if we go into specific circumstances. If the author is a corporate entity, or if his name is unknown, the protection shall be 50 years from the date of the publication[7]. Similarly, in regard to sound works, audio-visual works, films, collective works and computer programs, the protection period is 50 years from the date of the first show or publication of the work[8]. Applied art works and photographs shall be protected for 25 years[9] whereas broadcasting rights are protected for 20 years[10]. This duration of protection is in line with the requirement of TRIPS and Berne Convention[11].

Author's exclusive rights

"Copyright" is a legal instrument that grants authors or other content owners both moral and financial rights, to the exclusion of others (Abdulla, 2008). The legal instrument also specifies the rights of the public in accessing those copyrighted works. Ali Abdulla further stated that moral rights represent continuing personal association of authors with their intellectual creations while financial rights give the author an exclusive right to reproduce their work, adapt it, distribute it, perform it in public, or communicate it to the public.

Author's moral rights

The Berne Convention requires authors to be granted moral rights which include the right to claim authorship of the work and also the right to object to any distortion or modification of the work, or other derogatory action in relation to the work, which would be prejudicial to the author's honor or reputation[12]. These refer to paternity, integrity and the like (Hannabuss, 2001). Sterling summarizes the moral right as a continuing personal and legal connection that authors hold in their literary and artistic works (Sterling, 2005).

Article 8 of the Copyright Law confers the following four scopes of permanent moral rights to the author:

- (1) Attributing the work to himself or publishing it under a pseudonym or anonymously.
- (2) Objecting to any infringement on his work and preventing any deletion, change, addition, distortion, corruption or any other form of tampering with the work itself.
- (3) Making any amendment to or deletion from his work, at his discretion.
- (4) Withdrawing his work from circulation.

The convention requires these rights to be independent of the author's economic rights, and to remain with the author even after he has transferred his economic rights World Intellectual Property Organizations (WIPO). Upon the death of the author, his heirs shall be entitled to assignment of copyright. However, if the author has no heirs, his right shall pass to the Ministry upon his death[13]. It is worth noting that moral rights are only accorded to individual authors. Thus, even when, for example, a film producer or a publisher owns the economic rights in a work, it is only the individual creator who has moral interests at stake (WIPO, 2012).

Author's economic or financial rights

Economic rights refer to the right of the author to exploit his copyright work (Alsamdan, 2006). The author has the right to utilize their work commercially or to authorize others to do so (Price, 2011). In KSA however, Article 9 of the Copyright Law uses the word "financial" rather than "economic". It is presumed that the legislators purposely chose the word "financial". However, in perusing Article 9, it could safely be assumed that "financial" rights also bear the same connotation of the "economic" rights as suggested by the Berne Convention. Article 9 says that the author or his delegates are entitled to:

- print, publish and record the work;
- translate and redistribute the work;
- communicate the work to the public via any possible means; and
- all forms of material exploitation of the work, including permissible commercial rental.

The financial rights of the authors of artistic and literary works, their performers, composers and producers of sound recordings and broadcasting organizations are further stipulated by the Implementing Regulations[14].

Exceptions and prohibitions

Exceptions under Article 15 of the KSA Copyright Law

The exceptions talk about the lawful usage of copyrighted work under Copyright Law, either in its original language or its translation, without seeking the permission of the author. In this regard, there would be no issues of infringement of copyright. The Berne Convention left the issue of providing limitations and exceptions to the national legislation[15]. However, the legislator has to abide with two requirements, that the reproduction of the work does not conflict with a normal exploitation of the work and it does not unreasonably prejudice the legitimate interests of the author[15].

The Copyright Act has listed 12 circumstances where these exceptions apply[16]; these include personal use (computer software, audio and audio-visual works are excluded), reproduction of music playing, acting or performing by the government or public entities without any financial gains, reproduction of photograph work and making one reserve copy of computer programs for back up purposes. Other exceptions are for educational, library and research purposes[17] and these consist of the use of quotations[18]. The rest of the exceptions are related to media and broadcasting, which includes reproducing of public speeches, lectures and judicial proceedings by the media[19]. It is imperative that the source and the name of the author to be recognized for these usage. Abdulla (2008) argued that without statutory limitations and exceptions or proper permission, most of what education communities do in teaching, learning, and research can be considered a violation to the exclusive rights granted to content owners under the law.

Prohibitions

The Copyright Act clearly prohibits the reproduction, publication, display or distribution of original individual pictures without permission, except the pictures of officials or public figures for the use of public events or public purposes[20]. It is interesting to note that the individual's permission is essential before his picture is published in the newspapers or magazine, to the effect that the photographer's permission is not relevant[20].

The importance of public interest in the exceptions pertaining to educational purposes under Article 15 of the KSA Copyright Law

The KSA Copyright Law allows using the copyright work by way of clarification for educational purposes or making a copy or two for public libraries or non-commercial documentation[21]. The qualifying exception for this provision is that the use must be within the limits justified by the intended objective. This mandatory requirement originates in Article 10(1) of Berne Convention and it can be found in several provisions under the exceptions of Article 15 of the KSA law. There are four conditions that comes with the exception; the usage must not be for commercial or profit oriented, copying shall be restricted to the requirement of activities, the usage shall not impair the material benefit of the work and the work is out of print or is lost or damaged. Music playing, acting, performing or showing any published work by school theatre is also allowed under the KSA law, as long as such playing, performance or acting does not lead to direct or indirect financial gains[22].

The KSA law also permits making short quotations from published works, drawings, pictures, designs or maps in school books prepared for education curriculum[23].

This exception however, does not apply to unpublished works. Thus, it is understood that in regard to unpublished works, permission from the author is required. The exception also requires that the title of the work and the name of the author are mentioned. Another key requirement under this provision is that the use must be within the limits of necessity. This is again a mandatory requirement of Berne Convention. Article 15(11) also allows citing parts of scientific articles and works by research institutions for their internal use or to fulfill the requirements of those who are conducting studies and research, provided that the source is mentioned.

Mandatory license and public interest

Mandatory or compulsory licensing may also refer to statutory licensing, which connotes non-voluntary licensing (Xianrong and Xiao, 2010). In this regard, the users could exploit the copyrighted works without the permission of the author; but the users have to pay compensation to the author (Xianrong and Xiao, 2010). Compulsory licensing, as provided for in Article 31 of the TRIPS agreement has often been promoted as a policy tool to address public interest concerns (Juma, 1999). Internationally, the aim of mandatory license is to ensure information dissemination while safeguarding the interests of copyright owners (Agitha, 2012). The main feature of mandatory license is a balance in protecting both the public interest and the copyright owners. Hence, the public is ensured to get access of the copyright works whereas at the same time, the owners are honored with monetary compensation. From the historical context, the purpose of mandatory license was to address the crucial issues of non-availability, over-pricing and undersupply of copyrighted works (Agitha, 2012). However, as this is an exclusion of the owner's exclusive right of reproduction, it is considered as a restriction to the copyright owners (Guibault, 2002). The Berne Convention has left the issue of mandatory license to the national legislation.

In the KSA, mandatory license is issued by the Minister of Culture and Information. There are four conditions where mandatory license can be granted. The first condition is where the author refuses to make available copies of his published work and no such copies are available in the KSA with a comparable price to satisfy the public needs in regard to education[24]. This condition explicitly shows the importance of publication in order to serve the public interests, specifically for education purposes. The second condition applies where the original work or its Arabic translation is out of print and the author fails to make it available upon request[25]. Next, the mandatory license can also be granted where no translation has been published or with his permission, but the purpose has to be for educational curricula[26]. The second and third conditions may refer to the compulsory licensing of translation of foreign works, which is permitted by Article 2 of TRIPS[27]. However, this is indeed a controversial provision as some developed countries which are the copyright exporting countries are against it (Price, 2011). On this premise, it was argued that this is a kind of potential infringement of their copyright rights and a potential loss of income generation (Price, 2011). The last condition applies where the heirs of the Saudi author or his successors decline to exercise the assignment of copyrights passed to them, within one year of the date of the request without any valid excuse[28].

It can be seen that the spirit of the International Copyright Laws is applied here as the protection of public interest, especially in regard to education is paramount. In upholding the public interest, the above four conditions permits the Minister to

grant the mandatory license, although to the refusal of the author[29]. However, as mentioned above, this is also permissible under TRIPS agreement. The limitation of the Minister's power to issue a mandatory license is restricted to foreign works that serves the educational or research purposes (Price, 2011). The interests of the copyright owners are also protected whereby the licensee must pay the remuneration to the copyright owners as specified by the Minister[30].

The Copyright Law Implementation Regulations provides further details on mandatory licenses. The Regulation explicitly states that mandatory license can only be issued to works published for the first time in the KSA[31]. Licenses shall not be granted before the expiration of three years from the publication date of the edition in question[31]. As the main reason of mandatory license is to serve public interest and to support education purposes, the permission shall not be granted if it is for pure commercial purposes[32]. There are also several requirements to observe before the license is issued[33]; among them is that the applicant shall submit a proof that he has requested a license from the copyright owner or his publisher but has failed to obtain it.

Infringements

According to Article 21, several acts are considered as infringement of the Copyright Law. These are:

- publishing an unauthorized work or work not owned by the publisher;
- unauthorized amendments of the work;
- reprinting without consent;
- removal of any information leading to forfeiting the owner's copyrights;
- tampering with any protective electronic code that protects the original copies of the work;
- commercial use of intellectual property works through deception;
- manufacturing or importing tools with the purpose of exploiting works;
- copying or photographing any work without obtaining permission;
- import of counterfeit, imitated or copied works; and
- keeping non-original works at the commercial establishment.

In the case of the above infringement, the KSA Copyright Law provides the copyright owner with some remedies. Article 24 of the Implementation Regulations gives the right to the copyright owner to claim compensation as a result of the infringement of any of his rights that are protected by the law. The burden to prove of any infringement is on the copyright owner and he has to provide evidence and detail explanation regarding the damages incurred as a result of the infringement and how they occurred as well as estimated amount of compensation.

Procedures and penalties

TRIPS Agreement requires enforcement provisions in terms of criminal procedures, sanctions and remedies[34]. The criminal procedures are provided under Chapter 2 of the Implementing Regulations under the title of Violations and Procedures of Detection. It is a detailed chapter that is divided into three sections. Section 1 talks about violations and liability for copyright infringement, Section 2 provides for

procedures of detection and investigation on violations and Section 3 gives details on protective seizure. The penalties and punishments for infringements of Copyright Law are provided under Article 22 of the Copyright Law. The main aim of such punishments is to serve an effective deterrent. Hence, remedies must be sufficient to provide a deterrent and must be consistent with penalties applied for crimes of corresponding gravity (Price, 2011). Complying with this requirement, there are basically five types of penalties provided under the Copyright laws, for infringements of the law[35]:

- (1) warning;
- (2) a fine not exceeding SAR250 00;
- (3) closing the violating establishment for a period not exceeding two months;
- (4) confiscation of all copies of the infringed work; and
- (5) imprisonment not exceeding six months.

The monetary sanction of SAR250 000 is deemed impressive by local and foreign standards and has seen 30-fold increase from the 1989 law (Price, 2011). The reason of such magnificent increase was due to the process of accession to WTO membership. It illustrates the impact of the greater degree of critical scrutiny and pressure that KSA received from the USA and from international business and intellectual property watchdog organizations (Price, 2011). Further emphasis on deterrent purpose is shown in repeat offences where offenders will be faced with double penalties[36]. Another remarkable provision is the punishment of defamation against the individuals who commit the infringement[37]. The copyright owner may also claim an injunctive relief against the printing of the work infringed upon[38]. The discussion above shows that the KSA has complied with TRIPS requirements in respect of criminal procedures, sanctions and remedies. However, it can be seen that the performance of the GCC in regard to their commitment to TRIPS standards of protection are criticized as paying lip service to the demands of the developed countries for effective intellectual property protection (Carroll, 2000/2001; USTR, 2010).

Concluding remarks and recommendations

It can be concluded that the KSA Copyright Law and its Implementing Regulations show willingness to comply with international standards of intellectual property protection as enshrined in TRIPS. The law has been under WTO scrutiny whereby the 1989 law was superseded with the 2003 law in order to comply with TRIPS before the KSA accession to WTO in December 2005. The exceptions and limitations provided by the Copyright Law are also permitted under international laws. However, the critics regarding the GCC commitment to TRIPS standards of protection has raised some debatable issues. Therefore, in view of these critics, a further study on the commitment of the KSA on effective implementation strategies and execution of the Copyright Law is crucial in order to determine the validity such allegations.

Notes

1. For example, men and women are not allowed to mingle freely in the public; there are separate sections for men and women in the education system, banks and also restaurants. Women are covered from head to toe in black *abayas* (a loose outer garment worn by women

that covers the whole body except the face, feet and hands), they are not allowed to drive in the Kingdom and in regard to criminal law, and punishments are strictly carried out under *Shari'a*. For further reading, see Le Renard (2008) and Dekmejian (2003).

2. Implementation Regulations, Article 32(1).
3. Implementation Regulations, Article 32(2).
4. Berne Convention, Article 2.
5. Copyright Law 2003, Article 4.
6. Copyright Act, Article 19 First (1).
7. Copyright Act, Article 19 First (2).
8. Copyright Act, Article 19 First (5).
9. Copyright Act, Article 19 First (6).
10. Copyright Act, Article 19 Second (2).
11. TRIPS, Articles 12 and 14.5; Berne Convention, Articles 7 and 7bis.
12. Berne Convention, Article 6bis.
13. Copyright Act, Article 8(4); Article 11.
14. Implementing Regulations, Article 7.
15. Berne Convention, Article 9(2).
16. Copyright Act, Article 15 (1)-(12).
17. Copyright Act, Article 15 (2), (9) and (11).
18. Copyright Act, Article 15 (2) and (3).
19. Copyright Act, Article 15 (5)-(7).
20. Copyright Act, Article 17 (1).
21. Copyright Law, Article 15(3).
22. Copyright Law, Article 15(8).
23. Copyright Law, Article 15(9).
24. Copyright Act, Article 16(1)(a). Note that under the United Kingdom Literary Copyright Act 1842, the first compulsory license was introduced to address the issue of refusal to reproduce a published work. See further in *Copinger and Skone James on Copyright*, 14 ed., Sweet & Maxwell, pp. 1545-1546.
25. Copyright Act, Article 16(1)(b).
26. Copyright Act, Article 16(1)(c).
27. Article 2 of TRIPS provides *inter alia* that a member may grant to one of its nationals a license to translate and publish a foreign language work that has not been translated and published in that manner within 3 years of the original publication of the work.
28. Copyright Act, Article 16(1)(d).
29. Copyright Act, Article 16.
30. Copyright Act, Article 16(3). The copyright owners also have the right to appeal against the decision of the Minister to the Board of Grievances.
31. Implementations Regulations of Copyright Law, Article 30.
32. Implementations Regulations of Copyright Law, Article 30(8).

33. Implementations Regulations of Copyright Law, Article 30(1)-(8).
34. TRIPS Agreement 1994, Article 41; 61.
35. Copyright Act, Article 22.
36. Copyright Act, Article 22 Second.
37. Copyright Act, Article 22 Fifth.
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