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Protection of Copyrights in Lebanon

Thesis for obtaining the Master Degree in Private Law

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ABBREVIATIONS

BIRPI	Bureaux Internationaux Réunis pour la Protection de la Propriété Intellectuelle
CCIPRB	Cyber Crime and Intellectual Property Rights Bureau
CD	Compact Disc
DVD	Digital Versatile Disc
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GSP	Generalized System of Preferences
IIPA	International Intellectual Property Alliance
IPPO	Intellectual Property Protection Office
ILO	International Labour Organization
IP	Intellectual Property
IPR	Intellectual Property Rights
ISF	Internal Security Forces
MFTR	Memorandum of Foreign Trade Regime
MoET	Ministry of Economy and Trade

TPM	Technological protection measures
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
UCC	Universal Copyright Convention
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
US	United States of America
USTR	Office of the United States Trade Representative
VAT	Value Added Tax
WIPO	World Intellectual Property Organization
WTO	World Trade Organization
WCT	WIPO Copyright Treaty
WPPT	WIPO Performances and Phonograms Treaty

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Introduction

Copyright law is included in the broader body of law called intellectual property rights law. In general terms, intellectual property means the creations of the human mind¹. As for intellectual property rights, they grant protection to creators of patents, trademarks or copyrighted works over their creations. These rights are considered to be similar to any other property rights. Property rights are defined as the ability of individuals to own, buy, sell and use their property in a market economy. Broadly speaking, there are three types of property². The first type of property includes movable things like cars or furniture; it is called “movable property.” The second type of property is immovable property, sometimes referred to as real estate property such as land and houses, due to the fact they are stable and cannot be moved. The third type is intellectual property, which protects the creations of the human mind. This kind of property is referred to as “intellectual property” because it deals with the human intellect.

Intellectual property law covers a set of rights in works, inventions, ideas and information, the ways they are expressed or used, and how the products of companies are recognized by consumers and in the marketplace. As a general rule, intellectual property laws prevent or set limits on copying or use of these types of rights³.

The creation of knowledge greatly depends on the protection of intellectual property. Because of the increasing economic importance of knowledge, it is

¹ WIPO, Understanding Copyright and Related rights, WIPO publication No 909(E), Geneva,2016,p.3

² غسان رياح, قانون حماية الملكية الفكرية والفنية الجديد ، الطبعة الثانية، دار نوفل، ٢٠٠٣، p.6

³ S.Johnson, Guide to intellectual property, Profile books Ltd, The Economist 2015, p.14

crucial to focus on the recognition of that knowledge, its value and its management. Intellectual property is a way of valorizing knowledge.

Intellectual property⁴ includes among others: inventions, literary and artistic works, patents and trademarks. It is divided into two types; the first type is industrial property and the second is copyright and related rights.

Industrial Property comprises patents, trademarks, industrial designs and geographical indications. Copyright covers a wide range of creative, intellectual or artistic forms or works. It includes poems, theses, plays and other literary works, motion pictures, choreography, musical compositions, sound recordings, artistic works like paintings, drawings, sculptures, photographs, plus computer software and radio and television broadcasts. As for related rights, sometimes called neighboring rights, they are rights contrary to the term “authors” rights. They are the rights of performers, producers of phonograms and broadcasting organizations, in their recordings and their radio and television programs.⁵

The two most important types of intellectual property are industrial property and copyright. Some basic differences exist between inventions and literary and artistic works. In general terms, inventions could be established as new solutions to technical problems. They are considered as ideas and protected as such and do not need to be expressed in a physical form to be protected under patent law. As a result, the invention cannot be used without the authorization of the owner.⁶

⁴ WIPO, What is intellectual property, WIPO publication No 450(E), Geneva, p.2

⁵ S. Isiko Strba, International copyright law and access to education in developing countries, Martinus Nijhoff Publishers, Boston, 2012, p.9-10

⁶ WIPO, Understanding Copyright and Related rights, supra, p.5

On the other hand, works that have not been written, recorded, captured electronically or fixed into some kind of a tangible form are not protected by copyright laws. So basically, copyright law protects the author of a work from people who copy or use the original form of his work.

As seen above, the difference between inventions and literary and artistic works, leads to the difference between the legal protections given to each⁷. One of the differences consists in the duration of protection. The duration of protection given to ideas is usually short (about 20 years) whereas the duration of protection can be much longer in the case of literary and artistic works (50 years after the death of the author). Another difference relies on the fact that the invention should be revealed to the public. It must be registered in an official register to obtain protection of the law. As for literary and artistic works, the law is generally only declaratory; the work is considered protected as soon as it comes into existence.

In the world today, intellectual property rights are important and controversial. They play an important role economically and politically, mainly in developed countries, but also in developing countries. Intellectual property rights are included in many different topics such as human rights, public health, agriculture, education, trade, industrial policy, information technology and entertainment and media industries.⁸

The progress of intellectual property laws did not take place by revolutions, but by consecutive stages. Since the beginning, these laws were developed following major changes in technology, progression of the arts and innovation. And so on,

⁷ WIPO, Understanding Copyright and Related rights, supra, p.6

⁸ Kamil Idris, Intellectual Property: A Power Tool for Economic Growth, WIPO Publications No 888, Geneva, p.9

every time new developments take place, it is necessary to create new rules to match these changes. For example, in the beginning of the 1900's, commercial radio and television, motion pictures and sound recordings were not yet known. Thus, the law had to evolve to conform to these new patterns.⁹

The protection of intellectual property is essential for many reasons¹⁰. First, the capacity to create and invent encourages progress and well-being of humanity. Second, the legal protection of new creations provides the allocation of more resources. Third, the promotion and protection of intellectual property induce the creation of new jobs and industries, hence motivate economic growth.

The purpose of an efficient intellectual property system is to provide a balance between the interests of innovators and the public interest, thus everyone can benefit from creativity and invention.

According to Article 27 of the Universal Declaration of Human Rights¹¹, authors of scientific, literary or artistic productions have the right to profit from protection of moral and material interests of their works.

Intellectual property, as know today, is originated from the evolution of the two international unions created at the end of 19th century to protect both types of intellectual property: the Paris Union made by the Paris Convention for the

⁹ Kamil Idris, Intellectual Property: A Power Tool for Economic Growth, *ibid*, p.11,13

¹⁰ WIPO, What is intellectual property, *supra*, p.3

¹¹ The Universal Declaration of Human Rights (UDHR), proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (General Assembly resolution 217 A) states in Article 27: (1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits. (2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Protection of Industrial Property in 1883 and the Berne Union, created by the Berne Convention for the Protection of Literary and Artistic Works in 1886.¹²

A secretariat named the “International Bureau” was established under each of these two conventions. These two secretariats were joined in 1893. The joined secretariat was called different names, the last of which was United International Bureaux for the Protection of Intellectual Property, known as BIRPI, which finally evolved into WIPO. WIPO is considered an international organization, dedicated to ensure that the rights of creators and owners of intellectual property are well protected worldwide. In addition, the organization helps inventors and authors to be recognized and rewarded for their ingenuity. WIPO is the global forum for intellectual property services, policy, information and cooperation. It is a self-funding agency of the United Nations, with 188 member states. Its mission consists of leading the development of a balanced and effective international intellectual property system that enables innovation and creativity for the benefit of all. Its mandate, governing bodies and procedures are set out in the WIPO Convention that established WIPO in 1967¹³. According to Article 3 of the Convention, WIPO’s main purpose is to "promote the protection of intellectual property throughout the world."¹⁴

¹² S. Isiko Strba, International copyright law and access to education, supra, p.12

¹³ Convention Establishing the World Intellectual Property Organization (Signed at Stockholm on July 14, 1967 and as amended on September 28, 1979) Article 1 (Establishment of the Organization): The World Intellectual Property Organization is hereby established.

¹⁴ Ibid, Article 3 (Objectives of the Organization): The objectives of the Organization are:
- to promote the protection of intellectual property throughout the world through cooperation among States and, where appropriate, in collaboration with any other international organization,
- to ensure administrative cooperation among the Unions.

In 1974, WIPO joined the United Nations. The Agreement between the UN and WIPO¹⁵ states in Article 1 that WIPO is responsible "for promoting creative intellectual activity and for facilitating the transfer of technology related to industrial property to the developing countries in order to accelerate economic, social and cultural development, subject to the competence and responsibilities of the United Nations and its organs, particularly the United Nations Conference on Trade and Development, the United Nations Development Program and the United Nations Industrial Development Organization, as well as of the United Nations Educational, Scientific and Cultural Organization and of other agencies within the United Nations system."

WIPO is one of the seventeen specialized agencies of the United Nations. Currently it has 188 member states, administers 26 international treaties, and is headquartered in Geneva, Switzerland. WIPO assists developing countries in the process of developing their patent, trademark and copyright legal frameworks and intellectual property systems. It also helps countries in the negotiation of treaties, training in various forms and enforcement of laws. It also provides needed information on intellectual property for all kind of people, businesses and even countries.¹⁶

The Convention establishing the World Intellectual Property Organization (WIPO) gives the following list of subject matter protected by intellectual property rights:

- Literary, artistic and scientific works

¹⁵ Agreement between the United Nations and the World Intellectual Property Organization, entered into effect on December 17, 1974, Article 1 (Recognition)

¹⁶ غسان رياح, قانون حماية الملكية الفكرية والفنية الجديد ، مرجع سابق, p.196

- Performances of performing artists, phonograms, and broadcasts
- Inventions in all fields of human endeavor
- Scientific discoveries
- Industrial designs
- Trademarks, service marks, and commercial names and designations
- Protection against unfair competition;
- All other rights resulting from intellectual activity in the industrial, scientific and literary or artistic fields.¹⁷

After a general discussion on intellectual property, copyright and WIPO, we shall briefly review intellectual property in Lebanon. Lebanon witnessed many years of war which created political instability and delayed all economic and social development. After the war ended in the 1990's, Lebanon began a new national building. This process included development in many infrastructural sectors such as courts, telecommunications, electrical installations, airport, roads, etc.¹⁸

Lebanon was aiming to open up new business opportunities. The management and protection of intellectual property rights were one way to help the progress of the business sector. The Lebanese government was trying to encourage investors by providing appropriate investor friendly environment. Also the government wanted

¹⁷ Convention Establishing WIPO, supra, Article 2 (Definitions).

¹⁸ For more details see Fares El Zein, Lebanese administrative reform experience from 1992 to 2002; a political institutional perspective, Defense Magazine publication, 2004

to take part in the international economy by joining the World Trade Organization (WTO) on February 1999, thus Lebanon became an observer member in WTO¹⁹.

To go back in Lebanese history, protection of intellectual property rights goes back to the Ottoman Empire²⁰. Back then, some diversified laws provided certain protection to authors. In 1910, a law was issued which provided property rights to authors on all of their creations like books, images, manuscripts and music.

During the French mandate, on the 19th of July 1923, a special bureau was created for the protection of literary and artistic property. After that, Decision no 2385 of January 17, 1924²¹ was issued to define, organize and protect intellectual property according to the newest international standards. On August 1st 1924, Lebanon entered into the Berne Convention for the Protection of Literary and Artistic Works (1886). Then after relatively a long time, law no 75/99 on the protection of literary and artistic property was issued on the third of April 1999²².

According to what was mentioned above, Copyright in Lebanon is protected through International Agreements, law on the Protection of Literary and Artistic Property No. 75/ 99 (the copyright law) and other legislation related to enforcement of copyright or affecting copyright protection. Law No. 75/99 eliminated all previous legislation related to copyright and related rights.

This Copyright Law provides a reasonably sound basis of protection of works, sound recordings and performances although some deficiencies still remain and must be dealt with to ensure a more effective statute and to help the process of

¹⁹ www.wto.org/ Lebanese Republic accession

²⁰ غسان رياح, قانون حماية الملكية الفكرية والفنية الجديد, مرجع سابق, p.5

²¹ Resolution No.2385/1924 issued on January 17, 1924, amended by the law of 31/1/1946.

²² Law on the Protection of Literary and Artistic Property (No. 75 of April 3, 1999)

acceding to international organizations. One of the main deficiencies of the copyright law is Article 25, which provides a broad exception permitting the copying of software, and Article 23 that deals with “private” copy exception which should be examined in light of new technologies. Other deficiencies include the presumption provisions that are incomplete, and works and sound recordings that are not explicitly given full retroactive protection. In addition, amendments dealing with online piracy, moral rights and enforcement measures should be made so that the copyright law would be compatible with international agreements and organizations.

Is the protection of the authors’ rights adequate in Lebanon and what measures should be taken in order that copyright laws become effective in their application?

The copyright system comprises two major components. The first component is the legislative framework that defines rights and procedures, including international treaties and conventions plus national laws, rules, and regulations. The second component covers the institutions through which rights and interests are applied, including the maintenance of copyright through national and regional offices and its enforcement by institutions, like courts, customs, and police.²³

This thesis is divided into two major parts. The first part emphasizes on the legal framework of protection in Lebanon. Beginning with milestones in the development of Copyright Laws in Lebanon, history and definitions including nature of copyrights and copyright based industries are reviewed, as well as past laws of copyrights and internal laws protecting copyrights. Moreover, conventions are significant part of the application of copyright laws in Lebanon as well as worldwide. The discussion will focus on conventions concerning copyrights such

²³ Kamil Idris, *Intellectual Property: A Power Tool for Economic Growth*, supra, p268

as the Berne Convention and the Universal Copyright Convention as well as conventions concerning related rights like the Rome Convention in addition to some other conventions. The second chapter introduces law no 75/99 on the protection of literary and artistic property comprising terms and conditions, protected works, rights enjoyed by copyright holders with its exceptions and sanctions.

The second part is about the application of copyrights laws in Lebanon. The beginning is with the compliance of Lebanese laws with International standards. The highlight relies on the conformity of Lebanese laws with WIPO standards starting with a summary on WIPO standards. The discussion will also include Lebanon's occurrence on the Watch list. Then the emphasis is on the World Trade Organization and the Trips agreement.

The second chapter focuses on the actual enforcement of copyrights laws in Lebanon with emphasis on the role of enforcement authorities such as courts, Ministry of economy and trade, Internal Security Forces and customs officials.

The second paragraph describes piracy highlighting on its definition and nature, comparison between piracy and plagiarism and steps to reduce piracy in Lebanon.

The end of the thesis is a conclusion with some ideas and thoughts on ways to improve the existing laws and its enforcement.

Part I

Legal framework of protection

In order to benefit from the optimal use of the copyright system, countries should improve their regulatory framework, laws and services, which will help increase inventive activity. Laws are not static and they have to be in step with new technologies, national economic needs and international commitments. Lebanon should update and modernize copyright legislation, particularly in the context of the TRIPS Agreement, since the Lebanese government would like to access to the World Trade Organization (WTO).

The first part of the thesis focuses on the legal framework of copyright protection. Chapter one deals with milestones in the development of copyright laws in Lebanon, beginning with definition of copyrights and related rights. The emphasis of this section relies on the nature of copyright and some copyright based industries. Afterwards, the discussion focuses on the history of copyright protection including past laws of copyrights and internal laws protecting copyrights. Section two discusses conventions, which are a significant part of the application of copyright laws in Lebanon as well as worldwide. Conventions concerning copyrights such as the Berne Convention and the Universal Copyright Convention are reviewed, as well as conventions concerning related rights like the Rome Convention, in addition to some other conventions such as the WIPO Internet treaties, which are the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT).

The second chapter introduces law no 75/99 on the protection of literary and artistic property comprising terms and conditions, protected works, rights enjoyed by copyright holders with its exceptions and sanctions.

Chapter I

Milestones in the development of Copyright Laws in Lebanon

Copyright laws have developed over the years worldwide, and Lebanon has followed the change. In this first chapter, the first section defines copyright and related rights by stating their nature according to both WIPO and Law No 75/99 on protection of literary and artistic property and reviews the development of copyright throughout history. The second section is dedicated to conventions, describing copyright and related rights international conventions including the Berne convention, The Universal Copyright convention, Rome convention, as well as some other conventions.

Section I: Definition and history

This first section is divided into two paragraphs. While the first paragraph defines copyright and related rights by stating their nature and giving examples of some copyright based industries, the second paragraph reviews the history of copyright.

Paragraph I- Definition of copyright and related rights

This paragraph is divided into two parts. The first one describes the definition and nature of copyright and related rights (A) while the second part handles the industries that are based on copyright (B).

A- Definition and nature of copyright and related rights

Copyright grants legal protection to authors of an original and creative work. The presence of originality and creativity in the work is one of the main conditions for the law to give protection.²⁴

Copyright law protects authors by giving them exclusive rights to sell copies of their work in any tangible form. In theory, legal protection covers the expression of ideas, not the ideas themselves²⁵. Usually, the duration of the right lasts during all the life of the author plus 50 years, though it varies from one country to another. According to WIPO definition of copyright²⁶, copyright laws grant authors, artists and other creators, protection for their literary and artistic creations, generally referred to as “works”. A closely associated field is “related rights” or rights related to copyright that encompass rights similar or identical to those of copyright, although sometimes more limited and of shorter duration. The beneficiaries of related rights are:

- Performers (such as actors and musicians) in their performances
- Producers of phonograms (for example, compact discs) in their sound recordings
- Broadcasting organizations in their radio and television programs.

On the national level, Article 2 of the Lebanese Law No 75/99 on protection of literary and artistic property states that the protection of the law shall apply to

²⁴ “Il n’y a de création que dans la mesure où l’activité de l’auteur confère à l’œuvre un caractère original qui est la marque de sa personnalité. Il ne suffit pas, pour lui dénier ce caractère, de constater que le sujet traité est banal ou s’inscrit dans un courant de mode, ou encore que son originalité est faible. » CA Paris 4^e ch. 27 oct. 1993 LMI c/ Ma Sauvagine Gaz. Pal. 7 juin 1994 p.21.

²⁵ WIPO, Understanding Copyright and Related rights, supra, p6

²⁶ [www.wipo.int.com/ what is Copyright](http://www.wipo.int.com/what_is_Copyright).

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.²⁷

The “works” mentioned above, in both WIPO definition and Article 2 of Law No 75/99 on protection of literary and artistic property, are made by creators who are generally referred to as “right holders”. The right holders and their successors are given some basic rights by the copyright law.

The initial and most important right is the exclusive right to use the work and the permission for others to use the work. There are various forms of the use of the work. Reproduction of the work, its performance in public, its broadcasting and translation and its adaptation are some examples²⁸. Related rights are a closely associated field and grant similar rights as those mentioned above, although sometimes more limited and of shorter duration²⁹.

The beneficiaries of related rights are: performers (such as actors and musicians) in their performances; producers of phonograms (for example compact discs) in their sound recordings and broadcasting organizations in their radio and television programs. Law No 75/99 on protection of literary and artistic property deals with related rights in article 35 and its following articles³⁰.

It states that 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 are considered as holders of related rights.

²⁷ Lebanese Law on the Protection of Literary and Artistic Property (No75 of April 3,1999), Article 2

²⁸ S. Isiko Strba, International copyright law and access to education, supra, p.20

²⁹ WIPO, Understanding Copyright and Related rights, supra,p.27

³⁰ Lebanese Law on the Protection of Literary and Artistic Property (No. 75 of April 3, 1999)

The nature of copyright remains a matter of dispute³¹. The question is whether copyright is a natural law property right of authors or society's grant of a limited statutory monopoly. There are proponents of both theories, and each side can bring forth many arguments to support its position. Copyright is a body of law that must accommodate the interest of three groups in society: authors, distributors (including publishers) and consumers.

Assets are usually divided into tangible assets and intangible assets³². A tangible asset is an asset that has a physical form. Tangible assets include both fixed assets, such as machinery, buildings and land, and current assets, such as inventory. Nonphysical assets, such as patents, trademarks, copyrights, goodwill and brand recognition, are all examples of intangible assets.

Since Copyright law is considered an innovative law, there is no unanimous opinion in defining the nature of copyright.

Theories dealing with the nature of copyright are various and different. Some theories state that the economic and moral rights of the author are from the same nature, though they disagree on defining this nature. Some consider that the economic and moral rights of the author are property rights while others regard them as personal rights³³.

Other theories differentiate between the economic and moral rights of the author stating that these rights are not of the same nature. On the other hand, some argue that copyright cannot be treated as being primarily a property right, because property is essentially a bilateral concept, between the property owner and

³¹ L. Ray Patterson and Stanley W. Lindberg, *The nature of copyright, A law of users' rights*, The University of Georgia press, 1991, p.12

³² غسان رباح, قانون حماية الملكية الفكرية والفنية الجديد ، مرجع سابق، p.6.

³³ مرجع اعلاه, p.7-33

everyone else. Only if copyright is viewed as a statutory grant can it be seen as more regulatory than proprietary³⁴.

B- Copyright based industries

Copyright protects creative works from being copied or otherwise used without permission. It is an easy and almost costless form of protection and therefore should be part of any business's IP strategy. Copyright is a robust form of intellectual property. Copyright may be bought, sold and licensed independently of an underlying business³⁵.

Copyright activities enhance economic growth³⁶.

Lebanese people are educated, skilled and motivated individuals. They are able to develop businesses, generate revenues, and promote investments in various fields of IP. Copyright based industries produce goods and products that play important social and cultural functions and create economic contribution. This role and economic contribution are growing every day.

Copyright may be used by businesses in the creation, recording, publication, dissemination, distribution or retailing of artistic, musical or literary works.³⁷

The process of creating a work grants "added value", hence it produces an economic activity. The distribution and consumption of the work also contribute to the economic effect. There are many effects of copyright on the economy

³⁴ L. Ray Patterson, The nature of copyright, supra,p.14

³⁵ S. Johnson, Guide to intellectual property, supra,p.144

³⁶ Economic growth can be defined as "the increase in the real level of net national product, although the measure will then be sensitive to the way in which national products is measured." One should also bear in mind that the theory of economic growth is a long-run theory. David W. Pearce, ed., MIT Dictionary of Modern Economics, 4th ed. (Cambridge, MA: MIT Press, 1992).

³⁷ K. Idris, Intellectual Property: A Power Tool for Economic Growth, supra, p.54

especially its effect on creators, right holders, distributors, users, manufacturers, advertisers, etc.³⁸

Copyright industries are industries that are wholly engaged in creation, production and manufacturing, performance, broadcast, communication and exhibition, and distribution and sales of works.

Copyright based industries contain a wide range of economic activities including: advertising, architecture, crafts and designer furniture, fashion clothing, film, video and other audiovisual production, graphic design, educational and leisure software, live and recorded music, performing arts and entertainment, television, radio and internet broadcasting, visual arts and antiques, and writing and publishing. Some recent studies about copyright based industries in Lebanon³⁹ show that some of these industries are crucial to Lebanese economy and play an important role in employment and in gross domestic product (GDP).

The Lebanese literature sector and the press have a leading position in the area. The publishing industry in Lebanon offers high quality and a variety of products. In addition, the output can be offered in three languages.⁴⁰

The film industry in Lebanon is one of the most promising film industries in the area because of the availability of human resources, education and input in Lebanon. However many obstacles have been standing in the way of the progress of this sector, including inability of providing financing and competition from other countries, mainly the United States and Egypt.

³⁸ S. Johnson, Guide to intellectual property, supra,p.12

³⁹ Roger Melki, The Economic Contribution of Copyright-Based Industries in Lebanon, wipo publications, 2007, p.495

⁴⁰ Ibid, p.495

The Lebanese music industry is one of the most successful sectors due to the abundance of talents and professionals and the outstanding reputation of Lebanese musicians. The setback of this industry remains in the existence of a high level of piracy.

As for the software industries, it has become a substantial part in the Lebanese economy. Recently, the number of professionals with good knowledge is increasing; and these professionals deliver excellent products and services. Nevertheless, this sector is enduring some setbacks, due to the economic slowdown in Lebanon, big competition, lack of laws and incentives from the government and a very high level of piracy.

The above mentioned information clearly states that copyright based industries are valuable industries in the economy, worldwide and in Lebanon⁴¹.

In order to thrive, these industries need legal protection to works done by right holders. Some works, such as literary works, phonograms or computer software can be copied somehow easily.

Also, works can be distributed through the internet at little cost. So enforcing legal protection is necessary to transform the development of copyright industries into important business sectors.⁴²

Paragraph II– History of copyright

The emphasis in paragraph II is on the history of copyright, starting first with a brief history on the international level, followed by the history of past laws of copyright in Lebanon.

⁴¹ R. Melki ,ibid, p.495,496

⁴² K. Idris, Intellectual Property: A Power Tool for Economic Growth,supra, p.24

A- Past laws of copyright

This paragraph gives a brief history of copyright laws on the international level. After the medieval ages in Europe, a huge propagation of books emerged due to the invention of printing press⁴³. This economic growth urged for a need to protect the rights of both authors and publishers. The concept of copyright emerged in England in the 18th century. The statute of Anne⁴⁴ created in England in 1710 was the first real law related to copyright.

In the United States, the United States Constitution of 1787 included a copyright clause that stated the following: "To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries⁴⁵."

In France, after the French Revolution, two laws concerning the right of authors were enacted⁴⁶, the 1791 law which mentioned the authors rights only marginally and the 1793 law that really organized authors rights.

Throughout Europe and America, the production and distribution of books continued to be fast and easy, so authors needed more protection. Also on the international level, identical international standards were necessary. Thus, the Berne Convention was created in 1887 which implemented some standard levels of copyright protection and their enforcement in the member state⁴⁷.

As for Lebanon, the first law to protect literary and intellectual property rights was the Ottoman Law on Privileged Works, enacted on September 11, 1872.

⁴³ Ronan Deasly, Martin Kretschmer, Lionel Bentley, Privilege and property Essays on the history of Copyright, Openbook publishers, Cambridge, 2010, p.15

⁴⁴ The Statute of Anne, April 10, 1710

⁴⁵ The Constitution of the United States, 1787, Article 1, section 8.

⁴⁶ R.Savatier, Le droit de l'art et des lettres, Paris, 1953, p.19

⁴⁷ K. Idris, Intellectual Property: A Power Tool for Economic Growth, supra, p.15

During the French Mandate, High Commissioner General Weygand issued Resolution No. 2385, dated January 17, 1924, which regulated the literary and artistic property issues and thus, cancelled the Ottoman Law⁴⁸.

The above mentioned law, also called the law for the protection of commercial, industrial, artistic, literary and musical property rights, in its Title VII

(articles 137-183) related to artistic, literary and musical works, granted the author complete property right, including material and moral rights.

Moreover, the law of 1924 granted similar treatments to both national and foreign authors and works. Despite the fact that the protection of this law did not include new technologies like computer software, these technologies were always protected in the courts of law by the judges.

On June 28, 1934, the French Commissariat issued Resolution No. 141/L.R. aimed at implementing the Berne Convention for the Protection of Literary and Artistic Works in all states in the Middle East under French Mandate, including Lebanon. After its independence, Lebanon joined the Berne Convention on September 30, 1947, and ratified its modifications introduced in Paris in 1971.

Copyright and related rights in Lebanon remained regulated by Resolution No. 2385/1924, the Berne Convention, the Rome Convention, the Universal Copyright Convention and the Lebanese Criminal Code until 1999, when Law No. 75/99, on the Protection of Literary and Artistic Property, was issued⁴⁹. Changing the 1924 law was inevitable since it did not include all the new issues that developed from the technological revolution.

⁴⁸ غسان رباح, قانون حماية الملكية الفكرية والفنية الجديد, مرجع سابق, p.5

⁴⁹ [www.economy.gov.lb/ Intellectual property/Copyright](http://www.economy.gov.lb/Intellectual%20property/Copyright)

Law No. 75/99, on the Protection of Literary and Artistic Property cancelled Articles 137 to 180 of Resolution No. 2385 and Articles 722 to 729 of the Lebanese Criminal Code. The promulgation of the 75/99 Law was considered a significant achievement for the Lebanese legislative authority, for it produced a modern law to protect literary and artistic property 300 years after The Statute of Anne, the first intellectual property law in the world, issued in England in 1710⁵⁰.

B- Internal laws protecting copyrights

Beside the Copyright Law No. 75/99 and the international agreements to which Lebanon is a party which supersede Lebanese laws, some other laws concerning copyright and related rights are found⁵¹. These laws can be summed up to:

- Criminal Law No. 340 of 1/3/1943 as amended by the Law No. 513/96 and the law No. 75/99.
- Law on Civil Procedures No. 90 of 16/9/1983 as amended by the Law No. 2/ 85, Law No. 20/ 85 and Law No. 529/ 96.
- Law on Criminal Procedures No. 328 of 7/8/2001 as amended by the Law No. 359 of 16/8/2001.
- Law on Obligations and Contracts.
- Law on Customs No. 4461/2000.
- Law on Judicial Fees.
- Law on Consumer Protection No. 659/2005 dated 4/2/2005

⁵⁰ غسان رباح, قانون حماية الملكية الفكرية والفنية الجديد, مرجع سابق, p.5

⁵¹ www.wipo.int.com/Lebanon IP laws and treaties

- Law No. 69/20 of May 23, 1969 on the Rights of Creators of Musical works
- Law No. 89 of September 7, 1991 (Duties and Fees due to the Publication of Industrial Designs, Patents, Literary and Artistic Property in the Official Gazette)
- Publications Laws issued on July 14, 1962 (1962).⁵²

Some rules and regulations implementing copyrights are:⁵³

- Decree No. 918 of November 15, 2007, on the creation and organization of work of associations and companies of collective management of copyright and related rights and how to exercise control of the Ministry of Culture and checking violations (2007)
- Circular No. A/1/4 of May 25, 2006 on protection of computer programs and fight against piracy (2006)
- Circular No. A/1/5 of May 25, 2006 on the protection of audiovisual and musical works (2006)
- Circular No. A/1/6 of 25/05/2006 on the protection of literary, artistic and scientific works (2006)
- Resolution No. 2002/16 of July 1, 2002 on the rights of copying and copying of computer programs by nonprofit educational institutions and academic and public libraries, (2002)
- Resolution 185 of April 16, 1943 on the publication of literary, scientific and technical works of authors present in enemy countries or enemy-occupied countries (1943).

⁵² Unesco, World anti-piracy observatory, Lebanon, 2009, p.3

⁵³ www.wipo.int.com/Lebanon IP laws and treaties

Section II- Conventions

The Lebanese laws concerning copyright and related rights are superseded by International agreements to which Lebanon is a party. Lebanon is a member of the following international conventions and treaties on copyright and related rights⁵⁴:

- Berne convention for the protection of literary and artistic works
- Universal copyright convention
- Rome convention for the protection of performers, producers of phonograms and broadcasting organizations

Lebanon signed the following treaties/ Conventions related to copyright but did not ratify them yet:

- Paris Act of the Berne Convention for the Protection of Literary and Artistic
- Brussels Convention Relating to the Distribution of Program-Carrying Signals Transmitted by Satellite
- Arab Copyright & Neighboring Rights Convention
- WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT).

Lebanon is also a party to a number of bilateral Free Trade Agreements (FTA) which includes commitments on copyright.

⁵⁴ www.wipo.int.com/Lebanon legal information

Paragraph I- Summary on conventions concerning copyright and related rights

This paragraph examines first the most important conventions concerning copyrights which are the Berne convention, the Universal Copyright Convention (UCC) and WIPO Copyright Treaty (WCT). Secondly, the emphasis is on conventions concerning related rights such as the Rome convention and WIPO Performances and Phonograms Treaty (WPPT).

A- Conventions concerning copyright

In the nineteenth's century, interest in international protection of copyright emerged due to the development of larger national markets for copyrighted works.⁵⁵ With the growth of international trade and cultural exchanges, the need to set international standards of protection alongside with national protection became essential as well as having one international copyright instrument. The Berne convention of 1886⁵⁶ became the first international copyright convention assuring the harmonization of national standards and the protection of copyright in more countries. While every nation or state has different copyright laws, the Berne Convention provides a common framework between nations in respect to intellectual property rights⁵⁷.

The Association Littéraire et Artistique Internationale (ALAI) founded by Victor Hugo was the first association to initialize negotiations towards an international

⁵⁵ S. Isiko Strba, International copyright law and access to education in developing countries, supra,p.16

⁵⁶ Berne Convention for the protection of literary and artistic works, of September 9, 1886, completed at PARIS on May 4, 1896, revised at BERLIN on November 13, 1908, completed at BERNE on March 20, 1914, revised at ROME on June 2, 1928, at BRUSSELS on June 26, 1948, at STOCKHOLM on July 14, 1967, and at PARIS on July 24, 1971, and amended on September 28, 1979.

⁵⁷ A. Bertrand, Le droit d'auteur et les droits voisins, Dalloz Delta, Paris, 1999, p.40

copyright convention⁵⁸, thus it was influenced by the French "right of the author" (droit d'auteur). The reasons behind countries agreement to international conventions were first the authors' interests, as opposed to the interests of the users, since ALAI was an association representing authors. Another reason is that countries wanted to ensure better protection for their intellectual property materials, including copyright.⁵⁹

This convention deals with the protection of works and the rights of their authors who are nationals of countries that are party to the convention. It includes some basic principles and a series of provisions determining the minimum protection to be granted.⁶⁰

The current version of the convention is the Paris Act of 1971. The convention is administered by the World Intellectual Property Organization (WIPO).

The member countries form a Union, and the convention provides protection for the work of authors who are nationals of one of the countries of the Union, or where the work is first published (or simultaneously published) in a country that is a member of the Union.⁶¹

The convention states some basic principles and provides some minimum standards of protection related to works, rights and duration of protection which shall be discussed in details in the next paragraph.⁶²

⁵⁸ Ibid p.471

⁵⁹ S. Isiko Strba, International copyright law and access to education, supra, p.16

⁶⁰ غسان رباح, قانون حماية الملكية الفكرية والفنية الجديد, مرجع سابق , p209

⁶¹ WIPO, Summaries of Conventions, Treaties and Agreements Administered by WIPO, WIPO publication No 442 E/13, Geneva, p.38

⁶² See Paragraph II, A and B p.35

Lebanon joined the Berne convention in 1947 and signed the Paris Act of the Berne Convention but did not ratify it yet.

While the Berne Convention was centered around Europe, most American countries were not members of the Berne Convention because they were not ready to comply with its comparatively high level of minimum standards. The Universal Copyright Convention (UCC) was created in 1952 in order to allow some countries, especially the American countries and the then called Union of Soviet Socialist Republics, to be part of a multilateral treaty on copyright protection.

Thus the reason behind the creation of the UCC is to secure international copyright protection at a universal level.⁶³

The Universal Copyright Convention was held in Geneva in 1952 under the patronage of the United Nations Educational, Scientific and Cultural Organization (Unesco). The convention came into force in 1955.⁶⁴

The UCC, like the Berne Convention, is flexible concerning the way nations implement details of the convention, and this implementation should conform with national copyright laws.⁶⁵ The convention did not cancel any other multilateral or bilateral conventions between its member states. The provisions of the Universal Copyright Convention overrule all the other provisions with the exception of the acts of the Berne Convention, which have priority over all the other conventions and treaties including the UCC.⁶⁶

⁶³ Silke von Lewinski, *The Role and Future of the Universal Copyright Convention*, Unesco publishing, e-Copyright Bulletin, 2006. p.1

⁶⁴ Universal Copyright Convention, concluded at Geneva on 6 September 1952, entered into force on 16 September 1955, revised in Paris on 24 July 1971, entered into force on 24 July 1974.

⁶⁵ www.wipo.int, other IP treaties, Universal Copyright Convention

⁶⁶ Universal Copyright Convention, *ibid*, Art. XVII(1) states that the UCC shall not in any way affect the provisions of the Berne convention nor the membership in the Berne Union.

In 1971, a conference was held in Paris in order to reexamine the Universal Copyright Convention and the Berne Convention. The purpose was to consider the needs of developing countries, mostly regarding translations, reproductions, public performances, and broadcasting.⁶⁷

The major difference between the Berne Convention and the UCC concerns the duration of copyright protection. The copyright term of the UCC is 25 years after the life of the author while the Berne convention grants a period of 50 years after the author's death⁶⁸.

But nowadays, the Universal Copyright Convention is of limited importance, as most states joined the Berne Convention. Lebanon joined the Universal Copyright Convention (UCC) in 1959.

Although Lebanon has joined the most important conventions, as mentioned above, it has not yet joined some other important conventions or ratified some of them like the Berne convention. Lebanon has not yet joined the WIPO Copyright Treaty (WCT) (1996).

WIPO Copyright Treaty (WCT) is an agreement under the Berne Convention concerning the digital environment⁶⁹. It mainly handles the protection of works and the rights of their authors in this environment. The main reason behind the formation of WCT is the advance in information technology since the formation of the previous copyright treaties. Compliance with the provisions of the 1971 (Paris) Act of the Berne Convention for the Protection of Literary and Artistic Works is a

⁶⁷ For more details on Provisions relating to Developing Countries, see Silke von Lewinski, *The Role and Future of the Universal Copyright Convention*, supra. p.1

⁶⁸ A. Bertrand, *Le droit d'auteur et les droits voisins*, supra, p.473

⁶⁹ WIPO, *WIPO Copyright Treaty (WCT)*, concluded at Geneva, 1996

requirement to contracting parties.⁷⁰ The Treaty was concluded in 1996 and entered into force in 2002.

B- Conventions concerning related rights

The two most important conventions concerning related rights are the Rome convention and WIPO Performances and Phonograms Treaty (WPPT).

In 1961, an agreement was formed by the member states of BIRPI, the predecessor to WIPO, and was called the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations⁷¹. For the first time, a convention was held which extended copyright protection to the protection of creators and owners of particular, physical manifestations of an artistic or literary work, such as audiocassettes or DVDs.⁷²

The emergence of new technologies like tape recorders induced nations to establish the Rome convention. Copyright laws, including international conventions like the Berne Convention, deal with the regulation of the distribution of printed materials only. But with the development of the new trends, for example the tape recorders which made the reproduction of sounds and images easier and cheaper than ever before, there was a need for new laws regarding performers and producers of recordings. The Rome Convention offers protection for performers in their performances, for producers of phonograms in their phonograms and for broadcasting organizations in their broadcasts.

⁷⁰ WIPO, Summaries of Conventions, Treaties and Agreements, *supra*, p.45

⁷¹ Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, entered into force on 26 October 1961, ratified on 1 January 1989.

⁷² A. Bertrand, *Le droit d'auteur et les droits voisins*, *supra*, p.884

The Rome Convention is administered by three international organizations which are WIPO, the International Labour Organization (ILO) and the United Nations Educational, Scientific and Cultural Organization (UNESCO). The contracting states of the Rome convention do not form a Union or budget. These states, that consider questions concerning the Convention, constitute an Intergovernmental Committee. This Convention is open to States party to the Berne Convention for the Protection of Literary and Artistic Works (1886) or to the Universal Copyright Convention. Instruments of ratification or accession must be deposited with the Secretary-General of the United Nations. States may make reservations with regard to the application of certain provisions.⁷³ On the 26 of June 1962, Lebanon signed the Rome Convention; however, it did not become effective until May 12, 1997, when it was ratified by the Lebanese Parliament.⁷⁴

As for the WIPO Performances and Phonograms Treaty (WPPT)⁷⁵, it concerns also the digital environment and grants rights mostly to performers (actors, singers, musicians, etc.) and producers of phonograms (persons or legal entities that take the initiative and have the responsibility for the fixation of sounds). WPPT was adopted with an objective to develop and maintain the protection of the rights of performers and producers of phonograms in a manner as effective and uniform as possible. This treaty does not affect the existing obligations that nations have to each other under the Rome Convention.

The convention provides performers with economic and moral rights in their performances as long as they are fixed in phonograms and not in audiovisual

⁷³ WIPO, Summaries of Conventions, Treaties and Agreements Administered by WIPO, supra, p.41

⁷⁴ [www.economy.gov.lb/ Intellectual property/Copyright](http://www.economy.gov.lb/Intellectual%20property/Copyright)

⁷⁵ WIPO Performances and Phonograms Treaty (WPPT), Geneva, 1996

fixations, like motion pictures. Also producers of phonograms are provided with economic rights in their phonograms.⁷⁶ The term of protection must be at least 50 years. The Treaty was concluded in 1996 and entered into force in 2002. Lebanon has not yet become a party to WIPO Performances and Phonograms Treaty (WPPT) mainly because it has not yet ratified the 1971 (Paris) Act of the Berne Convention for the Protection of Literary and Artistic Works.⁷⁷

Paragraph II – Protection provided by Conventions

In this paragraph, standards of protection are discussed as well as the works protected by conventions concerning copyright and related rights. The other part concerns the rights granted to authors by these international conventions.

A- Standards of protection and works protected

The beginning shall be with the Berne convention which includes some basic principles. First, the principle that states that an author from any signatory country is awarded the same rights in all other countries that are signatories to the convention as they allow their own nationals, as well as any rights granted by the Convention. This principle is called principle of “national treatment” allowing works originating in one of the contracting states (that is, works the author of which is a national of such a State or works first published in such a State) must be

⁷⁶ غسان رباح, قانون حماية الملكية الفكرية والفنية الجديد, p.293

⁷⁷ [www.economy.gov.lb/ Intellectual property/Copyright](http://www.economy.gov.lb/Intellectual%20property/Copyright)

given the same protection in each of the other Contracting States as the latter grants to the works of its own nationals.⁷⁸

The principle of national treatment is the corner stone of international treaties in the field of intellectual property. This principle was conceived from the idea that authors have the right to benefit everywhere from their natural property thus have rights also in other countries. Another reason behind this principle is the encouragement of authors by benefiting from the exploitation of their works abroad so they have the motivation to create new works. Nevertheless, economic reasons, especially the prevention of international piracy, were behind the creation of the principle of national treatment.

Another principle is the principle of automatic protection. It declares that no formalities are needed to have the right to protection.

As an example of the application of a Berne principle by the Lebanese courts, Beirut Investigation Magistrate, in its Decision No 7844/1997, stated that the registration of copyright has a publicity effect starting from a certain delay after the date of publication of the law, thus copyright is protected as of the date of its creation or innovation in accordance with Article 4 of Berne convention (Rome Act 1928) which supersedes Lebanese laws.⁷⁹

This decision proves that Lebanese courts are bound to apply the provisions of international treaties even though national laws do not contain such provisions, since international agreements supersede national laws.

⁷⁸ WIPO, Summaries of Conventions, Treaties and Agreements Administered by WIPO, supra, p.38

⁷⁹ Beirut Investigation Magistrate, Decision No 7844/1997 issued on 22/5/1997, Attorney Edward Eid v. Mohamed Darwish Al Halabi and Bassem Mohamed Al Halabi

Finally, the principle of independence of protection states that the protection is not associated with the existence of protection in the country of origin of the work⁸⁰.

In other words, member country should grant foreign works the same protections they give domestic works, even when the foreign works are not granted protection under copyright laws of their original countries. For example, a book written in Ecuador by an Ecuador national is protected in Lebanon, if it adheres by the requirements for protection under Lebanese laws, even if it is not protected under the laws in Ecuador.

The minimum standards of protection provided by the convention are related to works, rights and duration of protection.

As to works, protection must include “every production in the literary, scientific and artistic domain, whatever the mode or form of its expression”⁸¹. Under the Convention, copyrights for creative works are automatically in force upon their creation without being asserted or declared. Before the Berne Convention, national copyright laws usually only applied for works created within each country.

As to the duration of protection, the general rule is that protection must be granted until the expiration of the 50th year after the author’s death, although there are some exceptions to this rule⁸². In the case of audiovisual works, the minimum term of protection is 50 years after the making available of the work to the public or

⁸⁰ WIPO, Summaries of Conventions, Treaties and Agreements Administered by WIPO, supra p.41

⁸¹ Berne convention ,supra, Article 2(1)

⁸² In the case of anonymous or pseudonymous works, the term of protection expires 50 years after the work has been lawfully made available to the public, except if the pseudonym leaves no doubt as to the author’s identity or if the author discloses his or her identity during that period; in the latter case, the general rule applies.

from the creation of the work. In the case of works of applied art and photographic works, the minimum term is 25 years from the creation of the work.⁸³

As for the Universal Copyright Convention (UCC), its terms and main features are the following:⁸⁴

- Signatory nation should provide the same favorable copyright treatment to foreign published works as they do to their own citizens. Nevertheless, no minimum protection for either domestic or foreign authors is imposed;
- Every copy of a work should comprise a formal copyright notice consisting of the symbol ©, the name of the copyright owner, and the year of first publication.

Some nations would demand more formalities in the condition that these formalities do not advocate domestic over foreign works;

In nations that request formal registration, works from foreign states that are signatories of the convention must be treated like they had been registered in the state, if these works contain a notice comprising the © symbol and the name of the owner.

- The minimum duration for copyright protection in member nations is the life of the author plus 25 years or 25 years from the date of publication with the exception of photographic and applied arts work which have a 10-year term.⁸⁵

As for the WCT, The two most important works to be protected by copyright are computer programs, whatever the mode or form of their expression and

⁸³ غسان رباح, قانون حماية الملكية الفكرية والفنية الجديد, p.234.

⁸⁴ Universal Copyright Convention, supra.

⁸⁵ S. von Lewinski, supra, p.1

compilations of data or other material (databases), in any form, which, by reason of the selection or arrangement of their contents, constitute intellectual creations.

As to duration, the term of protection must be at least 50 years for any kind of work.⁸⁶

Regarding the Rome Convention, the treaty secures protection in performances for performers, in phonograms for producers of phonograms and in broadcasts for broadcasting organizations. The duration of protection must be granted for a minimum period of 20 years that starts from the end of the year in which the fixation was made, for phonograms and for performances included in them; the performance happened, for performances not included in phonograms; or the broadcast happened. Nonetheless, most national laws are granting a longer period of protection mainly a 50-year period, at least for phonograms and performances.⁸⁷ The WIPO Performances and Phonograms Treaty (WPPT) deals with the rights of two kinds of beneficiaries, particularly in the digital environment: performers (actors, singers, musicians, etc.) and producers of phonograms (persons or legal entities that take the initiative and have the responsibility for the fixation of sounds). As to duration, the protection must be at least for 50 years.⁸⁸

B- Rights of authors

A summary on the rights granted to authors by the international conventions concerning copyright and related rights will be given, starting with the Berne

⁸⁶ WIPO, Summaries of Conventions, Treaties and Agreements, supra, p.38

⁸⁷ Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, supra.

⁸⁸ WIPO, Summaries of Conventions, Treaties and Agreements, supra, p.41

convention. According to the Berne convention, the copyright owner has the following exclusive rights, thus none of the actions below can be carried out without his permission:

- The right to authorize translations of the work.
- The exclusive right to reproduce the work, though some provisions are made under national laws which typically allow limited private and educational use without infringement
- The right to authorize public performance or broadcast, and the communication of broadcasts and public performances.
- The right to authorize arrangements or other types of adaptation to the work.
- Recitation of the work, (or of a translation of the work).
- The exclusive right to adapt or alter the work.

The author also has moral rights, including the right to claim authorship and the right to object to any treatment of the work which would be ‘prejudicial to his honor or reputation’.⁸⁹

Some limitations on economic rights are permitted by the convention. These limitations include examples in which protected works can be adopted without the authorization of the owner of the copyright, and without payment of compensation. These exceptions and limitations are stated in Articles 9(2) (reproduction in certain special cases), 10 (quotations and use of works by way of illustration for teaching purposes), 10*bis* (reproduction of newspaper or similar articles and use of works

⁸⁹ WIPO, Summaries of Conventions, Treaties and Agreements by WIPO, *supra*, p.38

for the purpose of reporting current events) and 11*bis*(3) (ephemeral recordings for broadcasting purposes).⁹⁰

Moving on to the Universal Copyright Convention (UCC), the convention acknowledges the economic rights of the author (the right of reproduction, public performance, broadcasting etc.) though it states some exceptions that can be applied to developing countries.⁹¹

As for the rights granted to authors by the WCT convention, the convention states that contracting parties shall comply with Articles 1 to 21 of Berne (Paris Act, 1971)⁹², thus apart from the rights recognized by the Berne Convention, the treaty expands three kinds of rights, namely the right of distribution, the right of rental and a broader right of communication to the public.

The right of distribution is the right to authorize the making available to the public of the original and copies of a work through sale or other transfer of ownership. Contracting parties are free to conclude conditions and exceptions of the distribution right, such as the exhaustion of the right after the first sale and other transfer of the ownership of the work⁹³. The right of distribution in the WCT is expanded to cover works in all categories while this right covered only cinematographic works under the Berne convention.

⁹⁰ S. Isiko Strba, International copyright law and access to education in developing countries, supra,p.21

⁹¹ See Conventions concerning copyright p.28

⁹² World Intellectual Property Organization (WIPO), WIPO Copyright Treaty (WCT), Geneva, 1996, Article 1(4).

⁹³ WCT , Ibid, Article 6.

The right of rental is the right to authorize commercial rental to the public of the original and copies of three kinds of works including computer programs, cinematographic works and works embodied in phonograms. This protection does not apply in the case of computer programs, where the program itself is not the essential object of the rental; and in the case of cinematographic works, commercial rental does not lead to widespread copying of such works, materially impairing the exclusive right of reproduction⁹⁴.

The right of communication to the public grants authors the right to authorize any communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them .⁹⁵ This right especially deals with the copyright infringement issue under the internet environment and covers on-demand interactive communication through the Internet.

On the other hand, the Rome convention which provides protection to performers such as actors, singers, musicians, dancers and those who perform literary or artistic works, including protection against some acts to which they have not approved. Some examples include the broadcasting and communication to the public of a live performance, the fixation of the live performance and the reproduction of the fixation if the original fixation was made without the performer's consent.⁹⁶

⁹⁴ WCT , Ibid, Article 7.

⁹⁵ WCT, Ibid, Article 8.

⁹⁶ Rome Convention, supra.

As for producers of phonograms, they are entitled to permit or prevent the direct or indirect reproduction of their phonograms⁹⁷. Sometimes, a phonogram is published for commercial intentions and they lead to other uses like broadcasting or communication to the public. When this happens, the users must give a single equitable payment to the performers, to the producers of the phonograms or to both. This rule is not obligatory so the contracting nations have the freedom either not to apply it or to limit its application. Finally, concerning broadcasting organizations, they are entitled to authorize or prohibit the rebroadcasting of their broadcasts, the fixation of their broadcasts and the reproduction of such fixations, the communication to the public of their television broadcasts if such communication is made in places accessible to the public against payment of an entrance fee.⁹⁸ Some limitations to rights mentioned above are permitted in national laws concerning for example private use, use of short excerpts dealing with reporting current events, ephemeral fixation by a broadcasting organization by means of its own facilities and for its own broadcasts, use merely for the intention of teaching or scientific research and in any other cases where national law allows exceptions to copyright in literary and artistic works.

Finally, regarding the WPPT, the convention provides performers with economic and moral rights in their performances as long as they are fixed in phonograms and not in audiovisual fixations, like motion pictures. The economical rights are the right of reproduction, the right of distribution, the right of rental and the right of making available. Secondly, concerning unfixed or live performances, performers are accorded the right of broadcasting, the right of communication to the public

⁹⁷ The definition of “phonograms” given by the Rome Convention states that they are any exclusively aural fixation of sounds of a performance or of other sounds.

⁹⁸ WIPO, Summaries of Conventions, Treaties and Agreements by WIPO, *supra*, p.41

and the right of fixation. As for moral rights, performers are granted the right to claim to be identified as the performer and the right to object to any distortion, mutilation or other modification that would be prejudicial to the performer's reputation.⁹⁹

As for producers of phonograms, they are provided with economic rights in their phonograms including the right of reproduction, the right of distribution, the right of rental and the right of making available. The term of protection must be at least 50 years. The Treaty was concluded in 1996 and entered into force in 2002.¹⁰⁰

This ends the first chapter that dealt with the definition, history and conventions concerning copyright and related rights. The second chapter reviews the Lebanese Law on protection of literary and artistic property No 75/99.

⁹⁹ WIPO, Summaries of Conventions, Treaties and Agreements Administered by WIPO, *supra*, p.47

¹⁰⁰ WIPO Performances and Phonograms Treaty (WPPT), Geneva, 1996

Chapter II

The protection of literary and artistic property (Law No 75/99)

The Law on protection of literary and artistic property No 75/99 was enacted on 3 April, 1999 and published in the official gazette No 18/ 99 on 13 April, 1999. It entered into application on June 14, 1999.

The above mentioned law cancelled all previous legislations related to copyright. The previous legislation was Resolution No. 2385 dated 17/1/1924¹⁰¹. So this law was enacted after 75 years which is considered relatively a long time, since the world has dramatically changed. When Resolution No. 2385 was enacted in 1924, it was considered a modern and effective law for the protection of literary and artistic works at the time¹⁰². But with the revolution in telecommunication and information fields, Lebanon had to enact a new law that complies with the new progress. The parliamentary debates that preceded the enactment of the law revealed that the protection of computer software lay at the heart of the matter. The text was also intended to make the national legislation conform to TRIPS (Agreement on Trade-Related Aspects of Intellectual Property Rights), and to help Lebanon's accession to certain international conventions especially the World Trade Organization (WTO)¹⁰³. The need to modernize the copyright law was becoming crucial since Lebanon is a country where the fight against piracy is

¹⁰¹ Law Governing Commercial and Industrial Property, Issued by Resolution No. 2385/LR of January 17, 1924, Amended by the Law issued on December 31, 1946

¹⁰² غسان رباح, قانون حماية الملكية الفكرية والفنية الجديد, p.34

¹⁰³ See The World Trade Organization (WTO), Accession of the Lebanese Republic, Factual Summary of Points Raised, December 2005

essential, and where artistic, literary and technological creations are considered sources of wealth requiring more protection.

The structure of Law No 75/99 is new; it is divided into twelve chapters. After laying out the definitions, the law establishes the works concerned by the protection, the owners of copyright and the conditions of the protection. The Chapter concerned with the extent of the legal protection discusses the beneficiaries of the protection in regards to works by foreign authors. Authors' prerogatives are set out by the rights granted to the owners of copyright followed by the exceptions to copyright. The law brings new provisions to related rights and provides the duration of the protection. Finally, it covers the protective measures, damages and applicable sanctions.

A complete overview of Law no 75/99 is provided in this chapter, describing in details the main acts of this law.

Section I- Domain and conditions of protection

This section is divided into two paragraphs. The first paragraph discusses works protected by law no 75/99, stating the list of protected works and its exceptions. As for the second paragraph, the deliberation will include conditions of copyright holders in addition to terms and criteria for protection.

Paragraph I– Domain of protection

The focus is first on the list of the works protected by copyright law no 75/99 by naming the works and deliberating on some of them, then moving on to exceptions unprotected by the above mentioned law.

A- Protected works

According to Article 2 of law no 75/99, the protection of Copyright applies to all productions of the human mind, whether written, photographic, sculptured, handwritten, or oral, regardless of their value, importance, aim, or manner or form of expression. The article mentioned above states 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. 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”.¹⁰⁴

Also Article 3 of the same law discusses additional works protected by this law and it states: “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”.¹⁰⁵

The list of works mentioned above should be viewed broadly¹⁰⁶. For example, the code used to create computer programs and some compilations may be registered as a "literary work". Maps and architectural plans may be registered as "pictorial, graphic and sculptural works". A dance could be registered as a choreographic work or an audiovisual work (if filmed).

¹⁰⁴ Lebanese Law on the Protection of Literary and Artistic Property (No. 75 of April 3, 1999), Article 2

¹⁰⁵ Ibid, Article 3

¹⁰⁶ غسان رباح, قانون حماية الملكية الفكرية والفنية الجديد, p.44,

The field of protected works is extremely large, and since it is not limited, it can be susceptible to include new forms of creations, keeping in mind that the works created by human minds are protected irrespective of their merit, form or destination.¹⁰⁷

As an example of the protection of computer programs by Lebanese laws, Beirut Criminal Court stated in its Decision No 139/2000 that the law No 75/99 considers the programs of the computer as a “human brain production” to be protected when representing an innovation.¹⁰⁸ Thus the Lebanese law protecting copyright and related rights confirms that computer programs are reviewed as creation of the human mind hence protected by the law in case they are original.

As a general rule, Copyright does not protect ideas or inventions¹⁰⁹. It must be fixed in a "tangible form of expression" i.e. it must be written or recorded. This means copyright protects the expression of an idea or plan not the idea itself. Moreover, works protected by copyright must be original. The author should make creative works, not copied from someone else. For example, facts, well-known phrases and lists of names or ingredients are not considered protected works. Nevertheless, if the author organizes these items in an original manner, then this organization or expression may be protected in itself, not the actual facts or lists contained. That is to say, copyright protection includes only an author's original and creative contribution to a work.

¹⁰⁷ « La loi qui garantit aux auteurs la propriété de leurs écrits, ne faisant entre eux aucune distinction au égard à leur valeur plus ou moins grande, a leur nature, a leur objet, on doit considérer comme production de l'esprit ou du génie rentrant sous sa protection, toute œuvre qui a nécessité un travail de l'esprit ou de l'intelligence. » CA Paris 3 dec.1867 Jeannel c/Taulier Ann. 1868, 404. The sole existence of a work deserves protection.

¹⁰⁸ Beirut Criminal Court, Decision No 139/2000, issued on 26/4/2000, Public Prosecution v. Daher and Co, Sader Courts' series Lebanon, Intellectual property, Sader legal publishing LLC, 2017, p16

¹⁰⁹ S. Johnson, Guide to intellectual property, supra, p15

In this matter, the Summary judge in Beirut, in its Decision No 53/2004 issued on 30/1/2004, declared that Law No 75/99 extends the protection to every innovation. The court described an innovation as being a creation of human mind characterized by individualism and personal added value. Thus, the keys sentences created by the defending party in order to facilitate the research operation for readers are covered by this protection as innovations.¹¹⁰

In this case, the court is heading towards providing protection to every innovation, no matter how small it might be considered, if this innovation has certain distinction from others.

B- Exceptions

According to Article 4 of law no 75/99, some exceptions of works are not protected by the copyright law. This article declares: “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;

¹¹⁰ Summary judge in Beirut, Decision No 53/2004 issued on 30/1/2004, Attorney Nabil Tubaya v. Sader Publishers

- Artistic folkloric works of all kinds. However, works inspired by folklore shall enjoy protection”.¹¹¹

The works which are not protected by this law are limited to the ones mentioned above and they are not just given as examples. For instance, the protection of the law does not include daily news but it includes daily analysis and commentaries of the news¹¹². The exclusion of these types of works is simply an application of the requirements for copyright protection. Copyright protection demands that a work should cover a minimum amount of authorship in the form of original expression. Another reason is that information, facts and knowledge should be spread out to all people and not be subject to limitations because of the freedom to communicate facts and ideas.

In general, works which are not written, recorded, captured electronically or fixed into some kind of a tangible form are not protected by copyright law.¹¹³

As mentioned earlier, copyright only protects the form of expression of an idea, not the idea itself. Some examples of works not fixed in tangible forms are stories not written down, dances not notated or recorded, speeches or lectures not written down or recorded.¹¹⁴

Several categories of materials are generally not eligible for copyright protection. These include among others:

¹¹¹ Lebanese Law on the Protection of Literary and Artistic Property, Article 4

¹¹² غسان رباح, قانون حماية الملكية الفكرية والفنية الجديد, p.45

¹¹³ La jurisprudence refuse d'une manière constante la protection du droit d'auteur a de simples idées au sens de règles abstraites et de principes généraux. CA Lyon 1ere ch. 13 nov.1975 Ragni c/ le Bouteiller Desforges Ann. 1976, 108. Aussi TGI Paris réf. 27 fév. 1986 Rigal Ansous c/ B. Tapie, inédit.

¹¹⁴ WIPO, Understanding Copyright and Related rights, supra, p.11

- Titles, names, short phrases and slogans; familiar symbols or designs; mere listings of ingredients or contents.
- Ideas, facts, data, procedures, methods, systems, processes, concepts, principles, discoveries or devices, as distinguished from a description, explanation or illustration.
- Works consisting entirely of information that are natural or self-evident facts, containing no original authorship, such as the white pages of telephone books, standard calendars, height and weight charts and tape measures and rulers.
- Works for which copyright has expired; works in the public domain.¹¹⁵

To give some examples of what was mentioned above, a poem listed in a collection of poems copyrighted by someone, cannot be used without the permission of the author. On the other hand, if the copyright of an old poem is expired, the poem can be used. In the case of historical events, historical facts cannot be copyrighted. If someone writes a story about World War II, other people can also write about the same incidents, as long as they do not copy the exact words.

The same applies for common information, i.e. works made up of information is considered common property with no original data. Some examples are calendars, charts and rulers. A creative design of a calendar may be copyrighted but not the information¹¹⁶; that is because the information has to be expanded while the form has to be protected.

¹¹⁵ S. Johnson, Guide to intellectual property, supra,p1 16

¹¹⁶ K. Idris, Intellectual Property: A Power Tool for Economic Growth, supra, p.191

Paragraph II– Conditions

The conditions under which copyright holders are granted protection for their works need to be studied as well as the terms and criteria for protection.

A- Copyright holders

The owner of copyright is the creator or the author of the work. Article 5 of the Law on the Protection of Literary and Artistic Property states¹¹⁷: “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.”

The copyright holder is usually the author, editor, publisher, producer, director, photographer, database compiler, sculptor etc. He has the exclusive right to copy the work, make it available to the public or adapt it as he wishes¹¹⁸. Ownership of copyright and ownership of the work are two different matters. Copyrights might be sold separately from the work itself; likewise, the different exclusive rights can also be sold independently. As an example, a person might sell the right to make copies of his work to a particular someone and sell the right to display it in public to someone else.

In case of a joint work¹¹⁹, in which each contribution consists an integral part of the work as a whole, all the contributors shall be considered co-authors and co-owners of copyright in the work. In the case of a joint work in which a number of contributions constitute separate and independent works in themselves, each of the

¹¹⁷ Lebanese Law on the Protection of Literary and Artistic Property, Article 5

¹¹⁸ WIPO, Understanding Copyright and Related rights, supra,p.13

¹¹⁹ غسان رباح, قانون حماية الملكية الفكرية والفنية الجديد, p.48

joint authors shall be considered the author of his own contribution. In a joint work, none of the co-authors may, in the absence of any written agreement to the contrary, exercise copyright without the consent of the other authors.¹²⁰

A joint work is a work prepared by two or more individuals, with the intention that their separate contributions be merged into a single work¹²¹. For instance, a book written by two or more authors is a joint work. On the other hand, when a book is written by one author and another author writes a certain chapter of the book, it is not considered a joint work.¹²²

In the case of a collective work, the copyright holder is the natural or legal person that took the initiative to create the work and supervise its execution unless there is a written agreement to the contrary.¹²³

In general, a collective work is a compilation, such as a periodical, anthology, or encyclopedia, in which a number of separate and independent works are assembled into one work. Copyright in one contribution of the collective work and copyright in the collective work as a whole are distinct from each other. The editor or compiler of a collective work should acquire allowance from the copyright owners of the separate works. The author of the collective work may not own the copyright to any of the individual parts, but he owns the copyright of the whole collective work if it is sufficiently creative.

In the case of a work created by natural persons working under a work contract for a natural or legal person in the course of performing their duties or professional

¹²⁰ Lebanese Law on the Protection of Literary and Artistic Property, Article 6

¹²¹ D. Bouchoux, Intellectual property, The law of trademarks, copyrights, patents, and trade secrets, Third edition, Delmar Cengage Learning, 2009, p.216

¹²² غسان رباح, قانون حماية الملكية الفكرية والفنية الجديد, p.48

¹²³ Lebanese Law on the Protection of Literary and Artistic Property, Article 7

obligations, the copyright holder is the employer unless there is a written agreement to the contrary¹²⁴. That is to say, when a work is created in the course of employment, the employer is normally the copyright holder. Employment and research contracts should be explicit in this area.¹²⁵

In the case of an audio-visual work, the copyright holder is the producer unless there is a written agreement to the contrary.

In the case of anonymous and pseudonymous works, the author of the work is the publisher. However should the identity of the author be revealed, the author himself shall exercise these rights. The person whose name is shown on the work in the usual manner is considered to be the author of the work unless there is a proof to the contrary. In case of transfer of authorship, the copyright holder is the person to whom the work was transferred.¹²⁶

B- Terms and criteria for protection

Article 12 states: “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;

¹²⁴ Ibid,Article 8

¹²⁵ WIPO, Understanding Copyright and Related rights, supra,p.13

¹²⁶ Lebanese Law on the Protection of Literary and Artistic Property, Articles 9,10,11

- 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.”¹²⁷

This article provides the necessary protection to Lebanese authors wherever they live. The reason for this protection that goes beyond the Lebanese borders to other nations is that Lebanese authors are dispersed enormously all around the world.¹²⁸

As for the protection of works, Article 13 declares the following: “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 abovementioned Conventions, provided that they are published in Lebanon or in a State party to the abovementioned Conventions within 30 days of their publication in the other country”.¹²⁹

Moving along to the terms of protection granted by this Law, they are discussed from Articles 49 to 57. The terms of protection differ between economic rights and moral rights. The term of protection given to economic rights of the author is the

¹²⁷ Ibid Article 12

¹²⁸ غسان رباح, قانون حماية الملكية الفكرية والفنية الجديد, p.51

¹²⁹ Lebanese Law on the Protection of Literary and Artistic Property, Article 13

life of the author plus 50 years after his death, calculated from the end of the year in which death has occurred.¹³⁰

On the other hand, moral rights of authors or performers would maintain perpetual protection that is not subject to prescription. They shall be transmitted to third parties by testamentary disposition or under inheritance laws.

As to economic related rights of performers, they hold protection for a period of 50 years, to be calculated from the end of the year in which the performance has been carried out. 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. 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.

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.¹³¹

Section II- Effects

In this section, the discussion in the first part involves the rights enjoyed by copyright holders. Copyright holders possess many economic and moral rights. On the other hand, exceptions and limitations on copyrights are established to keep a balance between the interests of right holders and users of protected works.

¹³⁰ غسان رباح, قانون حماية الملكية الفكرية والفنية الجديد, p.66

¹³¹ Lebanese Law on the Protection of Literary and Artistic Property, Articles 51 to 57

The second paragraph deals with copyright infringements focusing on the ways these infringements occur, provisional measures, compensations and sanctions.

Paragraph I – Rights enjoyed by copyright holders

The two types of rights granted by the law to copyright holders (economic and moral rights) are reviewed in this paragraph, followed by the exceptions or limitations imposed by the law for the interest of users.

A- Rights protected

As mentioned somewhere earlier in the thesis¹³², Lebanese Law on the Protection of Literary and Artistic Property states that the copyright holder enjoys two types of rights, economic and moral rights¹³³.

Article 15 of the above mentioned law adds the following: “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: ¹³⁴

- 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;

¹³² See Definition and nature of copyright and related rights p.17

¹³³ Lebanese Law on the Protection of Literary and Artistic Property, Article 14

¹³⁴ Ibid Article 15

- 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”.

In general terms, copyright gives authors up to six separate rights, which he is free to either use, give away, or sell. Note that all of these rights are subject to limitations¹³⁵.

These rights include reproduction or copy of the work, preparation of new versions and adaptations of the original work, public distribution of the work, public performance of the work, public display of the work and digital performance of sound recordings.¹³⁶

The economic rights of the author are considered movable rights and may be transferred in whole or in part.¹³⁷

Article 17 discusses contracts of exploitation or assignment of economic rights. The contract of exploitation of economic rights must be written, otherwise it would be null. It also should display in details the rights covered by the contract and indicate the time and location. Another requirement is that the author gets a percentage of the exploitation revenues and assignment proceeds. If the contract does not set a time limit, it would be valid for 10 years only from the date of signature of the contract.¹³⁸ This article did not specify the party responsible for the creation of such a contract, but preferably it should be done through a notary or

¹³⁵ WIPO, Understanding Copyright and Related rights, supra,p.7

¹³⁶ A. Bertrand, Le droit d’auteur et les droits voisins, supra, p.216

¹³⁷ Lebanese Law on the Protection of Literary and Artistic Property, Article 16

¹³⁸ Ibid Article 17

a lawyer's office. Also, the article mentioned a time limit for the contract but it did not mention anything about its place, which is considered a deficiency. The assignment in whole of future works would be considered as void.¹³⁹

The assignment of rights by the author is discussed in article 19. The assignment by the author of any of his rights must be limited in all cases to that right only.

The article adds that copyright contracts shall be construed in a restrictive manner, which means that these contracts should be explained in a narrow sense.

As for the author and composer of a song, as stated in article 20, they should have equal rights in the work, unless there is an agreement that states otherwise.¹⁴⁰

The articles mentioned above discussed economic rights.

Regarding moral rights, article 21 states: "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;

¹³⁹ غسان رباح, قانون حماية الملكية الفكرية والفنية الجديد, p.54

¹⁴⁰ Lebanese Law on the Protection of Literary and Artistic Property, Articles 19 and 20

- 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.”

It is not permitted to assign or attach the moral rights of the author but these rights could be transmitted by testamentary disposition or inheritance laws.¹⁴¹

Generally, moral rights are defined as the rights of an author or other creative artist to protect the integrity and ownership of their work¹⁴². The term "moral rights" comes originally from the French term "droit moral", indicating the ability of authors to control the fate of their works. Moral rights protect the personal and reputational value of an author's work rather than simply monetary values.¹⁴³

In a case relating to the protection of moral rights, the Summary judge in Beirut, in its Decision No 17/2004 issued on 19/1/2004, stated that only the right of exploitation of the work could be transferred, thus moral right is not transferrable, and in application of law No 75/99, this right gives the author the capacity to object against any modification of the work without his consent, making such modification a violation of the author's property.¹⁴⁴

This decision confirms the theory stating that moral rights cannot be delegated or assigned and that modification of a work without the author's approval is a violation of the law.

¹⁴¹ Lebanese Law on the Protection of Literary and Artistic Property, Articles 21 and 22

¹⁴² WIPO, Understanding Copyright and Related rights, supra,p.11

¹⁴³ For more details see A. Bertrand, Le droit d'auteur et les droits voisins, supra, p.259

¹⁴⁴ Summary judge in Beirut, Decision No 17/2004 issued on 19/1/2004, Music Master Inc v. Nouhad Hadad and Co

B- Exceptions

Exceptions and limitations to copyright are limited cases set by the law in order to keep a balance between the interests of right holders and content users of protected works. These limitations allow protected works to be used without the authorization of the rights holder, with or without payment of compensation¹⁴⁵.

Because of the difference of social and economic conditions in every country, exceptions to copyright and related rights also differ from one country to another. Due to this diversity, international conventions grant only general conditions for the use of limitations and give the freedom to national laws to implement or not a certain exception and to decide its scope of application.¹⁴⁶

The Berne convention acknowledged a three step test to define an exception or a limitation. Several other international treaties also adopted this test. In short, an exception or limitation to copyright is allowed only if:

- It covers only special cases
- It does not conflict with the normal exploitation of the work
- It does not unreasonably prejudice the legitimate interests of the author.¹⁴⁷

The Lebanese copyright law states the exceptions in Articles 23 to 34. These exceptions include copying for personal use (Articles 23 and 24); copying of a limited number of computer software by non-profit educational institutions, universities and public libraries for the purpose of lending them to students (Article 25.1); use for critical or educational purposes (Articles 25.2 and 26); use in judicial or administrative procedures (Article 29); use during official ceremonies or

¹⁴⁵ A. Bertrand, *Le droit d'auteur et les droits voisins*, supra, p.237

¹⁴⁶ WIPO, *Understanding Copyright and Related rights*, supra, p.11

¹⁴⁷ Berne Convention for the protection of literary and artistic works, supra, Article 9(2)

educational activities (Article 33) and use for purposes such as archive, research, criticism, review, advertisement or news reporting (Articles 27, 28, 30, 31 and 34).

The law provides that 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.

The exception mentioned above 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 copy¹⁴⁸. Article 25, which is probably the most controversial article of law No 75/99, is discussed in details in the second part of the thesis¹⁴⁹.

The next Articles (Articles 27-34) allow:¹⁵⁰

¹⁴⁸ Lebanese Law on the Protection of Literary and Artistic Property, Articles 23 and 24

¹⁴⁹ See p. 74 (B Lebanese laws agreement with WIPO)

¹⁵⁰ Lebanese Law on the Protection of Literary and Artistic Property

- The copy or reproduction of 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.
- The making of an additional copy of a work by non-profit-making public libraries 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.
- The copy, reproduction or recording of an audiovisual work of special artistic value by the Ministry of Culture and Higher Education 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.
- The copy, reproduction or recording of a specific work for use in judicial or administrative proceedings and within the limits required by such proceedings.
- The use by the media of 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.
- The publication by the media of 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.
- The display or performance of a work in public during occasions like official ceremonies and activities carried out by educational institutions during which teachers or students use the work.
- The display of 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.

- The copy or reproduction of 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.¹⁵¹

Paragraph II – Copyright infringement and sanctions

In this paragraph, Part I is concerned with the definition of copyright infringement, followed by a discussion on provisional measures for the prevention of infringements. Part B describes compensations and sanctions provided by the law for the punishments of copyright infringers.

A- Copyright infringement and provisional measures

Copyright is infringed through copying the elements of a work that are original and protectable expression. Copyright may also be infringed by unauthorized exercise of any of the other rights of a copyright owner such as distribution.¹⁵²

Lebanese laws have not clearly defined copyright infringement. Nevertheless, we can deduct some actions that form copyright infringements from provisions of the Copyright Law, the Criminal Law and the Customs law.¹⁵³

The most important copyright infringements are the violation of the provisions of the Law on the Protection of Literary and Artistic Property. Acts of piracy like importing, exporting or trafficking pirated products are considered infringements.

¹⁵¹ غسان رباح, قانون حماية الملكية الفكرية والفنية الجديد, p.61

¹⁵² S. Johnson, Guide to intellectual property, supra,p.159

¹⁵³ Unesco, World anti-piracy observatory, Lebanon, 2009, p.10

Other copyright infringements include to put or to instruct fraudulently others to put a false name on a literary or artistic work, to imitate fraudulently the signature or the logo of the author with intent to mislead the buyer.

Also, the imitation of a literary or artistic work and the sell, possession and offer for sale of a pirated or a plagiarized work are violation of the Copyright law.

Adding to these violations are manufacturing or importing for purposes of sale or rental, offering for sale or renting, possessing for the purpose of sale or rental, selling, installing or renting 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; as well as arranging or facilitating for third parties the reception of the transmission or broadcast or transmission.

Finally, importing, consigning to a warehouse or a free zone or transiting sound recordings, or works that are imitations of sound recordings or works enjoying legal protection in Lebanon are also viewed as copyright infringements.¹⁵⁴ The provisions mentioned above apply likewise in the case of violation of related rights.

In this context, Decision No 323/99, issued on 11/10/2001 by the Criminal Single judge in Beirut, confirmed that the acts of imitating, copying and selling a literary work constitute a violation of the literary property and these acts must be subject to sentences.¹⁵⁵

¹⁵⁴ Deduced from several provisions of the Copyright Law, the Criminal Law and the Customs law (Articles 81 to 88 and Article 91 of the Law on the Protection of Literary and Artistic Property, Articles 62 to 66 of the Customs Law).

¹⁵⁵ Criminal Single judge in Beirut, Decision No 323/99, issued on 11/10/2001, Edward Eid v. Al Halabi

This decision affirms that when someone copies and imitates a works protected by the law, he will be punished.

The breach of the Copyright law leads to the application of sanctions, compensation and provisional measures. Provisional measures will be discussed in the next part of this section, leaving the sanctions and compensations to be dealt with in the next section.

Conservatory or provisional measures have two purposes. The first purpose is the prevention of infringements from occurring, especially the entry of infringing goods into the channels of commerce. The second purpose is the preservation of relevant evidence regarding an alleged infringement. Judicial authorities might have the authority to order that provisional measures be executed without advance notice to the alleged infringer.

The reason is to prevent the alleged infringer from relocating the suspected infringing materials to avoid detection.¹⁵⁶

The typical provisional measures are the search of the premises of the infringer and the seizure of suspected goods, the equipment used to create them, and all related documents and other records of the alleged infringing business activities.¹⁵⁷

The Lebanese copyright law states that 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.

¹⁵⁶ WIPO, Understanding Copyright and Related rights, supra,p.15

¹⁵⁷ A. Bertrand, Le droit d'auteur et les droits voisins, supra, p.426

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.¹⁵⁸

The judge of expedited matters, the president of the court of first instance or the public prosecutor are allowed to temporarily seize material constituting evidence of an infringement of copyright or a related right and shall leave it in the custody of the defendant.¹⁵⁹

Decision No 17/2004 issued on 19/1/2004 by the Summary judge in Beirut, emphasized on the jurisdiction of the judge of expedited matters to estimate the necessity and convenience to adopt the right measures for the protection of the violated right or work.¹⁶⁰ The court affirms the authority of the judge to take the suitable decisions to protect works and rights granted to these works.

B- Compensations and sanctions

Compensations and sanctions can be divided into several categories including civil remedies, criminal sanctions and measures to be taken at the border.

Civil remedies grant compensations to the copyright holder for economic injury suffered because of the infringement, mainly in the form of monetary damages.

¹⁵⁸ Lebanese Law on the Protection of Literary and Artistic Property, Article 81

¹⁵⁹ Ibid Article 82

¹⁶⁰ قاضي الامور المستعجلة, قرار رقم ٤٨٩ تاريخ ١٦/١/١٩٩٩. راني صادر، المرجع في اجتهادات الملكية الفكرية، المنشورات الحقوقية صادر، 2006، p.491.

They also create an effective restraint to further infringement, often in the form of judicial orders to destroy the infringing goods and the materials and implements used for producing them.

Criminal sanctions are established first, for the punishment of those who willingly commit acts of piracy of copyright and related rights on a commercial level, and also for the restriction of further infringement. The punishment consists of the imposition of considerable fines and of sentences of imprisonment. Likewise, orders for the seizure and destruction of infringing goods and the materials used to implement them are another form of criminal sanctions.¹⁶¹

Measures to be taken at the border, unlike the measures described above, are actions taken by the customs authorities not by the judicial authorities.

Copyright owners are permitted to apply to customs authorities to hold off the release of goods that are suspected of infringing copyright. The suspension into circulation would provide the holder of copyrights time to start judicial action.¹⁶²

As for the Lebanese copyright law, it states that 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. 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

¹⁶¹ WIPO, Understanding Copyright and Related rights, supra,p.15

¹⁶² Ibid p.15

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.¹⁶³

In addition, any person who, knowingly and with intent to make a profit, infringes or attempts to infringe copyright or related rights, 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.

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. Police, customs officers and employees of the Intellectual Property Protection Office sworn in to that effect have authority to identify, inventory and sample suspect objects. These employees perform their duties pursuant to an order or a mandate issued by the public prosecutor or the Intellectual Property Protection Office.¹⁶⁴

This is the end of Part I which provided definition, history and a detailed discussion on Lebanese laws concerning copyrights. Part II reviews the application of these laws related to copyrights.

¹⁶³ Lebanese Law on the Protection of Literary and Artistic Property, Articles 83 and 84

¹⁶⁴ Lebanese Law on the Protection of Literary and Artistic Property, Article 86

Part II

Application of Copyright laws in Lebanon

The first part of this thesis described the legal framework of protection with emphasis on definitions, history and description of the laws as it is written on papers. The emphasis in this part shall be on the actual application of the laws.

While legislation concerning intellectual property rights in general and copyright in particular needs to be constantly updated to keep up with the new technologies, it is crucial for these laws to be administered and effectively enforced in order to be effective.

Lebanon's copyright legislation is generally compliant with Trade-Related Intellectual Property Rights (TRIPS)¹⁶⁵, though Lebanon is still not a member of the World Trade Organization (WTO)¹⁶⁶. Still, enforcement of intellectual property rights in general, and copyright in particular remains weak. The ministry of economy and trade (MoET)'s Intellectual Property Protection Office (IPPO) has made some efforts to improve the Intellectual Property Right system.¹⁶⁷

Still this system is affected by limited financial and human resources, plus insufficient political will. Lebanon's Internal Security Forces (ISF), Customs and

¹⁶⁵ Agreement on trade related aspects of intellectual property rights, in the results of the Uruguay round of multilateral negotiations, the legal texts, Geneva, World Trade Organization, 1995

¹⁶⁶ see The World Trade Organization (WTO), Accession of the Lebanese Republic, Factual Summary of Points Raised, December 2005

¹⁶⁷ [www.economy.gov.lb/Intellectual property](http://www.economy.gov.lb/Intellectual%20property)

the Lebanese judiciary system also play a role in enforcement. The Lebanese judiciary system has enhanced its understanding of IPR in recent years. However, deficiencies like awareness of the economic repercussions of IPR violations, judicial prosecution of IPR cases, and strong court decisions with punishments prohibitive enough to prevent other infringements remain a problem.¹⁶⁸

The ministry of economy and trade established new draft laws and amendments to existing laws to improve the IPR system but they are lacking parliamentary approval. MoET also launched an online registration service in January 2013 for copyrights plus registration is still accepted in person at the Ministry.¹⁶⁹

The second part of the thesis discusses the application of copyright laws in Lebanon. The first chapter reviews the compliance of Lebanese laws with International standards. The highlight is on the conformity of Lebanese laws with WIPO standards starting with a summary on WIPO standards and Lebanon's occurrence on the Watch list. Then the emphasis is on the World Trade Organization (WTO) and the Trips agreement. The second chapter focuses on the actual enforcement of copyright laws in Lebanon with emphasis on the role of enforcement authorities such as courts, Ministry of economy and trade, Internal Security Forces and customs officials.

The other part deals with piracy highlighting definitions, nature and types of piracy, plus a comparison between piracy and plagiarism and finally steps to reduce piracy.

¹⁶⁸ International Intellectual Property Alliance, Special 301 Report Lebanon, www.iipawebsite.com

¹⁶⁹ www.economy.gov.lb

Chapter I

Compliance of Lebanese laws with International standards

The Lebanese Copyright Law largely complies with international standards and WTO regulations but needs some amendments to become fully compatible. These amendments have been delayed in parliament since 2007. Lebanon's parliament ratified the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty (WPPT) in February 2010. Ratification documents have not yet been deposited with WIPO, however, since this would also require amendments to the copyright law.¹⁷⁰ The U.S. Trade Representative's Special 301 annual review of intellectual property protection worldwide has kept Lebanon on its watch list since 2008.¹⁷¹ The first section of this chapter deals with the conformity of Lebanese laws with WIPO standards and the occurrence of Lebanon on the watch list. Section two discusses the compliance with WTO/Trips agreement and the harmonization of legislative framework with TRIPs.

Section I- Conformity with WIPO standards

This section deals with the compliance of Lebanese laws concerning copyright with WIPO standards. The first paragraph starts with a summary on WIPO standards followed by the agreement of Lebanese laws with these standards. The second paragraph is concerned with the watch list starting with a definition of the "Special 301" Report and the Watch list and ending with the occurrence of Lebanon on the Watch list.

¹⁷⁰ International Intellectual Property Alliance, Special 301 Report Lebanon, *supra*

¹⁷¹ See p.81, B- Lebanon's occurrence on the Watch list

Paragraph I – Compliance with WIPO standards

A summary on WIPO standards is needed in part A, followed by Lebanese laws agreement with these standards discussed in details in part B.

A- Summary on WIPO standards

While in the introduction part of the thesis we reviewed a summary on WIPO, its history and its goals¹⁷², in this paragraph we shall discuss the role of WIPO in shaping international IP rules.

WIPO is the global forum for intellectual property policy, services, information and cooperation. Because for IP to work well and people everywhere can benefit from it, the international IP system needs to be efficient. It needs to be easily accessible worldwide. And it needs a set of rules, agreed internationally, which balance the interests of those who produce and those who consume the fruits of innovation and creativity. WIPO's role is to enable governments, businesses and individuals to realize the potential of IP as a driver of innovation since in every society, innovation is one of the most powerful forces for human progress.¹⁷³

Some 130 years ago, when governments signed the first international IP treaties, they laid the foundations on which the international legal framework for IP is built. Those agreements, the Paris Convention for the Protection of Industrial Property and the Berne Convention for the Protection of Literary and Artistic Works, remain cornerstones of the IP system today. But the world has changed beyond the wildest imaginings of the authors of those first treaties. And IP laws must keep adapting if

¹⁷² See Introduction p.9

¹⁷³ غسان رباح, قانون حماية الملكية الفكرية والفنية الجديد, p.196.

they are to serve the needs of our digital, interconnected, global society, today and in the years to come.¹⁷⁴

WIPO administers several international treaties in the area of copyright and related rights. The most important conventions are namely the Berne convention for the protection of literary and artistic works, Rome convention for the protection of performers, producers of phonograms and broadcasting organizations, Performances and Phonograms Treaty (WPPT) and Copyright Treaty (WCT).

These conventions were dealt with in details in the first part of the thesis in the section concerning conventions.¹⁷⁵

To add some information, as of May 2017, there will be 95 Parties to WIPO's Performances and Phonograms Treaty (WPPT) and 95 Parties to the WIPO Copyright Treaty (WCT), collectively known as the WIPO Internet Treaties. These treaties, completed in 1996 and which entered into force in 2002 have raised the standard of copyright protection around the world, particularly with regard to online delivery of copyrighted content. The treaties, which include certain exclusive rights, require parties to provide adequate legal protection and effective legal remedies against the circumvention of technological protection measures (TPMs)¹⁷⁶ as well as certain acts affecting rights management information.

¹⁷⁴ WIPO, Making IP work, WIPO publication No 1060(E), Geneva, p.4

¹⁷⁵ See Part I, Chapter I, Section II, Conventions p.27

¹⁷⁶ Technological Protection Measures (TPMs) are often used to protect copyright works, for example, through encryption on DVDs. TPMs can have an important role in enabling copyright owners to offer content to consumers in different ways, as well as protecting against unlawful copying (piracy).

The next paragraph traces the compliance of Lebanese IPR regime with international standards mainly the agreement of the Lebanese Copyright law with the Berne convention, the WIPO Internet Treaties and the Trips agreement.

B- Lebanese laws agreement with WIPO

The Lebanese Copyright Law no 75/99 provides, apparently, a firm basis for copyright protection for works and sound recordings. The law provides stiff penalties (on the books) for copyright infringement, stiff penalties against those who traffic in devices that receive, or those who arrange the receipt of, unauthorized transmissions of broadcasts, dedicated to a section of the public who pay a fee to receive such broadcasting, (i.e., cable pirates), confiscation of illegal products and equipment, the closure of outlets and businesses engaged in pirate activities, and a Berne-compatible evidentiary presumption of copyright ownership¹⁷⁷. The law also provides right holders with a broad communication to the public right.¹⁷⁸

Unfortunately, the law remains deficient with respect to international standards in several aspects. The government of Lebanon must consider the consequences of its failure to bring its law into compliance with international standards. The Lebanese government is still stalling to amend its Copyright Law of 1999 and related laws in order to be able for accession to the WTO and to implement the relevant international treaties related to WTO accession¹⁷⁹. These include most notably the TRIPS Agreement, the latest version of the Berne Convention (Paris 1971 act), and

¹⁷⁷ International Intellectual Property Alliance, Special 301 Report Lebanon, *supra*

¹⁷⁸ Lebanese Law on the Protection of Literary and Artistic Property, Article 15

¹⁷⁹ WTO, Accession of the Lebanese Republic, Factual Summary of Points Raised, *supra*

the WCT and WPPT, to which Lebanon's previous National Assembly had ratified, but which reportedly the current National Assembly may need to ratify again. The WCT and WPPT should then be deposited in Geneva with the WIPO. It is important that the government take steps to implement these conventions into national legislation.¹⁸⁰

So mainly, the Copyright law is being reviewed for drafting new provisions on copyrights aiming at adapting it to the electronic environment, incorporating in it provisions of the Appendix to the Berne Convention and redrafting the provisions on "Exceptions" for more compatibility with Berne language including Article 25 of the law.¹⁸¹

One of the main deficiencies in Lebanese copyright law no 75/99 is the provision of Article 25. This Article states¹⁸²: "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

¹⁸⁰ International Intellectual Property Alliance, Special 301 Report Lebanon, supra

¹⁸¹ Unesco, World anti-piracy observatory, Lebanon, supra, p.3

¹⁸² Law on the Protection of Literary and Artistic Property

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.”

This Article was amended by Decision No. 16/2002 (July 2002).¹⁸³

As seen above, Article 25 presents a broad exception and permits copying of software, and even as limited by Decision No. 16/2002 (July 2002), does not meet the standards and requirements of the Berne Convention or the TRIPS Agreement¹⁸⁴.

Most copyright laws today contain specific exceptions for the copying of computer programs under narrowly defined circumstances permitting the copying of certain kinds of works for personal use and in general for back-up purposes. On the other hand, Article 25 violates the requirements of Berne and TRIPS since it “conflicts with a normal exploitation of the work” (software aimed at the educational market) and it “unreasonably prejudices the legitimate interests of right holders” (eliminating or curtailing the educational market for software).¹⁸⁵

Some other deficiencies in the Lebanese Copyright Law of 1999 include absence of express distribution or rental right for sound recordings, violating the TRIPS

¹⁸³ Ministers of Culture & Education and higher Education, Decision No 16/2002, Mechanism to proceed to the copying and reproduction of Computer Programs by non-lucrative Educational & University Institutes and Public Libraries, July,1,2002, Beirut

¹⁸⁴ Article 9(2) of the Berne Convention (Paris [1971] text) states: “It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author.”

¹⁸⁵ International Intellectual Property Alliance, Special 301 Report Lebanon, 2013

agreement.¹⁸⁶ In addition, works and sound recordings are not explicitly given full retroactive protection in line with international treaties.¹⁸⁷

Lebanon is a member of both the Berne Convention for the Protection of Literary and Artistic Works (Rome [1928] Act), as well as the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention 1961). Lebanon must accede to the Paris Act of 1971 of the Berne Convention as well as the Geneva (phonograms) Convention, in order to provide clearer protection to international sound recordings.¹⁸⁸

Concerning the emerging global information society, various Lebanese lawmakers showed interest in joining the necessary treaties. Most of the works and creations these days are diffused on the World Wide Web. So it is important that Copyright owners can control the security and integrity of their works online. Because without such guarantees, there will be little motivation to make these creations available online. Accordingly, the protection of copyright in the networked environment will grant full potential of electronic commerce. Ratification and implementation of the WIPO Internet treaties, which are the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) would bring copyright protection in Lebanon into the digital age. Specifically, the WIPO treaties require effective legal remedies against the circumvention of technical measures used by content owners to protect their works. Lebanon's representatives at international copyright seminars have made positive statements to consider swift accession and implementation of these treaties.¹⁸⁹

¹⁸⁶ TRIPS agreement, Article 14

¹⁸⁷ TRIPS agreement and the Berne convention

¹⁸⁸ www.wipo.int.com/Lebanon legal information

¹⁸⁹ International Intellectual Property Alliance, Special 301 Report Lebanon, 2013

Paragraph II - Watch list

In this paragraph, the emphasis is on the watch list, a report prepared by the Office of the United States Trade Representative to identify countries that do not adequately protect U.S intellectual property rights, and the occurrence of Lebanon on this watch list.

A- Definition of Watch list

In 1988, the Congress gave the Office of the United States Trade Representative (USTR)¹⁹⁰ a club in the Omnibus Trade and Competitiveness Act of 1988¹⁹¹. The goals of this act are to secure open markets, reduce trade barriers and implement an effective system of trade procedures. The club came in the form of a "Special Section 301" which requires USTR to identify countries that do not adequately protect U.S intellectual property rights.¹⁹²

The "Special 301" Report¹⁹³ reflects the outcome of a Congressionally-mandated annual review of the global state of intellectual property rights (IPR) protection and enforcement. The review reflects the Administration's resolve to encourage and maintain enabling environments for innovation, including effective IPR

¹⁹⁰ The Office of the United States Trade Representative (USTR) is an agency of more than 200 committed professionals with decades of specialized experience in trade issues and regions of the world. They negotiate directly with foreign governments to create trade agreements, to resolve disputes, and to participate in global trade policy organizations. USTR was created in 1962 and has offices in Washington, Geneva, and Brussels.

¹⁹¹ The Omnibus Foreign Trade and Competitiveness Act of 1988 is an act passed by the United States Congress and signed into law by President Ronald Reagan.

¹⁹² William F Patry, Copyright Law and Practice, Volume 2, Greenwood Press, 1994, p.1120

¹⁹³ The Office of the United States Trade Representative (USTR), special 301 report, www.ustr.gov

protection and enforcement, in markets worldwide, which benefit not only U.S. exporters but the domestic IP-intensive industries in those markets as well. The Report identifies a wide range of concerns that limit innovation and investment, including:

- The deterioration in the effectiveness of IPR protection and enforcement and overall market access for persons relying on IPR in a number of trading partner markets;
- Reported inadequacies in trade secret protection in countries around the world, as well as an increasing incidence of trade secret misappropriation;
- Troubling “indigenous innovation” policies that may unfairly disadvantage U.S. rights holders in foreign markets;
- The continuing challenges of copyright piracy and the sale of counterfeit trademarked products on the Internet;
- Additional market access barriers, including nontransparent, discriminatory or otherwise trade-restrictive, measures that appear to impede access to healthcare and copyright-protected content;
- Ongoing, systemic IPR enforcement issues at borders and in many trading partner markets around the world.¹⁹⁴

The International Intellectual Property Alliance (IIPA) collects information on actual or perceived copyright infringement in the world and advises the Office of the United States Trade Representative (USTR) on which countries should be put on the Special 301 Watch list¹⁹⁵.

The International Intellectual Property Alliance (IIPA) is a private sector coalition, formed in 1984, of trade associations representing U.S. copyright-based industries

¹⁹⁴ USTR, special 301 report, *supra*

¹⁹⁵ S. Isiko Strba, International copyright law and access to education, *supra*, p.33

in bilateral and multilateral efforts working to improve international protection and enforcement of copyrighted materials and open up foreign markets closed by piracy and other market access barriers¹⁹⁶.

Each year the USTR must identify countries which do not provide "adequate and effective" protection of intellectual property rights and carry on annual surveys of foreign countries' intellectual property laws and policies¹⁹⁷.

A Special 301 Sub-Committee advises the USTR on which countries to designate as "priority foreign countries" or to include in the watch lists. The Special 301 Sub-Committee is chaired by the office of USTR and its members include the Department of Commerce, the Patent and Trademark Office, the Department of State, the Department of Health and Human Services, the Department of Agriculture, the Copyright Office, the Council of Economic Advisers, and other agencies. U.S. companies provide extensive comments in the annual National Trade Estimate Report. The Special 301 Sub-Committee also takes the views of foreign governments and the views of U.S. embassies on intellectual property rights.¹⁹⁸

The law requires the annual report to establish a list of "Priority Foreign Countries" considered having inadequate intellectual property laws; these countries may be subject to sanctions. Other than the category of "priority foreign country", two non-statutory categories have been created, "Priority Watch List" and "Watch List". Countries can be investigated, and if found in breach with a trade agreement, can

¹⁹⁶ International Intellectual Property Alliance, www.iipawebsite.com

¹⁹⁷ D. Bouchoux, Intellectual property, The law of trademarks, copyrights, patents, and trade secrets, *supra*, p.284

¹⁹⁸ www.ustr.gov/About_ustr

be subject to "retaliation actions" under Section 301 of the Trade Act of 1974. USTR consider Priority Watch list countries as having "serious intellectual property rights deficiencies" that require increased USTR attention. On the other hand, Watch List countries encompass "serious intellectual property rights deficiencies" but are not yet put on the Priority Watch list. The USTR can move countries from one list to the other, or remove them from the lists, throughout the year.¹⁹⁹

Countries placed on the Special 301 Report Watch lists may be subject to sanctions including the initiation of dispute settlement proceedings at the World Trade Organisation (WTO) or other relevant trade agreement, the elimination of tariff preferences unilaterally granted, such as the Generalized System of Preferences (GSP) and unilateral trade sanctions if the country is not member of the World Trade Organisation (WTO) or any other trade agreement²⁰⁰.

According to the International Intellectual Property Alliance (IIPA) the Special 301 Report and the Watch lists is used to pressure other nations to adopt stricter copyright laws and take a more active role in combating copyright infringement²⁰¹.

B- Lebanon's occurrence on the Watch list

Lebanon was placed on the Watch List in 1999 and remained there in 2000 but was then elevated to the Priority Watch List in 2001, where it remained until 2007.

¹⁹⁹ Peter Drahos, Global law reform and rent seeking: the case of intellectual property, Australian journal of corporate law, 1996, p.10

²⁰⁰ D. Bouchoux, Intellectual property, The law of trademarks, copyrights, patents, and trade secrets, supra, p.284

²⁰¹ International Intellectual Property Alliance, www.iipawebsite.com

Afterwards Lebanon was placed on the watch list again in 2008 and continued to be there till 2017²⁰².

IIPA filed a petition in 2001 to have the U.S. government evaluate whether to suspend some or all of Lebanon's benefits under the Generalized System of Preferences trade program for failure to adequately protect copyright. U.S trade preference programs such as the Generalized System of Preferences (GSP) provide opportunities for many of the world's poorest countries to use trade to grow their economies and climb out of poverty²⁰³.

GSP is the largest and oldest U.S. trade preference program. Established by the Trade Act of 1974, GSP promotes economic development by eliminating duties on thousands of products when imported from one of 120 designated beneficiary countries and territories. GSP grants preferential duty- free treatment for over 3,500 products from a wide range of designated beneficiary countries, including many least- developed beneficiary developing countries.²⁰⁴

The GSP program has been important to Lebanon's economy. Imports to the U.S. from Lebanon enjoyed duty free treatment under the GSP Program. It is essential to the continued growth that Lebanon provides free and open markets and high levels of protection to copyrights.

In 2013, IIPA formally requested that its petition be withdrawn in light of some progress made in Lebanon on enforcement and with respect to pay-tv piracy.²⁰⁵

²⁰² International Intellectual Property Alliance, www.iipawebsite.com, 2017 historical chart

²⁰³ P. Drahos, Global law reform and rent seeking: the case of intellectual property, *supra*, p.10

²⁰⁴ U.S. Generalized System of Preferences Guidebook, Office of the United States Trade Representative, D.C. October 2015, www.ustr.gov

²⁰⁵ International Intellectual Property Alliance, Special 301 Report Lebanon, 2013

As mentioned above, Lebanon is kept on the Watch List in 2017. The 2017 special 301 report by Office of the United States Trade Representative appreciates the continued efforts of the Ministry of Economy and Trade's Intellectual Property Protection Office and law enforcement agencies to strengthen Lebanon's administrative and enforcement capacity for IP protection. The report states that Lebanon still needs to employ additional resources to support this work.

Lebanon should also allocate financial and human resources to law enforcement institutions, including to ministry inspectors, police officers, and customs officials, as well as to facilities to store seized counterfeit goods and the mechanisms to destroy such seized goods.

The report welcomes the collaboration between private sector right holders and Lebanese enforcement agencies to determine pirated goods in the local market and help authorities in IP enforcement.²⁰⁶

In a recent 301 special recommendation report²⁰⁷, IIPA has hoped Lebanon's development goals, including its World Trade Organization (WTO) accession process, could be moved forward, and that enhancement of intellectual property protection standards would play an important role within that context. IIPA has noted incremental progress in copyright protection in previous submissions and in recent testimony before USTR.

As to the removal of Lebanon from the Special 301 list, both the USTR and IIPA find that hard to achieve given that Lebanon still needs to establish a proper legal framework for copyright protection, including online, and to fully implement its laws to reduce piracy and foster growth in the creative sectors.

²⁰⁶ The Office of the United States Trade Representative (USTR), 2017 special 301 report

²⁰⁷ International Intellectual Property Alliance, www.iipawebsite.com, 2017 historical chart

Lebanon still must guarantee that draft amendments to its Copyright Law (No 75/99), as recommended by the Ministry of Economy and Trade are passed by the National Assembly. These amendments comprise provisions compatible with TRIPS, WIPO Copyright Treaty (WCT), and WIPO Performances and Phonograms Treaty (WPPT). In addition, Lebanon must take all steps necessary to join the Berne Convention (Paris 1971 text), the WCT, and the WPPT.

Section II- compliance with WTO/Trips agreement

Section two highlights the compliance of the Lebanese copyright regime with the World Trade Organization (WTO) in general and the Trips agreement in particular. The first paragraph notes a summary on World Trade Organization starting with a definition and history of WTO followed by a discussion on the TRIPs agreement.

The second paragraph outlines the harmonization of legislative framework with TRIPs agreement beginning with steps of harmonization and finishing with the ratification of laws to comply with these international treaties.

Paragraph I – Summary on World Trade Organization

Paragraph I focuses on the definition and history of the World Trade Organization (WTO) in its first part followed by a description of the Agreement on Trade-Related Aspects of Intellectual Property Rights (Trips agreement).

A- Definition and history

The World Trade Organization (WTO) is the only international organization dealing with the global rules of trade between nations. Its main function is to ensure that trade flows as smoothly, predictably and freely as possible.²⁰⁸

²⁰⁸ About wto, www.wto.org

Consumers and producers know that they can enjoy secure supplies and greater choice of the finished products, components, raw materials and services that they use. Producers and exporters know that foreign markets will remain open to them.

WTO administers the implementation of a set of agreements, generally called WTO agreements. These agreements include the General Agreement on Tariffs and Trade (GATT)²⁰⁹, some other agreements in the goods sector and in addition agreements in the two other areas, services and intellectual property²¹⁰.

Besides, the WTO contains a framework for the enforcement of rights and obligations in these areas²¹¹.

The agreements generally contain disciplines on governments and in some cases on enterprises. WTO's agreements are negotiated and signed by a majority of the world's trading nations, and ratified in their parliaments. These agreements are the legal ground-rules for international commerce. Essentially, they are contracts, guaranteeing member countries important trade rights. They also bind governments to keep their trade policies within agreed limits to everybody's benefit.

Although these agreements are negotiated by governments, their goal is to assist producers of goods and services, exporters, and importers to manage their business. With the establishment of WTO, the international trading system came of age. The vast majority of international trade is now subject to this rule based

²⁰⁹ The General Agreement on Tariffs and Trade was the first worldwide multilateral free trade agreement. It was in effect from June 30, 1948 until January 1, 1995. It ended when it was replaced by the World Trade Organization

²¹⁰ Bhagiras Lal Das, *The World Trade Organisation, a guide to the framework for international trade*, Zed Books Ltd, 1999, p.3

²¹¹ Patrick FJ Macrory, Arthur E Appleton, Michael G Plummer, *The world trade organization: legal, political and economic analysis*, Volume I, Springer, 2005, p.10

trading system. Almost all of the major trading nations can be counted among its 164 members. The WTO hopes the world economy would come to be more prosperous, peaceful and accountable. The decisions in the WTO are taken by consensus among all member countries and they are ratified by members' parliaments.²¹²

Disagreements in trade are directed into the WTO's dispute settlement process. The process concentrates on interpreting agreements and commitments, and making sure that countries' trade policies conform to them. Accordingly, the risk of disputes turning into political or military conflict is decreased.²¹³

The WTO began life on 1 January 1995, but its trading system is half a century older. Since 1948, the General Agreement on Tariffs and Trade (GATT) had provided the rules for the system. Over the years GATT evolved through several rounds of negotiations. The last and largest GATT round, was the Uruguay Round which lasted from 1986 to 1994 and led to the WTO's creation. Whereas GATT had mainly dealt with trade in goods, the WTO and its agreements now cover- besides trade in Goods: trade in Services, and in traded inventions, creations and designs (intellectual property)²¹⁴.

The WTO has a formal status of an intergovernmental organization that had not been available to the GATT²¹⁵.

²¹² P. Macrory, A. Appleton, M. Plummer, The world trade organization: legal, political and economic analysis, supra, p.10

²¹³ About wto, www.wto.org

²¹⁴ WTO brochure(FAQ), www.economy.gov.lb

²¹⁵ B. Lal Das, The World Trade Organization, a guide to the framework for international trade, supra, p.5

Some basic principles are applicable to all multilateral agreements concerning goods. As for the areas concerning services and intellectual property rights, these principles are not applicable unless they are explicitly established in the agreements related to these areas. The two most important provisions are the most favored nation treatment and the national treatment. Some other general provisions include the obligations relating to local governments, the status of laws and obligations not applied and transparency²¹⁶.

Next we will discuss the TRIPS agreement which is the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights.

B- Trips Agreement

The TRIPS Agreement, which came into effect on 1 January 1995, is to date the most comprehensive multilateral agreement on intellectual property. It is the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights. The Agreement negotiated in the 1986-94 Uruguay Round²¹⁷, introduced intellectual property rules into the multilateral trading system for the first time.

Before the Uruguay Round negotiations, there was no specific agreement on

²¹⁶ Ibid, p.13

²¹⁷ The Uruguay Round was the 8th round of multilateral trade negotiations conducted within the framework of GATT, spanning from 1986 to 1994 and embracing 123 countries as "contracting parties". The Round led to the creation of the World Trade Organization, with GATT remaining as an integral part of the WTO agreements. The broad mandate of the Round had been to extend GATT trade rules to areas previously exempted as too difficult to liberalize (agriculture, textiles) and increasingly important new areas previously not included (trade in services, intellectual property, investment policy trade distortions). The Round came into effect in 1995.

intellectual property rights in the framework of the GATT multilateral trading system. However, some principles contained in the GATT had a bearing on intellectual property measures taken on imports or exports²¹⁸.

TRIPS is often described as one of the three pillars of the WTO, the other two being trade in goods (the traditional domain of the GATT) and trade in services²¹⁹. All the WTO agreements apply to all WTO members. Each member accepts all the agreements as a single package with a single signature, making it, a single undertaking. The TRIPS Agreement is part of that package; therefore, it applies to all WTO members. In addition, the provisions of the agreement are subject to the integrated WTO dispute settlement mechanism.

The GATT based TRIPS initiatives promoted by the developed countries finally legalized the standard towards more protection of intellectual property rights.

The advent of the digital age has greatly contributed to the emergence of this new trend²²⁰.

The agreement deals with some general issues like applying basic principles of the trading system and other international intellectual property agreements and granting protection to intellectual property rights. The agreement also provides how countries should enforce those rights adequately in their own territories and how to settle disputes on intellectual property between members of the WTO²²¹.

The areas of intellectual property covered by TRIPS are: copyright and related rights, trademarks including service marks, geographical indications including

²¹⁸ Article XX(d) of the GATT agreement

²¹⁹ See Section II, Paragraph I, A, Definition and history p.84

²²⁰ Carlos M Correa, Abdulqawi A Yusuf, Intellectual property and international trade: the TRIPS Agreement, Wolters Kluwer, 2008, p.9

²²¹ WTO brochure(FAQ), www.economy.gov.lb

appellations of origin, industrial designs, patents including the protection of new varieties of plants, the layout-designs of integrated circuits and undisclosed information including trade secrets and test data.²²²

The main concern in this thesis is copyright so only the area of copyright and related rights are dealt with. Just as literary works are protected under the Berne Convention, computer programs are protected under The TRIPS agreement. The agreement also outlines how databases should be protected and expands international copyright rules to cover rental rights. Authors of computer programs and producers of sound recordings now have the right under TRIPS to forbid the commercial rental of their works to the public. A similar exclusive right applies to films where commercial rental has led to widespread copying, affecting copyright-owners' potential earnings from their films. In addition, the agreement grants performers the right to prevent unauthorized recording, reproduction and broadcast of live performances for at least 50 years. Also producers of sound recordings have the right to prevent the unauthorized reproduction of recordings for a period of 50 years.²²³

The basic principles of the TRIPS agreement, like in other WTO agreements, are national treatment (treating one's own nationals and foreigners equally), and most-favored-nation treatment (equal treatment for nationals of all trading partners in the WTO). National treatment is also a key principle in other intellectual property agreements outside the WTO. The TRIPS Agreement adds another crucial principle: intellectual property protection should contribute to technical innovation

²²² Overview: the TRIPS Agreement, www.wto.org

²²³ WTO brochure(FAQ), www.economy.gov.lb

and the transfer of technology. The agreement states that producers and users should benefit, and economic and social welfare should be enhanced.²²⁴

During the Uruguay Round negotiations, it was recognized that the Berne Convention already, for the most part, provided adequate basic standards of copyright protection. Thus it was agreed that the point of departure should be the existing level of protection under the Paris Act of 1971, the latest act of the Berne Convention²²⁵. Sometimes, the level of protection granted by the TRIPS agreement is lower than the protection given by the Berne Convention.

But the TRIPS Agreement adds a substantial number of additional obligations on matters where the pre-existing conventions are silent or were seen as being inadequate. The TRIPS Agreement is thus sometimes referred to as a Berne and Paris-plus agreement²²⁶.

Paragraph II–Harmonization of the Lebanese legislative framework with WTO/TRIPS

The Lebanese legislative framework must be compliant with WTO standards so that Lebanon could accede to the WTO. The first part is concerned with the steps of harmonization while the second part deals with the ratification of the laws.

²²⁴ C. Correa, Intellectual property and international trade: the TRIPS Agreement, *supra*, p.17

²²⁵ The point of departure is expressed in Article 9.1 under which Members are obliged to comply with the substantive provisions of the Paris Act of 1971 of the Berne Convention, i.e. Articles 1 through 21 of the Berne Convention (1971) and the Appendix thereto. However, Members do not have rights or obligations under the TRIPS Agreement in respect of the rights conferred under Article 6bis of that Convention, i.e. the moral rights.

²²⁶ A. Bertrand, *Le droit d’auteur et les droits voisins*, *supra*, p.477

A- Steps of harmonization

Generally speaking, any state enjoying autonomy in the conduct of its trade policies may join or accede to the WTO after the approval of WTO members on the terms. To start the accession process to the WTO, an applicant country presents a communication to the Director-General of the WTO stating its request to accede to the WTO under Article XII. Afterwards, the General Council reviews the application and establishes a working party. The working party is chaired by a Chairperson selected after consultations with WTO Members and the applicant.²²⁷

The working party's mission is analyzing the application of the country requesting the accession to the WTO, under Article XII, and presenting to the General Council/Ministerial Conference some recommendations.

In broad terms, the accession goes through four stages²²⁸. The first stage includes the "submission of a Memorandum on Foreign Trade Regime (MFTR)". It describes all aspects of trade and economic policies that have a bearing on WTO agreements.

Next, comes the phase of "Questions and Answers (Q&A) and Working Party Meetings". Following the circulation of the Memorandum, members of the working party ask questions in relation to it to obtain more information about the applicant's foreign trade regime. Replies are discussed in working Party Meetings.

The phase of "bilateral negotiations" comes next. Just as the working party makes enough progress on principles and policies, bilateral talks commence between the prospective new member and individual countries on market access issues concerning goods and services.

²²⁷ See www.wto.org

²²⁸ WTO brochure(FAQ), www.economy.gov.lb

Finally the “Report, Protocol of Accession and Entry into Force” phase begins with the working party finalizing the terms of accession. This phase starts after the completion of the examination of the applicant’s trade regime and the parallel bilateral market access negotiations. After the finalization of the Draft Report, Draft Protocol and Schedules on Goods and Services, the working party presents the package to the WTO General Council/Ministerial Conference for approval. If the General Council/Ministerial Conference decides to accept the package, the Protocol of Accession enters into force. The applicant becomes a WTO Member thirty days after the acceptance.²²⁹

Lebanon is not yet a member of the WTO. In brief, Lebanon applied for WTO accession in January 1999 and a Working Party was established in April 1999. In October 2000, the Government adopted an Accession Master Plan for the implementation of the WTO Accession. The document provided an assessment of the economic and legislative reform required for conformity to requirements of the WTO and ushered in the required legislative reform drive.²³⁰

In addition, The Ministry of Economy and Trade was designated to lead the accession process. A WTO unit was set up in May 2001 and was allocated the necessary human resources of lawyers and trade specialists. The Memorandum of Foreign Trade Regime (MFTR) covering all aspects of Lebanon’s trade and legal regime was presented to the Working Party.²³¹

²²⁹ WTO brochure(FAQ), www.economy.gov.lb

²³⁰ WTO, Accession of the Lebanese Republic, Factual Summary of Points Raised, *supra*

²³¹ See www.economy.gov.lb

Working Party meetings have taken place in Geneva whereby the Working Party examined Lebanon's replies to the questions posed by WTO Members based on the information provided in the memorandum (MFTR).²³²

There is no time frame for concluding negotiations to accede to the WTO. At this stage, the acceding of Lebanon to the WTO and the concluding of negotiations rely on many factors connected together to determine the conclusion date for negotiations. These factors include a country's readiness regarding legislation, documentation and offers, and fitting working party meetings in the overloaded WTO schedule (since WTO member countries are mainly preoccupied with concluding the on-going multilateral negotiations). They also comprise bilateral negotiations (such as the readiness of WTO members to engage in bilateral talks) and multilateral negotiations.²³³

B- Ratification of Laws

Lebanon was a founding member of the GATT, and one of the attempts to be a contributor to the multilateral trading system is the accession to the WTO. The involvement in the international trading system would help Lebanon access new markets and improve the Lebanese economy. Lebanon has been making efforts to make its policies and practices comply with WTO procedures since the accession to WTO is crucial for Lebanon's economic development and integration into the world trading system. Despite the efforts made by Lebanon to comply with WTO rules and principles, additional work is required in order to fully implement the WTO Agreements.²³⁴

²³² WTO, Accession of the Lebanese Republic, Factual Summary of Points Raised, *supra*

²³³ WTO brochure(FAQ), www.economy.gov.lb

²³⁴ WTO, Accession of the Lebanese Republic, Factual Summary of Points Raised, *supra*

Lebanon is working to introduce some new legislation before accession to the WTO. The legislative reform consists in modernizing existing laws, minimizing restrictions and simplifying procedures. Generally, trade related legislation presented by a WTO Member country or country in the process of accession must be conformed to the relevant WTO Agreements.²³⁵

The Lebanese government is working on some laws that are awaiting approval and enactment²³⁶.

The object of this paragraph shall be on the compliance of Lebanese laws with the TRIPS agreement since it is the agreement related to intellectual property.

The World Intellectual Property Organization (WIPO) organized an assessment in 2002 which stated that the Lebanese legislation on Intellectual Property complies with the requirements of the TRIPS Agreement²³⁷. Nonetheless, some features need to be added or modified so that Lebanon could profit from exceptions and other limitations that are allowed under international conventions referred to by the TRIPS Agreement.

The TRIPS Agreement states that WTO member countries must comply with the substantive obligations of the main conventions of the World Intellectual Property

²³⁵ WTO brochure(FAQ), www.economy.gov.lb

²³⁶ Some of these laws are the draft law on International Trade and Licensing, draft Law on food, draft law on standard, technical regulations and conformity assessment procedures, draft Law on plant quarantine, Draft Law on animal quarantine and Law on anti-dumping, countervailing and safeguard measures.

²³⁷ www.wipo.int.com

Organization (WIPO), the Paris Convention on industrial property, and the Berne Convention on copyright, in their most recent versions²³⁸.

Every substantive provision of these conventions is incorporated by reference except for the provisions of the Berne Convention on moral rights.

So, under the TRIPS Agreement, these provisions are obligations for WTO member countries; that means these countries must implement these provisions, and apply them to the individuals and companies of all other WTO members. The TRIPS Agreement also introduces additional obligations in areas which were not addressed in these conventions, or were thought not to be sufficiently addressed in them. The TRIPS Agreement is therefore sometimes described as a Berne and Paris-plus Agreement.²³⁹

In addition, the TRIPS Agreement adopts the provisions of some other international agreements on intellectual property rights.

Article 2 of the TRIPS Agreement specifies that nothing in Parts I to IV of the agreement shall derogate from existing obligations that members may have to each other under the Paris Convention, the Berne Convention, the Rome Convention and the Treaty on Intellectual Property in respect of integrated circuits.²⁴⁰

WTO member countries are not obliged to adhere to the pre-existing international conventions that TRIPS refers to, but they must apply the provisions of these Agreements as WTO/TRIPS obligations.

²³⁸ WIPO, Agreement between the world intellectual organization and the World trade organization (1995), TRIPs Agreement (1994), Geneva.

²³⁹ A. Bertrand, *Le droit d'auteur et les droits voisins*, supra, p.447

²⁴⁰ TRIPs Agreement, supra

Lebanon is already a Member of the Paris Convention for the Protection of Industrial Property (London Act in 1947), The Berne Convention for the Protection of Literary and Artistic Works (Rome Act in 1947), and The International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention, 1997).²⁴¹

Although Lebanon has committed under the EU Association Agreement and the EFTA agreement to ratify, by March 1st, 2008, the last versions of the Paris Convention for the protection of industrial property (Stockholm Act) and The Berne Convention for the Protection of Literary and Artistic Works (Paris Act), this ratification has not yet finished. So Lebanon must ratify these agreements in order to be compliant with the requirements of the TRIPS agreement.

After the reviewing of the compliance of Lebanese laws with International standards in this first chapter, the second chapter focuses on the actual enforcement of copyright laws in Lebanon with emphasis on the role of enforcement authorities and piracy.

²⁴¹ See Part I, Chapter I, Section II on conventions, p.26.

Chapter II

Enforcement of Copyright laws in Lebanon

In this Chapter, we outline the actual enforcement of copyright laws in Lebanon.

The police, public prosecutor, judiciary, customs officials, and employees of the Intellectual Property Protection Office (IPPO) at the Ministry of Economy and Trade (MOET) sworn in to this effect, are the competent authorities responsible for enforcing the copyright law and combating piracy in Lebanon.²⁴²

The specific authorities designated to combat piracy are, however, the sworn employees of the IPPO and the officers of the Police Unit for combating cyber-crimes established in March 2006 at the Internal Security Forces.

General prosecutors and the judiciary act under the authority of the Ministry of Justice, the police under the Ministry of Interior and customs officials under the Ministry of Finance. The Ministry of Culture is responsible for monitoring the activities of Collective Management associations and companies and for establishing violations²⁴³.

Section I describes the function of enforcement authorities starting with the role of courts and the Jurisprudence related to copyright then finishing with Paragraph II highlighting the duties of the Ministry of Economy and Trade, Internal Security Forces and Customs Officials. Piracy is outlined in Section II, starting with its definition and nature, comparison between piracy and plagiarism and ending with the challenges facing Lebanon in combatting piracy and ways to reduce it.

²⁴² Articles 89, 91 and 92 of the Lebanese Law on the Protection of Literary and Artistic Property

²⁴³ Article 66 of the Lebanese Law on the Protection of Literary and Artistic Property.

Section I - Role of enforcement authorities

This section describes the role played by enforcement authorities in Lebanon beginning with the courts and its jurisprudence, following by the role played by the Ministry of Economy and Trade, Internal Security Forces and Customs Officials.

Paragraph I – Courts

The emphasis in this paragraph is on the role played by the courts in Lebanon to enforce the law and the jurisprudence issued by these courts related to copyright.

A- Role of Courts

In Lebanon, there are no specialized courts for intellectual property rights including copyright. The competent courts for copyright are the ordinary courts i.e. civil, criminal and administrative courts. The court with jurisdiction over civil remedies is the competent court of first instance in charge of civil cases. The court having jurisdiction over criminal offence is the competent tribunal of first instance in charge of criminal cases.²⁴⁴

Generally, in personal and movable rights cases (such as copyright cases), the competent court is that of the place where the defendant is resident. In the cases where the defendant is a natural person, the court of the place where he is domiciled or resident is the competent court. As for legal persons (companies, institutions, and associations), the court with jurisdiction over the case is the court where the legal person's headquarter is located. For companies with several branches, the matter may be referred to the court in the place where one of the

²⁴⁴ Unesco, World anti-piracy observatory, Lebanon, supra, p.15

branches is located. If the place of residence or domicile of the defendant is not known, the competent court is the one in Beirut²⁴⁵.

The courts having jurisdiction over copyright infringement cases at the borders are the ordinary courts in charge of civil cases. However, the customs administration should be in charge of setting the action in motion by submitting the proceeding of seizure to the Intellectual Property Protection Office at the Ministry of economy and trade charged with notifying the damaged party²⁴⁶.

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 head of the Intellectual Property Protection Office. Any judicial decision issued with regard to the foregoing infringements shall be communicated by the court to the Intellectual Property Protection Office within 15 days of the date of the decision²⁴⁷.

Concerning the matter of enforcement of the copyright law by competent courts, unfortunately, some problems continue to rest with the judiciary.

The reports of the International Intellectual Property Alliance (IIPA) document the delays encountered in simple piracy cases, postponements in court, even of urgent matters, and judges who are unaware of, or unsympathetic with the IP laws. Especially, during the judgment phase, damages in civil cases or fines and penalties in criminal cases are usually very low and insignificant, so infringement is not discouraged.²⁴⁸

²⁴⁵ Lebanese Law on Civil Procedures, Article 98 to 113.

²⁴⁶ Lebanese Customs Law, Article 66

²⁴⁷ Lebanese Law on the Protection of Literary and Artistic Property, Articles 89 and 90

²⁴⁸ International Intellectual Property Alliance, Special 301 Report Lebanon, 2013, supra

Some of the IIPA's recommendations concerning these matters are the continuous training of Lebanese prosecutors and judges, the establishment of a special IP tribunal, at least in Beirut, and the assignment of special IP prosecutors, so that a body of prosecutors and judges can be formed that is familiar with IP cases and the damage caused by IP infringements in Lebanon.²⁴⁹

In addition, courts in Lebanon must assign tools to strengthen their hand, such as informants who would help the police not encourage pirate traders but, for instance, would report when buying hardware if a seller voluntarily offered to load pirate software onto a computer.²⁵⁰

IIPA recommends also more emphasis to be put on criminal investigative techniques. Although lately the raiding activity has improved, prosecutorial actions have moved slowly. For example, some problems are encountered in the investigative process, with investigators leaving behind important evidence. Sometimes, improper influence put pressure on prosecutors, ending in inaction.

B- Jurisprudence related to Copyright

Lately, the Lebanese courts have slowly taken on a stronger stand against piracy, counterfeit, unfair competition and the protection of consumer's rights caused by illicit acts²⁵¹. However, court processes, starting from prosecutorial preparation and during judicial process, still do not end in deterrence or adequate compensation against piracy. The courts in Lebanon still are a weak element in the process of

²⁴⁹ International Intellectual Property Alliance, Special 301 Report Lebanon, 2013, *supra*

²⁵⁰ The Office of the United States Trade Representative (USTR), special 301 report, 2013, www.ustr.gov.

²⁵¹ Sader Courts' series Lebanon, Intellectual property, Sader legal publishing LLC, 2017, p14

enforcement, mainly with prosecutors' offices not taking any actions, and results which are not preventive to further infringements.

Nevertheless some progress can be noticed in the Lebanese courts dealing with intellectual property cases. We shall state two copyright related cases and the way Lebanese courts dealt with them.

We will start with the decision issued by the criminal single judge in Beirut, Decision No 323/99 issued on 11/10/2001, Edward Eid v. Al Halabi.²⁵²

The case is about violation of copyright and imitation, copy and sale of literary work. Dr Edward Eid, the plaintiff is an author of many legal works including the encyclopedia "codes of procedures: proof and execution" still being published. The defendants M.H and B.H work for the company "Al Halabi Company for Printing and Distribution SARL" directed by M.H and are signatories of the company "Al Halabi Company for Printing and Distribution, a limited partnership". These two companies copied and imitated the works of Dr Eid without his approval.

They distributed the works in the markets for reduced prices for gaining money. In addition, the copied books are contrasting from the original books.

An expert was selected by the investigating magistrate to inspect the copied encyclopedia and make a comparison with the original one. The affirmation of the expert about the existence of major differences between the two works led to the issue of an accusatory decision by the investigating magistrate. A decision by the public prosecution of appeal referred the defendants to the criminal single judge in Beirut. The plaintiff, who is the owner of the copyright, presented a direct complaint to the criminal single judge against "Al Halabi Company for Printing

²⁵² راني صادر، المرجع في اجتهادات الملكية الفكرية، المنشورات الحقوقية صادر، 2006، p.517.

and Distribution SARL” and “Al Halabi Company for Printing and Distribution, a limited partnership” which are responsible for the infringement of copyright committed. The complaint was accepted and the trial was continued. A new expert was assigned who affirmed the imitation of the encyclopedia. An order was issued by the court for the seizure of books that were still with the defendants.

The judge declared that it was proven that the acts of imitating, copying and selling a literary work belonging to the plaintiff constitute a violation of the literary property of the latter and therefore these acts will be subject to sentences mentioned in article 728 of the Penal Code.

The court’s sentence was the imprisonment of the two defendants M.H and B.H for three months, the disposition of a fine amounting to LBP 300,000 with an additional imprisonment day to every LBP10,000 they may abstain for paying. The court also enforced a payment of LBP 1,000,000 on the two companies “Al Halabi Company for Printing and Distribution SARL” and “Al Halabi Company for Printing and Distribution, a limited partnership”. Finally, the court ordered the two defendants jointly and separately to pay the indemnity for damages amounting to LBP 40,000,000 in addition to fees and expenses.

Another case of violation of literary and artistic rights is Decision No 1866/2003 issued on 15/7/2003 by the criminal single judge in Beirut. The plaintiffs are Lebanon sat company and ART company v/s the defenders subscribers with a prepaid monthly fee²⁵³.

ART signed a contract with Lebanon sat company so the latter could receive TV channels from ART and rebroadcast them within Beirut in return for a monthly subscription fee. The defendants obtained smartcards from the plaintiff, established

²⁵³ Sader Courts’ series Lebanon, Intellectual property, supra, p.104

stations and illegal equipment so they can rebroadcast the ART TV channels to third parties in return of a payment without the authorization of the plaintiffs.

The plaintiff submitted the lawsuit based on article 87 of the copyright law No 75/99 stating that the act of illegally receiving the broadcast and rebroadcasting it to third parties compose the offense of article 88 of the copyright law mentioned above. Article 87 states: "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".

Article 88 states: "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".²⁵⁴

The court decided to impose on each of the defendants the payment of a certain amount of money and a penalty jointly and severally to the plaintiffs. The court also commanded the seizure of the devices, accessories and equipment used by the defendants. Finally the judgement must be posted on the door of the establishment of each defendant who are bound to pay all legal fees and expenses.

²⁵⁴ Law on the Protection of Literary and Artistic Property (No. 75 of April 3, 1999)

Paragraph II - Ministry of Economy and Trade, Internal Security Forces and Customs Officials

The first part of this paragraph deals with the role of the Ministry of Economy and Trade while the second half describes the role of the internal security forces and Customs officials.

A- Role of Ministry of Economy and Trade

In the midst of changes in global economy and access to the Lebanese market, Lebanon is preparing new administrative and financial support measures to assist the enhancement of competitiveness at the national level and the promotion of national economic growth and business development.

The Ministry of Economy is the principal institution coordinating the progress of the Long-Term Development Strategy of the State which identifies measures aimed at accelerating economic growth, enhancement of economy competitiveness as well as promotion of employment and investments to the human capital.

The Ministry of Economy aims to collaborate at all levels with public authorities, social partners, scientific establishments and business associations to acquire consultations, advice and proposals. This collaboration would help the Ministry to contribute to more rapid national economic growth.²⁵⁵

Since intellectual property is considered part of the economic growth, The Ministry of Economy and Trade (MOET) is responsible for promoting intellectual property and protecting intellectual property rights.

The Ministry, in collaboration with the private sector and the World Intellectual Property Organization (WIPO) worked and is still working on many programs or

²⁵⁵ See About the ministry, www.economy.gov.lb

awareness campaign to help the Lebanese "Public" and specific target audiences, such as small businesses, artists, students, etc. comprehend intellectual property, and to promote the awareness and understanding of the legal aspects of intellectual property rights. Examples of trainings prepared by the Ministry include workshops and seminars for the staff of the Intellectual Property Protection Office (IPPO) on the importance of IPR protection and individual programs on the execution and administration of new laws and treaties. In addition, MOET organizes every now and then an IP week, workshops and discussions, campaigns in schools and conferences. In March 2007, a committee has been formed by a Ministerial decision, No. 66 dated 7/3/2008, to coordinate all activities related to Intellectual Property thus creating a specialized units and groups.²⁵⁶

An office named Intellectual Property Protection Office IPPO was created under the supervision of The Ministry of Economy and Trade. IPPO's sworn-in employees are empowered, based on complaints or on their own initiative (ex-officio), to inspect suspected violators, take samples of products, and prepare reports of all sampling and inventorying to be used before the court which would handle the case. Police, customs officers and IPPO's employees perform their duties following an order or a mandate issued by the public prosecutor or the Intellectual Property Protection Office and they notify the IPPO of all violations of the provisions of the Law on the Protection of Literary and Artistic Property that come to their attention. Sworn-in employees of the Intellectual Property Protection Office have police powers with regard to the implementation of the provisions of the Copyright Law.²⁵⁷

²⁵⁶ Unesco, World anti-piracy observatory, Lebanon, supra, p.16

²⁵⁷ Article 92 of the Lebanese Law on the Protection of Literary and Artistic Property

In my opinion, MOET is making big efforts to improve the IPR by establishing legislations, conducting seminars, raising awareness, improving technical capabilities and launching online copyright services. But these efforts remain weak because of the lack of parliamentary approvals, political will and additional resources.

B- Role of Internal Security Forces and Customs Officials

A special Police Unit for combating cyber-crimes and enforcing intellectual property rights called “Cyber Crime and Intellectual Property Rights Bureau (CCIPRB)” was created by the Judicial Police at the Internal Security Forces within the special criminal investigation section. The Unit started to operate on 13/3/2006. Although CCIPRB lack ex officio authority and a formal budget, the Bureau always provides raid support upon request. As of early 2009, the CCIPRB Unit comprised 33 total officers (15 ranking officers and 18 junior officers).²⁵⁸

One of the IIPA recommendations to Lebanon is providing CCIPRB with ex officio raiding authority so that it can proactively address and investigate piracy cases. In the meantime, CCIPRB waits for a criminal complaint to be filed with the prosecutor’s office so it can start an action. Another IIPA recommendation is the supply of CCIPRB with updated training on computer crime issues. In Lebanon, law enforcement agencies especially CCIPRB must be properly equipped to inspect computer-based and Internet-based infringement and to document acts of piracy relating to them.²⁵⁹

Lately, piracy acts has highly increased, especially relating to computers, like end-user piracy of business software, and the Internet, such as Internet-based piracy

²⁵⁸ Unesco, World anti-piracy observatory, Lebanon, supra, p.14

²⁵⁹ International Intellectual Property Alliance, www.iipawebsite.com

and mobile device piracy. CCIPRB must be ready to face such new challenges and continue to receive greater resources and assistance on computer crime issues.

Lastly, IIPA remarks that, similar to many police units in Lebanon, the CCIPRB Unit is not provided with a formal budget. The Lebanese government should supply a formal budget to the Unit for its stability and effectiveness.²⁶⁰

Personally I believe that even if from time to time the police seize and destroy pirated materials, these represent only a small percentage of the ones on the market since we are able to find easily pirated CDs, DVDs and other products in many shops all across Lebanon.

The Lebanese Customs Administration is responsible for ensuring that all goods and persons entering and exiting Lebanon are in accordance with relevant laws and regulations. The Customs Administration collects and protects a major component of government revenue²⁶¹. The Customs is the Authority responsible for combating piracy at the borders. Primary tasks of Customs administration include the collection of customs duties, prevention of smuggling and detection of fraudulent practices, clearance of persons along with their baggage and protection of the general welfare of Lebanon by enforcing import and export restrictions and prohibitions. According to the IIPA reports concerning Lebanon, Lebanese Customs sometimes acts ex officio and seizes suspected products when detected at the ports of entry, and sometimes even after these products enter Lebanon²⁶².

Customs officers are granted the power, based on complaints or acting ex-officio, to inspect suspected violators, take samples of products, and prepare reports of all

²⁶⁰ International Intellectual Property Alliance, www.iipawebsite.com

²⁶¹ See www.customs.gov.lb, about us

²⁶² International Intellectual Property Alliance, www.iipawebsite.com

sampling and inventorying to be used in front of the court dealing with the case. These employees accomplish their tasks following an order or a mandate issued by the public prosecutor or the Intellectual Property Protection Office and they must inform the IPPO of all violations of the provisions of the Law on the Protection of Literary and Artistic Property.²⁶³

The customs also have the right to seize prohibited goods, ex-officio or at the request of right holders, anyplace they are discovered. Customs officers may act ex officio at the borders and in the country in copyright infringement cases.²⁶⁴

Infringing or attempting to infringe intellectual property rights, including copyright, is dealt with under the Customs Law as importing or attempting to import prohibited goods without the submission of manifest or through smuggling and should be subject to penalties.²⁶⁵

Lebanon Customs may, on their own initiative, detain items which they suspect infringing copyright. Once the goods have been detained, a copy of the formal statement drawn up for that purpose shall be posted on the door of the customs house within 24 hours as of the closure of the proceedings²⁶⁶ and the administrative or judicial authority which issued the order shall be notified of the detention and shall in turn notify the applicant.

The becoming of infringing goods shall be decided by the IPPO which may decide the destruction of the goods or any other mode of disposal²⁶⁷.

²⁶³ Lebanese Law on the Protection of Literary and Artistic Property, Article 92

²⁶⁴ Articles 62 to 65, 140(3), 197, 250, 421 to 423 of the Customs Law and Article 91 of the Law on the Protection of Literary and Artistic Property.

²⁶⁵ Customs Law, Decree No. 4461 of December 15, 2000, Articles 59, 62 to 65 and 421 to 423

²⁶⁶ Customs Law, Article 369(11)

²⁶⁷ Customs Law, Article 66

Violations set forth in the customs law may be prosecuted and proved by all legal evidences even if such violations were not discovered inside or outside the customs territory or upon declaration of goods through customs manifests. For this purpose, information coming from foreign authorities, forfeiture proceedings and documents issued by the said authorities may be considered to be proofs of violations. Public prosecutors shall be in charge of the popular actions filed for the purpose of implementing criminal sanctions incurred from ordinary crimes committed concurrently with customs violations or relating to such violations. However, the customs administration shall be in charge of actions filed in order to apply duties and fines²⁶⁸. Imports for personal use of a non-commercial quantity and new items and things acquired for personal use will not be detained by Customs²⁶⁹. The aforementioned provisions apply also in the case of infringement of related rights.

Section II – Piracy

This part of the thesis deals with a national as well as international problem called Piracy. Paragraph I defines piracy and describes its nature following by a comparison between piracy and plagiarism. The second paragraph is concerned with piracy challenges in Lebanon. The emphasis is on the types of piracy in Lebanon and steps that must be taken to reduce this piracy.

Paragraph I – Summary on piracy

Defining and stating the nature of piracy is the main concern of the first part of this paragraph, while the second part deals with a comparison between piracy and plagiarism.

²⁶⁸ Customs Law, Article 81

²⁶⁹ Customs Law, Article 316-317

A- Definition and Nature

According to Unesco (United Nations Educational Scientific and Cultural Organization), World anti-piracy observatory, "Piracy" includes the reproduction and distribution of copies of copyright-protected material, or the communication to the public and making available of such material on on-line communication networks, without the authorization of the right owner(s) where such authorization is required by law. Piracy concerns different types of works, including music, literature, films, software, videogames, broadcasting programs and signals.²⁷⁰

In general, most national copyright acts do not comprise a legal definition of piracy. On the other hand, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) includes within its provisions a definition of piracy. Art.51, n.14 of the TRIPS Agreement states:

“Pirated copyright goods shall mean any goods which are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country of importation.”²⁷¹

The term Piracy, pointing out to the intentional and illegal sale of copyrighted works, is an illegal activity damaging authors, performers, producers of phonograms, broadcasters, and in general the society as a whole.

Usually, pirated copies of works are sold at extremely low prices in unofficial places, rather than in established stores;

Authors of copyrighted works are entitled financial rewards. Pirated works remove

²⁷⁰ Unesco, World anti-piracy observatory, Lebanon, supra, www.unesco.org

²⁷¹ TRIPs Agreement, supra, Article.51, n.14

this financial gain thus reducing the ability of creators to continue generating new works. For example, the sale of a pirated CD generates money that does not return to the authors or performers of the songs in that CD. The result of authors and performers not being able to gain income from the sale of their works is the urge to get other jobs to make money. Thus authors and performers may not be capable to create and perform new works.²⁷²

In addition, publishing and distributing companies lack the incentive, due to piracy, to invest in new authors and performers, since the discovery, development, and promotion of new authors and performers cost huge amount of money. In case these legal companies do not receive profits from the sale of created works, they would not have enough resources to invest in new authors and performers.

Another result of piracy is that legal copies of works become more expensive. Publishers and distributors can raise the prices of legal copies of works so they restore losses they suffered from piracy.²⁷³

Piracy is not a problem concerning developing countries alone, it is a global issue. The importance of world trade and the advent of modern technology require that measures are to be taken to fight piracy which is embodied in every single sector in the economy, including for example music, software, books, television broadcast and so on. Besides the importance of the legal framework in combatting piracy, the education and partnerships between the various stakeholders, owners of the intellectual property, the public sector and beneficiaries play major roles.²⁷⁴

²⁷² K. Idris, *Intellectual Property: A Power Tool for Economic Growth*, supra, p.310

²⁷³ Ibid, p.311

²⁷⁴ Shahid Alikhan, *Socio-economic benefits of intellectual property protection in developing countries*, WIPO publications, Geneva, p.165

Intellectual property theft has a major impact on international trade. According to FBI, Interpol, World Customs Organization and International Chamber of Commerce estimates, 7 to 8% of world trade every year is in counterfeit and pirated goods. That is the equivalent of approximately \$512 billion in global lost sales. IP theft poses a risk to all industry sectors, especially manufacturing, consumer goods, technology, software, and biotechnology, including pharmaceuticals.²⁷⁵

The items that counterfeiters and pirates produce and distribute are generally of a very low quality and can be dangerous, posing health and safety risks. Economy wide, counterfeiting and piracy undermine innovation, which is key to economic growth²⁷⁶.

B- Comparison between piracy and plagiarism

According to the Merriam-Webster dictionary²⁷⁷, to "plagiarize" means:

- To steal and pass off the ideas or words of another as one's own;
- To use another's production without crediting the source;
- To commit literary theft
- To present as new and original an idea or product derived from an existing source.

In other words, plagiarism is a fraudulent act concerning the theft of someone else's work. A question of whether words and ideas could actually be stolen comes

²⁷⁵ See www.stopfakes.gov

²⁷⁶ OECD Publications, The economic impact of counterfeiting and piracy, 2008.

²⁷⁷ www.merriam-webster.com

to mind. According to most copyright laws, the expression of original ideas is considered intellectual property and is protected by copyright laws. Generally most forms of expression are protected by copyright laws as long as they are recorded in some way, like a book or a computer file.

Other forms of plagiarism include the failure to put a quotation in quotation marks, the granting of incorrect information about the source of a quotation, the change of words but copying the sentence structure of a source without giving credit and the copying of so many words or ideas from a source that it makes up the majority of the work.

To prevent plagiarism, one must cite the sources from where he got his information. Thus, when the author admits that some material come from certain sources and supply readers with the data needed to locate the source, it is considered sufficient to avoid plagiarism.

Generally, students at schools and universities are prohibited to commit plagiarism at the risk of being expelled from schools. Nowadays, the Internet facilitates the copying of someone else's work and claiming it as one's own, but the results of plagiarism can be severe.

Like most other national copyright laws, the Lebanese copyright law 75/99 does not include a definition of piracy nor plagiarism. They are included in the section of copyright infringement. The law states²⁷⁸:

“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:

²⁷⁸ Lebanese Law on the Protection of Literary and Artistic Property, Article 85

- 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.”²⁷⁹

Piracy and plagiarism are often confused. Although they are different from each other, they are part of the same principle which is copyright infringement. A simple reminder about copyright infringement, it is the act of using a copyrighted work in some manner without obtaining the authorization of the copyright holder, unless it is used under a limitation to copyright. The use of the copyrighted work might be its reproduction, translation, adaptation, exhibition or performance in public, distribution and broadcasting.²⁸⁰

Generally, a copy of a work can be defined as an infringement even if it is not exactly the same as the original work that is if the copy is substantially similar. Mostly, courts decide if the work is an infringement by examining the language, appearance, format, sequence, sound and so on of both the original work and the work accused of infringement. Sometimes, the person accused of plagiarism could have created an identical work simply by chance, without being exposed to the original work. Infringement or plagiarism does not occur in this case.

As a conclusion, while plagiarism is the act of copying a work, wholly or partially,

²⁷⁹ Lebanese Law on the Protection of Literary and Artistic Property, No. 75 of April 3, 1999.

²⁸⁰ Unesco, World anti-piracy observatory, Lebanon, supra, p.10

and then pretending to be its original author, piracy indicates the intentional and illegal sale of copyrighted works, such as music, movies, video games and computer software. Piracy is an illegal activity that hurts not only authors, performers, producers of phonograms, and broadcasters, but also the society as a whole.²⁸¹

Paragraph II- Piracy challenges in Lebanon

Piracy is a major problem in Lebanon due to many reasons and there are many types of piracy which shall be stated in the first part, followed by steps to reduce this piracy to be discussed in the second part.

A-Types of Piracy

There are different types of piracy in Lebanon. These types include cable piracy (which is the worse type of piracy in Lebanon), book piracy, retail piracy, business software, entertainment and internet piracy. We shall be discussing each type of these piracies in brief.

- Cable piracy: We shall start with cable piracy which, for a long time, has been identified as the major piracy problem for the motion picture industry in Lebanon.

Many small cable systems are involved in the retransmission of broadcast programming in some illegitimate ways. The owners of these cables take money in return for the television services provided, which is considered an act of piracy.

As for fighting cable piracy, the Lebanese Copyright Law²⁸² imposes imprisonment and varying fines to any person involved in the illegal radio or

²⁸¹ S. Alikhan, Socio-economic benefits of intellectual property protection in developing countries, *supra*, p.165

²⁸² Lebanese Law on the Protection of Literary and Artistic Property, Articles 87 and 88

television retransmissions. Thus, the above mentioned law, on its face, is adequate and could be enforced to handle the cable piracy issue.

A case in which Lebanese courts combat cable piracy is Decision No 1866/2003 issued on 15/7/2003 by the criminal single judge in Beirut. The court imposed, as a sanction to the act of illegally receiving the broadcast and rebroadcasting it to third parties without license, the payment of a certain amount of money, several penalties and the seizure of the devices, accessories and equipment used by the offenders.²⁸³ In this case, the Lebanese courts are trying to fight cable piracy by stopping the broadcasting, seizing the equipment and imposing fines.

- Book piracy: Another form of piracy is book piracy which is also a big problem in Lebanon. The book industry is suffering from illegal photocopying of academic materials. Both students and teachers find it easy to copy books, since beside most universities and schools, one can reach photocopying centers. In addition, photocopied materials are not prohibited by universities on campus. IIPA²⁸⁴ recommends the Lebanese enforcement and education officials to work for solutions to fight the major illegal photocopying taking place in and around these institutions. We can also find print piracy, taking place in the scientific, technical and medical sectors.

- Retail piracy: retail piracy is still very common in Lebanese shops. This piracy revolves especially around pirated optical discs, called “burned” CD-Rs, of sound recordings, movies, entertainment software, and business software. These CD-Rs

²⁸³ Criminal single judge in Beirut, Decision No 1866/2003 issued on 15/7/2003, Lebanon sat company and ART company v. subscribers with a prepaid monthly fee,

For more details on this Decision see B-Jurisprudence related to Copyright p.100.

²⁸⁴ International Intellectual Property Alliance, Report 301, www.iipawebsite.com

are smuggled into Lebanon through many Arabic and Asian countries. The CCIPRB has and still is confiscating these pirated CD, but they are still available in many shops across Lebanon. Also, copies of movie releases from pirated and imported sources such as illegal copies taken on cam recorders are found available before the official release of the movie in theaters or in videos and DVDs.

Another piracy issue concerns the import of circumvention devices to Lebanon. Circumvention devices are devices used to avoid technological protection measures used by right holders to prevent users from accessing or copying works without authorization. One of the main recommendations of many agencies concerned with intellectual property rights protection for Lebanon is to amend the Copyright Law to prohibit the circumvention of TPMs and the trafficking in circumvention devices (and related services).²⁸⁵

- Business software piracy: The piracy happening in the business software industry in Lebanon is mainly due to the illegal use of software in businesses. Moreover, the computers sold to customers are in most cases supplied with unlicensed software in their hard drives.

- Entertainment software: Another form of piracy is the piracy in entertainment software or the piracy of video games which is becoming worse over the years. These pirated games created on optical discs and CD-Rs can be easily found in the market and they are sold in many shops. The advertising of these illegal games through the Internet is making the situation even worse. In addition to this, Internet piracy includes the advertising to sell goods such as computer software, music CDs, and DVDs, plus the direct offer to download copyrighted materials.

²⁸⁵ Ibid, International Intellectual Property Alliance, Report 301

- Mobile device piracy: Finally, mobile device piracy including the illegitimate loading or preloading of illegal copyright content onto mobile devices is still under control in Lebanon.²⁸⁶

B- Steps to reduce Piracy

On the international level, piracy rates continue to increase despite the growing number of countries adopting IP legislation mainly as part of the WTO/ TRIPS agreement. Thus piracy is an international issue, not only a Lebanese issue.

The establishment of a proper legal framework for copyright protection and the implementation of the laws to reduce piracy and foster growth in the creative sectors in Lebanon are crucial nowadays.²⁸⁷

According to IIPA's reports concerning Lebanon, the country is making progress in the fight against piracy. The Cyber Crime and Intellectual Property Rights Bureau (CCIPRB), the Customs and the IPPO have been active in restraining copyright infringers. Lebanese authorities are destroying CDs and DVDs in different places in the presence of officials from different ministries, media, and other entities. Millions of dollars' worth pirated CDs and DVDs were destroyed²⁸⁸.

There are many steps that can be taken to reduce piracy. First of all, the policy decision to fight piracy should be taken at a high executive level in the country. The government should incorporate in its strategy the rules of IP enforcement

²⁸⁶ International Intellectual Property Alliance, Report 301

²⁸⁷ S. Alikhan, Socio-economic benefits of intellectual property protection in developing countries, supra, p.156

²⁸⁸ International Intellectual Property Alliance, www.iipawebsite.com

which could help to acquire confidence. Since piracy is still not considered a serious offence in Lebanon, communication of such a decision to all concerned parties, such as law enforcement agencies, the public and the judiciary system, should be strong enough to be taken seriously.²⁸⁹

Secondly, a country must ensure that the legal framework handling piracy issues is complete, strong and effective. Powers must be granted to enforcement agencies so they can handle the widespread piracy problems. Every country adopts different approaches to deal with IP enforcement. What is important is to keep the right balance between the different IP enforcement authorities, especially customs, IP bureaus and the judiciary. Copyright infringers and pirates must be punished with sufficient deterrence including large fines and imprisonment if needed.

In addition, IP law enforcement agencies such as IP officers, judiciary and customs officers must be granted with adequate and continuous training in IP issues. If these enforcement authorities are not well educated, they will be incapable of performing their jobs the right way.

The organization of IP campaigns should be aiming at young students, consumers, households and private sector in order to comprehend the theoretical and ethical aspects of IP protection. IP campaigns directed at students must explain the benefits of IP protection in a friendly way like choosing real life examples.²⁹⁰

An example of awareness campaign in Lebanon is the launch of a media campaign at schools directed by the IP bureau with the help of WIPO. IP experts taught students at schools all over Lebanon practical IP issues and distributed WIPO

²⁸⁹ Unesco, World anti-piracy observatory, Lebanon, supra, p.10

²⁹⁰ S. Alikhan, Socio-economic benefits of intellectual property protection in developing countries, supra, p.157

comic brochures. Likewise, consumers should be provided with information about their rights as citizens, benefits of IP protection and risks of pirated products in details.²⁹¹

The advertisement of enforcement measures makes a strong deterrence. This could include the destruction of counterfeit products in public and the publicity of heavy fines and prison sentences issued by courts. The website of law enforcement agencies, such as courts, IP offices and customs authorities must also advertise strong measures.²⁹²

When starting the fight against piracy, it is important to focus on priority areas i.e. on selected priority sectors where for example piracy is uncontrolled and growing. After the law enforcement agents control piracy in these sectors, the success stories must be published and other sectors could be handled. Also, random raid must be made to serve as a reminder to all pirates.

Finally, the fight against piracy may help to reduce prices of certain products. Usually, intellectual property right holders suffer from losses due to piracy which makes it hard for them to reduce the prices of their products. If pirated products can be eliminated from the market, it becomes possible for the IP rights holders to engage in initiatives to lower the prices of IP products. This might make the difference between the price of original and pirated products diminish, and the process more acceptable to consumers.²⁹³

²⁹¹ Unesco, World anti-piracy observatory, Lebanon, supra, p.10

²⁹² Fadi Makki, WIPO publications, Guidelines for a successful and sustainable IP enforcement strategy, Geneva, 2006

²⁹³ K. Idris, Intellectual Property: A Power Tool for Economic Growth, supra, p.311

In my opinion, Lebanon must still make strong efforts to fight piracy, especially since piracy is rooted in the mores or customs of the Lebanese people. Most of the Lebanese, regarding their age or social status, have no knowledge about the wrongful doing by purchasing for example a pirated CD. That is why awareness campaigns are crucial to inform the people about the seriousness and danger of buying pirated products.

After outlining the enforcement of copyright laws in Lebanon, the thesis is ended with a conclusion.

Conclusion

The intellectual property system is one of the cornerstones of modern economic policy at the national level and a catalyst for development. It will increasingly become an important tool for sustainable development of developing countries.

Protection of intellectual property rights is an issue of high importance and is becoming a priority to most governments on the international level. Intellectual property plays a substantial role in promoting innovation and growth. On the other hand, counterfeiting and piracy undermine innovation.²⁹⁴

The introduction of this thesis defined and described intellectual property and intellectual property rights in details. It also discussed the World Intellectual Property Organization (WIPO) with its establishment, history and purposes.²⁹⁵

Kamil Idris, the author of the book published by WIPO, called “Intellectual Property: A Power Tool for Economic Growth”²⁹⁶ strengthens the importance of IP by stating the following: “WIPO is working to raise awareness, at all levels, of the value of IP and of the potential positive impact that it can bring to society. Awareness of the potency of IP as a source of economic, social and cultural dynamism will ensure that:

- Government officials and agencies formulate their policies and administrative and management programs with a view to optimizing the use of, and in respect of, IP rights;

²⁹⁴ S. Alikhan, Socio-economic benefits of intellectual property protection in developing countries, *supra*, p.1

²⁹⁵ See Introduction p.8

²⁹⁶ K. Idris, Intellectual Property: A Power Tool for Economic Growth, *supra*, p.10

- IP rights in increasingly knowledge-based industries and economies;
- The public understands the benefits of purchasing legitimate goods and services, thereby boosting local industries and increasing the tax base.”

The World Intellectual Property Organization (WIPO) believes that IP is native to all nations and relevant in all cultures and that it has contributed to the progress of society.²⁹⁷

Part I of the thesis focused on the protection of copyright within its legal framework. Including some international laws and conventions, the main focus is on the Lebanese copyright law with its description, history and challenges to meet international standards. Part II dealt with the enforcement of the copyright law in Lebanon. It was shown that the Lebanese copyright law, on its face, is generally compliant with international standards like Trade-Related Intellectual Property Rights (TRIPS), though Lebanon is still not a member of the World Trade Organization (WTO). Still, enforcement of intellectual property rights in general, and copyright in particular remains weak.

The Lebanese government has not yet amended the copyright law and related laws in order to be able to accede to the WTO and to implement the relevant international treaties related to WTO accession. These international treaties are mainly the TRIPS Agreement, the latest text of the Berne Convention (Paris 1971), and the WIPO Internet treaties, WCT and WPPT.

The International intellectual property alliance (IIPA) special reports on copyright protection and enforcement still recommend that Lebanon should remain on the Watch List.

²⁹⁷ www.wipo.int.com

The priority actions demanded from the Lebanese government, according to IIPA can be summed up as follows:

- Ensure that the special police bureau, the Cyber Crime and Intellectual Property Rights Bureau (CCIPRB) Unit, actively run raids against piracy targets, including enterprise end-user software piracy targets, and provide the Unit with ex officio raiding ability, authority to employ investigative techniques to detect piracy practices and a regular operating budget.
- Ensure that draft amendments to the Lebanese Copyright Law (1999), as proposed by the Ministry of Economy and Trade, include provisions compatible with TRIPS, WIPO Copyright Treaty (WCT), and WIPO Performances and Phonograms Treaty (WPPT), are passed by the National Assembly.
- Take all steps necessary to join the Berne Convention (Paris 1971 text), the WCT, and the WPPT.
- Provide seminars and other forums to sensitize judges to, and make them more experts in their understanding of, IP laws.
- Sensitize judges to the negative effects of piracy on: the Lebanese economy and foreign direct investment; right holders; and the reputation of Lebanon internationally. Combat current trend at the judicial level to tolerate counterfeiting and piracy in the country.
- Continue to press for a special IP tribunal, at least in Beirut.²⁹⁸

On another level, piracy is still a major problem in Lebanon. Piracy, counterfeiting and the theft of intellectual property assets pose a serious threat to all Lebanese and

²⁹⁸ International Intellectual Property Alliance, 301 Reports, www.iipawebsite.com

foreign businesses in Lebanon and on a global scale. In the past, counterfeiters and copyright infringers have counted on the lack of knowledge regarding the mode of protecting the IP rights and whether the owner thereof would and is able to pursue this into justice.²⁹⁹

I believe that one of the major problems in Lebanon is the unstable political situation, leading to certain indifference to the problems concerning intellectual property in general. Lebanon's history has been marked by periods of political turmoil leading to years of social and political instability. Thus the Lebanese government has major economic, social and financial problems to handle, leaving issues like intellectual property on the side.

The enforcement of IP rights and the combat of piracy in Lebanon are mainly assigned to the ministry of economy and trade, law enforcement agencies such as customs and police, and the judiciary. The laws of these agencies compel them to enforce IP rights in the most suitable manner.

The level of piracy in a certain country usually affects the reputation of the country. The economy in general and the business sector in particular are damaged by negligent IP enforcement measures.

In addition, consumer protection is an important reason for the combat of piracy. Piracy can cause adverse impact on consumers. Consumers have the right to be aware of what they are buying. From a financial point of view, consumers pay a specific amount of money in return for a specific original product.

Other than the financial aspects, cultural, ethical and social aspects are affected by piracy such as the true origin of the product and its intangible value. Again, piracy

²⁹⁹ Sader Courts' series Lebanon, Intellectual property, supra, p13

causes a loss of revenue due mainly to the loss of customs proceeds and loss of VAT and other taxation.

Another reason to fight piracy is that it can cause damages to the Lebanese investment sector. Usually, multinational companies who cannot register and receive proper protection for their IP rights will hardly invest in a country.

Another consideration for proper IP enforcement measures is the WTO (World Trade Organization) which requires adequate enforcement for both member countries of WTO and countries that are seeking accession. For countries seeking accession to WTO, IP enforcement is a condition before the accession can be completed. The organization and its member countries observe the acceding country's willingness to enforce IP properly before allowing its accession.

Nowadays it is common that the provision of proper IP enforcement is elementary to secure financial aid and even debt relief. The United States for example uses the Generalized System of Preferences (GSP) to create more effective enforcement of US intellectual property rights in other countries. The US threatens countries that are not adequately protecting intellectual property to withdraw its trade preferences under GSP.

Due to the harm that piracy and counterfeit is causing worldwide, priority has been given to enhancing international cooperation to reduce commerce in counterfeit and pirated products.

The subject of intellectual property is becoming more important each day and countries wishing to follow the international trends and comply with international standards must enforce the protection of intellectual property adequately.

The main objective of intellectual property rights protection is the encouragement of creativity and innovation, the balance of interests and benefits between the creators and the beneficiaries and the protection of authors' and innovators' rights. The encouragement of creative activity allows the creators to gain a compensation for their creative endeavor. The creators are also granted the right to prevent others from using their ideas without consent and without compensation being paid to them. Failure to do so can only encourage piracy and counterfeiting.³⁰⁰

In the present thesis, we dealt only with a part of intellectual property, which is copyright, since the subject of intellectual property is very wide. We have covered the subject of copyright protection from many sides focusing on the protection of copyright in Lebanon and comparing it with international ways of protection provided by WIPO and the copyright conventions.

In sum, intellectual property protection is not an end in itself but a means to an end, and a catalyst in social, cultural and economic development of every country. A developed industrial and business sector is dependent on a strong and effective intellectual property system at the international level and especially on the national level.

³⁰⁰ S. Alikhan, Socio-economic benefits of intellectual property protection in developing countries, *supra*, p.8

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