

Intellectual Property Copyright and Fair Use Lebanon as a Case Study

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Outline

- ▶ Introduction
- ▶ Lebanese Copyright Law
 - ▶ Copyright and Related rights
 - ▶ Exceptions related to libraries and institutions
- ▶ Piracy in Lebanon and Arab Countries
- ▶ Recommendations



Intellectual Property (IP)

- ▶ Intellectual Property
 - ▶ Industrial property
 - ▶ Copyright for literary and artistic works
- ▶ Intellectual Property Rights
 - ▶ Creator, or owner, of a patent, trademark, or copyright to has the right to benefit from his or her own work or investment
- ▶ Intellectual Property Rights Protection – Arab World
 - ▶ Trademark and patent rights are well protected in most Arab countries
 - ▶ Copyright is one of the weakest area in intellectual property rights protection in Lebanon and the Arab world. Even when the protecting copyright exist



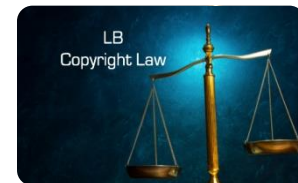
September 11, 1872	Ottoman Law on Privileged Works: first law to protect literary and intellectual property rights in Lebanon
January 17, 1924	Under the French mandate, Resolution No. 2385 which protect various forms of intellectual property including literary and artistic property was issued
June 28, 1934	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.
March 1, 1943	First Lebanese Criminal Code was promulgated. It set out in Articles 722 to 729 the penal sanctions for the infringement of literary and artistic property rights and the crime of piracy.
September 30, 1947	Lebanon joined the Berne Convention and ratified its modifications introduced in Paris in 1971.
July 17, 1959	Lebanon joined the Universal Copyright Convention (UCC) in order to protect the intellectual property rights of Lebanese authors in countries which were not at that time parties to the Berne Convention.
June 26, 1962	Lebanon signed the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations. It become effective in May 12, 1977, when it was ratified by the Lebanese Parliament
June 6, 1999	Law No. 75/99 on the Protection of Literary and Artistic Property issued
July 1, 2002	Resolution No. 2002/16 on the rights of copying and copying of computer programs by nonprofit educational institutions and academic and public libraries
May 25, 2006	Circular No. A/1/4 : on protection of computer programs and fight against piracy; Circular No. A/1/5 : on the protection of audiovisual and musical works; Circular No. A/1/6 : on the protection of literary, artistic and scientific works
November 15, 2007	Decree No. 918 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

Major Changes and Treaties Related to Copyright in Lebanon

Copyright in Lebanon

- ▶ Copyright in Lebanon is protected through
 - ▶ International agreements
 - ▶ Lebanese Copyright Law
 - ▶ Legislations related to enforcement of copyright
- ▶ Copyright Protection is **automatic**
- ▶ Copyright holder shall reserve all his rights **without** having to follow **any formalities**

The **Lebanese copyright law** protects every **creation of the human mind** whether it is written, pictorial, sculptural, handwritten or oral, regardless of its value, importance or purpose and the mode or form of its expression



Copyright in Lebanon – Works Protected



Any **original work** made by a qualified person is **eligible for copyright protection**. Originality of the work is related to the expression of the thought /idea

The protection apply to **artistic and literary** works of **Lebanese** residing anywhere, works on **non-Lebanese** who are nationals of, or resident in, a state member to Bern Convention, Universal Copyright Convention, Rome Convention, or Arab League *(even if it is not a member of the mentioned conventions provided that reciprocal treatment is applied)*

Works protected by the copyright law include but are not limited to

- ▶ All forms of printed matters (literacy, artistic or scientific)
- ▶ Verbally delivered works
- ▶ Audiovisual, photographic, musical and dramatic works
- ▶ Works of choreography and mime action
- ▶ Works of drawing, sculpture, engraving, weaving & lithograph
- ▶ Architectural drawings and pictures
- ▶ Computer programs
- ▶ Maps, designs, plans, and three dimensions



Works excluded from the protection of the copyright law

- ▶ Daily news bulletin
- ▶ Laws
- ▶ Decrees
- ▶ Resolutions and their translations
- ▶ Judicial rulings
- ▶ Public speeches
- ▶ Thoughts/ Ideas 
- ▶ Data and pure scientific facts
- ▶ All works of arts of folkloric heritage


Copyright Holders

Copyright holder	
	<input type="checkbox"/> Author of any artistic or literary work has an absolute property rights over his work
Joint work	<input type="checkbox"/> All the contributors are considered co-owners of copyright in the work <input type="checkbox"/> None of the coauthor may exercise copyright without the consent of other authors
Collective work	<input type="checkbox"/> Person or legal entity which took the initiative to create the work and supervise its execution
Work created under a work contract	<input type="checkbox"/> In case of absence of agreement to the contrary <input type="checkbox"/> Employer shall be the copyright holder
Audiovisual work	<input type="checkbox"/> Producer of the work
Anonymous or pseudonymous work	<input type="checkbox"/> Person or legal entity which published the work

The person whose name is shown on the work 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

The copyright holder shall enjoy economic and moral rights



Economic Rights

Copyright holder shall have the exclusive right to exploit the work commercially

Has the right to authorize or prohibit the following:

- Copying, printing, recording and reproduction of the work in any form
- Translation, adaptation, alteration, transformation, summarizing, reworking of the work
- Selling, distribution or rental of the work
- Communication to the public of the work by wire or wireless means

Exploitation or assignment of economic rights must be drawn up in writing:



Set out in detail the rights assigned and indicate the duration and location of this exploitation

*If such a **contract does not set a time limit**, exploitation of copyright shall be **valid for 10 years only** from the date of signature of the contract*

10
years



Moral Rights



- ▶ Arise automatically with copyright
- ▶ Are owned by the creator and can not be assigned
- ▶ May be transmitted by testamentary disposition or inheritance laws.

Copyright holder has the right to




Right to be named as the author of the work

(Authorship right, paternity right or attribution)

Right to protect the integrity of the work

(Prohibit any changes that would damage the author's honor or reputation)

- ▶ Disclose the work and to determine the way and method of such disclosure
 - ▶ 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
 - ▶ Use a pseudonym or to remain anonymous
 - ▶ Object to any distortion, mutilation or modification of the work
 - ▶ Cancel contracts for the assignment of economic rights even after their publication if rescission is necessary
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Related Rights in Lebanon



Related rights / Neighboring rights

- ▶ **Secondary rights** and can not exist on their own
- ▶ **Independent of the copyright**
- ▶ **Rights given to persons or legal entities** who contribute in **making the copyrighted work available to public**

Related rights are granted to the following categories



- ▶ **Performers** (actors, musicians, singers, orchestra members, dancers, and circus performers)
- ▶ **Producers of sound recordings**
- ▶ **Broadcasting organizations**
- ▶ **Publishing houses**

N.B. Related rights do not diminish copyright protection for a work that is performed, recorded or broadcast.

Related Rights in Lebanon

Each beneficiaries have the **right to allow or prohibit**

Performers



- Should elect **one person to represent them** in the exercise of their rights.
- Recording, broadcasting, and communication of their performance or program to the public without their approval

Producers of sound recordings



- Broadcasting of their unrecorded performance to the public
- Reproduction, importation and distribution of their sound recording
- Copying, selling, or rental of any recordings containing an unauthorized fixation of their performance

Broadcasting Organizations

- Rebroadcasting, fixation, or reproduction of their broadcast

Radio and television companies, establishments and corporations



- Rebroadcasting of their programs by whatever means
 - Showing of their programs in places where entrance is permitted of an entrance fee
 - Recording of their programs on tangible material for commercial purposes
 - Copying of unauthorized recordings of their programs
-



Protection through Collective Management

Lebanese copyright law defines the rules for collective management in Lebanon. It allows copyright and related rights holders to establish and join companies and associations to manage their rights, license their works and collect royalties

In Lebanon there is one active collective management society

- ▶ SACEM: The French Society of Authors, Composers and Music Publishers.
Has managed the collective rights of Lebanese authors since 1942 through its agency in Beirut. SACEM manage the works of its members and protect their rights in Lebanon and other countries that have signed mutual agreements with SACEM
- ▶ The Lebanese Association for the Production of Sound Recordings: has been founded in Beirut to manage the rights of the producers of sound recordings. This association did not start operating yet due to absence of regulatory texts
 - ▶ Decree number 918 issues in 2007 “Regulating the mode of establishment and functioning of collective management associations and companies...” needs ratification



Duration of Copyright Protection

Balance between

- ❑ Rights of authors/creators
- ❑ Rights of members of society to have fair access to these works

Achieved is by making **copyright law last for certain period of time** and not forever

How long does copyright last?

- ❑ Moral rights has no limited duration
- ❑ Economic rights are of limited duration and differs from country to country

Arab Countries

- ❑ Copyrighted works are protected from the moment the work is created for the entire lifetime of the author plus 25*, 50*, or 70* years after his or her death, depending on the country.

Lebanon:

- ❑ Life time of the author +50 years
- ❑ 50 years from the end of the year in which the work was first completed or published

* (Libya =25 years)

* (Majority of Arab countries = 50 years)

* (Bahrain, Morocco, and Oman= 70 years)

Work	Duration of Protection
Author	<ul style="list-style-type: none">○ Life of the author + 50 years to be computed from the end of the year in which the death has occurred.
Joint work	<ul style="list-style-type: none">○ Life of the joint authors + 50 years after the death of the last joint author to be computed from the end of the year in which the death has occurred○ Should one of the authors die without leaving heirs, his share shall pass to the co-authors or to their heirs, unless stated otherwise.
Collective work and Audiovisual work	<ul style="list-style-type: none">○ 50 years starting from the end of the year in which the work has been made available to the public○ 50 years from the making of such work, to be computed from the end of the year in which the work has been completed
Anonymous or pseudonymous work	<ul style="list-style-type: none">○ 50 years after the work has been legally made available to the public
Performers	<ul style="list-style-type: none">○ 50 years to be computed from the end of the year in which the performance has been carried out.
Producers of sound recordings	<ul style="list-style-type: none">○ 50 years to be computed from the end of the year in which the first fixation of sound on tangible material has taken place.
Broadcasting organizations	<ul style="list-style-type: none">○ 50 years to be computed from the end of the year in which the broadcasting of their programs has taken place.
Publishing houses	<ul style="list-style-type: none">○ 50 years to be computed from the end of the year in which the first publication has taken place.

When the term of copyright protection expires, the work enters the public domain.





Public Domain

Scope of the public domain differs from country to country depending on the duration of copyright protection

Works in the public domain can be copied, shared, and translated by any person for free and without the need to seek anyone's permission

The role of the copyright in this domain is to give the authors control over the integrity of their work and the right to be properly cited

Public Domain consists of

- ▶ Work with expired copyright
 - ▶ Works not covered by copyright law
 - ▶ Copyrighted works deliberately dedicated by author to the public domain using the Creative Commons (CC) license. 
- CC license is one of the public domain licenses. It is used by author when he wants to share and give the right to use*



Copyright Law Exceptions and Limitations

Copyright law

Grant rights to owners of works
Permit limitations and exceptions

Copyright exceptions and limitations balance between:

Creators or Owners of works
Users need to access information

WIPO* Studies on Copyright Exceptions and Limitations for Libraries and Archives

Limitations and exceptions for libraries vary from country to country due to particular social, economic and historical conditions.

Numerous Member States had either no limitations or exceptions for libraries in their national copyright legislation, or had only minimal/general provisions.


Copyright laws in Arab countries provides exceptions and limitations

Allow users to utilize and copy copyrighted and related rights materials without the permission of the author

No one Arab country has a fair use exception and all the provided exceptions are limited and do not justify the needs of the users.

Lebanese copyright law

1. Set out some exceptions for the use in specific cases, of copyright and related rights without the author's consent and without paying him any fee.
2. This use is based on strict conditions that must be respected otherwise such use will be considered an infringement of copyright.

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- Personal use
 - Libraries
 - Media use
 - Performing works in public
 - Artistic work

* WIPO: World Intellectual Property Organization

Exceptions/ Limitations for Libraries - Lebanon

Reproducing Computer Programs

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.

Research and Studying

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

Research and Studying

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

Preservation

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

http://www.economy.gov.lb/public/uploads/files/4600_3516_9524.pdf



“Fair Use” concept is not embedded in the law but the Lebanese copyright law exceptions allow, to a certain extend, the practice of “Fair Use”

Lebanese national systems have not been updated for the digital environment, delaying in particular cross-border activities, such as distance learning, digitization projects by libraries and exchange of material in accessible formats for people with disabilities.

Reproduction Right Organization is beneficial for libraries but is absent in Lebanon. RRO legalize the photocopying and Ease the burden of right clearance



Limitations and Exceptions for libraries – IFLA

IFLA* has produced a treaty proposal on copyright Informal chart on limitations and exceptions for libraries and archives to guide WIOP's member states in updating limitations and exceptions for libraries worldwide.



It should be permissible for libraries to

- ▶ Acquisition: Purchase or obtain a license to use copyrighted works that has been commercially available (e.g. buying books from abroad)
- ▶ Preservation: Make copies of works available in its collections for purpose of preservation including migrating content to different formats
- ▶ Course reserve: Make copies of a work in support of classroom teaching
- ▶ Borrowing /Interlibrary loan: Lend copyrighted works and materials protected by related rights to a user or a library for a temporary access
- ▶ Document delivery: Make and supply a copy of a work to a library, archive user, or to another library or archives in connection with a request by a user at that library for the purpose of education, research or private use.
- ▶ Support person with disability: Convert materials from one format to another to make it accessible to person with disability
- ▶ Orphan books: an exception is needed to resolve the problems of orphan books

*IFLA: International Federation of Library Associations



Piracy in Lebanon and Arab countries

Software Piracy in MENA region in 2015			
Country	Piracy Rate	Global Rank	Losses (US\$m)
Libya	90%	1	65
Yemen	87%	4	11
Iraq	85%	8	120
Algeria	83%	15	84
Tunisia	74%	33	49
Lebanon	70%	37	65
Morocco	65%	46	57
Egypt	61%	52	157
Oman	60%	53	59
Turkey	58%	57	291
Kuwait	58%	57	94
Jordan	56%	61	34
Bahrain	54%	62	34
Saudi Arabia	49%	69	412
Qatar	48%	71	72
UAE	34%	89	226
Israel	29%	95	161

Source: Business Software Alliance, Byblos Research

US-Business Software Alliance estimated Software Lebanon's piracy rate at **70% in 2015**, compared to 71% in 2013 and 2011, and 72% 2009

Lebanon had the 37th highest piracy level globally (out of 111 countries) and **6th highest** in the **MENA region**

According to the **United States Trade Representative (USTR) 301 Report** published in **2017**, Lebanon remains on the **Watch List** for infringement of intellectual property rights and copyright problems.

Weak legal framework, poor law enforcement and price of software in local market combined lead to high risk of piracy in Lebanon.

Examples of piracy include but are not limited to:

- ▶ Software piracy
- ▶ Book piracy in form of illegal photocopying
- ▶ Retail piracy of all kind of copyright materials (movies, music, and entertainment software)
- ▶ Cable and pay TV piracy

Lebanon is making progress in fighting piracy

Rights holders are still facing many difficulties and challenges

- ▶ Lebanese legislative framework for copyright and related rights is not sufficient to protect these rights.
- ▶ The protection system is not implemented and enforced in an effective manner

Recommendations

Violation of intellectual rights remains a serious problem in Lebanon.

There is a movement in Lebanon at the governmental level on Open Data and freeing the access to the public data, without infringing proprietary rights

Lebanon should

- Improve and modernize laws and the regulatory framework of Intellectual Property
- Introduce more efficient legal practices
- Allocate financial and human resources to law enforcement institutions
- Ratify and implement the latest acts of several international Intellectual Property framework treaties.
- Ratify and implement decrees related to Lebanese copyright law
- Increase public awareness:
 - ❑ Students → school campaigns
 - ❑ Governmental bodies → training
 - ❑ Public → awareness campaigns and other alternatives



*Thank
you*



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