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Copyright law in the United Arab Emirates in the digital age

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**Legislation cited:** Federal Law 7/2002 for Copyright and Neighbouring Rights (United Arab Emirates)

*This article gives an overview of copyright law in the United Arab Emirates (UAE) and critically evaluates its operation in the digital era, providing suggestions for reform.*

Since joining the World Trade Organisation (WTO) and signing the associated Trade-Related Aspects of Intellectual Property Agreement (“TRIPS agreement”) many countries throughout the world have amended or passed new laws on copyright. As part of this process, in 2002, the UAE promulgated a new copyright law titled Federal Law (7) of 2002 (UAE) Pertaining to Copyrights and Neighbouring Rights (“UAE Copyright Law”).<sup>1</sup>

This article seeks to overview and evaluate the provisions of the UAE Copyright Law especially in the context of an increasingly digital and networked world.<sup>2</sup>

### **Copyright fundamentals**

Article 3 of the UAE Copyright Law confirms the fundamental principle that copyright protects the *expression* of ideas, not simply the idea.<sup>3</sup> Furthermore the sale of an item embodying copyright such as a book does not transfer economic or financial rights but it will transfer ownership of the physical item, namely the book.<sup>4</sup> Pursuant to art.4, “no prejudice shall be caused to the aspects of protection or the rights prescribed” under the law if the work has not “been filed nor the rights thereof and disposals therein” registered.<sup>5</sup>

### **Copyright subject matter**

Copyright subject matter is defined in art.2 of the UAE Copyright Law in much the same way as in many other countries.<sup>6</sup> It covers literary works such as books, computer software, databases, lectures and speeches, dramatic works, musical works, audio, visual and audio-visual works, architectural works, drawings, paintings, sculptures, works of applied art, photographs, maps and derivative works.<sup>7</sup> This subject matter is extended by later sections to sound recordings (art.18), broadcasts (art.19) and performances (art.17).

### **Economic and moral rights**

*Economic or financial rights*

The core financial rights (or exclusive economic rights) of the “author and his successors or the holder of the right of the author” are specified in art.7 to include the right to grant licences for the exploitation of the work, in any manner, particularly for:

“[R]eproduction,<sup>8</sup> electronic storage or downloading, public performance or communication,<sup>9</sup> broadcasting, re-broadcasting, acting a play, transmission, translation, alteration, modification, rental, lending and publication by any means including provision of publication through computers or information nets or communication nets or other means.” Rental of software and audio-visual works is narrowed by art.8. Under art.8 the right to rental “will not apply to computer software unless such software is the essential subject of a rental” and, “will not apply to audio- visual works unless such rental is prejudicial to the normal exploitation of such works”. Article 18 outlines the financial rights of the producers of phonograms or sound recordings which include the right to prevent any exploitation in any manner without authorisation and the right to disseminate recordings via wire, wireless, computer or other means. Third parties are prohibited from, “exploiting such sound recordings by reproduction, rental, broadcasting, re-broadcasting and making available to the public through computers or other means”. Under art.19 broadcasting organisations have the right, “to grant licenses for the exploitation of the recordings and broadcast thereof” and to prevent “any communication to the public” without authorisation. Third parties are prohibited from exploiting broadcasts by, “recording, copying, rental, rebroadcasting or communication to the public in any manner”. Pursuant to art.7 performers have financial rights to transmit and communicate unfixed performances, fix the performance on phonograms and the right to reproduce the performance fixed on the phonograms. Third parties are prohibited from the:

“[F]ixation of such live performance on a phonogram for direct or indirect, commercial revenue, rental, transmission or availability to the public on any medium by others without authorization of the right holder.”

Article 17 is expressed to apply, “to fixation of performances in audiovisual work, by their performers unless agreed otherwise”. This seems to suggest that use of the sound recording in an audio visual work will not impact on its level of protection.<sup>10</sup>

### *Moral rights*

In many countries copyright law provides authors with the moral rights of integrity and attribution (paternity) and this is the case in the UAE where the additional rights to decide to first publish the work (divulgence) and “to withdraw the work from circulation if serious reasons justifying such have occurred” (retraction) are also protected.<sup>11</sup> Under the UAE Copyright Law moral rights “are not liable for prescription or assignment”.<sup>12</sup> The UAE Copyright Law treats protected copyright material as an extension of the personality of the author. In this regard the UAE Copyright Law is similar to art.L.121-1 of the French Intellectual Property Code which provides:

“An author shall enjoy the right to respect for his name, his authorship and his work. This right shall attach to his person. It shall be perpetual, inalienable and imprescriptible. It may be transmitted *mortis causa* to the heirs of the author.”

### **Authors**

An author under art.1 of the UAE Copyright Law is deemed to be “the person who creates the work”.<sup>13</sup> A person publishing anonymously or under a pseudonym shall also be deemed as an author provided that no doubt is raised in respect of their true identity. Where doubt exists:

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“[T]he publisher or producer of the work, whether a natural or juridical person, shall be deemed representative of the author in exercising the rights thereof, until the true identity of the author is recognized.”<sup>14</sup>

Pursuant to art.26 of the UAE Copyright Law:

“Any natural or juridical person who directed the creation of a work of collective-authorship may solely assume the moral and financial copyrights thereon; unless otherwise agreed upon.”<sup>15</sup>

Pursuant to art.25 of the UAE Copyright Law:

“In [the] case of works of joint-authorship, in which the shares of authors may not be separated, all the jointauthors shall be deemed equal authors of the work; unless otherwise agreed upon in writing.”

In this case “no author may singularly exercise the copyrights” unless there is a written agreement stating otherwise.<sup>16</sup>

### **Duration/term**

The term or length of protection that copyright law provides will depend on the type of copyright subject matter that is in issue.<sup>20</sup> For example in the UAE copyright in a book or musical composition will last for the life of the author plus 50 years,<sup>21</sup> a sound recording 50 years and a broadcast 20 years.<sup>22</sup> In some countries, like Australia, moral rights last for the duration of the copyright<sup>23</sup> while in other countries such as France<sup>24</sup> and China<sup>25</sup> moral rights are “unlimited” or “perpetual”--they last forever. It is unclear from the UAE Copyright Law what the position is in the UAE.<sup>26</sup>

### **Limitations and exceptions<sup>33</sup>**

Under copyright laws throughout the world the exclusive economic or financial rights of the copyright owner are normally subject to limitations and exceptions.<sup>34</sup>

Article 22 provides for eight exceptions to the author's<sup>37</sup> financial or exclusive rights under the UAE Copyright Law.<sup>38</sup> They can be summarised as follows:

1. “[t]o make a sole copy from the work for the merely personal and non-commercial or professional but personal use of the copier” (not applicable in certain cases to fine and applied art, architectural works and software (subject to 2 below));
2. making a sole copy of a computer software programme with the acknowledgement of the person lawfully in control of the software within the limits of the licence or for the purpose of back-up or replacement for when the original is lost, destroyed or unusable provided the, “reserve or derived copy must be destroyed even if it was stored in a computer as soon as the right of acquisition of the original copy” is no longer valid;
3. copying of works for judicial proceedings;
4. making a sole copy of the work with the acknowledgement of libraries, archives or documentation offices and not for profit, for preservation or research and study;
5. quotations and analysis for criticism and review;
6. “[p]erforming the work in family meetings or by students in an educational institute against no direct or indirect remuneration”;
7. “[p]resenting the fine arts, applied and plastic arts works or architectural works in broadcasting programmes, if such works are permanently present in public places”; and

8. “[r]eproduction of written, sound or audio-visual short excerpts for cultural, religious, educational or vocational training purposes, provided that copying be in the reasonable limits of its purpose and that the name of the author and the title of the work be mentioned wherever is possible and that the copying authority does not aim at direct or indirect profit and that license for copying was unobtainable in accordance with the provisions of this law”.

Article 23 of the UAE Copyright Law (which is also extended to neighbouring rights through art.24) also provides other limitations and exceptions for newspapers, periodicals or broadcasting organisations that are allowed to reproduce certain works for publication purposes provided that, “the limits are justified by the objective thereof”.<sup>39</sup>

### **Infringement and remedies**

The UAE Copyright Law like any other copyright law has provisions on infringement and remedies.<sup>40</sup> In practice, judges usually appoint experts to help them determine whether a copyright infringement has taken place, but the final decision is left to the judge presiding over the case. Chapter 7 (arts 34-41) of the UAE Copyright Law (entitled “Precautionary Measures and Penalties”) deals with enforcement. It provides the author or the rights holder or their successors with various remedies against infringers including, precautionary measures, administrative sanctions, civil redress<sup>41</sup> and criminal penalties.

Article 34 gives the author or their successors<sup>42</sup> the right to request the Head of the Court of First Instance to take precautionary measures against infringers of copyright.<sup>43</sup> Customs authorities may also order on their account or upon the request of the author or the rights holder or their successors:

“[T]he suspension of the release of goods that have been counterfeited in contradiction with the provision of the law herein, for a period not exceeding twenty days.”<sup>44</sup>

Pursuant to art.37, without prejudice to any severer penalty provided for in any other law, infringers of copyright<sup>45</sup> shall be penalised by imprisonment for not less than two months and a fine of not less than 10,000 dirhams (US \$2,700), and not exceeding 50,000 dirhams (US \$13,600) or either of both penalties.<sup>46</sup>

### **Issues to consider**

Having outlined the core provisions of the UAE Copyright Law it is now possible to reflect upon how this law might meet the challenges of innovation and development in the digital age.

#### *Intermediary liability and the need for safe-harbour provisions*

The UAE Copyright Law contains no provision dealing expressly with secondary (or what is called in other jurisdictions--contributory/vicarious/inducement or authorisation) liability.<sup>47</sup> In most jurisdictions in the absence of a provision in the copyright act this issue would be dealt with under general tort law<sup>48</sup> and principles of joint liability.<sup>49</sup>

The UAE needs to consider legislating safe-harbour provisions (including notice and takedown provisions) that will sensibly protect intermediaries especially if it wants to develop industries providing information services.<sup>54</sup> Such provisions should also cover caching which is a key ingredient of the provision of network services.<sup>55</sup> It is important to carefully and sensibly define who is protected by the safe harbours, as in Australia, for example, there is uncertainty as to whether content hosts like YouTube are covered.<sup>56</sup>

#### *The adequacy of current limitations and exceptions*

The UAE Copyright Law has a number of limitations and exceptions as outlined above.<sup>57</sup> These limitations and exceptions are critical to a vibrant education, research and innovation system. Therefore they should be closely considered in this context. While free-trade agreements provide many benefits too often countries who are net importers of IP (such as Australia) have struck deals that see a narrow limitations and exceptions regime put in place. This serves to privilege US copyright interests but has the potential to slow down the development of education and research as the cost of accessing copyright material increases. Any free trade agreement with the United States should expressly permit the UAE to embed in its law the “freedom to reuse” copyright material to the same extent as the fair use principle allows. Some may suggest this is not necessary as there is already wide scope for reusing copyright material under the personal use exception under UAE Copyright Law.<sup>58</sup> The key question will be the extent to which the personal use exception will operate in the digital environment? In testing the efficacy of its law in the digital environment the UAE should ask to what extent its law allows activities such as the:

- right to reuse copyright material (for non commercial purposes) in circumstances where there is no financial detriment to the copyright owner;
- right to engage in transformative and fair use;
- right to reuse government funded copyright (for non-commercial purposes); and
- right to engage in format shifting, e.g. changing material from analogue to digital format or changing material from one digital format (CD) to another (mp3).

The usefulness of limitations and exceptions is seriously undermined if they can be overridden through contractual licences or agreements. This is a practice that arises where books, journals or software are licensed rather than sold to the consumer and the licence provides that the freedoms like those provided under arts 22, 23 and 24 are not permitted. Which is more powerful--the public interest of the copyright legislation or the private interest of the contractual agreement? There are cases in the United States that uphold the contractual ouster of copyright exceptions yet in Australia our Copyright Law Review Committee recommended that copyright should trump contract and in relation to reverse engineering of software this is expressly stated.<sup>59</sup> Best practice would suggest that UAE Copyright Law should contain a section that expressly provides that copyright limitations override any attempt to oust them by contract.<sup>60</sup>

#### *Term extension*

There are strong arguments to suggest that there is no sensible economic reason for extending the term of copyright in any country and therefore the UAE should be wary of and investigate closely any proposal for extending copyright term.<sup>61</sup> Term extension has occurred in a number of Arab countries that have signed an FTA with the United States including Bahrain,<sup>62</sup> Morocco<sup>63</sup> and Oman.<sup>64</sup>

#### *Anti-circumvention law*

While the actual or dealing in devices designed for the circumvention of “technological protection” is prohibited under art.38 of the UAE Copyright Law this provision only provides for criminal (not civil) redress <sup>65</sup> and importantly there are no specific exceptions listed.<sup>66</sup> Breach of art.38 of the UAE Copyright Law will result in a penalty of imprisonment for not less than three months and a fine of not less than 50,000 dirhams and no greater than 500,000 dirhams and in case of recurrence, the penalty shall be increased to imprisonment for a period of not less than nine months and a fine not less than 200,000 dirhams.



It is critically important to include appropriate exceptions and limitations in any anti-circumvention provisions. By failing to include such exceptions and limitations in the copyright law countries like the UAE,<sup>76</sup> Qatar,<sup>77</sup> Kuwait<sup>78</sup> and Jordan<sup>79</sup> run the risk of impeding the development of education, research and the IT sector in their jurisdictions.

#### *The promotion of voluntary mechanisms like creative commons*

The task of making copyright law more suitable for the digital age will--as outlined above--involve looking at and reforming the provisions of the copyright law. However many people have realised that a more immediate route is to try and use the copyright system as it currently exists along with voluntary mechanisms to improve the situation. The Creative Commons and Free and Open-Source Software projects are key examples of this. *Creative Commons (CC)* is a worldwide project that aims to build a distributed information commons by encouraging copyright owners (who wish to share their material) to licence use of their material through open content licensing protocols and thereby promote better identification, negotiation and reutilisation of content for the purposes of creativity and innovation.<sup>80</sup> It aims to make copyright content more “active” by ensuring that content can be reutilised with a minimum of transactional effort.<sup>81</sup>

*Free and open-source software (FOSS)* is software which is liberally licensed to grant to users the right to study, change, and improve its design through the availability of its source code.<sup>82</sup> This approach has gained both momentum and acceptance as the potential benefits have been increasingly recognised by individuals, government and corporate players.<sup>83</sup>

The UAE represent a fertile ground for the development of information communication technologies (ICT) for the Arab region in general and FOSS in particular. The UAE Government should explore the potential of using FOSS to develop its governmental institutions. In doing so it is also critical to understand the legal issues associated with the use of FOSS in government.<sup>84</sup>

Jordan is the first country in the Middle East to start a creative commons (CC) project. Creative Commons (CC) has been working with Abu-Ghazaleh Intellectual Property (AGIP),<sup>85</sup> a law firm specialising in IP issues since March 2004 to port the CC licence into the Jordanian civil legal system and copyright law. Version 01 of the CC licence was translated into Arabic and posted over the internet on March 30, 2004 and Version 03 was finalised and will be launched in late 2010.<sup>86</sup> There is currently no CC initiative in the UAE. The possibility that the UAE will open its own chapter on CC was discussed in the meeting of “CC Arab region” that took place in Doha, Qatar on March 14, 2009 with the support of Al Jazeera.<sup>87</sup> In August 2008 one of, if not the most, influential intellectual property courts in the United States known as the Court of Appeals for Federal Circuit upheld the validity of an open-source software licence known as the “Artistic Licence”. The case is significant because up until this point there had been little judicial discussion of the legal operation of this new type of copyright licensing that is sweeping across the world fuelled by the ubiquity of the internet. The decision in *Jacobsen v Matthew Katzer and Kamind Associates Inc*<sup>88</sup> provides a unique and welcome insight<sup>89</sup> into the legal operation of free and open-source software licences and by analogy creative-commons styled open-content licences.<sup>90</sup>

#### **Conclusion**

The rise of digital networked technologies has meant that copyright is now central to most everything we do from recreation to research. Every time we use networked digital technologies--which inherently reproduce

and communicate as part of their operation--we automate the possibility of copyright infringement. In every country copyright law and not just patent law should be seen as a key ingredient of the innovation system. It is fundamental to the generation and transfer of knowledge. In further developing its copyright law and practice UAE needs to be mindful of the importance of “information flow” in the modern economy.<sup>97</sup> It needs to be alert to the fact that overly-restrictive copyright law will slow down development and innovation whereas copyright law that can harness the power of technology will provide a competitive advantage.<sup>98</sup>

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1. The first UAE copyright law (Federal Law 40 of 1992 for the Protection of Intellectual Works and Copyright) and its implementing Regulations (411/1993 and 412/1993) came into force on April 12, 1993 and September 1, 1994 respectively. This (old) law was repealed on July 14, 2002 by the issuance of the Federal Law (7) of 2002 (UAE) Pertaining to Copyrights and Neighbouring Rights (“UAE Copyright Law”). There are a number of translations of this law into English (which differ slightly). We have relied primarily on the translation available from the website of Abu-Ghazaleh Intellectual Property (AGIP): [http://www.agip.com/country\\_service.aspx?country\\_key=10&service\\_key=C&SubService\\_Order=3&lang=en](http://www.agip.com/country_service.aspx?country_key=10&service_key=C&SubService_Order=3&lang=en) [Accessed August 18, 2010]. We have also had regard to the translation that is available from WIPO: [http://www.wipo.int/clea/en/text\\_html.jsp?lang=en&id=7](http://www.wipo.int/clea/en/text_html.jsp?lang=en&id=7) [Accessed August 18, 2010]. The constitutional authority for the UAE Copyright Law is found in art.121 of the UAE Constitution available at [http://www.worldstatesmen.org/uae\\_const.doc](http://www.worldstatesmen.org/uae_const.doc) [Accessed August 18, 2010]. See also Regulations (decisions of the Minister of Information and Culture) on Registration of Works (131/2004), Register of Imported and Distributed Works (132/2004), Collective Management of Rights (133/2004), Compulsory Licensing for Copying and Translating Works (134/2004), Fees Relating to the Rights of the Author and Neighboring Rights (288/2004). On the operation of regulations under the 1992 and 2002 Acts see: P. Hansen, *Intellectual Property Law and Practice of the UAE* (Oxford: OUP, 2009), pp.171-2. The UAE Copyright Law draws heavily on the author's right system. For an analysis of the difference between the author's right system and the copyright system see: S. von Lewinski, *International Copyright Law and Policy* (2008), Ch.3.

2. See also Essam Al Tamimi, “Current U.A.E Copyright Law and how it compares and contrasts with WTO's TRIPs Agreement and the Berne Convention” (1999) 2 *Journal of World Intellectual Property* 371;

Ali Dualeh Abdulla, *Copyright and Knowledge Advancement: A Case Study on UAE Copyright Law* (2007).

3. Under UAE Copyright Law art.3 copyright protection will not be afforded to: “1) Official documents, whatever the source or target language thereof, including legal texts, regulations, decisions, international agreements, judicial rulings, arbitral awards, and judgments issued by administrative committees of judicial competence. 2) Reports and news of incidents or current events having the character of mere items of press information. 3) Works that have fallen into public domain. Nevertheless, items 1, 2 and 3 of the present article shall be protected, if characterized by innovation in terms of the collection or arrangement thereof or any other effort exerted therein.”

4. See UAE Copyright Law art.3. Things are more complicated when dealing with intangible items such as software and this is why major software companies “licence” (as opposed to “sell”) software. A licence will determine user rights and in many cases will not allow any further selling of the particular software or copies of it. See further B. Fitzgerald,



“Commodifying and Transacting Informational Products Through Contractual Licences: The Challenge for Informational Constitutionalism” in CEF Rickett and GW Austin (eds), *Intellectual Property and the Common Law World*, (Oxford: Hart, 2000), p.35.

5. cf. P. Hansen, *Intellectual Property Law and Practice of the UAE* (Oxford: OUP, 2009), pp.225-7. On the practical aspects of registration see: Al Tamimi, *Copyright Law*, available at <http://www.zu.ac.ae/library/html/UAEInfo/documents/UAECopyright.pdf> [Accessed August 18, 2010].

6. UAE Copyright Law art.2 lists 12 types of copyright material to be protected under the law.

7. “National folklore” is defined in art.1 (and referred to in the definition of “derivative work” in art.1) but is not mentioned in art.2 or elsewhere in the UAE Copyright Law.

8. “Reproduction” means according to UAE Copyright Law art.1: “The making of one or more reproductions of a work, phonogram, broadcast or any performance in any manner or form, including permanent or temporal electronic loading or storage, and whatever the method or device used in reproduction.”

9. “Communication to the Public” means according to UAE Copyright Law art.1: “Wire or wireless transmission of a work, a performance of phonogram or of a broadcast in a manner that enables receiving thereof, through transmission only, to persons other than the family members and close friends, and in any place other than the place of transmission; regardless of the time, place or manner of receiving.”

10. P. Hansen, *Intellectual Property Law and Practice of the UAE* (Oxford: OUP, 2009), pp.220-2. Hansen (p.224) questions whether in relation to the financial rights of neighbouring rights-holders under the UAE Copyright Law the granting of a right to prohibit certain types of exploitation is the same as a the grant of a positive right to authorise those acts.

11. See UAE Copyright Law art.5. Under art.5 the right to withdraw the work from circulation must be exercised through the relevant court of jurisdiction and compensation paid by the author to a party ascribed the financial exploitation rights. Pursuant to art.16 performers have the moral rights of attribution and integrity.

Article 16 also provides in relation to performers moral rights that: “The Ministry after the expiry of the economic rights stipulated in this law shall exercise such literary rights in order to preserve their performance in the shape of its creation.”

12. See UAE Copyright Law art.5.

13. “Creativity” is defined as “the element of innovation that bestows authenticity and distinctiveness upon the work”: UAE Copyright Law art.1.

14. See UAE Copyright Law art.1.

15. See UAE Copyright Law art.26. P. Hansen, *Intellectual Property Law and Practice of the UAE* (Oxford: OUP, 2009), p.180, notes that the position of employers is not expressly mentioned in the copyright law and questions whether art.26 is meant to do this job, concluding that it is not a complete solution.

16. See UAE Copyright Law art.25. On the notion of a “joint author” in an audio-visual, audio or visual work see art.27.

20. A. Fitzgerald and B. Fitzgerald, *Intellectual Property in Principle* (Law Book Co, 2004), pp.126-128.

21. Compare that with art.L.123-1 of the French Intellectual Property Law, which provides that:“The author shall enjoy, during his lifetime, the exclusive right to exploit his work in any form whatsoever and to derive monetary profit there from. On the death of the author, that right shall subsist for his successors in title during the current calendar year and the 70 years thereafter.”

22.

23. See UAE Copyright Law art.20.
24. Australian Copyright Act 1968 s.195AM.
25. French Intellectual Property Code art.L.121-1.
26. Copyright Law of the People's Republic of China of 1990 art.20 (as amended) provides that: "The rights of authorship, alteration and integrity of an author shall be unlimited in time." ([http:// www.chinaiprlaw.com/english/laws/laws10.htm](http://www.chinaiprlaw.com/english/laws/laws10.htm) [Accessed August 18, 2010]).  
On China and copyright law see: B. Fitzgerald et al. (eds), *Copyright, Digital Content and the Internet in the Asia Pacific* (Sydney University Press Sydney, 2008), available at [http://www.eprints.qut.edu.au/view/person/Fitzgerald,\\_Brian.html](http://www.eprints.qut.edu.au/view/person/Fitzgerald,_Brian.html) [Accessed August 18, 2010].
33. See art.147 of the UAE Constitution.
35. See generally, art.9 of the Berne Convention 1886. Article 13 of TRIPs provides: "Members shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder."
36. US Copyright Act 1976 s.107: "*Limitations on Exclusive Rights: Fair Use.* Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include--(1) the purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes;(2) the nature of the copyrighted work;(3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and(4) the effect of the use upon the potential market for or value of the copyrighted work.The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors."
- 37.
- 38.
- 39.
- 40.
- 41.
42. UAE Copyright Law arts 22 and 23.
43. UAE Copyright Law art.22 is extended to neighbouring rights through art.24.
44. UAE Copyright Law art.22 corresponds with the French Intellectual Property Code art.L122-5 that provides similar limitations and exceptions and reads as follows:"Once a work has been published, the author cannot prevent:1. Private family performances.2. Copies for the private and personal use of the copier.  
This provision does not apply to works of art, computer programs (where a single safeguard copy is allowed, Art L122-6-1-II) and databases.3. In cases where the name of the author and the source are clearly indicated,  
a) Analyses and short citations justified by the critical, polemical, scientific or pedagogical nature of the work.b) Press reviews.c) Diffusion of public speeches as current news.d) Reproductions of works of art in catalogues for auctions in France (subject to regulatory restrictions).4. Parody, pastiche and caricature, 'taking into account the usage of the genre'.5. Acts necessary to access a database within the limits of the agreed use."
- 45.
- 46.
- 47.

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54.

55. These limitations and exceptions apply to: “1- Extracts of the works thereof that have been lawfully made available to the public. Such shall apply on communicating extracts of seen or heard works, during current incidents; or broadcasting or communicating same to the public in any other manner. 2- Published articles relating to discussions of issues, which have occupied public opinion at a certain time; so long as upon publication such articles are not prohibited. 3- Speeches, lectures, and addresses delivered in the course of public sessions of parliament, judicial councils and public meetings; so long as such speeches, lectures and addresses are delivered to the public, and are reproduced within the framework of reporting current news.” UAE Copyright Law art.23.

56. On the complexities of this topic see: Hansen, *Intellectual Property Law and Practice of the UAE*, 2009, pp.236-7.

57. Hansen, *Intellectual Property Law and Practice of the UAE*, 2009, pp.237-238 suggests that a right to compensation is not expressly provided for in the copyright law and must be found in the general law: see Federal Law 5 of 1985 on Civil Transactions art.282.

58. Hansen, *Intellectual Property Law and Practice of the UAE*, 2009, p.237 suggests that this provision must extend to the holders of neighboring rights pursuant to UAE Copyright Law art.24.

59. See UAE Copyright Law arts 34 and 35.

60. See UAE Copyright Law art.36.

61. Including the, “moral or financial rights of the author or the holder of the neighboring right”: UAE Copyright Law art.37(1).

62. See further UAE Copyright Law art.38 (dealing specifically with protection of technological measures, electronic rights management information and software) which provides for the tougher penalties of imprisonment for not less than three months and a fine of not less than 50,000 dirhams (US \$13,600) and not exceeding 500,000 dirhams (US \$136,128).

63. See, for example, *A & M Records Inc v Napster Inc* 239 F. 3d 1004 (9th Cir. 2000) (Napster), *Universal Music Australia Pty Ltd v Sharman License Holdings Ltd* (2005) 65 I.P.R. 289; [2005] FCA 1242 (Kazaa) and *MGM Studios Inc v Grokster Ltd* 545 US 913 (2005) (Grokster).

64. Tort is recognised in the UAE under Federal Law 5 of 1985 on Civil Transactions art.124. Article 282 of the UAE Federal Law 5 of 1985 on Civil Transactions provides that, “any harm done to another shall render the perpetrator, even if he is a minor, liable to make good the harm”. Three elements must be present for tort liability to arise under UAE law and civil legal systems: (i) a fault or error (which may be either an act or a failure to act); (ii) damage to another; and (iii) a casual connection between the fault and damage. See Al Tamimi, *Law of Tort in the UAE*, <http://www.zu.ac.ae/library/html/UAETInfo/documents/UAETortLaw.pdf> [Accessed August 18, 2010]. See further the explanation of tort law under continental European systems which have had a strong influence in Arabic countries, particularly that of France (e.g. art.1382 of the French Civil Code): Edward A. Tomlinson, “Tort Liability in France for Act of Things: A Study of Judicial Lawmaking” (1998) 48 La. L. Rev. 1299; Dr Nouri Khater, “Explanation of the Jordanian Civil Law (Obligations)” (in Arabic) in *Dar Hamad* (1997).

65. See art.1382-1384 of the French Civil Code; art.121-7 of the French Penal Code. See also, art.313 of the UAE Federal Law 5 of 1985 on Civil Transactions; art.44-55 of UAE Criminal Federal Law 3 of 1987. See further, J. Spier, *Unification of Tort Law: Liability for Damage Caused by Others* (November 2003), pp.85-88; Hannibal Travis, “Opting Out of the Internet in the United States and the European Union: Copyright, Safe Harbors, and

International Law” (2008) 84 Notre Dame L. Rev. 331; Xavier Amadei, “Standards of Liability for Internet Service Providers: A Comparative Study of France and the United States with Specific Focus on Copyright, Defamation, and Illicit Content” (2001) 35 Cornell Int’l L.J. 189.

66. Oman, Morocco, and Bahrain US-FTAs contain provisions and side letters on intermediary liability, safe harbours and notice and taken down: see Bahrain art.14.10.29, Oman art.15.10.29 and Morocco art.15.11.28 and related side letters.

76. See further art.6 of the French Civil Code which provides that an, “agreement between individuals may not derogate from laws concerning public order or good moral”. Cf. Robert A.D. et al., Chanel et al. February 5, 2008 French Court of Cassation; see further Estelle Derclaye, *French Supreme Court rules fashionshows protected by copyright--what about the UK?*, available at <http://www.jiplp.oxfordjournals.org/cgi/content/full/3/5/286> [Accessed August 18, 2010]. Article 127 of the UAE Civil Transactions Law 5 of 1985 provides that: “Agreeing on a sin is not allowed.” See also, art.3 of the UAE Civil Transactions Law on what is considered “public order”.

77. In the context of neighbouring rights see generally: *The Gowers Review of Intellectual Property* (November 2006), available at [http://www.hm-treasury.gov.uk/d/pbr06\\_gowers\\_report\\_755.pdf](http://www.hm-treasury.gov.uk/d/pbr06_gowers_report_755.pdf) [Accessed August 18, 2010] in the UK which recommended the EU Commission should retain the length of protection on sound recordings and performers' right at 50 years; “Copyright extension is the enemy of innovation” in *Timesonline*, available at <http://www.timesonline.co.uk/tol/comment/letters/article4374115.ece> [Accessed August 18, 2010]; Max Planck Institute for Intellectual Property, Competition and Tax Law, *Comment by Max Planck Institute on the Commission's proposal for a Directive to amend Directive 2006/116 EC of the European Parliament and Council concerning the Term of Protection for Copyrights and Related Rights* (September 10, 2008), available at [http://www.ip.mpg.de/en/data/pdf/stellungnahme-bmj-2008-09-10-def\\_eng.pdf](http://www.ip.mpg.de/en/data/pdf/stellungnahme-bmj-2008-09-10-def_eng.pdf) [Accessed August 18, 2010]; Institute for Information Law of the University of Amsterdam, *The Recasting of Copyright & Related Rights for the Knowledge Economy* (2006), available at [http://www.ivir.nl/publications/other/IViR\\_Recast\\_Final\\_Report\\_2006.pdf](http://www.ivir.nl/publications/other/IViR_Recast_Final_Report_2006.pdf) [Accessed August 18, 2010]; letter of Professor P. Bernt Hugenholtz to Mr Barroso opposing the EU proposal, available at [http://www.ivir.nl/news/Open\\_Letter\\_EC.pdf](http://www.ivir.nl/news/Open_Letter_EC.pdf) [Accessed August 18, 2010]; cf. *Eldred v Ashcroft* 537 US 186 (2003).

78. Bahrain US FTA 2005 art.14.4 (s.4) provides that: “Each Party shall provide that, where the term of protection of a work (including a photographic work), performance, or phonogram is to be calculated:(a) on the basis of the life of a natural person, the term shall be not less than the life of the author and 70 years after the author's death; and(b) on a basis other than the life of a natural person, the term shall be(i) not less than 70 years from the end of the calendar year of the first authorized publication of the work, performance, or phonogram, or failing such authorized publication within 50 years from the creation of the work, performance or phonogram, not less than 70 years from the end of the calendar year of the creation of the work, performance, or phonogram.” Available at [http://www.ustr.gov/Trade\\_Agreements/Bilateral/Bahrain\\_FTA/final\\_texts/Section\\_Index.html](http://www.ustr.gov/Trade_Agreements/Bilateral/Bahrain_FTA/final_texts/Section_Index.html) [Accessed August 18, 2010].

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83. Morocco US FTA 2006 art.15.5 (s.5) provides that: “Each Party shall provide that, where the term of protection of a work (including a photographic work), performance, or phonogram is to be calculated:(a) on the basis of the life of a natural person, the term shall be not less than the life of the author and 70 years after the author's death; and(b) on a basis other than the life of a natural person, the term shall be(i) not less than 70 years from the end of the calendar year of the first authorized publication of the work, performance, or phonogram, or(ii) failing such authorized publication within 50 years from the creation of the work, performance, or phonogram, not less than 70 years from the end of the calendar year of the creation of the work, performance, or phonogram.”Available at [http://www.ustr.gov/assets/Trade\\_Agreements/Bilateral/Morocco\\_FTA/Final\\_Text/asset\\_upload\\_file797\\_3849.pdf](http://www.ustr.gov/assets/Trade_Agreements/Bilateral/Morocco_FTA/Final_Text/asset_upload_file797_3849.pdf) [Accessed August 18, 2010].

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89. Oman US FTA 2006 art.15.4 (s.4) provides that: “4. Each Party shall provide that, where the term of protection of a work (including a photographic work), performance, or phonogram is to be calculated:(a) on the basis of the life of a natural person, the term shall be not less than the life of the author and 70 years after the author's death; and(b) on a basis other than the life of a natural person, the term shall be(i) not less than 95 years from the end of the calendar year of the first authorized publication of the work, performance, or phonogram, or(ii) failing such authorized publication within 25 years from the creation of the work, performance, or phonogram, not less than 120 years from the end of the calendar year of the creation of the work, performance, or phonogram.”Available at [http://www.ustr.gov/assets/Trade\\_Agreements/Bilateral/Oman\\_FTA/Final\\_Text/asset\\_upload\\_file715\\_8809.pdf](http://www.ustr.gov/assets/Trade_Agreements/Bilateral/Oman_FTA/Final_Text/asset_upload_file715_8809.pdf) [Accessed August 18, 2010].

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98. See also for similar provisions art.42 of the Kuwaiti IP Law and art.47 of the Qatari Copyright and Neighbouring Rights Law 6 of 2002. Available in Arabic at [tp://www.gcc-legal.org/MojPortalPublic/Home.aspx](http://www.gcc-legal.org/MojPortalPublic/Home.aspx) [Accessed August 18, 2010].