

Chapter 2

Egypt

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2.1 Background

2.1.1 General geography

Egypt is located in the northeast corner of Africa and has a strategic geographic position connecting the Mediterranean Sea with the Indian Ocean. It is bordered by the Mediterranean Sea to the north, the Red Sea to the east, Sudan to the south and Libya to the west. Egypt is the world's 38th largest country, covering an area of about 1 001 450 km². It is divided into 29 governorates, with governors appointed by the President. In terms of land area, it is approximately twice the size of France and four times the size of the United Kingdom. Over 95 per cent of Egypt's land is desert, with the remaining land comprising the Nile Valley and Delta. The majority of the population lives near the banks of the Nile River, in an area of about 40 000 square kilometres, meaning that approximately 99 per cent of the population uses only about 5.5 per cent of the total land area.

2.1.2 Political history

It is difficult if not impossible to summarise Egypt's long and diverse history in a few paragraphs. What is important for the purposes of this research, however, is the recent political history, which reflects similarities and differences between Egypt and its neighbouring countries. Like its North African sisters, Egypt was part of the Ottoman Empire from the early 1500s. In the late 1700s it became a target for European colonialism and in 1882 the British established military control over the country, though allowing an appearance of political independence by the Egyptian monarchy.

The 1950s were an era of independence and military rule. In 1952, the Egyptian military ousted the King and in 1953 established a Republic. In 1956, Britain withdrew its last soldier. The current political system is a continuation of the 1952 regime, with an increased role for civil society and freedom of movement and speech and with an increasing adoption of capitalist and liberal values.

2.1.3 Cultural diversity, education, literacy and ICT use

Egypt is one of the most populous countries on the African continent, with an estimated 82 million people in 2008. Ninety-nine per cent of the population are Egyptians, 0.3 per cent are Nubians and 0.7 per cent are Greeks. Of the entire population, 48.8 per cent is female. The most important demographic trend is the young age of the Egyptian population, with people under 15 representing about 32 per cent of the populace. Arabic is the official language but English and French are widely understood by the educated classes.¹

The Egyptian education system is divided into three stages: basic, secondary and post-secondary. The basic education is compulsory and lasts for nine grades, split into two stages, primary school (Grades 1-6) and preparatory school (Grades 7-9) and is open to all children aged 6 to 14. The 1971 Constitution asserted in Article 18 that education is a basic right to be provided by the state. Secondary education, which generally comprises three years, is divided into general and technical, with some technical education schools having a five-year system. Only general secondary school graduates (the academic option) may be admitted to university after obtaining their General Secondary Education Certificate (GSEC) or an Advanced Technical Diploma with scores above 75 per cent.

Higher (post-secondary) education is provided by 48 universities and higher institutes of technical and professional training, both public and private.

Responsibility for higher education lies mainly with the Ministry of Higher Education and Scientific Research. Universities have full academic and administrative autonomy, but are supervised by the Supreme Council of Universities. Private universities are entitled to implement their own criteria of admission and to set fees without intervention from the Ministry.

Illiteracy is considered one of the greatest problems hindering citizens' involvement in the knowledge society. According to the Egyptian Central Agency for Public Mobilisation and Statistics (CAPMAS) Census in January 2007,² illiteracy rates decreased to 29 per cent in Egypt. The national budget for education in 2009/2010 represents almost 32 per cent of total public expenditure.

Egypt has been utilising information and communication technology (ICT) as part of its provision of education for some time. The state aims to enter the knowledge and information world through several routes and is using new technologies in education, learning and administration by linking 36 926 schools through the Internet, increasing the number of schools equipped with recent

1 Central Intelligence Agency (CIA) *The world factbook—Egypt* (2009). Available at <https://www.cia.gov/library/publications/the-world-factbook/geos/eg.html> [Accessed 18 May 2009].

2 Central Agency for Public Mobilisation and Statistics (CAPMAS) (2009). Available at <http://www.capmas.gov.eg> [Accessed 18 May 2009].

technology to 28 850 and increasing the number of computers in preparatory schools to 84 327.³

Recent data show the number of Internet users at 12.57 million subscribers at the end of 2008 and the contribution of the ICT sector to the real GDP is at 3.398 per cent. Of Internet users, 59.19 per cent are male and 40.81 per cent are female. Fifty-five per cent of Egyptian families who have Internet access use it for educational purposes.⁴

2.1.4 The economy

According to World Bank figures, Egypt currently has the second largest African gross domestic product (GDP) after South Africa. In 2007, the GDP reached US\$431.9 billion, ranking Egypt 29th in the world.

2.1.5 Legal environment⁵

Egypt is a democratic republic, based on a multiparty system. Its current Constitution was first promulgated in 1971. The President of the Republic is elected by general election and governs with the help of a Cabinet that is accountable to an elected one-chamber Parliament.

Egypt's judicial system is a copy of the French system. In addition to the regular court system it has the State Council, which acts as an administrative court and has an advisory role to the government. In 1969, Egypt created a Supreme Constitutional Court to handle issues related to the constitutionality of acts and regulations.

Egypt has been a civil law country since 1883,⁶ when it adopted the Codes of Napoleon. Several amendments have been introduced to these Codes and Egypt has allowed itself to develop its own legal system that is based on both French and Islamic law, in addition to benefiting from other legal systems and practices.⁷

3 Government of Egypt *Egyptian ICT indicators, ICT infrastructure and access* (2009). Available at <http://www.egyptictindicators.gov.eg/default.htm> [Accessed 18 May 2009].

4 Ministry of Communications and Information Technology *Egypt ICT indicators portal* (2009). Available at <http://www.mcit.gov.eg/Indicators.aspx> [Accessed 18 May 2009].

5 See section 2.2 for a detailed doctrinal analysis.

6 The French Codes substituted Islamic law, the law of the land, except for family law matters. The new Codes applied equally to Egyptians and foreigners, thus removing the legal disparity that existed before. In parallel, Egypt established two types of courts: National Courts (al-Mahakim al-Ahliyah) where Egyptian citizens adjudicated their disputes and Mixed Courts (al-Mahakim al-Mokhtalatah), where Europeans enjoying the concessions adjudicated their disputes (but applying the French Codes).

7 In 1937, Egypt and the European countries enjoying the concessions entered into a treaty to put an end to the concession system after an adjustment period of 12 years. In 1949, Egypt started having its unified legal and judicial system, signaled for the most part by the issuing of the New Egyptian Civil Code and the abolition of the two courts system.

Egypt has adopted the French distinction between commercial matters and civil matters. Until recently, issues related to the commercial aspects of intellectual property (patents and trademarks) were assigned to commercial courts or panels while issues related to civil aspects (copyright) were assigned to the civil courts or panels. This situation changed in 2008 when Egypt created an Economic Court to handle several types of cases including all disputes arising out of the application of the Egyptian Intellectual Property Rights Protection Act (EIPRPA) 82 of 2002.

2.1.6 Access to Knowledge (A2K) environment

With respect to the access to knowledge movement, two forces are at play in Egyptian society.

On one hand, the pro-copyright protection movement in Egypt is forceful and influential, especially regarding protection of musical and artistic works. This movement advocates for stringent general application of copyright protection and is lobbying for legislative amendments that adopt ‘TRIPs-plus’ and ‘Berne-plus’ provisions (provisions exceeding the minimum requirements of the WTO TRIPs Agreement and the Berne Convention, to be discussed later). The pro-copyright protection movement is supported by large Egyptian and Arab music and movie production companies and well-known book publishing agencies.

On the other hand, several pro-A2K initiatives are in place. ‘Reading for All’ is Egypt’s national programme for increasing access to the written word. It is supported by Egypt’s First Lady and has been in place for most of the last two decades. Under the programme, hundreds of books have been translated, published, re-published and sold to the public at very affordable prices. The programme also includes support for public libraries and several activities encouraging people, especially young people, to read, go to the library and research and present papers in competitions for prizes.

In addition to Reading for All, several programmes invest in translating and publishing both literary and scientific books. Most notably, two programmes are funded through the Ministry of Culture or its affiliated councils and administrations: the ‘Thousand Book — Second Series’ and the ‘National Project for Translation’. The two projects have printed hundreds of books in the last two decades.

Bibliotheca Alexandrina (BA) is arguably the main A2K advocate and supporter in Egypt and the Arab world. In March 2008, BA launched its A2K electronic platform. The main objective of the platform is to raise awareness about A2K and its vital developmental role.⁸ In its pursuit of that objective, the platform provides the latest studies, articles, news and international agreements that are related to A2K.

8 Bibliotheca Alexandrina *Access to knowledge* (2008). Available at <http://www.bibalex.org/a2k/home/home.aspx> [Accessed 18 May 2009].

Moreover, BA organises a variety of events that aim to create awareness among different related stakeholders.

2.2 Doctrinal analysis*

Several provisions in different legal instruments affect access to knowledge in Egypt. Among the most important are the constitutional provisions related to education and learning. In particular, Article 16 of the Constitution imposes on the state the obligation to guarantee cultural services and to work to ensure these services, particularly for villagers in order to improve the villagers' quality of life. Article 18 of the Constitution states that '[e]ducation is a right guaranteed by the State. It is obligatory in the primary stage [...] and guarantees the independence of universities and scientific research'. Article 20 of the Constitution declares that '[e]ducational institutions shall be free of charge in their various stages,' and Article 21 makes combating illiteracy 'a national duty for which all the people's capacity shall be mobilised'.

Intellectual property issues are addressed in border measures and regulations implemented jointly by the Customs Authority and the Trade Agreements Sector of the Ministry of Trade and Industry,⁹ as well as in regulations implementing the Consumer Protection Law.¹⁰

The most relevant piece of specific legislation, however, is the 2002 EIPRPA, the Egyptian Intellectual Property Rights Protection Act, to which we dedicate most of the next few sub-sections.

2.2.1 Development of Copyright Law in Egypt

Until the late 1930s, Egyptian law was devoid of any rules that organised intellectual property rights in general, or copyright specifically. This was attributed to the foreign concession system that was applied in Egypt at that time, wherein the protection of literary and artistic works required criminal punishment for counterfeiting. Egypt could not punish foreigners except by the minimal penal sanction imposed for minor crimes (infringements). For any sanctions beyond this, courts had to have approval from all foreign countries with privileges.

During this period, the national judicial system tried to fill the gap by protecting intellectual property rights according to the principles of natural law and the rules of justice.

* All quotations from legislative texts in this chapter are translations from the official Arabic versions.

9 Articles 27-38 of the Executive Regulations of the Export and Import Law 118/1975 published in the *Egyptian Gazette* 13 October 2005.

10 Executive Regulations of the Consumer Protection Law 67 of 2006. Available at http://www.cpa.gov.eg/english/legislations_rules.htm [Accessed 18 June 2009].

In 1939, with the abolition of the concession system, the first intellectual property legislation was enacted as the Trademark Law 57 of 1939, followed by the Patent and Industrial Designs Law 132 of 1949. Statutory protection of copyright in Egypt was introduced by the Copyright Law 354 of 1954, which was modified several times thereafter. The Copyright Law 354 of 1954 reflected the general principles of copyright protection contained in the Berne Convention for the Protection of Literary and Artistic Works, although Egypt did not join this Convention until 1977. This Copyright Law provided copyright protection for written works, paintings, sculptures and architecture, theatre and musical pieces, photographs and cinematographic films, television and radio works for publication, maps and speeches. A 1992 amendment to the Copyright Law stiffened the penalties available and also provided for protection of video tapes. A 1994 amendment treated computer software as a literary work and guaranteed it a term of protection of 50 years after the death of the author.

As a result of the World Trade Organisation (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), a new phase of the protection of intellectual property in Egypt began. In June 2002, the People's Assembly passed the EIPRPA. This Act enshrined, in a unified piece of legislation, protection of intellectual property rights previously spread over multiple acts of Parliament. The EIPRPA went into force on 3 June 2002 and replaced most of the previous laws related to different fields of intellectual property, including the Copyright Law 354 of 1954. The said law includes almost all the principles set out in the TRIPs Agreement and in some cases exceeds them, as we explain below regarding access to learning materials.

The EIPRPA has four 'Books,' and copyright and related rights are dealt with in Articles 138-188 of Book Three. The Executive Regulations of Book Three related to copyright were issued by Prime Ministerial Decree 497 of 2005 and have been amended by Prime Ministerial Decree 202 of 2006. The Executive Regulations primarily address procedural issues not specified in the law itself.

2.2.2 The EIPRPA of 2002

Protected works

The EIPRPA generally protects all creative productions whatever their type or mode of expression.¹¹ In particular, it provides, in Book Three, copyright protection for written works (such as books, booklets, articles, bulletins and any other written works), oral works (lectures, speeches, sermons and any other oral works when

11 Article 138(1) of the EIPRPA defines 'work' as '[a]ny created literary, artistic or scientific product, whatever its type, mode of expression, significance or purpose of its creation'.

recorded), paintings, sculpture, architecture, applied and plastic arts, theatre and musical pieces, photographs and cinematographic films, television and radio works for publication, maps and sketches, video tapes, databases and computer software. The list is not exhaustive, however and other works are protected as long as they meet the general definition of being a creative literary, artistic or scientific product (Article 140).

The protection also extends to derivative works, ‘without prejudice to the protection prescribed for the works from which they have been derived. Protection shall cover also the title of the work if it is inventive’ (Article 140(13)).

The protection does not extend to mere ideas, procedures, systems, operational methods, concepts, principles, discoveries and data, even when expressed, described, illustrated or included in a work (Article 141). According to Article 141(1) of the EIPRPA, the protection also does not extend to ‘[o]fficial documents, whatever their source or target language, such as laws, regulations, resolutions and decisions, international conventions, court decisions, award of arbitrators and decisions of administrative committees having judicial competence’. Nor does protection extend to ‘[n]ews on current events which are mere press information’ (Article 141(2)).

Collections of protected works enjoy protection ‘if the selection of such collection is creative by virtue of its arrangement or any other personal effort deserving protection’ (Article 141).

Conditions of protection

Formal conditions

The law in Egypt does not require any formalities for copyright protection. In other words, copyright protection in Egypt arises automatically, without official registration or application. Copyright exists as soon as a work is created or a recording is made, as long as certain other substantive criteria are met (see below). As a result, copyright protection subsists from the time the work is created in a fixed and tangible form of expression until the author explicitly disclaims it, or until the term of protection expires. Having said this, in certain instances, keeping a private register for works is required by law. Article 187, for instance, stipulates that any entity ‘that puts in circulation works, recorded performances, sound recordings or broadcast programs through sale, rent, loan or licensing’ must obtain a licence from the state and pay a fee of up to 1 000 Egyptian pounds for the licence and must maintain a register containing data and year of circulation on each work.

In addition, in terms of Article 186, a book author may file an application and pay a fee, at Dar El-Kotob at the Ministry of Culture to get a serial number and a certificate, which are used to prove that he or she is the author of the book. This

also applies to authors of computer programs and databases. These authors fill in an application at the Information Technology Industry Development Agency (ITIDA) at the Ministry of Communication. Such registration serves as prima facie evidence of a valid copyright and enables the copyright-holder to seek statutory damages.

Moreover, Article 149 of the EIPRPA, dealing with the right to transfer economic rights, requires that any such transfer be ‘certified in writing and contain an explicit and detailed indication of each right to be transferred with the extent and purpose of transfer and the duration and place of exploitation’. Article 185 then goes on to require every competent ministry to establish a register ‘in which any act of disposal relating to works, performances, sound recordings and broadcast programs under the provisions of this Law shall be recorded. The Regulations shall determine the procedures for the registration against payment of a fee [...]’. The disposal is not valid with respect to third parties prior to such registration.

It is important to emphasise that the registration and fee requirements just outlined are not requirements for copyright protection as such (which would contravene international treaties), but do serve to increase the cost of publishing a book. Consequently, these requirements have raised problems with international publishing entities that refuse to abide by them.

Substantive conditions

Protection only extends to works that a) are original and b) have been reduced to material form. Article 138(2) defines creation as ‘[t]he creative nature that confers originality on the work’. In the absence of judicial applications, however, it is very difficult to ascertain how this requirement of ‘creativity’ should be applied.

While Article 138 indicates that the legislature generally requires originality for copyright protection, Article 141 of the EIPRPA presents a different perspective with regard to databases. This Article excludes mere ideas and theories and data but its last paragraph confers protection on collections of such data ‘if the selection of such collection is creative by virtue of its arrangement or any other personal effort deserving protection’.

Nature and scope of protection

Moral rights

Moral rights are independent of economic rights and remain with the author even after he/she has transferred his/her economic rights (Article 143). In other words, the rights are perpetual, inalienable and imprescriptible and always belong to the creator of the work, regardless of who the owner of the economic rights is. Creators

cannot assign, waive, transfer or sell their moral rights. Moral rights confer on the original author '(1) [t]he right to make the work available to the public for the first time[;] (2) [t]he right to claim authorship[;]' and (3) the right to object to any distortion, mutilation or other modification of his work that might be prejudicial to his honour or reputation (Article 143).

Two points should be noted. First, in relation to the scope of moral rights, the right to prevent circulation of the work can be exercised by an author only through an application to the competent court, which has the right to accept or refuse such request. The author must present to the court the significant reasons that have arisen to require prevention of circulation and must pay in advance a fair compensation to the person authorised to exercise the economic rights (Article 144). Second, the legislature has given the competent ministry the right to exercise the moral rights conferred on authors and performers in the case of their death without any heir or successor (Article 146).

Economic rights

Economic rights cover any form of work exploitation. In particular, economic rights include the following rights outlined in Article 147 of the EIPRPA: reproduction; adaptation and translation; distribution; rental and lending; public performance; broadcasting; communication to the public; and making available to the public.

Article 147 however also states that '[t]he exclusive right for computer program rentals shall only apply to the main rental enterprise; it shall not apply to renting audiovisual works inasmuch as the circulation of such copies does not cause material prejudice to the owner of the exclusive right in question.'

Furthermore, Article 147 stipulates that '[t]he author and his successor shall also have the right to control any disposal of the original copy of the work, and shall consequently be entitled to a certain percentage of not more than 10% of the proceedings resulting from every disposal of that copy.'

Three observations on Article 147 can be made with regard to its potential impact on access to knowledge.

First, Egyptian lawmakers conferred on the author a new right which does not exist in the Berne Convention or the TRIPs Agreement. Article 147 gives the copyright-owner the right to prevent a legitimate possessor from lending a protected work without previous authorisation from the rights-holder. Thus, for example, a student who legitimately buys a copyright-protected textbook may perhaps not lend this book to a colleague who may be in need of the book but cannot afford to buy

it.¹² Moreover, providing rights-holders with such a right could inhibit the lending work of libraries.

The second observation concerns the rental right conferred on the author by the EIPRPA. Article 11 of the TRIPs Agreement restricts the rental rights on computer programs and cinematographic works for commercial use. However, Egyptian lawmakers extended the rights to prevent renting to all kinds of works and for all types of commercial as well as non-commercial uses. Therefore, the rights conferred on rights-holders by the Egyptian law go beyond what international treaties require. Such rights are thus 'TRIPs-plus,' 'Berne-plus' rights.

The third observation is related to the right of controlling any disposal of the original copy of works. These resale rights, known also as 'droit de suite,' were first introduced in Egypt by the law of 2002.¹³ They provide authors with the inalienable right to receive a royalty based on the resale price of an original work. Resale rights in most countries are not applied to literary works; more often, they are implemented for the visual arts, ie paintings, sculptures, textiles, canvas, etc. Here, again, lawmakers went beyond Egypt's international treaty obligations. Article 14*ter*(1) of the Berne Convention leaves its member states the discretion to provide authors with the right to control any disposal of the original copy only for works of art and original manuscripts. However, Egyptian lawmakers extended this right to all kinds of works, which potentially hampers access to knowledge by imposing an additional financial charge on resellers and second hand purchasers of physical copies of any kind of work.

ICTs and anti-circumvention measures

The EIPRPA contains provisions which prohibit the circumvention of technological protection measures (TPMs) in order to use digital material in ways that are not authorised by the rights-holders. The EIPRPA has adopted the highest level of protection for TPMs. Article 181 forbids manufacturing, assembling or importing any device or tool or any technology that aims to circumvent any TPM. The Article stipulates that, among other things, the following acts are forbidden:

- (5) Manufacturing, assembling or importing for the purpose of sale or rent any device, tool or implement especially designed or made to circumvent a technical

12 The authors of the chapter differ regarding the interpretation of this Article. Lending here is listed under prohibited 'exploitation'. It is not readily obvious that lending to a personal friend, with no remuneration, falls under the strict definition of the term exploitation.

13 The 'droit de suite' was first introduced in France in 1920 as a social welfare measure in response to popular dismay that the family of Jean-François Millet could exist in relative poverty while his paintings were fetching astronomic prices. California followed France in 1977; and in 2001 a European Union Directive (2001/84/EC) required all EU countries to implement a resale royalty for living artists and their heirs by 2006.

protection means, such as encryption or the like, used by the author or the owner of the related right;

- (6) Removing, neutralizing or disabling, in bad faith, any technical protection device used by the author or the owner of the related rights;

Violation of the TPM anti-circumvention provisions is, according to Article 181, 'punishable by imprisonment for a period of not less than one month and by a fine of not less than 5,000 pounds and not more than 10,000 pounds, or any of those sanctions [...]']

The anti-circumvention provisions adopted in the EIPRPA may have a negative impact on accessing learning materials in Egypt because they potentially restrict access to and impede educational use of, copyright-protected material. The provisions apply not only to TPMs protecting copyright-protected works but also to TPMs protecting works which are not copyright-protected. This means, for instance, that rights-holders can protect their works through the use of TPMs for an unlimited period of time, even after the end of the copyright term. Anti-circumvention provisions have the potential to disturb the balance, between the interests of rights-holders and users, which copyright laws try to achieve. This is because established copyright exceptions and limitations, especially those for educational uses and for the benefit of educational institutions, can now be bypassed by rights-holders employing TPMs whose circumvention is prohibited by law. Egyptian anti-circumvention provisions do not contain explicit exceptions and limitations.

Term of protection and the public domain

Duration of protection

For most works, the Berne Convention and TRIPs require the duration of copyright to be, at minimum, 50 years after the death of the author.¹⁴ In some countries, however, the duration of copyright protection has been extended to 70 years or longer. In Article 160 of the EIPRPA, Egyptian law has adopted the standard 50-year term of protection set out in international treaties.

In compliance with the relevant international treaties and agreements, the EIPRPA contains different terms of protection for different works. For example, if the copyright-holder is a legal entity, the term of protection is 50 years from the date on which the work was published or made available to the public for the first time, whichever comes first. For works of applied art, the term of protection is 25 years from the date on which the work was published or made available to the public for the first time, whichever comes first. The duration of protection of related/

14 Article 7(1) of the Berne Convention, which is incorporated into TRIPs via Article 9(1) of TRIPs.

neighbouring rights of performers, record producers and broadcasters is generally the same as for author rights.

Public domain

Once the duration of the protection of a certain work lapses, it falls automatically into the public domain. The EIPRPA defines works falling into the public domain as follows: ‘all works initially excluded from protection or works in respect of which the term of protection of economic rights expires, in accordance with the provisions of this Book’ (Article 138(8)).

Despite the fact that the public domain should in theory be freely accessible by any person, Egyptian law requires a licence for any commercial or professional exploitation of such works, with licence fees that are set out in the Regulations. Article 183 states that:

The competent ministry shall grant license for the commercial or professional exploitation of works, sound recordings, performance or broadcast programs that fall into the public domain, against payment of fees, as prescribed by the Regulations, and not exceeding 1,000 pounds.

As a result, in Egypt, one needs to apply to the competent ministry (the Ministry of Culture for literary works; the Ministry of Communication for software and databases) when, for instance, preparing a handbook with public domain works for students of the arts or when using an out-of-copyright poem or a song. Such requirement is not imposed by any international agreement and is therefore an unnecessary and unusual requirement created by the Egyptian legislator. Compounding the problem is the fact that the licensing requirement for public domain materials is vague. Does one need a licence for reproducing a book published a thousand years ago? What about books published a thousand years ago in Syria?¹⁵

Copyright flexibilities

Egyptian law provides an exclusive list of instances in which users may legally ignore the owner’s rights. These exceptions and limitations reflect circumstances that outweigh the necessity of protecting copyright-owners’ rights. We now discuss the exceptions and limitations that have a bearing on access to learning materials.

15 One impact assessment interviewee described the provision as mere ‘taxation’ or ‘collecting money’ rather than being related to protection of copyright.

Educational exceptions

Egyptian law lists instances where users may legally ignore the owner's rights. Several exceptions and limitations have a bearing on access to learning materials.

Automatic exceptions

According to Article 171 of the EIPRPA, authors, after the publication of their work, may not prevent third parties from doing any of the following:

- (1) Performing the work in family context or student gathering within an educational institution, to the extent that no direct or indirect financial remuneration is obtained; [...]
- (6) Reproduction of short extracts from a work for teaching purposes, by way of illustration and explanation, in a written form or through an audio, visual or audiovisual recording, provided that such reproduction is within reasonable limits and does not go beyond the desired purpose, and provided that the name of the author and the title of the work are mentioned on each copy whenever possible and practical.
- (7) Reproduction, if necessary for teaching purposes in educational institutes, of an article, a short work or extracts therefrom, provided that:
 - reproduction is made once or at different separate occasions;
 - the name of the author and the title of the work are mentioned on each copy.

The first exception addresses 'performances' and not only teaching. Accordingly, it would extend to performances for entertainment purposes, as long as they are performed to students and within an educational institution. While it can be possibly argued that the tuition paid to the institution would qualify as 'indirect compensation', the provision more likely means compensation for the performance itself and not to the educational service as a whole. The qualifier 'in educational institutes' is important in Article 171(7). The interesting but yet-unanswered question is whether reproducing the material for the purpose of e-learning would constitute use *in* the institution. Only practice will show the true scope of the exception.

Also, it is important to note the difference between paragraphs 6 and 7 of Article 171. Article 171(6) deals with the production of short extracts for the purpose of illustration, which would usually apply in public lectures or as part of a class. Article 171(7), on the other hand, talks about the reproduction of an entire article or short work in educational institutes. Article 171(7) contains two requirements for such reproduction. Firstly, the reproduction can only happen in educational institutes and not merely in training courses given outside such institutes; secondly, such reproduction must be 'necessary'.

Compulsory licence

In addition to the aforementioned exceptions, Article 170 allows anyone to apply to the competent ministry for a personal licence for reproducing or translating, or both, of any protected work. This may, however, only happen a) for the purposes of fulfilling the requirements of some kind of education; b) against payment of fair compensation to the author or his successors; and c) if such a licence does not contradict ‘the normal exploitation of the work’ and does not unreasonably ‘prejudice the legitimate interests of the author or the copyright holders’.

Exceptions granted to libraries and archives

Article 171(8) of the EIPRPA allows documentation centres, the national archives and non-profit libraries to make one single copy of a work—either directly or indirectly—in the following cases:

- The reproduction is made of a published article, a short work or a derivative of a work, as long as the purpose of reproduction has been in fulfilment of a request made by a natural person, for using in study or research. Such reproduction shall be made once or on irregular intervals; or
- The reproduction is made for the purpose of preserving the original copy or of substituting a lost, destroyed or spoiled copy, where it became impracticable to obtain a substitute thereof under reasonable conditions.

In many countries, so-called public lending rights (PLRs) compensate authors for the potential loss of sales caused by the fact that their works are available in public libraries. The Egyptian legislators have neither in the EIPRPA nor in any other legislation adopted public lending rights or other equivalent clauses.

The EIPRPA does not include any specific provisions for people with a disability, which would be of particular relevance in the context of library and archive use of copyright-protected material.

Photocopying for personal use

In addition to the previous rights granted to educational institutions and public libraries to reproduce works, Article 171(2) of the EIPRPA grants an exception for photocopying for personal use. The Article, however, includes several conditions. Firstly, the Article requires the copy to be: a) a single copy; and b) for one’s exclusive personal use. In addition, the Article requires that such action may ‘not hamper the normal exploitation of the work nor cause undue prejudice to the legitimate interests of the author or copyright holders’.

The wording of the latter qualification was adopted directly from the ‘three-step test’ contained in the Berne Convention and other intellectual property treaties

and agreements.¹⁶ The three-step test is a test against which national copyright exceptions and limitations are to be judged when examining their legitimacy. Egyptian lawmakers were apparently in doubt as to whether an exception allowing the creation of a single copy of an entire work or a large portion of a work for personal uses would always fulfil the requirements of the three-step test. Creating a single copy may not be unduly prejudicial if done by a single individual, but cumulatively may indeed hamper the 'normal exploitation' of the work and interfere with the legitimate interests of the rights-holder. To ensure that the exception complies with Egypt's international treaty obligations, Egyptian lawmakers therefore added the requirements of the three-step test directly into Article 171(2). There has yet to be any judicial interpretation of the provision.

Second, Article 171 allows the author or his or her successor to prevent third parties from carrying out any of the following acts without his or her authorisation. That is, the following are exceptions to the exception:

- Reproduction or copying works of fine, applied or plastic arts, unless they were displayed in a public place, or works of architecture;
- Reproduction or copying of all or a substantial part of the notes of a musical work;
- Reproduction or copying of all or a substantial part of a database or computer program.

This means that the exception applies, in essence, to written material only and not to artistic works and software.

Exceptions in relation to the media

Article 172 allows newspapers, periodicals or broadcasting organisations, if justified by the purpose, to, without permission of the author, publish excerpts of works already legally made available to the public and excerpts of articles 'on topical issues of concern to the public, unless the author has prohibited such publication', and as long as the author's name and the work's title are cited. Media outlets can also publish 'speeches, lectures, opinions or statements delivered in public sessions of the parliament, legislative or administrative bodies or scientific, literary, artistic, political, social or religious meetings, including statements delivered during public court proceedings' and 'extracts of an audio, visual or audiovisual work made available to the public in the course of covering current events'.

In addition, Article 171(4) of the EIPRPA allows any person 'to make an analysis' of a work, or of excerpts or quotations from a work, 'for the purpose of criticism, discussion or information'.

16 Article 9(2) of the Berne Convention and reinforced by Article 13 of the TRIPs Agreement.

Parallel imports

Parallel imports of copyright-protected materials are expressly permitted under Egyptian law without any restrictions. Article 147 states that '[t]he right to prevent third parties from importing, using, selling or distributing his protected work, shall lapse where the copyright owner undertakes to exploit or market his work in any state or authorize a third party to do so'.

Compulsory licensing of translations

One of the important provisions in the Appendix of the Berne Convention (Paris Act) deals with the right of developing countries to translate copyright-protected works for the purpose of teaching, scholarship or research, without the copyright-owner's authorisation.¹⁷ The Berne Appendix, in Article II(1), enables lawmakers in developing countries to substitute the exclusive right of translations granted to rights-holders for a compulsory licensing system.

The Appendix contains, however, a number of strict requirements and limitations for such substitution. For instance, Article II(2) of the Appendix requires that compulsory licensing can occur only if a translation of a work has not been published by the copyright-holder or other authorised person, in a language in general use in the country in question for a minimum period of three years after the first publication of the work. In the case of translations into a language which is not in general use in a developed country, the minimum period is one year (Article II(3)(a)).

In addition, the translation may be carried out only in printed or analogous form. Moreover, Article IV of the Berne Appendix provides that such licences can be granted only 'if the applicant [...] establishes either that he has requested, and has been denied, authorization by the owner of the right to make and publish the translation or to reproduce and publish the edition, as the case may be, or that, after due diligence on his part, he was unable to find the owner of the right'.

Egypt availed itself of Articles II and III of the Appendix to the Berne Convention on 14 March 1990 (Berne Notification No. 128 to the WIPO). This declaration was, however, effective only until October 1994 and was not renewed. The fact that the declaration has not been renewed has no immediate effect at the national level and Egypt built a compulsory licensing provision for translation into Article 148 of its 2002 law. Any person may continue to make use of the translation rights contained in the national law and Egyptian courts are obliged to apply these national rules. At the international level, the situation is potentially problematic. This is because any member of the WTO could now complain to the Dispute Settlement Body at the

17 The Berne Convention for the Protection of Literary and Artistic Works is the most important instrument of international copyright law.

WTO, arguing that Egypt is not respecting its international obligations by applying rules to which it has no longer availed itself. Article 148 of the EIPRPA deals with translations as follows:

The protection of an author's copyright and the translation rights of his work into another language shall lapse with regards to the translation of that work into the Arabic language, unless the author or the translator himself exercises this right directly or through a third party within three years¹⁸ of the date of first publication of the original or translated work.

The Egyptian law is distinct from the Berne Appendix, because it states in Article 148 that the work, 'with regards to the translation of that work into the Arabic language', falls into the public domain by the lapse of the time specified in the Article. In this context, however, Article 183 of the EIPRPA applies, which requires fees to be paid to the state if one wishes to translate a public domain work for commercial or professional purposes.

In sum, the EIPRPA contains two kinds of exceptions related to translations. The first exception is a compulsory licence for translating protected works for educational purposes (Article 170). Interested persons need to apply to the competent ministry.¹⁹ The second exception related to translations (Article 148) concerns foreign works that have not been translated into Arabic within three years after first publication. No permission from the competent ministry is required for such translations, but fees must be paid to the state if the translation is for commercial or professional purposes.

National folklore

In Egypt, national folklore is considered, according to Article 142 of EIPRPA, 'part of the public domain of the people'. The article also stipulates that '[t]he competent ministry shall exercise the author's economic and moral rights and shall protect and support such folklore'. The fact that the state exercises moral and financial copyright in respect of materials deemed to be in the public domain is paradoxical, as in theory, public domain materials are not subject to any copyright protection whatsoever. Nonetheless, in Egypt, national folklore is defined in Article 138(7) of the EIPRPA as: 'Any expression which consists of distinctive elements reflecting the traditional popular heritage, which originated or developed in Egypt,' and more specifically includes folk tales, poems, songs, dances, rituals, sculptures, architectural forms and more.

18 It was five years in the Copyright Law 354 of 1954 (Article 8).

19 See this book chapter's section 'Educational exceptions' above.

ICT-related provisions

In addition to Egypt's anti-circumvention provisions, software is an area that receives special treatment under copyright law. For one example, special rules apply to quotations from computer software. Article 10 of the Executive Regulations of the law indicates that quotations must be used for non-commercial purposes or for the purpose of education or training. Such quotations must, however, not unduly prejudice the legitimate interests of the author of the computer program and must include an indication of the program from which the quotation was taken. Also, Article 171(3) of the EIPRPA allows, in essence, for backup copies of software to be made. And moreover, Article 171(9) includes an exception for ephemeral copying.

2.2.3 International obligations

According to the Egyptian Constitution, international agreements are self-executing, meaning that parties can rely upon them directly where national law is vague or non-existent. Egypt became a contracting party to the General Agreement on Tariffs and Trade (GATT) in 1970 and a member of the Berne Convention of 1886 in 1977. Also, Egypt has been a party to the Geneva Convention for the Protection of Producers of Phonograms against Unauthorised Duplication of their Phonograms since April 1978.

Egypt has signed several free trade agreements (FTAs). These include a bilateral treaty between Egypt and the European Union (EU) as well as bilateral trade agreements signed with Arab countries such as Syria (1991), Lebanon (1999), Morocco (1999), Jordan (1999) and Tunisia (2007). In addition, free trade agreements exist with Turkey (2005) and the EFTA states²⁰ (2007). None of these agreements requires any amendment of the current copyright laws.

In June 1995, Egypt became a WTO member. Since then, Egypt has been bound by the WTO agreements, including the WTO TRIPs Agreement of 1994. Egypt has not joined the Universal Copyright Convention (UCC), nor signed the so-called 'WIPO Internet Treaties,' the WCT and WPPT of 1996, though it has nevertheless implemented their key feature: anti-circumvention provisions.

2.2.4 Judicial and administrative decisions

Unlike in some other legal systems, all incidents of IP infringement in Egypt are considered criminal misdemeanours that may be prosecuted following a complaint by the rights-holder, with a civil action available for compensation to an aggrieved party.

There are no recent court cases in Egypt specifically addressing copyright issues in relation to learning materials and court cases generally dealing with copyright law are

²⁰ The EFTA states are Iceland, Liechtenstein, Norway and Switzerland.

scarce and hard to trace. Arguably the most important recent court decisions in the area of copyright law are *The Ministry of Justice v East Laws* of 2004 [27 April 2004, n°5894/2003] and the *Translation Right* decision of 2005 [22 March 2005, n°791 and 832/72]. In *The Ministry of Justice v East Laws*, the Supreme Court addressed Article 141 of the EIPRPA, which states that official documents such as court decisions generally do not enjoy copyright protection. Collections of such documents, however, may be copyright-protected if the selection of such collection is creative by virtue of its arrangement or any other personal effort deserving protection. It was in this context that the Supreme Court provided useful clarifications regarding the meaning of the terms 'creativity', 'originality' and 'personal effort' in copyright law. In the *Translation Right* decision, the Supreme Court confirmed the right to translate foreign works that have not been translated into Arabic within three years after the first publication of the work without the authorisation of the rights-holder.

Several factors affect the rarity of reported judicial decisions regarding copyright, particularly the manner of reporting judicial decisions in Egypt. Official reports exist only only for the Cour de Cassation (Supreme Court) and very few cases ever reach the Cour de Cassation and those cases that do reach the Court take a long time to do so. As a result, most decisions decided under the new IP law are unpublished. The few copyright cases that have reached the Cour de Cassation and have been published predominantly deal with formalities and do not address or interpret substantive copyright issues. In addition, the Court interprets the law or applies it only in relation to a particular decision of a lower court. Hence, such decisions are not always precedent-setting. Furthermore, because Egypt is a civil law country, the entire system relies on the statutes promulgated rather than judicial theory or application.

Having said this, Egypt strives to promote stronger enforcement of intellectual property rights by maintaining an intellectual property unit in its police force, as well as teams of civil inspectors who are authorised to remove infringing goods from the market. The enforcement authority dealing with copyright and neighbouring rights is distributed between different bodies:

- For the protection of hard-copy material: The Permanent Office for Copyright Protection at the Supreme Council for Culture, affiliated to the Ministry of Culture;
- For the protection of computer programs and databases: The Information Technology Industry Development Agency (ITIDA) related to the Ministry of Communication and Information Technology; and
- For issues in connection with broadcasting organisations: The office of the producers of audio and audiovisual works at the Ministry of Media.

2.3 Qualitative analysis

2.3.1 *Secondary literature*

There are dozens of scholarly writings about IP issues in Egypt and in the Arab world in general. A chapter on IP is embedded in every 'Introduction to Law' book assigned to first-year law students. Recent economic and legal developments have heightened interest in IP issues and many treatises, PhD theses and LLM dissertations have been written and published on IP issues, especially in relation to industrial property such as patents and trademarks.

The research team cannot claim to have read or surveyed all available literature on IP in general and copyright specifically. Yet, it is clear that issues of access to knowledge (A2K) within copyright literature are rarely addressed in the Egyptian literature. Books dealing with copyright normally mention the exceptions enumerated in the EIPRPA without clarification or explanation, or with simple reference to their origin in the pertinent treaty. This can be for several reasons, but a strong one is the absence of application in practice, which would require thorough examination of the text and provision of judicial interpretations. The dearth of treatment of A2K issues can also be attributed to the lack of awareness of their importance and the absence of influential lobbying in this respect. Compared to other causes, such as the 'the right to medicine' and 'medicine for all' initiatives, which were lobbied and funded by Egyptian generic pharmaceutical companies who question the stringent measures of the TRIPs Agreement, the A2K cause in respect of copyright-protected works has received relatively less attention.

The Bibliotheca Alexandrina (BA) prepared in 2008, and updated in 2009, the *Access to knowledge toolkit 1*,²¹ which assembled different papers by Egyptian and Arab researchers and activists in the field of A2K. Another important study published by the BA was *Copyright in the Egyptian law: an analysis from a development perspective*, written by Hassan Al-Badrawy and Hossam Al-Saghir in 2008. The study can be considered pioneering since it is the first that revisits and analyses Egypt's copyright Book from a developmental perspective. It explains the current protection for copyright-holders under Egyptian law and, specifically, the additional protection that was not required by TRIPs or the Berne Convention. The study discusses the exceptions and limitations provided in the law and suggests amendments to the current law that would respect Egypt's international treaty obligations while making the current law more sensitive to Egypt's needs as a developing country. Among other things, the study suggests eliminating the requirement for fee payment and obtaining approval for reproducing works that

21 Bibliotheca Alexandrina *Access to knowledge toolkit 1* (December 2009) 2ed edited by Hala Essalmawi. Available at <http://www.bibalex.org/a2k/attachments/references/reffileh150fxqxns2lld55djrkdrc.pdf> [Accessed 1 June 2010].

are already in the public domain. It also suggests adopting the broader US-style 'fair use' doctrine instead of the more limited provisions currently in Egyptian law.

More recently, in February 2010, the American University in Cairo launched the Access to Knowledge for Development Center (A2K4D). The launch of the Center was accompanied by the launch of an important comprehensive study edited by Nagla Rizk and Lea Shaver, entitled *Access to knowledge in Egypt: new research on intellectual property, innovation and development*.²²

2.3.2 Impact assessment interviews

Stakeholders from the following categories were interviewed:

- government (Information Technology Industry Development Agency (ITIDA) and Ministry of Justice);
- education community (graduate students, librarians from public libraries, professors and researchers from different life science fields, university e-learning projects); and
- rights-holders (publishers and the Publishers' Association).

In an attempt to examine access-related difficulties that women and, in particular, people with disabilities may face, the research team interviewed a diverse group, including eight women and one person with a disability.

Knowledge of the law

Interviewees expressed different levels of knowledge of copyright law. Graduate students, including law school graduate students, showed significant lack of awareness of the law.

One student interviewed admitted to photocopying study material without giving any thought to copyright law. She was surprised when told that her actions could be legitimate under the EIPRPA. We found the same potentially erroneous belief among other students and librarians: that they were infringing when, legally, they might not have been.

Another interviewee discussed the illegitimacy of photocopying and the distribution of photocopies over the Internet, which was perceived to be illegal based on Islamic religious legal concepts. The interviewee did not appreciate, however, that Islamic law in Egypt governs only marriage and personal status and not areas such as copyright.

22 N. Rizk and L. Shaver (eds) *Access to knowledge in Egypt: new research on intellectual property, innovation and development* (2010) Bloomsbury Academic, London.

One prominent publisher did not know about the Arabic translation compulsory licence provision in the EIPRPA. Once told about it, the publisher considered the exception to be valuable. It is possible that the reason for not knowing about this specific exception was that this particular publishing house had little translation experience. Yet another possible explanation could be that the translation exception is generally disputed. A prominent IP lawyer, for instance, expressed in another interview his dislike for the exception and insisted that the exception is misinterpreted and does not go as far as its literal meaning suggests.

Librarians showed noticeable general understanding of copyright-related issues, of the importance of copyright protection and of the cultural and social impact of copyright, but deep knowledge of the law was sometimes lacking. For example, although the Bibliotheca Alexandrina has begun a books digitisation project and is considered an advocate for A2K within Egypt and beyond, one of its staff members did not know about Egypt's public domain exception and thought that copyright-protected books could not fall into the public domain. Another librarian, in another library, discussed the difficulties the library faces when trying to find out whether a certain activity is permissible or not permissible under the law. Most libraries, if not all, do not have legal divisions and lack legal expertise regarding the EIPRPA.

Professors and researchers, specifically in the field of life sciences, were in general aware of copyright protection but were not well aware of existing copyright exceptions and limitations. For most of them, copyright constitutes a significant barrier to access to learning and research materials because most of these materials are copyright protected. One professor we interviewed made a significant remark when she said that 'even if the exception of personal copying does not exist, I will not stop making personal copies because the other alternative means that I stop accessing important copyrighted works because they are too expensive'. Interviewees from the e-learning sector and from areas related to information technology were relatively more aware of copyright law and, to some extent, its exceptions and limitations.

Enforcement of the law

Most interviewees acknowledged that copyright law in Egypt is not enforced. Ignorance of the law in general, ignorance of its importance and outright corruption were referenced in this context. Some officials expressed concerns regarding the lack of comprehension of the law by users, rights-holders and even the judiciary.

Publishers said they find it necessary to independently track down and report infringers to the authorities. One publisher expressed disappointment with

prosecutors and the judiciary, believing judges are not well aware of the dangers of copyright infringement and do not treat such infringements seriously enough. This publisher mentioned that several cases that he helped to build were not properly examined by the investigating authorities. On the other hand, users believe that stringent implementation of current copyright laws would hamper their access to learning materials.

It was also found that access-restricting library policies are more vigorously enforced than the national laws. In the two libraries we examined, these policies contained restrictions including a prohibition on photocopying that exceeds a certain percentage, typically 10 per cent or 20 per cent of a book. The photocopying prohibitions are more problematic than they otherwise would be because a 'no-checking-out policy' is strictly enforced. The only option for students, therefore, is to conduct all required research while physically present in the libraries. There are, however, several ways to circumvent the policy of no photocopying beyond a percentage. For instance, librarians of Bibliotheca Alexandrina have found entire books with the BA stamp on them scanned and uploaded onto the Internet. Apparently, a library user photocopied the book on several visits and then scanned it and uploaded it to the Internet. The librarian said that such acts, if discovered by the book's author or publisher, would be extremely embarrassing for the library. And public universities' libraries apparently tolerate the photocopying of whole books because many librarians realise that books are not readily available to students.

Channels of access to learning materials

Faculty books and 'memos'

From the interviews conducted with some university undergraduates we found that they mainly rely on books issued by the faculty in the university they are enrolled in. These books are authored and published by the professors and they exclusively contain the material needed for the exam. It was found that if sold and subsidised through the university, books are affordable, but in all other cases books are expensive. As a result, cheaper alternatives, so-called 'memos', are often commercially available near campuses. These memos contain questions, answers and summaries from the relevant books. In essence, they are copies (abstracts and abridgments) from the book and, thus, illegal. But they are much cheaper and students consider them easier to handle.

Copy shops

University libraries often do not possess enough material for all students to use and are therefore not seen as a viable source of accessing resources. In most cases,

students photocopy books from photocopying shops, which are usually located near their campus. These copy shops illegally create a few master copies of a book and then routinely photocopy it for students at about one third of the cost of the original book.

Online materials

In addition to copy shops, an important source for (soft-copy) books and other learning material is the Internet. One interviewee stated that he finds almost all material he needs on the Internet and that he has a huge moving library on his laptop. The student told us the story of an entire industry to copy books and make them available free via Internet. This affects especially old Islamic books. Despite the fact that these books are in the (state-owned) public domain, some publishers who print them still believe they should enjoy quasi-copyright on them. Probably one of the reasons behind such belief is that the EIPRPA requires a licence from and payment of a fee to, the state for any commercial or professional exploitation for works that fall within the public domain. Although the personal or even non-commercial use of the public domain does not require a licence or a fee, this is not widely known.

A masters-level student particularly praised the Google Books project that allows full free access to books that are not copyright-protected and access to snippets of copyright-protected books. He said that although the access to copyright-protected works is limited, the snippets still give him an indication about the 'basic idea of the book'. This would help him in making a decision as to whether or not to search for it in other libraries or even purchase it.

An interesting justification we heard for the unauthorised use of material available on the Internet was that the authors of the material available on the Internet have most likely also infringed copyright. It is felt that a lot of what is published on the Internet is initially published in violation of copyright law.

Difficulties in accessing knowledge

Library stocks

A student working on a new research topic told us that she was struggling to find newly published foreign material. Her experience with the library in the Law School in Alexandria University, however, was better than her experiences at Cairo and Ain Shams universities.

Another student found the library in Alexandria Law School sufficient. He also stated that the librarian there often asked students about their needs and tried to find and buy the needed books. This was confirmed by the librarian we interviewed. She told us of the comment of the inspector in the university who said 'Your case is

a rare case of the administration actually cooperating with the library'. The variety of materials available at the Bibliotheca Alexandrina is gradually increasing due to the increase in its acquisitions budget and the BA has thus become more attractive to different types of researchers. One of the most important remarks we received from various library users was that most libraries are very rigid regarding their lending. Most libraries do not allow students to borrow books. Rather, they allow only reading and accessing the book within the library or photocopying a specified percentage of the book or work. This no-borrowing library practice does not relate to copyright law but rather to the fear of destructive behaviour by students, such as not returning material or damaging it. The policy does, however, have a definite impact when coupled with photocopying restrictions attributable to copyright. Some exceptions to these policies exist. For example, two of the BA special libraries, the Children's and Young People's libraries, have offered check-out services since 2005 and 2006 respectively, while the libraries of Alexandria University offer check-out to faculty members.

Internet access

Access to Internet databases was available in the libraries examined during this particular research. Some libraries, however, have more extensive database access than others, because such access is dependent on a number of economic factors, including the availability of adequate numbers of PCs in the library and the money available for subscription services. Librarians report that the databases, when available, are very attractive to users, especially postgraduates, since they usually include current issues of journals, whereas only hard-copy versions are usually available for older issues.

Some of the researchers interviewed mentioned that the BA provides copyright-free, open-access (yet well-revised) lectures and presentations online via a 'Supercourse' online resource. They appreciated this resource because under the new applied credit system they are required to teach for extensive hours and are obliged to provide their students with updated materials in their field of research or discipline.

Economic factors

An often-mentioned reason for problems with accessing learning materials is the economic situation of the information-seeker. Publishers argue that the market is small, which drives up prices. However, publishers are also of the opinion that, in absolute terms, prices are not exorbitant. Users from different academic and research fields and levels, on the other hand, criticised the prices of copyright-protected learning materials. Generally, according to these users, all up-to-date foreign books

are unaffordable for most people, regardless of whether the copyright-protected work in question is available in hard-copy or soft-copy.

Consequently, the users interviewed rely mainly on photocopying entire books, which enables them to access up-to-date material at affordable prices. Interestingly, some copy shops even subscribe to electronic periodicals and (illegally) reproduce the articles from there, if requested. Some professors, in a cynical manner, remarked that sometimes they depend on materials which their students from the Arab Gulf countries bring along when they register for masters and doctoral degrees at their institutions.

Notably, this research did not detect that copyright infringements have a detrimental effect on the availability of material in Egypt. In other words, the occurrence of copyright infringement may cost publishers and other rights-holders money, but it does not stop them from publishing and distributing learning materials.

Educational system

The educational system in Egypt faces a number of problems. These include: 1) massive numbers of students at different educational levels, whether in schools or universities; 2) limited educational budgets; and 3) educational methodologies that do not concentrate on developing the interactive, analytical and reasoning skills of students but instead depend on a single textbook, taught by what one interviewee described as 'spoon-feeding'.

Two interviewees, a graduate student and a publisher, were of the opinion that the illegal reproduction of university books by copy shops does not pose the main threat to the copyrights of authors and publishers. What is of greater concern for rights-holders is the fact that students now resort to the aforementioned, illegally produced summary memos of these books. For example, in the study of law, which is renowned for its long-winded textbooks, some law school graduates or lawyers summarise the relevant textbooks and then sell the summaries to copy shops which, in turn, copy and sell them to students. Usually, the authoring graduate or lawyer obtains in return an agreed amount of money from the copy shop. The existence of memos diverts the students' attention from obtaining and using the actual textbooks. Thus, the issue is not only the cost of the book but also the willingness of the students to make use of an entire book rather than a memo.

One interviewee said that an increasing number of undergraduate students are using the BA for research. This indicates that the availability of materials may indeed encourage the actual use of them. Most of the patrons in the Bibliotheca are undergraduates who come mainly from universities located in Alexandria such as Alexandria University, the Arab Academy for Science and Technology and

Pharos University. Also, a number of postgraduate students, PhD researchers and researchers from different scientific backgrounds and professional posts, come from other Arab countries to use the BA.

Disabled users

Both libraries studied have a special section for the blind. In this section, software is installed which helps blind learners access learning materials. Alexandria University also has a centre which provides human readers for blind students because some of the students, for various reasons, still prefer this service. The BA provides courses to train the blind to use facilities.

Having said this, the disabled people we interviewed said that they still encounter many difficulties in accessing learning materials. Their difficulties are financial, technical and logistical. One of the interviewees, a lecturer at a faculty of law, explained to us the difficulties he had to undergo to obtain his PhD. He had to convert a great amount of his research data into audio format and although new technologies such as MP3 help people with disabilities, particularly the visually-impaired, many technologies specifically designed to assist disabled people are often unaffordable. More problematically in the context of copyright, these technologies are strictly protected with TPMs. This situation is aggravated by the fact that Article 181(6) of the EIPRPA prohibits any circumvention of TPMs and the EIPRPA does not include any exceptions or limitations to this prohibition.

Print-on-demand

Print-on-demand machines (PDMs), also called Espresso Book Machines, allow a book to be printed upon a user's request. These machines print, collate, cover and bind a single book in a few minutes. Until recently, there were only two Espresso Book Machines in the world: one in Washington DC at the bookstore of the World Bank and the second one in Alexandria at the BA.²³

Printing on demand requires that the whole book has previously been digitised. At present, the PDM facilities at BA are not yet open for use by the public. Also, only a small number of books are licensed for reproduction by BA's PDMs. This is apparently partially because publishers are still uncertain about royalty procedures and the impact of printing on demand on their economic rights.

PDMs could play an important role in enhancing access to knowledge materials. They can provide inexpensive materials to users and facilitate the circulation of books issued in other countries. If managed wisely, they also help safeguard the interests

23 Bibliotheca Alexandrina International School of Information Science *Print on demand: Espresso Book Machine* (2008). Available at <http://www.bibalex.org/isis/FrontEnd/Projects/ProjectDetails.aspx?id=RrxJcG1yfQk7/gaSpiEs4A=> [Accessed 30 March 2009].

of rights-holders by protecting their rights and ensuring the quick circulation of their works.

Use of exceptions and limitations

In the context of exceptions and limitations facilitating access to learning material, two of the notable provisions are the Arabic translation compulsory licence exception and the personal use exception.

Compulsory licence for translations

Egypt's permissive translation exception allows translation into Arabic of any work that has not been translated by its rights-holder within three years of its issuance. The exception stretches the limits of the Appendix to the Berne Convention and for that reason has been criticised by some copyright scholars in Egypt.²⁴ But in practice, the exception has little or no effect on the market. The 'Reading for All' project as well as the 'Thousand Book – Second Series' both rely heavily on translation, but they acquire licences for these translations and do not make use of the translation exception. While it is better-known in legal circles outside Egypt, Egyptian publishers are largely unfamiliar with this exception.

A prominent publisher in Egypt who we interviewed stressed that he would never resort to the translation exception, so as to keep his good reputation and good standing with foreign publishers. However, another prominent publisher, who did not know about the exception, expressed enthusiasm upon hearing about it. He had been trying for quite some time to communicate with a European publisher to translate one of its books, without success.

Personal use

While Egyptian law potentially allows considerable photocopying of copyright-protected material for personal use, library policies are limiting. The BA, for instance, has a strict and inflexible quota system: 20 per cent per day, regardless of the size of the book. And the public university library interviewed has a limit of 10 per cent of a book. When inquiring at the BA about the reason for adopting a 20 per cent daily quota policy, one of the library's officers answered that the policy was adopted as a result of many authors' requests, despite the fact that such limitation is not explicitly required by the law.

24 This view was expressed in an interview with Prof. Mohamed Hossam Lotfy, a prominent Civil Law and Copyright Professor at the Faculty of Law of Beny Swaif University. Prof. Lotfy said that the translation exception infringes the Berne Convention itself and affirmed his opposition to the exception.

Electronic learning centres

Egypt started an e-learning project almost five years ago by establishing the National Centre for Electronic Learning. In 2008, the Centre launched its National Project for Electronic Learning. The project's objective is to support and develop e-learning in Egyptian universities by establishing a centre for that purpose in each university. Each university is supposed to have a Production Centre for Electronic Syllabus. The Centre usually employs e-content developers and graphic designers. Professors who are willing to provide their learning materials electronically usually sign an agreement for that purpose, hand their material to the Centre and obtain compensation for their contribution.

Most e-learning courses require enrolment keys, which restrict access to enrolled students only. Electronic learning materials are mostly protected with technological protection measures, including passwords. Egypt's copyright law prohibits circumvention of these technologies, even if the purpose for doing so is legitimate. According to the coordinator of Alexandria University's e-learning centre, he explained that stringent protection measures are implemented due to requests by professors. Paradoxically, however, he also said that the centre intends to declare any software it develops free and open source software (FOSS) to encourage and maximise access and use. Although interviewees in relation to the e-learning project showed, by and large, a fair amount of knowledge with regard to copyright law, they were not fully aware of the exceptions and limitations. They repeatedly raised questions pertaining to what can be considered legal uses.

2.4 Conclusions and recommendations

Egyptians face various difficulties when accessing learning material. The economic situation, in particular, of the person seeking access plays an important role. Prices of books, even when subsidised, are relatively high for the average Egyptian. This is even more the case in fields that rely on imported foreign books. The education system in Egypt also plays a role. Students often do not rely on the required textbooks but resort to abridged versions of these books, which infringe copyright. The lack of sufficient stocks in libraries makes it difficult for libraries to satisfy the demand of an ever-increasing number of students and other users. This situation is aggravated by library policies that sometimes hamper individual access opportunities, for example by not allowing patrons to check books out of the library. People therefore try to access material in any manner possible. They resort to mass photocopying, sometimes facilitated by copy shops. Photocopied books are also sometimes scanned, published and exchanged on the Internet.

Several national projects are in place to increase the number of books published and translated and to reduce their cost. Internet access is facilitated and supported

by initiatives that make computers available to citizens, personally or in their workplaces. Restrained enforcement of copyright law may also be a result of this official recognition of the problem.

Awareness-raising of A2K issues in Egypt, particularly in relation to copyright, is still in early stages. Some promising initiatives have emerged, particularly facilitated by staff at the BA, but these have not yet reached beyond the research and academic communities. Interviews with stakeholders revealed a tendency to interpret and apply the current copyright law in Egypt in a protectionist manner. Most stakeholders overstated the copyright-holders' rights and, at the same time, tended to disregard existing exceptions and limitations.

Copyright-holders believe that there is neither ample knowledge nor adequate implementation/enforcement of the law. They also believe that a broad interpretation of existing statutory copyright exceptions and limitations would be a threat to their rights. Users from different academic backgrounds and levels, on the other hand, perceive copyright protection as a threat to their access to knowledge in general and to learning and research materials in particular. The general lack of understanding of copyright law, including its exceptions and limitations, necessitates more educational efforts in this respect. It became clear through the research that, in Egypt, copyright infringement is not, for the most part, intentional; most users are willing to legitimise their behaviour if it achieves, in a satisfactory manner, the objective of acquiring knowledge.

Except for a few provisions, the EIPRPA of 2002 is not designed to increase access to knowledge. Among the few provisions which are guided by the need to increase access, the translation exceptions are the most notable. These exceptions allow anybody to translate works into Arabic without permission after three years of their publication (if they have not already been translated into Arabic), or to acquire a compulsory licence to translate material for educational purposes.

Article 147 of the EIPRPA is currently far wider and greater in scope than necessary. It allows authors to prevent the rental of any kind of copyrighted materials, regardless of the type of rental (commercial or non-commercial). Rental rights could instead be restricted to control the commercial use of computer programs and cinematographic works. Similarly, Article 147 allows rights-holders to prevent lending to third parties — a provision which should be amended. The right to control any disposal of original copies of all types of copyrighted works should be changed to apply only to works of art and original manuscripts, consistent with the Berne Convention.

Among other troubling provisions is the one that requires acquisition of a licence and payment of fees in order to publish books that are already in the public domain. Article 183 of the EIPRPA could be amended in order to allow the Egyptian public uninhibited and free use of the public domain. Obtaining a licence and paying fees for exploitation, even commercial exploitation, of public domain

works is certainly not required by any international agreement and indeed can have adverse impacts on access to knowledge.

Like in other jurisdictions, Egyptian copyright law does attempt to provide exceptions for private research and study. Article 171(2), however, includes several arguably unnecessary conditions, such as the requirement that only a single copy can be made and the copy must be for one's exclusive personal use. In some other national copyright laws, photocopying for personal use, especially for private purposes, is not subject to detailed restrictions.

No provisions address access needs in the context of e-learning or the problem of inaccessibility of learning materials to people with disabilities. This could be changed. In the absence of legislative change, however, policies might be developed to fill the regulatory gap.

In some libraries, services and software help blind people to access learning materials. However, not all libraries have such facilities. All libraries in Egypt could help to facilitate access by disabled users to available materials through hiring qualified personnel to assist them in accessing such materials, ensuring that disabled-compatible materials are available and adopting new ICTs that specifically address this category of users.

Libraries that prohibit checking out books could reconsider borrowing policies and adopt other measures to prevent destructive behaviour by users, to avoid putting patrons in the position of having to (illegally) photocopy materials. Libraries permit photocopying for personal use, but impose restrictions not necessarily required by copyright law. Libraries could refrain from adopting restricting policies that do not stem from the law itself and libraries could be aware of how to maximise use of limitations and exceptions provided within the law. Library codes of ethics have an important role to play, not only in guiding users' behaviour but also in ensuring that librarians and users understand the laws that govern use of resources within a particular library.

It seems that libraries may be imposing photocopying quotas on materials within the public domain. Libraries could develop a mechanism for listing public domain materials. Such a mechanism would allow users to know that the material at hand is not protected with copyright and, accordingly, that they have more freedom to rely on it within their learning and research. The BA, in particular, has the ability to use print-on-demand facilities to make available public domain materials. This may require licences pursuant to Article 183, which may prove to be a useful test (or demonstration of the burden) of public domain materials licensing.

The Internet and Internet-based databases are important tools for access to knowledge. Although access to Internet-based databases was available in the libraries interviewed, it was found that some libraries have more extensive database access than others because of a number of economic factors. More funds could

be allocated to maximising Internet facilities, given their supreme importance in accessing up-to-date learning materials.

E-learning schemes are gaining more popularity and application in Egyptian universities. However, access to the materials is restricted to students who are enrolled in those courses. Such materials could be made available on an open access basis to other Internet users, which may not adversely affect authoring professors since the authors are already well compensated for their contributions. (This model, allowing free Internet-based access to learning modules, is already being followed by institutions such as MIT and Yale University in the United States. MIT's open access learning facility is called Open Courseware, while Yale's is called Open Courses.) And it is important to introduce authors to and inform them of, the existence of flexible copyright protection schemes — such as Creative Commons licensing — which protect the rights to a work but also help in its dissemination.

Finally, the combined results of this research project's doctrinal analysis and impact assessment interviews suggest that a combination of legislative reform and changes in stakeholder behaviour are required in order to improve access.

Copyright enforcement is not at present strong enough to prevent access to learning material. But if and when enforcement tightens, then the access situation will change rapidly and the law will begin to have a direct and negative impact on access. Thus, legal reforms need to be part of the way forward. But equally important are changes in practices within the copyright environment — changes that are not reliant on changes in the law. For instance, the resourcing and lending policies of libraries could be changed in ways that would improve materials access. And user and right-holders awareness of the existing copyright legal framework needs to be built, so that there can be wider acceptance of the importance of both the economic rights of right-holders and the free access rights of users.

This research has also found that the copyright environment, while an important variable, is by no means the only variable affecting access to learning materials in Egypt. Measures must be taken — many of which will not be directly related to copyright — to combat socioeconomic barriers to learning materials access. Student poverty needs to be ameliorated. And ways need to be found (some perhaps related to copyright, others clearly not) to boost the local production of affordable tertiary-level learning materials by local publishers.

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