

# Chapter 5

## Morocco\*

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### 5.1 Background

#### 5.1.1 General elements

The Kingdom of Morocco is a constitutional monarchy with a population of 30 million, located in the northwest of Africa. The King is the supreme representative of the nation and the protector of civil rights and he ensures that the Constitution is respected. Morocco is a developing country and poverty is a serious issue, despite the fact that the poverty rate in the country fell from 19 per cent in 1998 to 11 per cent in 2006.<sup>1</sup>

#### 5.1.2 Social and human context

Poverty in Morocco is primarily a rural phenomenon. The World Bank reported in 2004 that almost one out of four Moroccans was poor in rural areas, but only one out of 10 was poor in urban areas.<sup>2</sup> Morocco has, for nearly 10 years now, been in a phase of reforms and revisions aimed at achieving social, political and economic goals. However, the country has recently regressed in the human development ranking of countries. It was ranked 123<sup>rd</sup> in the Human Development Index (HDI) in 2006 and descended to 128<sup>th</sup> in 2008.<sup>3</sup>

Some of the social problems the country is battling with are illiteracy, unemployment and lack of housing. Another problem is gender inequality and efforts are being made to balance the power of men and women, through, for instance, the new Family Code, which aims to enhance the rights of women to play their full and appropriate role in society. Society and attitudes must also evolve. Moroccan women have succeeded to some extent in entering the workforce, both

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\* This chapter, including quotations from reports and legislative texts, is translated from the French-language version prepared by its authors.

1 Government declaration before the Chamber of Representatives relating to the conclusions of its action on 17 July 2007.

2 N. El Moujaddidi and A. Fadel 'La pauvreté au Maroc. Du concept à la réalité' in H. Zaoual and T. Daghri (eds) *Développement humain et dynamiques territoriales : vers des savoirs recomposés* (2008) Édition l'Harmattan.

3 UNDG '2006 Resident Coordinator Annual Report' (2006) United Nations Development Group (UNDG) at 160.

in the private and the public sectors.<sup>4</sup> ‘However, and despite the progress achieved, the integration of women in economic activities remains limited. In 2006, women’s employment rate at the national level was 27.2 per cent as opposed to 76.4 per cent for men. This rate reflects 19.3 per cent against 71.4 per cent in urban areas and 38.4 per cent against 83.4 per cent in rural areas.’<sup>5</sup>

Morocco committed in the 1980s to a World Bank/International Monetary Fund (IMF) Structural Adjustment Programme (SAP) in order to create the level of competition that a liberal economic perspective requires. Morocco has signed free trade agreements (FTAs) with the European Union, Arab countries (Tunisia, Egypt, Jordan), Turkey and the United States. Since the 1990s, a reform of the legal and institutional framework of the economy has been carried out. This has led to a series of legal and regulatory measures that have, among other things, boosted the liberalisation of key sectors.

Access to knowledge, as well as contributions to knowledge production and dissemination, remain closely linked to public and private investments, as well as to foreign direct investment (FDI). It is evident that investment in training and innovation, education, research and development, information and communication technologies (ICTs) and the industrial sector contribute to knowledge production, since such investment provides a favourable environment for it. Investment also contributes to knowledge dissemination and evolution through job creation, the distribution of income and improvements in standards of living.

Investment in infrastructure is also a determining factor. The production and dissemination of knowledge need an enabling environment as well as appropriate resources and instruments. FDI can enable the transfer of knowledge, of know-how and of skills relating to complex technologies, coordination, management and production. FDI is also a means to create employment and to distribute income through the creation of businesses to ensure the well-being of citizens.

The public investment rate in Morocco, which varies between 22 and 24.5 per cent,<sup>6</sup> is insufficient to be the driving force for strong and sustainable growth. Public sector efforts, which are mostly focused on funding social and economic infrastructure programmes, are not supported enough by the private sector, whether in Morocco or abroad. Also, it is obvious that investments play a crucial role in access to knowledge. This is necessarily linked to education, which in itself depends on basic infrastructure, employment and income. These are the main axes of human

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4 Haut Commissariat au Plan (HCP) ‘Femmes et hommes au Maroc: analyse de la situation et de l’évolution des écarts dans une perspective de genre’ (2003) study conducted by the HCP and presented on 18-19 March 2003.

5 Ministère de l’Économie et des Finances et UNIFEM *Examen exhaustif des statistiques sensibles au genre au Maroc* (2007) at 89.

6 Ibid.

development. Indeed, countries that have accumulated a substantial delay at these levels are those that 'do not have enough financial resources for public investments that would cause an increase in human development investment and growth fast-tracking'.<sup>7</sup>

Access to knowledge is increasingly understood as connected to human rights, which cannot be exercised in conditions of poverty. The fight against poverty must occur through the acquisition and the development of 'capabilities', as Amartya Sen puts it.<sup>8</sup> Education and teaching are essential pillars to accomplish this, but they also depend on the level of income, which in turn depends on the level of national and foreign public/private investment. 'Access to higher education remains a privilege that benefits mainly high-income countries. Today's inequalities in terms of education are bound to be tomorrow's global social and economic inequalities'.<sup>9</sup>

### 5.1.3 *State of education*

Morocco's education sector is faced with two major issues: the high number of illiterate people and the high number of unemployed graduates. Although 4 million children are schooled (in a total population of 30 million) and 230 000 students are registered in the 11 universities in the country, it is estimated that half of persons more than 10 years old are illiterate. This state of education has prompted the implementation of a new policy that considers the fight against illiteracy and the promotion of informal education as chief priorities. This reform particularly targets girls and the rural population between 10 and 45 years of age. It is estimated that 34 per cent of men and 62 per cent of women are illiterate; these rates reach 63 per cent and 78 per cent respectively in rural areas.<sup>10</sup> Morocco has committed to completely eradicating illiteracy by 2015.<sup>11</sup>

Since 2002, schooling has been compulsory and free for all children aged 6 to 15, but there are still a number of obstacles that prevent some children from attending school and/or completing their studies, such as families' financial difficulties linked to the cost of school stationery, transport and school meals. In rural areas, the situation is more complex than in the urban areas: in the 'douars' and villages, which are widely dispersed, getting to school every day is

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7 Ibid at 51.

8 A. Sen *Un nouveau modèle économique* (1999) Odile Jacob, Paris.

9 ONU *Rapport mondial sur le développement humain* (2007) at 27.

10 General information available on the website of the Ministère de l'Enseignement Supérieur. Available at <http://www.enssup.gov.ma> [Accessed 10 February 2010]. The statistics used by the Ministry are those provided by the Direction de la statistique, based on the Census of the Moroccan population.

11 Ministère des Finances et de la Privatisation 'Tableau de bord social' (2005). Available at <http://www.leconomiste.com/upload/document/social2272005.pdf> [Accessed 25 July 2009].

a real problem. Quitting school is sometimes not a choice but rather an unavoidable reality.

### *Pre-school education*

The net rate of schooling in 2003-2004 for 4- to 5-year-olds was only 50 per cent and the system generally serves boys better than girls and urban areas better than rural ones.<sup>12</sup>

### *Primary education*

According to statistics provided by the Department of National Education in the Ministry of National Education, Higher Education, Professional Training and Scientific Research, the number of pupils from 6 to 11 years old attending public and private primary schools reached 1 810 898 in 2007-2008. If we compare this number to the total number of children in this age bracket according to the Census of 2004, the net rate of schooling would have been 83.7 per cent in 2004, up from 60.2 per cent in 1993-1994.<sup>13</sup> A sustained improvement has thus been achieved in primary education, largely due to the schooling effort carried out in the previous decade. This has especially benefited girls. However, a large number of these children have not finished their primary school cycle due to problems linked essentially to poverty. In urban areas, the schooling rate for girls has nearly reached that of boys (89.8 per cent for girls and 91.2 per cent for boys).<sup>14</sup> In a similar fashion, in rural areas, the discrepancy in schooling between boys and girls has decreased. The rate of participation for girls has more than doubled.<sup>15</sup>

### *High school education*

At the high school level, an increase in the percentage of educated girls was achieved between 1990-1991 and 2003-2004.

In 2006-2007 and 2007-2008, the numbers of schooled children and the number of girls at the various levels, were as follows:

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12 The mid-project evaluation of the implementation of the Education and Training Charter has identified this problem and has suggested new measures to reach the objective of full attendance, including through compulsion.

13 Statistics from the Ministère de l'Éducation Nationale. Available at <http://www.men.gov.ma/stat2008/> [Accessed 25 July 2009].

14 Besides the official data from the general Census, we also used the extrapolations carried out by the Haut Commissariat au Plan, the Ministère de l'Éducation Nationale and the Ministère des Finances as well as other departments. There are discrepancies in the data and these are due to the difference in the methods used by the various departments.

15 Supra note 5 at 73.

	2006-07			2007-08		
Pupils	Urban	Rural	Total	Urban	Rural	Total
Primary school	1 698 888	1 910 415	3 609 303	1 635 164	1 896 897	3 532 061
Number of girls	818 168	856 590	1 674 758	788 203	859 401	1 647 604
Lower high school	1 039 867	308 737	1 348 604	1 040 595	338 305	1 378 900
Number of girls	495 534	109 213	604 747	496 369	120 695	617 064
Senior high school	577 785	60 465	63 250	602 237	69 627	671 864
Number of girls	287 052	22 806	309 858	302 003	27 237	329 240
<b>Total</b>	<b>3 316 540</b>	<b>2 279 617</b>	<b>5 596 157</b>	<b>3 277 996</b>	<b>2 304 829</b>	<b>5 582 825</b>
<b>Number of girls</b>	<b>1 600 754</b>	<b>988 609</b>	<b>2 589 363</b>	<b>1 586 575</b>	<b>1 007 333</b>	<b>2 593 908</b>
<b>Percentage that are girls</b>	<b>48.3%</b>	<b>43.4%</b>	<b>46.3%</b>	<b>48.4%</b>	<b>43.7%</b>	<b>46.5%</b>

Source: <http://www.men.gov.ma/stat2008/> [Accessed 25 July 2009]

Regarding the rate of pupils remaining schooled to the end of high school, there is evidence of a greater capacity by girls to pursue their studies and to succeed: 55.2 per cent of urban female pupils and 22.7 per cent of rural female pupils finish the school cycle, whereas the completion rates for male pupils are respectively 44.8 per cent and 17.4 per cent.<sup>16</sup>

### *Higher education*

Higher education has regressed in terms of the number of registered students in public universities as opposed to private institutions. This can be explained by the preference of students for private higher education institutions, not only for the perceived higher standard of study but also in terms of the nature of the training offered, which is seen as responding better to market demands. Public university training has gained a poor reputation from the ever-increasing numbers of unemployed public university graduates.

<sup>16</sup> Ibid.

## 5.2 Doctrinal analysis

### 5.2.1 *The Copyright legal environment in Morocco*

With the arrival of the French Protectorate system in 1912 and the introduction of the modern printing press, a law regarding industrial, commercial and literary property was passed. The 23 June 1916 Dahir guaranteed for the first time in Morocco the right of the author to his or her work, whatever the nationality.<sup>17</sup> This Law was followed by those of 9 November 1926 and 16 February 1927. These two laws were repealed and replaced by the 29 July 1970 Law (hereafter the 1970 Law), which was later itself repealed by Law 2-00 of 15 February 2000 (hereafter the 2000 Law) and published in the Government Gazette on 18 May 2000. This Law came into force on 18 November 2000.

In the context of national and international demands and in order to better tackle the challenges caused by technological progress, amendments have been added to the 2000 Law, through Law 34-05 promulgated by the 1-05-192 Dahir of 14 February 2006. (The 2000 Law, as substantially amended in 2006, is hereafter referred to as the Copyright Law.)

Morocco's dynamic intellectual property legislative process, however, has not been accompanied by supporting doctrinal, scientific or policy research. To some extent because of this scarcity of research publications on the topic, attitudes and assumptions favour stronger protection. These attitudes are in spite of the alarming poverty faced by the majority, which suggests a need for free and open access to knowledge.

Economic rights are protected by constitutional principles. Morocco's Constitution states in Article 15 that '[t]he right to ownership and the freedom to undertake are guaranteed'. However, the exercise of this right is not absolute, as the second paragraph of the same Article says: '[t]he law may limit the scope and exercise of this right if the nation's social and economic development so require'.

At the institutional level, copyright, royalties and related rights are managed by a public agency, the Bureau marocain du droit d'auteur (BMDA, the Moroccan Copyright Office). The BMDA is a collective management organisation under the Minister of Communication and is the 'only institution in Morocco in charge of receiving and redistributing copyright income under all forms current and future'.<sup>18</sup>

17 A dahir is a royal law through which the Sovereign of Morocco takes decisions within his competence, ie the promulgation of bills passed by Parliament.

18 Décret n° 2-64-406 du 8 mars 1965, B.O. n° 2732 du 10 mars 1965.

The BMDA's scope of work is very wide since it relates not only to large institutions such as theatres and cinemas, but also to coffee shops, restaurants and other places where music is played publicly. The receiving of fees is carried out according to three categories: broadcast and television rights, general rights and mechanical reproduction rights.

The BMDA's activities include:

- collective management and distribution of royalties among rights-holders;
- representation of Morocco in international institutions concerning artistic and literary property and signature of conventions with foreign author organisations to enforce the rights of Moroccan authors abroad;
- staging of awareness campaigns;
- monitoring of the use of works;
- licensing use of protected works;
- licensing use of folklore when use is commercial or outside the traditional or customary context;
- legal actions for the defence of moral and economic rights;
- seizure of illegal reproductions and equipment used to create illegal reproductions;
- cooperation with customs and tax authorities to ensure seizure of goods suspected of being counterfeited or pirated; and
- coordination with Internet service providers for identification of authors who may have infringed the Copyright Law.<sup>19</sup>

### ***5.2.2 Structure and main orientations of the Copyright Law***

In 2006, Law 34-05 amending the 2000 Law completely changed the national legal environment in the area of copyright. New elements in the 2006 Law modified the 2000 Law relating to copyright and neighbouring rights in the following ways:

- extension of the standard term of economic rights protection for authors from 50 to 70 years after the death of the author;
- a stronger role for the BMDA, the government and customs authorities in controlling and enforcing rights, including tighter measures for the suspension of the free circulation of goods suspected to be illegal or to be infringing copyrights and neighbouring rights;
- strong legal protection against the bypassing of technological protection measures (TPMs), including civil and criminal procedures and sanction for the individuals committing infringement, except for some specific cases involving

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19 Further details on the activities of the BMDA are available at <http://www.bmda.org.ma> [Accessed 25 July 2009].

- non-profit entities, such as libraries, archives, educational institutes and broadcasters that are non-profit;
- increased penalties for infringement, from seizure and fines to imprisonment; and
- a new system of limited liability for service providers (eg Internet service providers) in order to implement measures against copyright or other neighbouring rights infringement, especially quick measures to prevent such acts as well as penal and civil sanctions.

These changes were made to harmonise national laws with Morocco's international commitments in general and its free trade agreement (FTA) with the United States in particular. Another central objective of the 2006 amendments was to tackle piracy. The average piracy rate in the software, music and cinema sectors had reportedly reached 70 per cent and, reportedly, resulted in economic losses to rights-holders of up to 2 billion dirham in Morocco.<sup>20</sup>

The Copyright Law is divided into six parts and each part is subdivided into several chapters. The first part is entitled 'Copyright' and has eight chapters. Chapter 1 includes definitions, Chapter 2 determines the object of protection, Chapter 3 is about protected rights, Chapters 4 and 5 define the limitations of property rights and the duration of protection, Chapter 6 determines the owners of the rights, Chapter 7 defines the conditions of the assignment of rights and the way licences are regulated and Chapter 8 is reserved for the provisions particular to the publication contract market.

The second part has five chapters and deals with neighbouring rights: rights of performers, record producers and broadcasting organisations. The third part of the Law is about collective management. The fourth part deals with recourse and sanction measures regarding piracy and other infractions. The fifth part is about the scope of the application of the Law, with various final clauses in the last part.

The Moroccan legislator has taken care to describe in the first chapter of the Copyright Law, entitled 'Introductory Provisions', the legal terminology used when taking into account the new trends and commitments of the country at the international level. Some notions are defined: that of 'author' and 'work' in all its forms, as well as 'expressions of folklore', 'computer programme' and 'database'.<sup>21</sup>

20 Information taken from a document distributed to the delegates of a meeting organised by the Department of Communication and the Bureau marocain du droit d'auteur (BMDA).

21 Article 1, paragraphs 1 to 23 of the Moroccan Copyright Law of 2000 as amended in 2006: dahir n° 1-00-20 du 15 février 2000 portant promulgation de la loi n° 2-00 relative aux droits d'auteur et droits voisins and dahir n° 1-05-192 du 14 février 2006 portant promulgation de la loi n° 34-05 modifiant et complétant la loi n° 2-00 relative aux droits d'auteur et droits voisins.

### *Protected works*

The Moroccan Law protects 'literary and artistic works (hereafter termed 'works') that are original intellectual creations in the artistic and literary field...' (Article 3).

In order to qualify for copyright protection, a work must first and foremost be in a material form. Only an idea that has been materialised can result in a work protected by copyright. An oral work also qualifies for protection, which starts from the moment of creation of the work even if it is not fixed in physical format.

A second condition is that the form must be original. The current Copyright Law does not define the term 'original', whereas the old 1970 Law was clearer in terms of original work: 'the work whose characteristics and/or form can help to identify and individualise its author'. This means that the work must bear the mark of the personality of its author. This is not in any case about novelty. The creator just needs to have made artistic choices (of style or structure, for example) that can help distinguish his/her creation from others.

The Moroccan Copyright Law largely follows the categories included in Article 2 of the Berne Convention. The following are therefore considered copyright-protectable works in Article 3 of the Copyright Law:

- a) works expressed in writing;
- b) computer programs;
- c) conferences, conference papers, sermons and other works including words or expressed orally;
- d) musical works, whether or not they include any accompanying text;
- e) dramatic or musical dramatic works;
- f) choreographic works and pantomimes;
- g) audiovisual works, including movies and videograms;
- h) fine arts works, including drawings, paintings, engravings, lithographs, leather prints and any other fine arts work;
- i) architectural works;
- j) photographic works;
- k) applied arts works;
- l) illustrations, geographical maps, plans, sketches and three-dimensional works relating to geography, topography, architecture or science;
- m) expressions of folklore and works inspired by it;
- n) drawings and creations from the clothing sector.

The Copyright Law has also classified works into categories with provisions applicable to each of them: individual works; collective works (Article 1(3)); collaborative works (Article 1(4)); composite works; (Article 1(6)) and derived works (Article 1(5)).

The Copyright Law also grants protection to databases. This type of protection is included in the general copyright framework. (Copyright protection for databases is provided in Europe but is not required under the Berne Convention or provided in the United States.)

Under the title ‘Works Not Protected,’ Article 8 of the Moroccan Copyright Law stipulates that:

The protection offered by this law does not extend to:

- a) official texts of a legislative, administrative or judicial nature, nor to their official translations;
- b) news of the day;
- c) ideas, processes, systems, methods of functioning, concepts, principles, discoveries or simple data, even if all these are mentioned, described, explained, illustrated or incorporated in a work.

This exception for the free use of works of a legislative, judicial and administrative nature does not explicitly cover the studies or reports produced by the government or by a public institution, or documents whose production is funded by the government. And thus, despite a public entity having participated in the funding and/or creation of these works, it would appear that these works are protected by copyright rules.

### *Conferred rights*

The Moroccan legal system is one of civil law as opposed to common law, hence the importance of moral rights on par with economic rights.

### **Moral rights: a perpetual right**

Article 9 of the Copyright Law gives the author perpetual and inalienable moral rights in relation to his/her work, common to countries inspired by French law. Moral rights are attached to the author and only after the author’s death can his/her heirs claim these rights.

Moral rights include three types of rights: (1) the right to claim paternity of the work, especially the right to respect the name of the author for any public use of his/her work; (2) the right to stay anonymous or use a pseudonym bearing a false name; and (3) the right to have the work’s integrity respected (this right aims at protecting the work itself and as such the work cannot be modified, altered, mutilated or taken out of its context).

Unlike the economic rights outlined below, these moral rights never cease; they exist in perpetuity.

## Economic rights

Concerning economic rights, according to Article 10 of the Copyright Law as amended by the Law of 2006, the author of a work has the exclusive right to do, forbid or authorise the following acts:

- a) reprint and reproduce the work in whatever manner and in whatever form, permanent or temporary, including temporary electronic archiving,
- b) translate the work;
- c) prepare adaptations, arrangements or other transformations of the work;
- d) carry out or authorise the rental or public lending of the original or the copy of the audiovisual work, of the work being integrated in a phonogram, computer program, database or visually represented musical work (music sheets), whoever the owner of the original work or the copy subject of the rental or the public lending;
- e) carry out or authorise the distribution to the public through the sale, rental, public lending or any other transfer of property or of ownership, of the original or copies of the work whose distribution was not duly authorised by him/her;
- f) represent or execute his work in public;
- g) import copies of the work;
- h) radio-broadcast the work;
- i) communicate the work to the public by cable or any other means.

Rights-owners also have the exclusive right to monitor the distribution and/or rental and/or communication/availability of their work. In this regard, the Law makes temporary reproduction of the work conditional on authorisation from the copyright-owner or from the Law. According to Article 47, the author may also demand, at least once per year from the publisher, a statement including information such as the number of copies manufactured with the dates and the production size, the number of copies in stock and the sale price in force.

In terms of Article 11, the author or his/her assignee (any other physical or moral person to whom the rights have been attributed) may benefit from the economic rights outlined in Article 10. Moreover, the Law entrusts the BMDA with the task of exercising the author's economic rights should there be no known assignee or rights-owners. The duration of economic rights protection covers the whole of the author's life and is extended, by virtue of the 2006 amendments, for 70 years from the first day of the calendar year that follows his/her death. In the case of collaborative works, this 70-year period begins at the death of the last living co-author. Collective works are protected for the duration of the last surviving author's life and 70 years after his/her death. For certain works, the duration of the protection is not based on the author's life. Audiovisual works and those published under a pseudonym or anonymously have a duration of protection of 70 years from the first day of the

calendar year that follows their publication. Should a work not be published, the point of departure is the end of the year that follows the making of the work.

For audiovisual works, economic rights are protected for 70 years from the end of the calendar year when such a work was lawfully published for the first time or, should such an event not occur within 50 years from the making of this work, 70 years from the end of the calendar year when such a work was made accessible to the public or, should such events not occur within 50 years from the making of the work, 70 years from the end of the calendar year in which the work was completed.

Regarding works of applied art, Article 29 of the Copyright Law once again goes beyond what the Berne Convention and the TRIPs Agreement prescribe: the duration of the protection of the works is 70 years from the end of the calendar year when the first authorised publication was released, or should such a publication not take place within 50 years from the creation of the works, 70 years from the end of the calendar year of its creation.

The 70 years of protection goes beyond international norms (typically 50 years) dictated by the key international instruments related to copyright: the Berne Convention for the Protection of Literary and Artistic Works and the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs Agreement). This extended term may result in depriving the public domain of a substantial number of works and could therefore impede access to knowledge.

### Technological protection measures (TPMs)

Technological protection measures (TPMs) are defined as any technology, system or component that, within the normal framework of its operation, is aimed at preventing or limiting, regarding works and other protected objects, actions not authorised by the copyright-owner, or actions protected by neighbouring rights.

The clauses relating to technological protection measures were largely modified by the 2006 amendments to the Moroccan Copyright Law, in accordance with the requirements of Morocco's FTA with the United States. With the 2006 amendments, the legislator significantly raised the level of protection for the benefit of copyright-owners and content distributors. There is now a wide variety of prohibited acts in relation to TPMs. Article 65 prohibits all devices or methods that circumvent or make TPMs inoperable and devices or methods to decode programming signals. Receiving and redistributing decoded signals is also illegal, as is circumventing any TPM or rights management information (RMI). There are prohibitions on distributing or communicating works, performances, phonograms or broadcasts from which RMI has been removed or tampered

with. Overall, Morocco's anti-circumvention provisions are among the strongest anywhere in the world.

The legislator has, in the 2006 amendment of the Copyright Law, limited the application of these anti-circumvention clauses for the benefit of some non-profit entities. Article 65.1 indicates that libraries, archive services, education institutions or radio and television broadcast organisations, provided the entities are non-profit, are not subjected to penalties for the performing of TPM circumvention acts described in the relevant subsections of Article 65. Use of these exceptions may be practically impossible, however, without access to prohibited devices or methods that make such acts possible. There is no specific mention of disabled users, who sometimes need to circumvent TPMs in order to convert works from one format to another. In fact, disabled users are not mentioned anywhere in the Copyright Law.

### *Limitations and exceptions to copyright*

In order to maintain a balance between the interests of copyright-holders and users and under the heading 'Limitations of Economic Rights,' the Moroccan legislator has enumerated limitations and exceptions to the exclusive rights conferred to the author of a protected work.

#### **Private use**

The first limitation is the provision for free reproduction of works for private use. According to Article 12 the reproduction of a lawfully published work for the exclusive and private, non-commercial use by the user is allowed without the authorisation of the author and without the payment of remuneration. However, Article 12 indicates that free reproduction for private use does not apply:

- a) to the reproduction of architectural works under the form of buildings or other similar types of construction;
- b) to the reprographic reproduction of an entire book or a musical work in a visual format (music sheets);
- c) to the reproduction of the whole or parts of databases in a digital format;
- d) to the reproduction of computer software except for cases indicated in Article 21;
- e) to any other reproduction of a work that would affect the regular exploitation of the work or would cause unjustified prejudice to the legitimate interests of the author.

The Article contains three key points. Firstly, reproducing an entire book is forbidden. This means that a student cannot copy an entire protected work in order to use such a book for his/her studies.

The second point deals with the ‘three-step test’ in international copyright law,<sup>22</sup> which permits countries to allow reproduction of works ‘in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author.’ This three-step test was extended to all economic rights in Article 13 of the TRIPs Agreement. Article 12.2 (e) in the Moroccan Law strictly follows the three-step test logic with its provision that neither normal exploitation nor the legitimate interests of the author should be affected by any reproduction for private use.

The third point is that the reproduction or adaptation of computer programs for private purposes is not authorised except when the copying or adaptation of a computer program by the rightful owner is for one of the purposes outlined later in the Law, in Article 21. Article 21 specifies that reproduction or adaptation of a computer program is permitted when:

- a) necessary to the use of the computer program for purposes for which the program was purchased;
- b) necessary for archiving purposes and to replace a legal copy should the latter be lost, destroyed or made unusable.

No reproduction or adaptation of a computer program is permitted for any other reason than the two reasons just cited, as contained in Article 21.

### Use for information purposes

Article 19 concerns provisions for use for information purposes. The Copyright Law allows the reproduction by the press or via a radio broadcast or communication to the public of an article of an economic, political or religious nature published in newspapers or journals having the same character, on condition that the right to reproduction, radio broadcast or communication to the public is not exclusively reserved. Such reproduction/communication is also permitted for reporting purposes, to reproduce or to make accessible to the public current events materials by way of photograph, cinematography, video or radio broadcast or cable if justified by the objective of obtaining information. It is also permitted to reproduce, via the media or certain other public communication means, political speeches, conferences, conference papers, sermons and other works of a similar nature delivered in public. Authors maintain only the right to publish collections of these works.

### Reproduction taking the form of a quotation

The Moroccan Copyright Law also allows permission-free quotation of an integral part of any type of copyrighted work (if lawfully published) in another work,

<sup>22</sup> Article 9(2) of the Berne Convention and Article 13 of the TRIPs Agreement.

whatever the aim of the quotation is. This freedom is limited by three conditions: 1) the source and the name of the author, if in the source, must be indicated; 2) the quotation must comply with principles of appropriate use; and 3) the length of the quotation must not exceed the length justified by the objective being reached (Article 14).

### Education and teaching

Article 7(2)(c), concerning the protection of expressions of folklore, stipulates that the provisions of protection do not apply when the works are only used for ‘direct teaching or scientific research purposes,’

The Copyright Law adds, in Article 15, entitled ‘Free Use for Teaching,’ that:

[I]t is permitted, without the author’s authorisation and without any remuneration payment, but subject to the indication of the source and the name of the author if the same name is indicated in the source:

- a) to use a lawfully published work as illustration in publications, radio broadcast programmes or sound or visual recordings destined for teaching;
- b) to reproduce through reprographic means for teaching or for exams within educational institutions for which the activities do not directly or indirectly see a commercial profit, and to the extent justified by the objective sought, the isolated articles lawfully published in a journal or regular publication, short excerpts of a lawfully published work or a short work that has been lawfully published.

And Article 23(b) allows for the public performance of a work when this is done within the framework of ‘the activities of an educational institution, for the personnel and students of such an institution, if the audience is composed exclusively of personnel and the students of the institution, or the parents or the supervisors or other persons directly linked to the institution’s activities’.

Several observations on the limitations and exceptions regarding education and teaching can be made. First, the free use of a complete work in the field of education is allowed only in cases where the work is performed in private or in public and only within the framework of the activities of an educational institution under certain conditions.

Second, the use of protected works in online teaching and distance education is not included in the Law. With the technological revolution in the field of communication and the appearance of new teaching techniques, it is necessary to extend the limitations and exceptions relating to education and teaching for these new modes of learning.

Third, there is no provision in the Copyright Law for compulsory and/or statutory reproduction licences for education purposes. The granting of such a licence, for translation and/or publishing of a work by an entity other than the rights-holder, can allow the state to rectify abnormalities in the market. Compulsory or statutory

licences can be an important mechanism to create access when the protected work in question is not available, or is not affordable, or is not available in a widely spoken local language. Moroccan law thus favours the interests of copyright-holders at the expense of access to knowledge by prohibiting the possibility of obtaining such a licence.

### Library and archive services

Libraries and archive services benefit from a special regime in the Moroccan Copyright Law. Article 16 is dedicated to these two types of entities, authorising them to carry out reproduction of isolated copies of a work on the condition that such an act is not directly or indirectly aimed at commercial profit and in one of the following cases described in the Law:

- a) When the reproduced work is an article or a short work, or is composed of short excerpts of a work other than a computer program, with or without illustrations, published in a collection of works or in a journal or periodical, or when the aim of the reproduction is to satisfy the request of a physical person;
- b) When the copy is produced in order to preserve and, if necessary (in case it would be lost, destroyed or rendered unusable), to replace it within the permanent collection of another library or another archive service, to replace copies that are lost, destroyed or unusable.

The Moroccan Law does not include provision for ‘public lending rights’ or similar clauses.<sup>23</sup>

### Parallel imports

Parallel importing occurs when a protected work legally acquired in one country is imported into another country without the copyright-owner’s permission in that other country. Article 10(g) of the Copyright Law forbids parallel importation, providing the rights-holder with the exclusive right to forbid or authorise the importation of copies of his/her work from another market. Only one exception to this general rule is provided, in Article 24, which authorises the importation of one copy of a work by a person for private purposes. This restrictive rule favours a monopoly system whereby Moroccan users cannot import books already being sold at cheaper prices than the prices in Morocco in other countries such as Algeria, Tunisia or Egypt.

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23 Public lending rights allow authors of protected works to be financially compensated for the presence of their works in public libraries. The first public lending remuneration system was implemented in Denmark in 1946. Twenty-eight countries currently have such a system, through which libraries pay fees to rights-holder representatives.

### *Other laws relating to copyright*

Morocco has in recent years initiated numerous legal and institutional reforms related to intellectual property in general, required due to Morocco's international commitments.

Among the laws linked to intellectual property are:

- border control measures via a Joint Order by the Minister of Finance and Privatisation and the Minister of Industry, Trade and Economic Renewal, Joint Order 206-06 of 6 February 2006;
- Circular 4994/410 of 1 April 2006 relating to new customs regulations and measures at borders aiming at reinforcing the protection of intellectual property rights; and
- Circular Letter 5051 relating to border measures to fight against counterfeiting and piracy. These measures concern literary and artistic works when they are imported, exported or in transit, or when they are stored on a physical device such as a book, CD, DVD or a painting canvas. For the purposes of this circular letter, the customs and indirect tax authorities may, at border posts, suspend the circulation of goods suspected to be counterfeited or pirated.

The border control measures against suspected counterfeiting or pirated goods may be initiated upon the written request from a copyright owner or his/her representative or by the Bureau marocain du droit d'auteur (BMDA), in compliance with the amended Article 60 (amended in 2006) of the Copyright Law; or upon the government's initiative.

### **National Library of the Kingdom of Morocco**

With the adoption of Law 67-99,<sup>24</sup> the general library has become 'the National Library of the Kingdom of Morocco'. The National Library is responsible for, among other things:

- collection, valuation and conservation of the cultural and documentary heritage;
- attribution of ISBN and ISSN numbers;
- communication and dissemination via its collections and bibliographical research tools;
- adding value to these collections via publications, exhibitions and cultural events;
- coordination of the national network of Moroccan libraries in order to implement programmes for processing, saving and disseminating the documentary legacy;

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24 Dahir n° 1-03-2000 du 11 novembre 2003, B.O. n° 5184 du 5 février 2004.

making the collections available to the public, subject to intellectual property legislation;

- supplying specialised document and informational services for disabled people; and
- ensuring the reception and management of mandatory deposits, in compliance with the regulations in force.

Law 68-99 mandates deposit in the library of any printed document, graphic, photographic, audio, audiovisual or multimedia work, as well as databases, software and firmware. The Dahir of 2003 promulgating mandatory deposit Law 68-99<sup>25</sup> indicates that the purpose of the repository is to collect, preserve and conserve printed, graphic, photographic, sound, audiovisual and multimedia documents,<sup>26</sup> as well as databases, software and firmware. It should be noted that among the documents excluded from this procedure is research carried out within an academic context such as dissertations and theses. The availability to the public of the documents subject to mandatory deposit is governed to some extent by the provisions of the Copyright Law.

The National Library currently has a modern digitisation laboratory equipped with highly sophisticated facilities and it has started a digitisation programme for its most precious, fragile and rare collections. More than 20 000 documents have already been digitised. The National Library has also acquired a new restoration laboratory — for both mechanical and manual restoration — that not only restores the library's documents but also assists other Moroccan and foreign institutions in this field.

### Functions and organisation of the national documentation centre<sup>27</sup>

Besides its main mission, which is to supply stakeholders with information in all forms and formats (written, audiovisual, magnetic or multidimensional), the National Documentation Centre is also responsible for the collection, processing and diffusion of all the documents and information relating to the social and economic development of Morocco.

### **5.2.3 International conventions and agreements**

Morocco has been a signatory to the Berne Convention since 1917, with the exception of Articles 1 to 21 of the Stockholm Act. Morocco has recognised the Universal Copyright Convention of 6 September 1952 since 1972. In 1971 the

25 Dahir n° 1-03-201 du 11 novembre 2003.

26 B.O. n° 5184 du 5 février 2004.

27 Décret n° 2-97-286 du 7 avril 1999, B.O. n° 4696 du 3 juin 1999.

country also adopted the convention which created WIPO.<sup>28</sup> The ‘WIPO Internet Treaties’ of 1996 — WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT) — are currently in the process of being ratified. As a member of the WTO, Morocco has modified its national laws in accordance with the clauses dictated by this organisation. A WTO TRIPs Council assessment found that Morocco had complied with all its TRIPs obligations.

Indeed, the Moroccan Law goes beyond international minimum standards. For instance, the Copyright Law (as amended in 2006) and other legal instruments related to intellectual property, provide for:

- a term of protection of 70 years for most works, well beyond the 50-year international standard;
- special requirements for border protection;
- broad legal protection against circumvention of technological protection measures (TPMs);
- strong civil and criminal sanctions for copyright violations; and
- a limited liability regime for communications service providers in order to make it easier for authorities to take action against infringements.

According to Article 68 of the Copyright Law, ‘should there be a conflict between the clauses of the present law and those of an international treaty which the Kingdom of Morocco has signed, the clauses in said international treaty shall apply.’

### *Free trade agreement (FTA) with the United States*

Morocco has signed several important bilateral agreements and treaties, but the recent free trade agreement (FTA) with the United States, signed in June 2004 and in force since January 2006, is most important for this study.<sup>29</sup>

In Morocco, the negotiations for this agreement provoked much debate, among the intelligentsia and, in particular, politicians. The opponents of the agreement felt that it was unbalanced and benefited the US only, given the weak production, export and upgrading capacity of the Moroccan economy. The defenders of the agreement — the government, the majority party in power and their media, as well as employers — saw it as an opportunity for Moroccan companies to access the American market and therefore diversify export markets, dominated until then by the EU countries, especially France, Spain and Germany.

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28 Dahir n° 1-73-378 du 8 janvier 1974, B.O. n° 3204 du 23 mars 1974. Dahir n° 1-76-599 du 17 décembre 1976, B.O. n° 3359 du 16 mars 1977.

29 Free trade agreement signed between the US and Morocco on 15 June 2004, in force on 1 January 2006.

Despite dissent from civil society and the international mobilisation that accompanied the negotiation of the FTA, the agreement was signed and has been in force since 2006. Obligations contained in the agreement that relate to copyright are as follows:

- compliance with the highest international standards, in other words the standards common to countries that export technology. For instance, according to Article 15.1.2(g) and (h) of the FTA, Morocco has accepted to adhere to the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT);
- forbidding circumvention of technological protection measures (TPMs);
- protection against unauthorised parallel importations, according to Article 15.5.2;
- compelling the relevant authorities, in terms of Article 15.11.23, to implement measures at the borders regarding the import, export or transit of goods suspected to affect an intellectual property right, without requiring a formal complaint from a private party or from the rights-owner;
- forbidding, in terms of Article 15.11.27, the trafficking of false labels put or destined to be put on a phonogram, a copy of software, a document or packaging for a computer program, the copy of a movie or any other audiovisual work, or knowingly trafficking false documents; and
- imposition of a minimum duration for copyright protection of 70 years for most rights.

Morocco has thus relinquished its right to use many of the copyright flexibilities granted to countries by the WTO. It is not surprising, then, that the US Advisory Council feels that the weak points that featured in the US free trade agreements with Chile and Central America were mostly eliminated in the FTA with Morocco. The US FTA with Morocco has become a template for other US FTAs to follow.

The challenges connected to the US-Morocco FTA are numerous. In the field of knowledge/learning materials, Morocco's public education system is already fragile and sensitive to the price of foreign publications. The strengthening of copyright included in the agreement may, among other things, restrict access to these publications.

#### **5.2.4 Judicial and administrative decisions**

There is a shortage of judicial decisions in the area of copyright in Morocco, which can be explained by two things. The first is that most cases which relate to copyright find solutions in alternative arrangements such as mediation or amicable settlement.

The second is that most rights-holders seem to consider the sanctions contained in the Law as insignificant and thus not worth formally pursuing.

The lack of case law means that Morocco risks not addressing important questions about access to knowledge as a means to economic and social development in the knowledge economy. Furthermore, practice has shown that measures taken by the authorities against infringement — for instance, infringement by families who depend on piracy to make a living, or students doing infringing photocopying — are ineffective. Attempts at draconian controls, arbitrary interventions, heavy fines and the seizing of equipment used for these crimes have shown that such tactics do not seem to produce any desired results. New policies based on sound development policies are required. The cornerstone should be access to knowledge rather than the existing, flawed market logic that primarily benefits foreign multinational corporations.

### **5.2.5 Summary of legal environment**

The laws and regulations in Morocco relevant to copyright have been developed along international norms, which are included in the various conventions signed by the Kingdom of Morocco, particularly the Berne Convention and the WTO TRIPs Agreement and to some extent the two ‘WIPO Internet Treaties’ — the WCT and WPPT — which Morocco is in the process of ratifying. But Morocco has recently adopted, particularly after signing the FTA with the US, measures that go beyond international norms. The 2006 amendments to the Copyright Law were primarily aimed at addressing technological evolution, allowing Morocco to fulfil its commitments in terms of its FTA with the US and relieving general pressure by international powers. Indeed, the system created by these reforms seems likely to ensure more protection of works, but will such protection be positive for Moroccan social development, given the current needs of Moroccan society? What about access to knowledge in general and access to learning materials in particular?

## **5.3 Qualitative analysis**

### **5.3.1 Copyright literature**

Morocco suffers from a scarcity of copyright research, except for a very limited number of theses and dissertations. There are fewer than 10 works regarding copyright. The research studies carried out, even though they are academic, tackle the topic from the point of view of the protection of the author’s absolute property. They focus on the lack of compliance with copyright, often blaming lax state controls.

In his PhD thesis published in 1997 under the title ‘Notion de droit d’auteur et les limites de sa protection pénale’, Abdelhafid Belkadi recommends the strengthening of criminal sanctions for copyright violations. Meanwhile, Abdessaid Cherkaoui

writes that: ‘Morocco has fallen into the trap of globalisation when it implicitly recognised multinational companies as an author. In fact, there is nothing Moroccan about the BMDA: it only manages the various interests of multinational companies on the national territory.’<sup>30</sup> But in his more recent work entitled ‘ABC de la mondialisation’,<sup>31</sup> the same author abandons his critical position and aligns himself with the overwhelming majority in terms of copyright, by adopting a protectionist perspective that does not take into account access to knowledge.

Ahmed Mikou, the head of an academic course on intellectual property at the Hassan II University, published an article in the *Revue marocaine de droit et d'économie du développement* entitled ‘Le rôle de l'État dans la promotion et la défense de la propriété intellectuelle’, advocating a similar protectionist perspective that de-emphasises access to knowledge.<sup>32</sup> However, since the 2004 signing of the FTA with the US, stakeholders have started being more critical in terms of copyright. In his article entitled ‘ALE entre le Maroc et les États-Unis: impact sur la protection de la propriété intellectuelle’, Mohamed Elmassloui reflects this new trend. The privatist approach, which refuses to take into account fundamental rights, is starting to recede.

For its part, the BMDA reflects the idea that protection is a source of creativity. On their side, public administrators give their positions on their websites and in brochures. These brochures are internal documents which limits their impact. And the brochures reveal that there is a lack of coordination from the public services across the board, due to the absence of a multidimensional strategy regarding the links between intellectual property, copyright and access to knowledge.

### 5.3.2 Impact assessment interviews

With interviewees chosen on the basis of their connection to access to knowledge and copyright, we interviewed representatives of:

- the Ministry of Higher Education (now a Department of the unified Ministry of National Education, Higher Education, Training Programmes and Scientific Research);
- the Programming Division of the Ministry of National Education (now a Department of the unified Ministry of National Education, Higher Education, Training Programmes and Scientific Research);

30 A. Cherkaoui ‘Droits d’auteurs: Le BMDA, un organisme bénéficiant d’une période d’exception qui dure depuis 1970’ *L’opinion* (10 January 1998) at 4. Available at <http://www.cherkaoui.net/fichiers/journaux/j2-fr.html> [Accessed 26 February 2010].

31 A. Cherkaoui ‘ABC de la mondialisation: règles et exceptions’ *L’opinion* (31 January 1998). Available at <http://www.cherkaoui.net/fichiers/journaux/j4-fr.html> [Accessed 26 February 2010].

32 A. Mikou ‘Le rôle de l'État dans la promotion et la défense de la propriété intellectuelle’ (2001) 44 *Revue marocaine de droit et d'économie du développement*.

- the National Library;
- university libraries at the Faculties of Law at Salé and at Marrakech;
- Marsam publishing house;
- the Bureau marocain du droit d'auteur (BMDA) (several meetings but not an official interview with the Director and one unofficial interview with a Bureau manager); and
- teachers and students.

From these interviews, we were able to see the lack of awareness on the part of most of the interviewees (all except the interviewees from the BMDA) regarding copyright and its legal framework. This lack of awareness made it necessary for almost all interviews to take the form of a general discussion. Such a situation reflects the general environment and the dominant culture in terms of copyright in Morocco. Copyright is a preoccupation of major corporations and the elites and revolves around protection and promotion of authors' and rights-holders' property rights.

Other overall findings from the impact assessment interviews were:

- a lack of a sense of the connection between copyright law and access to knowledge;
- a lack of understanding of the evolution towards strengthening of the protectionist elements of the Copyright Law;
- generalised lack of compliance with the Copyright Law, particularly via illegal photocopying of books and use of pirated software;
- the view that it is the state's responsibility to ensure access to knowledge, but with the precise nature of necessary state intervention remaining uncertain for most interviewees;
- the view that weak economic conditions and poverty are the main explanations for the lack of respect for copyright, eg infringing purchasing of illegally photocopied works at very low prices;
- support for improvement and maximisation of access to knowledge, especially in the area of learning materials and teaching; and
- the need for more open and free access to digital resources, which remain scarce except at the National Library.

Below is a more detailed look at some of the interview findings.

### *The role of copyright*

Most of the interviewees had difficulty conceiving of a link between copyright and access to knowledge. According to them, even though they are convinced of the necessity of the right to knowledge for citizens, this right has to be limited by almost absolute copyright in works.

According to the interviewees, copyright is a necessary obligation, to motivate creativity and innovation. Publishers, representatives of the BMDA and representatives of the National Library say they ensure compliance with copyright and consider it a factor that favours access to knowledge, not the contrary.

For one of the Education Ministry officials interviewed, copyright is not a priority: copyright is the business of publishers. The Ministry is not concerned with this topic, in terms of its jurisdiction. The first priority of the Education Minister is to ensure that all citizens can access knowledge at a minimal cost, but the Ministry does not consider copyright to be a part of the solution. The Ministry feels it plays its role, which it wishes to strengthen further, by working with the publishers, who are willing to collaborate and who are considered by the Ministry to be civic-minded corporations. These publishers are committed to paying for copyright in the works they publish, even before they know whether their projects are accepted by the Ministry's monitoring committee. According to the interviewee, the Minister does not deal with copyright; he deals with the right to knowledge.

It is significant that expressions such as 'protection obligation' and 'state intervention to impose respect for the law' were typical in all the interviews. The reasons for non-compliance with the Law did not generate any spontaneous curiosity among the interviewees. Rather, the issue for the interviewees was how to empower the state and require strong intervention on its part in order to guarantee respect for authors and rights-holders. But once the discussion went into more detail, many interviewees did say that copyright infringement likely has its roots in poverty and the high cost of books and learning materials.

It is our view that the lack of compliance with the Law – by those, for instance, who illegally photocopy entire books for commercial purposes – can indeed be explained by factors such as poverty, the high prices of books and by the almost total lack of infrastructure in public libraries and public cyber-spaces.

### *Economic factors*

Economic factors have a crucial impact upon access to knowledge. According to the publishers we interviewed, the author gets only 8 to 10 per cent of the retail price of the book in return for giving copyright to the publisher. The costs of publication and distribution should also be taken into consideration. Indeed, it would seem all stakeholders are suffering in the present market, which does not always function optimally. Publication and distribution costs are high, economic conditions do not allow many citizens to purchase the books they are interested in and copyright payment from a publisher is not enough in itself for authors to make a decent living.

In order to facilitate access to knowledge, books need to be produced at lower costs to allow Moroccans to benefit from them. But, say the publishers, such

low-cost books would also need to be quality products. Librarians, on the other hand, say they facilitate and maximise access to knowledge for educational and scientific purposes in a manner that does not impact the economics of book production. Their concern is the lack of materials in their libraries and the lack of finances to purchase books. Meanwhile, according to Education Ministry officials, the essential thing is to prevent the government from deregulating the prices of school books. At present, many school books (pre-tertiary-level books) are made somewhat affordable by government subsidisation of publishing and distribution of these books.

Meanwhile, the BMDA takes a different view of the economic realities. For the BMDA, copyright limitations and exceptions have the potential, if expanded, to undermine the economic returns for producers, innovators and inventors of materials, who would then lose one of their main motivating factors.

#### *Copyright limitations and exceptions and access to knowledge*

According to the BMDA, current copyright limitations are largely sufficient and allow for access to knowledge fairly easily in the case of learning materials, research, or personal and non-commercial use. The National Library interviewees agreed. As far as adaptation of copyright works goes, the National Library confirmed that some provisions are made to facilitate access to knowledge for disabled people or people with particular needs. Individuals suffering from a physical disability have no problem accessing the library and can therefore access any kind of work without any difficulty. People suffering from sensory disability, such as the visually impaired, can magnify the pages they read 16 times, which facilitates their reading. The blind have access to the necessary equipment to read in Braille. They can also use audio equipment to listen to an audio version of a book instead of reading, though relatively few books are available in audio format and converting and/or accessing audio books may constitute copyright infringement or require the illegal circumvention of TPMs.

An interviewee at the National Library confirmed that he was willing and able to make recorded versions of copyrighted works for blind individuals who request this. This type of request has never been made, however. Regarding the copyright aspect of this type of adapting of an entire work (actually not permitted by the Copyright Law without authorisation from the copyright-holder), the official did not think that there was a single author who would refuse such an adaptation should it be to help disabled people, but he indicated he would ask for the author's permission beforehand. Should there be royalties to pay, the National Library would pay them. Finally, membership at the National Library is free for all disabled people.

Despite libraries being places where knowledge can be disseminated, the interviews with library officials revealed the deep need for training and awareness

in terms of copyright. There is little awareness of the issues of maximising access to knowledge or taking advantage of legal exceptions. Only after our interviews did the National Library start to be aware of the importance of copyright and the library has now committed itself to organise, in the near future, a study on copyright. The National Library has also decided to liaise with the BMDA to find out more about the BMDA's mission and to potentially create a partnership in order to contribute to the development of policies and strategies in this area.

The interviewees at the National Library now believe the topic of copyright deserves special interest in order for the National Library to:

- better know and understand copyright, its environment and its impact on access to knowledge in order to allow the National Library to play its role in facilitating and maximising access to information and knowledge in general; and
- be able to participate in the formulation of strategies relating to access to knowledge, which is something the National Library had never thought of doing before. (In order to do this, the National Library was, at the time of writing this report, preparing a study day on copyright in which the BMDA, experts in the area and academics would participate.)

The interviewees from the teaching community, although more aware than other interviewees of the impact of copyright on access to knowledge, said it was the state's responsibility. For them, the state alone must take the necessary decisions in order to maximise access. The members of the teaching community interviewed did, however, recognise their own obligations to disseminate a copyright culture regarding the inalienable rights of authors as well as the limitations to these rights in order to provide for user access.

The Education Ministry officials highlighted the inequality women suffer and how this situation illustrates why the schooling of girls is essential. There should not be a choice between 'sending either the boy or the girl to school'. According to the officials, girls must receive improved means of access to knowledge. Only knowledge will give them the opportunity to fully play their role in society and to share the right to contribute to decision-making.

According to one Education Ministry official we interviewed, the key access to knowledge barrier is the poor state of the country's educational systems in general, which has not yet reached the required level. According to this official, it is likely that big cities provide a more or less acceptable education, but this is not the case in the rest of the country. Even in some of the big cities, some educational institutions operate in unacceptable conditions, especially in deprived areas. How, the official asked, is it then possible to stabilise the country and to make it reach a higher level of development if the poorer parts of the population do not have the adequate public and cost-free facilities for access to knowledge?

The private sector, namely the publisher interviewed, indicated that the situation regarding copyright and access to knowledge is paradoxical, especially in the area of publishing. Inexpensive books are desirable for all, but they must also be of good quality. How is it possible to produce quality goods without incurring additional costs? How can sufficient royalties be paid if book prices are low? How can creators be motivated to produce if they do not receive good payments? According to the publisher, local authorities need to intervene and play a role in this area. Local authorities need to create library collections for each district and, said the publisher, buy large collections of books, which they should make available to the public.

At the university libraries, managers complained that their budgets do not allow them to fulfil the access objectives entrusted to them. At the same time, however, the interviews revealed that library employees, including management, do not know much about copyright and do not have strategies for increasing access to knowledge. It was thus found that libraries are isolated from decision-making processes and the formulation of national policies and legislation in terms of copyright.

Regarding photocopying in university libraries, this service tends to be provided independently from the libraries' operations. Reproduction (sometimes of entire books) and adaptation are carried out on the basis of managers' personal opinions and not on the basis of agreements and conventions signed with the relevant institutions.

This situation at university libraries reflects the problem of access to knowledge. On the one hand, the Copyright Law forbids the photocopying of an entire work except for special circumstances such as library preservation. On the other hand, because of the poverty of users, photocopying entire books remains an important means of access, regardless of what the Law says.

Teachers interviewed said they feel that the right to access to knowledge is far from being achieved and is even threatened by the current trend towards free trade. They are afraid that knowledge will be transformed into a simple good regulated by free market principles.

### *Information and Communication Technology (ICT)*

According to statistics provided by the Agence nationale de réglementation des télécommunications (ANRT, National Telecommunications Regulatory Authority),<sup>33</sup> there are roughly 20 million mobile telephony subscribers, 2 393 million fixed-line telephone subscribers and 526 080 home Internet subscribers in Morocco.

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33 M. Siraj 'Le taux de pénétration d'Internet au Maroc ne dépasse pas 1,72%.' Available at <http://www.bladi.net/16798-taux-penetration-internet-maroc.html> [Accessed 26 February 2010].

In addition, according to one study, about 12 per cent of the total population, or about 3.7 million people, access the Internet outside their home.<sup>34</sup> The low rates of home Internet connection are due partially, according to the study, to the negative perception of the Internet and the underdevelopment of electronic commerce. Also, in rural areas, lack of access to the Internet was said by most respondents (63.3 per cent) to be largely a function of illiteracy or a lack of education, while others (37.7 per cent) cited the high prices of the equipment needed to connect to the Internet at home. In urban areas, the price factor was the main reason users cited (58 per cent) for not having access to home Internet, while some urban users also cited the lack of access to a computer (38 per cent).

ICTs, according to most interviewees for our research, generally constitute a powerful means of communication and dissemination of all kinds of knowledge. All interviewees agreed that these technologies are relevant in the area of knowledge, but nobody raised the question of access controls and the cost of access to knowledge through ICTs.

### *Gender*

According to most interviewees, the issue of gender and copyright law was not a point that required attention. Most interviewees said the Copyright Law is the same for all and there is no particular circumstance or measure that indicates differences in gender consideration. However, there was acknowledgement of gender dynamics in access to knowledge.

One Education Ministry interviewee had much to say about gender. He pointed out that various training sessions had been arranged for the benefit of managers and officials at the Ministry, in order to make them aware of the gender issue. The Ministry asked the trainers to make them aware and to train those authors who contribute to the development of school books. The focus is on making authors aware that 'the traditional lines' separating men from women are outdated and should not be replicated in school materials. A new logic based on principles of equality and equity must be generated and mainstreamed in texts, images and all school books. These orientations appear in the specifications delivered to publishers and are therefore available for authors, who then take this gender perspective into account when they write. The commission tasked with the evaluation of government-procured books is particularly interested in this aspect, so much so that it will reject any book project that does not comply.

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34 A. Bounar 'Adoption d'un projet de plan d'action pour le développement du web au Maroc.' Available at <http://www.aedev.org/spip.php?article1203> [Accessed 25 July 2009].

It is important to highlight that gender relations in Morocco have received a boost due to profound recent modifications to 'Moudawana', the Moroccan Family Code. However, there are discrepancies between men and women that continue to exist, especially in terms of education, employment and income. A national budget study conducted in Morocco in 1998 helped clarify this situation. It was found that 22 per cent of women's time was dedicated to household tasks and the maintenance of the family.<sup>35</sup> Such a situation leaves a certain bitterness regarding the time women spend on domestic chores and the education of children. These efforts are currently not evaluated in Morocco. Only remunerated professional activities are counted; domestic work is considered a traditional obligation.

Women's economic empowerment is necessary as a source of social respect and opportunity to participate in public life. It is also a source of financial support and contribution to the social and cultural environment. Such economic autonomy can occur only if women have the same chances to access knowledge that men have. In this regard, the state has a fundamental role to play: it must work to liberate women and girls from traditional chores that prevent them from benefiting from the same opportunities as men in terms of schooling and education.

Factors such as family attitudes and traditions still play an important part in society, especially in poor families and particularly in rural areas. In fact, when having to make a choice, in poor families, between schooling a boy or a girl, the decision is spontaneously made: it is the boy who will go to school. In all such cases, the girl will be neglected, whereas statistics have shown that in the field of education, from the primary to the secondary level, girls are in fact more successful than boys in completing their education once they have been given a chance to start. Thus one cannot ignore the gender aspect in any policy or strategy.

That being said, there is nothing specific in the Copyright Law related to women: the Law is written in a way that appears to be the same for all. But, as just outlined, there are many reasons not directly related to copyright that make access to knowledge not as easy for women as it is for men. And thus it could be argued that a copyright environment with greater limitations and exceptions would particularly benefit women and girls, as they currently face greater learning access challenges than men and boys.

#### **5.4 Conclusions and recommendations**

In terms of the legal framework adopted by the state, the copyright environment in Morocco clearly leans towards protection, or over-protection, of intellectual

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35 N. El Moujaddidi 'Les fondements de la budgétisation du genre au Maroc.' See also A. Paternov, G. Gabrielli and A.V. d'Addato 'Travail des femmes, caractéristiques familiales et sociales: le cas du Maroc.' Available at <http://www.demogr.mpg.de> [Accessed 25 July 2009].

and knowledge-related products. Consequently, access to knowledge is limited for poorer populations, hence the use of less costly access alternatives, such as illegal photocopies of books and pirated software.

The topic of copyright in Morocco remains an elite one even though its negative impact affects all of society. This situation is partially explained by a conception common to Moroccan society at large, which considers intellectual property as a luxury product, or as a concept that only large companies are interested in. The scarcity of research in this area is but one example that confirms this reality.

The reality of copyright in Morocco is that there are paradoxes at play: on the one hand, the legislation is very heavy in terms of protection, inspired by theories that are not even fully applied in their countries of origin. On the other hand, it is evident that compliance with copyright is an exception. In public services, for instance, it is known that employees work with pirated software, whereas the state is in principle the enforcer of the Copyright Law in this regard. Users of books and software who are vulnerable to economic conditions are in an untenable situation. Their lack of financial capacity does not allow them to afford the prices of the works, be they on paper or digital and the user must at the same time abide by the Copyright Law. This dead-end situation explains the choices that result in non-compliance with the Law in order to avoid marginalisation and exclusion.

What is required is a thorough examination of the copyright legal framework through the lens of the universal values and principles recognised by Morocco — principles such as the right to education and the right to knowledge. Such an examination should focus on fundamental rights. This type of analysis could help unlock some of fundamental principles in intellectual property, in particular the fact that intellectual property rights are limited rights.

To analyse copyright through the lens of fundamental rights would lead to understanding that there are property rights for copyright-owners and there are also fundamental rights for users, such as the right to expression, to information and especially to knowledge. All these rights have value. It is therefore necessary to find the correct balance between these rights.

Recent amendments to the Copyright Law essentially focus on expanding the field of protection, strengthening enforcement through legal mechanisms and tougher border controls, and strengthening the role of the BMDA. The results we observed have enabled us to make the following recommendations.

The Copyright Law should be reviewed in order to take into account the rights of users — not only the rights of rights-holders. The law should maintain a balance of interests between copyright-holders and users in the following ways:

- it is necessary to expand the scope of exceptions and limitations related to education, in order to include the objectives of distance education and

e-learning, as well as to give the possibility of obtaining compulsory and statutory licences for educational purposes. Compulsory and statutory licensing could be employed when protected works are not available, or are not affordable, or are not available in a widely-spoken local language. With such licences, the copyright-holder would then be obliged to assign his or her rights to another entity, such as the state or an individual publisher;

- access to knowledge differs from one social category to another and thus it is necessary to introduce exceptions and limitations for groups with specific needs, such as people with disabilities;
- libraries should be granted more flexibility in the amount of photocopying they can do for the benefit of students and researchers; and
- exceptions and limitations relating to parallel importation should be introduced to allow for the free importation of works that are already distributed abroad by the rights-holder at a lower price than in Morocco. Parallel importation would allow access to protected works at prices that are affordable for a larger part of the population.

The 1965 Decree constituting the BMDA should be reviewed in order:

- to ensure total control by the state over the Bureau's budget in order to avoid the latter's dependence on contributions from knowledge producers; and
- to allow for collective management of copyright royalties, by repealing Article 3 in the Decree which states that the BMDA 'alone is tasked with collecting and distributing the royalties derived from copyright in all its forms current or future...'

Libraries, which are sources of knowledge, must benefit from the implementation of a special status that will allow them to contribute to policymaking and become active facilitators of access to knowledge.

Universities and schools are currently excluded from any involvement in copyright policymaking. This negatively impacts access to knowledge. Universities and schools should enjoy political freedom to determine their own internal copyright policies and they should be integrated into government copyright policy decision-making processes.

In terms of public policies in general, the access to knowledge situation requires:

- promotion of the objectives of access to knowledge and provision of information to users about the limitations and exceptions to copyright;
- review of policies that inform the publication of school books to avoid market-based strategies and to prioritise policies that favour access to knowledge; and
- provision to educational institutions of access budgets specifically aimed at promoting the use of new technologies in education.

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