



# ACA2K

## Country Report

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**African Copyright and Access to  
Knowledge (ACA2K) Project**

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## EGYPT

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# Table of Contents

<b>EXECUTIVE SUMMARY</b>	<b>4</b>
<b>1. BACKGROUND</b>	<b>5</b>
1.1 GENERAL-GEOGRAPHY	5
1.2 POLITICAL HISTORY	5
1.3 CULTURAL DIVERSITY, EDUCATION, LITERACY AND ICT USE	5
1.4 THE ECONOMY	7
1.5 LEGAL ENVIRONMENT	7
1.6 A2K ENVIRONMENT	8
<b>2. DOCTRINAL ANALYSIS</b>	<b>9</b>
2.1 DEVELOPMENT OF COPYRIGHT LAW IN EGYPT	9
2.2 THE EIPRPA OF 2002	10
2.2.1 Protected Works	10
2.2.2 Conditions of Protection	11
2.2.3 Core Rights	12
2.2.4 ICTs and Anti-Circumvention Measures	14
2.2.5 Term of Protection and the Public Domain	15
2.2.6 Copyright Flexibilities	16
2.3 INTERNATIONAL OBLIGATIONS	21
2.4 JUDICIAL AND ADMINISTRATIVE DECISIONS	22
<b>3. QUALITATIVE ANALYSIS</b>	<b>23</b>
3.1 SECONDARY LITERATURE	23
3.2 IMPACT ASSESSMENT INTERVIEWS	24
3.2.1 Knowledge of the Law	24
3.2.2 Enforcement of the Law	25
3.2.3 Learning Materials	26
3.2.4 Difficulties in Accessing Knowledge	26
3.2.5 Disabilities	28
3.2.6 Policies	28
3.2.7 Print-on-Demand Machines	29
3.2.8 Exceptions and Limitations	29
3.2.9 Access Notwithstanding the Law	30
3.3 SUMMARY OF QUALITATIVE ANALYSIS	31
<b>4. INFORMATION AND COMMUNICATION TECHNOLOGY (ICT)-SPECIFIC FINDINGS</b>	<b>32</b>
<b>5. GENDER-SPECIFIC FINDINGS</b>	<b>33</b>
<b>6. CONCLUSIONS</b>	<b>34</b>
6.1 ACCESS TO KNOWLEDGE	34
6.2 COPYRIGHT LAWS	35
6.3 THE RELATION BETWEEN COPYRIGHT AND ACCESS TO KNOWLEDGE	35
<b>BIBLIOGRAPHY</b>	<b>36</b>

## Executive Summary

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This report is the result of more than a year of research work. It attempts to discern the relation between the Egyptian copyright environment (including statutes, policies, court cases and practices) and access to knowledge (A2K), especially access to learning materials. The research was conducted through two parallel avenues: an examination of the current legal/regulatory framework protecting copyright and/or promoting access to knowledge, and a qualitative analysis which included a review of relevant secondary literature as well as conducting interviews with selected stakeholders from different stakeholder groups, ie, representatives of publishers and their associations; graduate students and professors; librarians; IP lawyers; and officials.

Our findings can be grouped into three categories: those related to access to knowledge, those related to copyright law, and those related to the relation between copyright and access to knowledge.

The key findings of this report are as follows:

- Egyptians find difficulties accessing learning material – difficulties which they try to overcome both at the national/official level and at the popular/citizen level.
- Egyptian copyright law abides by all international treaties to which Egypt is a signatory, yet in some instances it deviates from them – both to the benefit and to the harm of access to knowledge. The relevant Egyptian Intellectual Property Rights Protection Act (EIPRPA), in general, is not guided by the purpose to increase access to knowledge as opposed to protecting copyright. It could be amended with a view to increasing access to knowledge.
- On the practical level, we have not found a direct and tangible effect of the current law on access to knowledge, whether positive or negative. This is because knowledge about the law and enforcement of its provisions are both rare.
- Egyptian copyright law lacks provisions that address access to knowledge per se. For example, there are no provisions related to e-learning or to students with disabilities.

# 1. Background

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## 1.1 General-Geography

Egypt is located in the northeast corner of Africa and has a strategic geographic position that connects the Mediterranean Sea with the Indian Ocean.<sup>1</sup> 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; it covers an area of about 1 001 450 square kilometres. It is divided into 29 governorates, with governors appointed by the president. In terms of land area, it is approximately the same size as all of Central America, 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.

## 1.2 Political History

Given Egypt's long and diverse history, it is difficult – if not impossible – to summarise this history in a few paragraphs. What is important for the purposes of this research, however, is the recent political history, which represents the 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 keeping an appearance of political independence of the Egyptian monarchy.

Like in other developing countries, the fifties was the era of independence and military rule. In 1952, the Egyptian military ousted the King, in 1953 established a Republic; and in 1956 Britain withdrew its last soldier. The current political system is a continuation of the 1952 regime, with a significant increase of the role of civil society and freedom of movement and speech, and with an increasing adoption of capitalist and liberal values.

## 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<sup>2</sup> is female. The most important demographic trend is the young age of the Egyptian population, where people under age 15 represent about 32 per cent of the population. Arabic is the official language but English and French are widely understood by the educated classes.<sup>3</sup>

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<sup>1</sup>Sinai, its farthest northwestern peninsula, falls in Asia.

<sup>2</sup>These numbers are not often reported in a way that signals them as minority groups, and in general from the legal and social point of view they are not treated as such. The information is stated as part of the background and does not have a bearing on the results of this paper.

<sup>3</sup>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].

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The education system in Egypt is not only the largest in Africa but also one of the largest in the world: with some 19.9 million students (17 million pre-university, 2.9 million in universities) and approximately 42 000 schools (public and private) at the different education levels and 34 universities (public and private), the educational system plays an essential role in the economic development and growth of the country.<sup>4</sup>

The Egyptian education system is divided into three stages: basic education, secondary education, and post-secondary education. The compulsory education lasts for nine grades and is known as 'basic education'. It is split into two stages, primary school (Grades 1-6) and preparatory school (Grades 7-9) and includes all children aged 6-14. 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.

The number of schools reached 42 184 in the year 2007/8 and the classes attended are at 394 716. Females represent 48.31 per cent of students in primary schools, 49.22 per cent in preparatory school and 52.35 per cent in general secondary school. Enrolment rates in the pre-university stage were estimated in the school year 2007/2008 to be above 90 per cent for basic education and 77 per cent for secondary education.<sup>5</sup>

Higher 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. Organisation and administration, as well as academic programmes, are determined by laws, decrees and government regulations. 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 the citizens' involvement in the knowledge society. According to the Egyptian Central Agency for Public Mobilisation and Statistics (CAPMAS)<sup>6</sup> Census in January 2007, illiteracy rates decreased to 29.3 per cent in Egypt. The national budget for education in 2009/2010 represents almost 32 per cent of the total public expenditure.

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<sup>4</sup>The Egyptian Cabinet Information and Decision Support Centre (IDSC) *Egypt's information portal: statistical indicators* (2009). Available at <http://www.eip.gov.eg/nds/nds.aspx> [Accessed 18 May 2009].

<sup>5</sup>Statistics are available in Arabic on the website of the Egyptian Ministry of Education, electronic services portal, at [http://services.moe.gov.eg/egov\\_statisticsData.html](http://services.moe.gov.eg/egov_statisticsData.html) [Accessed 18 May 2009].

<sup>6</sup>Central Agency for Public Mobilisation and Statistics (CAPMAS) (2009). Available at <http://www.capmas.gov.eg> [Accessed 18 May 2009].

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Egypt has been utilising information and communication technology (ICT) as part of its provision of education for some time. Computer infrastructure and equipment, laboratories, information systems, and administrative management structures have been developed and are in operation in many schools and administrative departments within the ministries and the governorates. This includes computers in preschools, primary, preparatory, secondary, and special education schools; and computer laboratories in almost 4 611 schools – mainly secondary schools. Currently, many schools at all levels are equipped with: (a) multimedia laboratories (1 800 preschool, 11 925 primary, 6 195 preparatory, and 1 205 secondary schools); and (b) high speed Internet access available in 152 schools – installation in another 2 000 schools is under way – while 22 000 schools access the Internet via dialup connections.<sup>7</sup> The state aims to enter the knowledge and information world through several routes. It is using new technologies in education, learning and administration by: linking 36 926 schools through the Internet; increasing the schools equipped with recent technology to 28 850 schools; and increasing the number of computers in preparatory schools to 84 327.

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 the Internet users, 59.19 per cent are male while 40.81 per cent are female. Fifty-five per cent of Egyptian families having Internet access use it for educational purposes.<sup>8</sup>

## 1.4 The Economy

Egypt's economy depends to some extent on agriculture, media, and petroleum exports. Its main revenues, however, come from tourism and from traffic that passes through the Suez Canal.

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 and ranked Egypt 29th on the global scale. The GDP (purchasing power parity) for 2008 was US\$5 400. The economy grew by an estimated 6.9 per cent in 2008.<sup>9</sup>

## 1.5 Legal Environment

Egypt is a democratic Republic, based on a multiple-party 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 administrative court in addition to its advisory role to the government. In 1969, Egypt created a Supreme Constitutional Court to handle issues related to the constitutionality of acts and regulations.

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<sup>7</sup>Government schools equipped with Internet access represent 38.86 per cent, private schools 32.92 per cent, and Azhar-Private 1.82 per cent (July 2008). From Government of Egypt - 'Egyptian ICT indicators, ICT infrastructure and access' (2009). Available at <http://www.egyptictindicators.gov.eg/default.htm> [Accessed 18 May 2009].

<sup>8</sup>Ministry of Communications and Information Technology *Egypt ICT indicators portal* (2009). Available at <http://www.mcit.gov.eg/Indicators.aspx> [Accessed 18 May 2009].

<sup>9</sup>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].

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Egypt has been a civil law country since 1883,<sup>10</sup> 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 law and Islamic law, in addition to benefiting from other legal systems and practices.<sup>11</sup>

Egypt has also adopted the French distinction between commercial matters and civil matters. Until recently, issues related to the commercial aspects of IP (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) of 2002.

## 1.6 A2K Environment

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

On the one hand, the pro-copyright protection movement in Egypt is very forceful and influential, yet mostly concerned with musical and artistic works. This movement advocates and calls for stringent general application of copyright protection and is even lobbying for legislative amendments that adopt 'TRIPs-plus' and 'Berne-plus' provisions. The pro-copyright protection movement is lobbied and sponsored generously by giant 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 in Egypt. 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 and go to the library, and to research and present papers in competition for prizes.

Bibliotheca Alexandrina (BA) is arguably the main A2K advocate and supporter in Egypt and the Arab world. On 30 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 to Egypt and the Arab world.<sup>12</sup> In its pursuit of that objective the platform provides the latest studies, articles, news and international agreements that are related to A2K. Moreover, BA organises a variety of events that aim to create awareness among different related stakeholders.

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.

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<sup>10</sup>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 Code).

<sup>11</sup>In 1937, Egypt and all 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.

<sup>12</sup>Bibliotheca Alexandrina Access to knowledge [2008]. Available at <http://www.bibalex.org/a2k/home/home.aspx> [Accessed 18 May 2009].

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## 2. Doctrinal Analysis

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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 them particularly for villagers in an easy and regular manner 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 'Educational 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<sup>13</sup> as well as in regulations implementing the Consumer Protection Law.<sup>14</sup>

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

### 2.1 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 the approval from all foreign countries with privileges.<sup>15</sup>

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.

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<sup>13</sup>Articles 27-38 of the Executive Regulations of the Export and Import Law 118/1975 published at the Egyptian Gazette 13 October 2005.

<sup>14</sup>Executive Regulation of the Consumer Protection Law 67 of 2006. Available at [http://www.cpa.gov.eg/english/legislations\\_rules.htm](http://www.cpa.gov.eg/english/legislations_rules.htm) [Accessed 18 June 2009].

<sup>15</sup>By the end of the 19th Century, European countries obtained certain rights and privileges to counteract the increased debts of the Egyptian government. In 1875 the Mixed Courts were established to rule in cases between Egyptian citizens and foreigners (the mixed judicial system). Europeans enjoyed the concessions in adjudicating their disputes. These privileges were abrogated by the Treaty of Montreux signed in Switzerland (8 May 1937) and enforced in 1949. See T Beshry *The Egyptian jurisdiction between independence and dependence* (2006) 2ed Al-shorouk al-dawleya, at 11.

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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.<sup>16</sup> 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, sculpture 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 under the Copyright Law and also provided for protection of video tapes. A 1994 amendment to the Copyright Law treats computer software as a literary work and guaranteed it a 50-year term of protection after the death of the author.

As a result of the TRIPs Agreement, a new phase of the protection of intellectual property in Egypt began. In June 2002, the People's Assembly passed the EIPRPA of 2002. 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 in the TRIPs Agreement and in some cases exceeds it, as we will explain below with regard to access to learning and education materials.

The four 'Books' of the EIPRPA address patents, integrated circuit designs, and undisclosed information (Book One), trademarks, geographical indications, trade statements, and industrial designs (Book Two), copyright and related rights (Book Three), and plant variety protection (Book Four). More specifically, copyright and related rights are dealt with in Articles 138-188 of the EIPRPA.

The Executive Regulation of Book Three related to copyright was issued by the Prime Ministerial Decree 497 of 2005 and has been amended by Prime Ministerial Decree 202 of 2006. The Executive Regulations primarily address procedural issues not specified in the law itself.

## 2.2 The EIPRPA of 2002

### 2.2.1 Protected Works

The EIPRPA generally protects all creative productions whatever their type or mode of expression.<sup>17</sup> In particular, it provides, in its 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 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)).

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<sup>16</sup>Copyright Law 354 of 1954 as amended contained the general principles of the Berne Convention for the Protection of Literary and Artistic Works, although Egypt did not join this Convention until 1977.

<sup>17</sup>Article 138(1) of the EIPRPA states that 'for the purposes of this law, the following terms shall have the meaning given below: [w]ork: Any created literary, artistic or scientific product, whatever its type, mode of expression, significance or purpose of its creation.'

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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).

## 2.2.2 Conditions of Protection

Two issues warrant discussion in this context: the formal and the substantive conditions for protection.

### 2.2.2.1 Formal Conditions

The law in Egypt does not require any formalities for copyright protection. In other words, copyright protection in Egypt arises automatically. This means that an author does not need to officially register or apply for copyright protection. Instead, copyright protection 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, provides:

Any establishment that puts in circulation works, recorded performances, sound recordings or broadcast programs through sale, rent, loan or licensing, shall be required to:

- (i) Obtain a license from the competent minister against payment of a fee prescribed by the Regulations, not exceeding 1,000 pounds;
- (ii) Maintain registers in which data and circulation year relating to each work, sound recording or broadcast program are recorded.

Without prejudice to any more severe sanction under any other law, violation of the provisions of this Article shall be punishable by a fine of not less than 1,000 pounds and not more than 5,000 pounds.

In case of repetition, the punishment shall be a fine of not less than 10,000 pounds and not more than 20,000 pounds.

Book authors may file an application at 'Dar El-Kotob' at the Ministry of Culture to get a serial number that is used to prove that he or she is the author of the book. This also applies for authors of computer programmes 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.<sup>18</sup>

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<sup>18</sup>Article 186 of the EIPRPA states 'any person may obtain from the competent ministry a certificate for a deposited work, recorded performance, sound recording or broadcast program, against payment of a fee prescribed by the regulations not exceeding 1,000 pounds for each such certificate'.

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Moreover, Article 149 of the EIPRPA, dealing with the right to transfer economic rights, requires any such transfer to 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 shall not be valid with respect to third parties prior to such registration.'

Article 186 goes on to allow any person to 'obtain from the competent ministry a certificate for a deposited work... against payment of a fee'.

It is important to emphasise that the latter requirements are not requirements for copyright protection as such. They also increase the cost of publishing a book and are not required by international treaties. In addition they have raised problems with international establishments that refuse to abide by them.

### 2.2.2.2 Substantive Conditions

On the substantive level, protection only extends to works that are (a) original and that (b) have been reduced to material form. Article 138(2) defines creation as '[t]he creative nature that confers originality on the work'. In 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'.

## 2.2.3 Core Rights

Egypt is a civil law country and both moral rights and economic rights of copyright-holders are protected.

### 2.2.3.1 Moral Rights

Moral rights are independent of the economic rights and remain with the author even after he/she has transferred his/her economic rights (Article 143.). In other words, they are perpetual, inalienable, and imprescriptible, and always belong to the creator of the work, regardless of who the owner of the economic rights is. The disposal of any moral rights is considered null and void. This means that creators cannot assign, waive, transfer or sell their moral rights.

Moral rights confer on the original author '(1) the right to make the work available to the public for the first time; (2) the 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:

- In relation to the scope of moral rights, the right to prevent circulation of the work can only be exercised 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 serious reasons that have arisen and should pay in advance a fair compensation to the person authorised to exercise the economic rights.<sup>19</sup>
- Secondly, 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).

### 2.2.3.2 Economic Rights

Economic rights cover any form of work exploitation. In particular, economic rights include the following rights: reproduction right; right of adaptation and translation; distribution right; rental and lending right; public performance right; broadcasting right; right of communication to the public; and right of making available to the public. Consequently, Article 147 of the EIPRPA states that '[t]he author and his universal successor shall have the exclusive right to authorise or prevent any form of exploitation of his work, particularly through reproduction, broadcasting, re-broadcasting, public performance, public communication, translation, adaptation, rental, lending or making the work available to the public in any manner, including through computers, internet, information networks, communication networks and other means'.

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, the Egyptian legislators 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 protected work without previous authorisation from the rights-holder. Thus students, for example, who legitimately buy a copyright-protected textbook, cannot lend this book to their colleague who may be in need of the book but can not afford to buy it. Moreover, providing rights-holders with such right could have negative consequences on access to knowledge by inhibiting the work of libraries.<sup>20</sup>

The second observation concerns the rental right conferred to the author by the EIPRPA. Article 11 of the TRIPs Agreement restricts the rental rights on computer programmes and cinematographic works for commercial use. However, the Egyptian legislator extended the rights to prevent renting to all kinds of works and for all types of commercial as well as non-commercial uses.<sup>21</sup> Therefore, the rights conferred to right-holders by the Egyptian law go well beyond what international treaties require. Such rights are referred to as 'TRIPs-plus' and 'Berne-plus' rights.

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<sup>19</sup>Article 144 of the EIPRPA reads: 'Where serious reasons arise, the author alone shall have the right to request the court of first instance to prevent putting the work in circulation, withdraw the work from circulation or allow making substantive modification to the work, notwithstanding his disposal of the economic exploitation rights. In such a case, the author shall, within a delay fixed by the court, pay in advance a fair compensation to the person authorized to exercise the economic rights of exploitation, failing which the court decision shall have no effect.'

<sup>20</sup>The authors of the report 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.

<sup>21</sup>Article 11 of TRIPs states 'In respect of at least computer programs and cinematographic works, a Member shall provide authors and their successors in title the right to authorize or to prohibit the commercial rental to the public of originals or copies of their copyright works. A Member shall be exempted from this obligation in respect of cinematographic works unless such rental has led to widespread copying of such works which is materially impairing the exclusive right of reproduction conferred in that Member on authors and their successors in title. In respect of computer programs, this obligation does not apply to rentals where the program itself is not the essential object of the rental'.

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.<sup>22</sup> They provide authors with the inalienable right to receive a royalty based on the resale price of an original work. In practice, however, resale rights are rarely applied to literary works; more often, they are implemented for the visual arts, ie, for paintings, sculptures, textiles, canvas, etc. Here again, the legislator went beyond Egypt's international treaty obligations. Article 14 *ter*(1) of the Berne Convention for the Protection of Literary and Artistic Works leaves its Member States the discretion to provide authors with the right to control any disposal of the original copy only for works of arts and original manuscripts.<sup>23</sup> However, the Egyptian legislator extended this right to all kinds of works, which potentially hampers access to knowledge: imposing an additional financial charge on purchasing and selling all types of original works may prevent people from buying literary and artistic works.

## 2.2.4 ICTs and Anti-Circumvention Measures

The EIPRPA contains anti-circumvention provisions which prohibit the circumvention of any technological measures in order to use digital material in ways which are not authorised by the rights-holders. In fact, the EIPRPA has adopted the highest level of protection for technological protection measures (TPMs). Article 181 forbids manufacturing, assembling or importing any device or tool or any technology that aims to circumvent any technological protection measures that include information and communication technologies (ICTs). The Article says, in part, that TPM circumvention:

Without prejudice to any more severe sanction under any other law, shall be 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, any person who commits any of the following acts:...

- (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 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;

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 copyright-protected material and impede educational use of copyright-protected material. The anti-circumvention provisions do not only apply 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 TPMs for an unlimited period of time even after the end of the copyright term of these works. Also, anti-circumvention may 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 employing TPMs whose circumvention is prohibited by law. Egyptian anti-circumvention provisions do not contain explicit exemptions dealing with the issue of copyright exceptions and limitations.

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<sup>22</sup>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.

<sup>23</sup>Article 14 *ter* of the Berne Convention states: '(1) The author, or after his death the persons or institutions authorized by national legislation, shall, with respect to original works of art and original manuscripts of writers and composers, enjoy the inalienable right to an interest in any sale of the work subsequent to the first transfer by the author of the work. (2) The protection provided by the preceding paragraph may be claimed in a country of the Union only if legislation in the country to which the author belongs so permits, and to the extent permitted by the country where this protection is claimed. (3) The procedure for collection and the amounts shall be matters for determination by national legislation'.

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## 2.2.5 Term of Protection and the Public Domain

### 2.2.5.1 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.<sup>24</sup> In many countries, however, the duration of copyright protection has been extended to cover 70 years after the death of the author or longer. In Article 160 of the EIPRPA, Egyptian law has adopted the standard 50-year term of protection set out in the international treaties.<sup>25</sup>

In compliance with the relevant international treaties and agreements, the EIPRPA contains different terms of protection for some works. Works of joint authorship, for instance, are protected throughout the lives of all co-authors and for 50 years from the death of the last survivor (Article 161). For collective works, 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; if the copyright-holder is a natural person, the protection period is calculated according to the aforementioned rules as stipulated in Articles 160 and 161. For works published for the first time after the death of the author, the protection term 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 (Article 162-2). In the case of anonymous or pseudonymous works, the term of protection expires 50 years after the date on which the work was published or made available to the public for the first time, whichever comes first, unless the identity of the author is known and established or revealed by the author; in the later case the general rule applies (Article 163). 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 (Article 164).

The duration of protection of related rights is the same as the author rights. Performers enjoy an exclusive economic right for the exploitation of their performances for a period of 50 years calculated from the date on which the performance or the recording took place, whichever may be the case (Article 166). The producers of sound recordings generally enjoy an exclusive economic right to exploit their recordings for a period of 50 years calculated from the date on which the recording was made or made public, whichever comes first (Article 167). Lastly, broadcasting organisations enjoy an exclusive economic right to exploit their programmes for a period of 20 years calculated from the date on which the programme was broadcast for the first time (Article 168).

### 2.2.5.2 Public Domain

Once the duration of the protection of 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'. Despite the fact that the public domain should be freely accessible by any person, the law requires obtaining a licence for any commercial or professional exploitation of such works for 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, and 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.

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<sup>24</sup>See Article 7(1) of the Berne Convention, which is incorporated into TRIPs via Article 9(1) of TRIPs.

<sup>25</sup>Article 160 of the EIPRPA reads: 'The author's economic rights provided for in this Law shall be protected throughout the life time of the author and for 50 years from the date of his death.'

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Such requirement is not required by any international agreement and is therefore an additional unnecessary requirement conditioned by the Egyptian legislator.<sup>26</sup> As a result, in Egypt, one needs to apply to the competent ministry (ie, the Ministry of Culture for literary works; 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. This application is in order to obtain a licence before exploiting the unprotected works either commercially or professionally.

## 2.2.6 Copyright Flexibilities

Egyptian law provides an exclusive list of instances where users may legally ignore the owner's rights. These copyright exceptions and limitations are determined by the legislature – not the courts. They reflect circumstances that outweigh the necessity of protecting the owner's rights. In the following we categorise and discuss those copyright exceptions and limitations that have a bearing on access to learning materials.

### 2.2.6.1 Educational Exceptions

Egyptian copyright law contains specific and limited exceptions related to teaching and learning. It is noteworthy, however, that the law does not tackle distance or e-learning with special provisions.

At present, the law offers two types of educational exceptions. The first type is automatic, and does not require government intervention and the second depends on a compulsory licence issued by the government.

#### a. Automatic exceptions

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

- (1) Perform 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.

A couple of comments are in order. 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. In that light we should also scrutinise the qualification of the absence of indirect compensation. While it can be possibly argued that the tuition paid to the institution would qualify as 'indirect compensation', we believe the provision means compensation for the performance itself and not to the educational service as a whole. Only practice will show the true limits of the exception.

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<sup>26</sup>In addition the requirement is vague, as it does not define its scope regarding what works are covered: do we need a license for reproducing a book published a thousand years ago? How about books published a thousand years ago in Syria? One of our interviewees described the provision as mere 'taxation' or 'collecting money' rather than being related to protection of copyright.

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The qualifier ‘in educational institutes’ takes an important role in Article 171(7). The interesting but yet-unanswered question is whether reproducing the material for the purpose of e-learning run by the institution would constitute use *in* the institution.

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.

### **b. 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.

### **2.2.6.2 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 for 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 for once or on irregular intervals;
- 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. Fifteen countries have a PLR programme and others are considering adopting one. PLR programmes vary from country to country. Countries like Germany and the Netherlands have linked PLR to copyright legislation and have made libraries liable to pay copyright-owners for every book in their collection. Other countries do not connect PLR to copyright.<sup>27</sup> The Egyptian legislators have neither in the IP Act 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.

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<sup>27</sup>Wikipedia *Public lending rights* (2009). Available at [http://en.wikipedia.org/wiki/Public\\_Lending\\_Rights](http://en.wikipedia.org/wiki/Public_Lending_Rights) [Accessed 25 April 2009].

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### 2.2.6.3 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.<sup>28</sup> The three-step test is a test against which national copyright exceptions and limitations are to be judged when examining their legitimacy. Obviously, however, the Egyptian lawmakers were in doubt whether an exception allowing the creation of a single copy for personal uses would always fulfil the requirements of the three-step test. While such effect is not generally produced by creating a single copy, widespread personal use may indeed hamper the normal exploitation of the work and unduly interfere with the legitimate interests of the rights-holder. To ensure that the exception nonetheless complies with Egypt's international treaty obligations, the Egyptian lawmaker therefore added the requirements of the three-step test to Article 171(2).

Second, Article 171(2) still allows the author or his successor to prevent third parties from carrying out any of the following acts without his authorisation:

- 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 rather than artistic works and software.

### 2.2.6.4 Exceptions in Relation to the Media

Article 172 allows newspapers, periodicals or broadcasting organisations, if justified by the purpose, to engage in:

- (1) Publishing excerpts from his works which were legally made available to the public, and his published articles on topical issues of concern to the public opinion, unless the author has prohibited such publication when publishing the work, and provided that the source, the name of the author and the title of the work were mentioned.
- (2) Publishing 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. However, the author alone or his successor has the right to make collections of such works, for which he shall be entitled to claim authorship.
- (3) Publication of 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 the work, or excerpts or quotations therefrom, for the purpose of criticism, discussion or information.

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<sup>28</sup>Article 9.2 of the Berne Convention and reinforced by Article 13 of the TRIPs Agreement.

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### 2.2.6.5 Parallel Imports

Parallel imports of copyright-protected materials are expressly permitted under Egyptian law without any restrictions. Article 147 states 'The 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'.

### 2.2.6.6 Translations

One of the important provisions for developing countries stated 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.<sup>29</sup>

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 Berne Appendix contains, however, a number of strict requirements and limitations for such substitution. For instance, Article II(2) of the Berne Appendix requires that a translation of a work is not published in a language in general use in the country in question by the copyright-holder, or another authorised person, 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.<sup>30</sup> In addition, the translation may only be carried out 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, authorisation 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 to 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 effective until October 1994 and has not been renewed. The fact that the declaration has not been renewed has, of course, no immediate effect on the national level; any person may continue to make use of the translation rights contained in the Egyptian law of 2002 and Egyptian courts are obliged to apply these national rules. On the international level, however, this situation is more problematic. This is because any member of the WTO could now complain to the Dispute Settlement Organ at the WTO, arguing that Egypt is not respecting its international obligations by applying rules to which it has no longer availed itself.

The EIPRPA, in Article 148, 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 years<sup>31</sup> of the date of first publication of the original or translated work.

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<sup>29</sup>The Berne Convention for the Protection of Literary and Artistic Works is the most important instrument of international copyright law. It was adopted on 9 September 1886 and was then revised at Paris in 1896 and at Berlin in 1908, completed at Berne in 1914, revised at Rome in 1928, at Brussels in 1948, at Stockholm in 1967 and at Paris in 1971, and was amended in 1979.

<sup>30</sup>Article III(3)(a) of the Berne Appendix.

<sup>31</sup>It was five years in the Copyright Law 354 of 1954 (Article 8).

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On the face of it, the Egyptian lawmaker has chosen a different path than the Berne Appendix by stating 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, one must, however, take Article 183 of the EIPRPA into account. It provides that '[t]he 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'.

Finally, it needs to be mentioned that the EIPRPA contains two kinds of exceptions related to translations. The first exception, outlined above, is a compulsory licence for translating protected works for educational purposes (Article 170). Interested persons need to apply to the competent ministry and have to respect some conditions which have been discussed earlier.<sup>32</sup> The second exception related to translations (Article 148) concerns translations of foreigner works that have not been translated into Arabic within three years after the first publication of the work. No permission from the competent ministry is required for such translations.

### 2.2.6.7 National Folklore

In Egypt, national folklore is considered as a part of the public domain of the people.<sup>33</sup> Article 142 of the EIPRPA stipulates: 'National folklore is deemed public domain. The competent ministry shall exercise the moral and financial copyright on folklore; and shall assume the protection and support thereof.'

National folklore is defined at 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, including in particular:

- (a) Oral expressions such as folk tales, poetry and charades, and other folklore;
- (b) Musical expressions such as popular songs accompanied by music;
- (c) Motion expressions, such as popular dances, plays, artistic forms and rituals;
- (d) Tangible expressions such as:
  - Products of popular plastic art, particularly drawings with lines and colors, engravings, sculpture, ceramics, pottery, woodwork and any inlaid designs, mosaics, metal or jewellery, hand-woven bags, needlework, textiles, carpets and clothes;
  - Musical instruments;
  - Architectural forms.

### 2.2.6.8 ICT-Related Provisions

Because of the different nature of software, it receives a treatment that differs in some aspects from written documents when it comes to copyright exceptions and limitations.

For 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 programme and must include an indication of the programme from which the quotation was taken.

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<sup>32</sup>See section 2.2.6.1 of this report.

<sup>33</sup>The public domain is defined by Article 138(8) of the EIPRPA of 2002 as 'Domain including 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'.

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Furthermore, Article 171(3) of the EIPRPA allows one to:

[m]ake, with the consent of the legitimate owner of the program, a single copy or an adaptation of a computer program, even if exceeding the extent necessary for the use of the program inasmuch as it remains within the limits of the purpose for which consent was initially granted, for archiving purposes or to replace a lost, destroyed or invalid original copy. In either case, the original or adapted copy shall be destroyed upon expiration of the property title. The Regulations shall determine the terms and conditions of adaptation from the program.

Another interesting aspect related to ICT can be found in Article 138(9) of the EIPRPA. It defines reproduction as 'making one or more exact copies of a work or a sound recording, in any manner or form, including permanent or temporary storage of the work or sound recording in an electronic form'. Potentially, this provision can create difficulties when viewing files on the Internet, as this requires the creation of temporary files on the hard disk. However, Article 171(9) of the EIPRPA aims to mitigate this unwanted consequence by including an exception that allows any person to make 'temporary reproduction of a work where such reproduction is made in relay, during a digital transmission of the work or in the course of a process of reception of a digitally stored work, within the normal operation of the device used by an authorised person'.

## 2.3 International Obligations

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.<sup>34</sup> Also, Egypt has been a party of 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 Lebanon (1999), Syria (1991), Morocco (1999), Jordan (1999), and Tunisia (2007). In addition, free trade agreements exist with Turkey (2005) and the EFTA States<sup>35</sup> (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, inter alia, been bound by the WTO including the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) of 1994.<sup>36</sup>

Egypt has not signed the so-called WIPO 'Internet Treaties', WCT and WPPT, of 1996<sup>37</sup> and has not joined the Universal Copyright Convention (UCC).

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<sup>34</sup>The Berne Convention is self-executing according to Egypt's Constitution. Thus, international copyright-holders may be able to rely directly on Berne Convention provisions in Egyptian courts in areas where the coverage of the Egyptian copyright law is vague or non-existent.

<sup>35</sup>The EFTA states are Iceland, Liechtenstein, Norway and Switzerland.

<sup>36</sup>Egypt is not bound by least developed country (LDC) status.

<sup>37</sup>Interestingly, this is in spite of the fact that Egypt has introduced anti-circumvention provisions into the EIPRPA (the 'Internet Treaties' call for anti-circumvention provisions).

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## 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 civil action being available for compensation to an aggrieved party.<sup>38</sup> Enforcement is primarily addressed through the criminal law, with the possibility of a civil suit based on a showing of criminal infringement. The reason for the preference of criminal prosecution is that it is more expeditious and more effective, if at all, for preventing infringers from continuing their action.

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 scarce and hard to trace.<sup>39</sup> Several factors affect this, particularly the manner of reporting judicial decisions in Egypt: official reports only exist for the Supreme Court (Court de Cassation). However, very few cases ever reach the Court de Cassation and those cases which 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 reaching the Court de Cassation and having been published predominantly deal with formalities and do not address or interpret substantive copyright issues. It also needs to be considered that the Court only interprets the law or applies it 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. Another very important aspect is – as discussed below in our qualitative analysis – that copyright law is very rarely put into practice in Egypt.

Having said this, Egypt strives to promote stronger enforcement of intellectual property rights by maintaining an intellectual property unit in its police force<sup>40</sup> 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 is responsible of the protection of literary works in Egypt (hard-copy);
- For the protection of computer programmes and databases: The Information Technology Industry Development Agency (ITIDA)<sup>41</sup> 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.

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<sup>38</sup>In the past, injunctions have not been frequently granted in Egyptian courts, but judges have recently begun issuing injunctions in appropriate IP cases, and there have been a number of cases in which the courts imposed maximum penalties in criminal cases and issued commercially appropriate damage awards in civil cases.

<sup>39</sup>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 decision do generally 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 language within three years after the first publication of the work without the authorisation of the rights-holder.

<sup>40</sup>A special unit in the Ministry of Interior named the General Administration for the Prevention of Infringement of Intellectual Property Rights had been established in 1996 (Decision of the Ministry of Interior n° 2011/1996) to confront copyright piracy and related rights violation.

<sup>41</sup>The Information Technology Industry Development Agency (ITIDA) is a governmental entity that has been established through Law 15 of the year 2004. This agency aims at paving the way for the diffusion of e-business services in Egypt by capitalising on different mandates of the authority, such as activating the Egyptian e-signature law and supporting an export-oriented IT sector in Egypt. The ITIDA's services include functioning as the registration centre for original computer software put forth by organisations or individual publishers and producers to protect intellectual property and other rights.

## 3. Qualitative Analysis

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### 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, Ph.D. theses and LL.M. dissertations have been written and published on IP issues, especially in relation to industrial property such as patents and trademarks.

We cannot claim to have read or surveyed all available literature on IP in general and copyright specifically. Yet, to the extent possible, we can say that issues of access to knowledge within copyright literature are almost absent. 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 that would provide judicial interpretations and limitations.

The dearth of treatment of A2K issues can also be attributed to the lack of appropriate awareness of its importance and the absence of influential lobbying in this respect. Unlike other causes, such as the 'the right to medicine' and 'medicine for all' initiatives which were lobbied and funded by Egyptian generic pharmaceutical companies that reject the stringent measures of TRIPs Agreement, the A2K cause is thus far neglected and accordingly requires more effective lobbying.

As mentioned earlier in this report the BA is arguably the main A2K advocate and supporter in Egypt and the Arab world. Through its electronic platform, and other activities, the BA is able to raise awareness of different A2K issues among stakeholders. The BA's electronic platform clearly states that its main objective is to raise the awareness of a wide public audience on the relationship between IP and development on the international level, with a special focus on A2K, for the purposes of promoting innovation and creativity and stimulating the development of an inclusive knowledge society in the Arab world.<sup>42</sup> In fulfilment of that objective the BA prepared in 2008 the 'Access to knowledge toolkit'<sup>43</sup> which is essentially a study that assembled different papers by Egyptian and Arab researchers and activists in the field of A2K. Those papers were: 'The evolution of A2K' by Ahmed Abdel Latif; 'Free and open source software: an introduction for practitioners' and 'Creative Commons: an introduction for practitioners', both papers by Anas Tawileh; 'Considerations and motivations for the use and development of open source systems' by Professor Sherif El Kassas; 'Research on progress on A2K in Egypt: in line with the proposed agenda for A2K research in the Arab countries' by Dr. Nagla Rizk; and the 'African Copyright and Access to Knowledge Project (ACA2K)' by Dr. Bassem Awad and Dr. Moatasem El-Gheriani.

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<sup>42</sup>See Bibliotheca Alexandrina *Access to knowledge platform, statement of purpose*. Available at <http://www.bibalex.org/a2k/Home/StaticPage.aspx?page=15> [Accessed 25 June 2009].

<sup>43</sup>See Bibliotheca Alexandria *Access to knowledge toolkit (A2k)* (September 2008), edited by Hala Essalmawi. Available at <http://www.bibalex.org/a2k/attachments/references/refilen0hjhc55jmfcbcket5l0k1rzi.pdf> [Accessed 30 March 2009].

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Another very important doctrinal study published by the BA was that titled 'Copyrights under Egyptian law: analytical study from a developmental perspective', written by Professor Hossam Al Sagheer and Dr. Hassan Badrawy in 2008. The study can be considered pioneering since it is the first that revisits and analyses Egypt's copyrights 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 the TRIPs or Berne agreements. The study discusses the exceptions and limitations provided in the law, and suggests amendments to the current law that would on the one hand respect Egypt's international treaty obligations and, on the other hand, would render the current law more sensitive to the development needs of Egypt as a developing country. Among other things, the study suggests doing away with the requirement for fee payment and obtaining approval for reproducing works that are already in the public domain. It also suggests adopting the broader US-style 'fair use' doctrine instead of the more limited type of provisions which are currently included in Egyptian law.

## 3.2 Impact Assessment Interviews

Stakeholders from the following categories were interviewed for the project:

- Government (Information Technology Industry Development Agency (ITIDA));
- Education community (graduate students, librarians from public libraries, professors and researchers from different life science fields, university e-learning projects);
- Rights-holders (publishers and Publishers' Association).

The interviewees' views regarding selected pertinent issues are summarised below.

### 3.2.1 Knowledge of the Law

Interviewees expressed different levels of knowledge of copyright law. Graduate students, including law school graduate students, showed significant unawareness of the law. This ignorance may be attributed to the fact that the law is not being enforced.

One student interviewed admitted to photocopying study material without giving thought to what might be allowed under the law. She was surprised when told that her actions could be legitimate under the EIPRPA. We found the same erroneous belief among other students and librarians – the belief that they were infringing when in fact they might not have been. One reason for this misconception could be that the internal policies of libraries prohibit photocopying of entire books even for personal use although, under Article 171 of the EIPRPA, such copying is not necessarily illegal.<sup>44</sup> The confusion about the legal situation certainly stresses the absence of first-hand knowledge by users regarding their rights under the EIPRPA.

Another interviewee discussed with us the legitimacy of photocopying and the distribution of photocopies over the Internet. The discussion had no relation to copyright law but rather was about what Islamic religious law says. Islamic law in Egypt, however, only governs marriage and personal status. Therefore, its rulings have no legal bearing on the copyright matter in the Egyptian legal system.

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<sup>44</sup>Article 171(2) states: 'Without prejudice to the moral rights of the author under this Law, the author may not, after the publication of the work, prevent third parties from carrying out any of the following acts: ... Make a single copy of the work for one's exclusive personal use, provided that such a copy shall not hamper the normal exploitation of the work nor cause undue prejudice to the legitimate interests of the author or copyright holders;' Therefore, copying for personal use, even of entire works, is not prohibited provided the three requirements contained in Article 171 are met. As mentioned above, there has yet to be any judicial interpretation of Article 171(2).

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One prominent publisher did not know about the translation exception 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 very 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.

While librarians showed noticeable general understanding of copyright-related issues, the importance of copyright protection, and the cultural and social impact of copyright, their actual knowledge of the law was wanting. For example, although the Bibliotheca Alexandrina is embarked on a books digitising project and is considered a prominent advocate for A2K within Egypt and beyond, one of its prominent staff did not know about Egypt's public domain exception. She thought that copyright-protected books could not fall into the public domain.

Another librarian, in another library, discussed the difficulties the library faces when they try to find out whether a certain activity is permissible or not permissible under the law. Most of those libraries, if not all, do not have legal divisions and they lack the legal expertise that can give them clear advice regarding their uses under the EIPRPA and how to make full use of its libraries' exceptions and limitations.

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 contained in the law. 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 very important 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'.

We understood from most of the researchers interviewed that intellectual property rights in general constitute a major barrier for A2K and research since books and learning materials are copyrighted and other research tools and recently-invented technologies are often patented.

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.

### **3.2.2 Enforcement of the Law**

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

Publishers find it necessary to track down infringers by themselves, report them to the authorities and help the latter in catching the infringers. One publisher expressed disappointment with the prosecutors and the judiciary, believing judges are not well aware of the dangers of copyright infringement and that they do not treat such infringements seriously enough. This publisher mentioned that several cases which he helped build were not properly examined by the investigating authorities.

On the other hand, users believe that a stringent implementation of the 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 two main restrictions: 'no checking out of books' and 'no photocopying that exceeds a certain percentage', typically 10 per cent or 20 per cent of a book. The no-checking-out policy is strictly enforced. 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.

### 3.2.3 Learning Materials

From the interviews we conducted with some university undergraduates we may note 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. Therefore, students have no need for other material. 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 available in front of campuses. These memos contain questions, answers and summaries from the relevant books. In essence, they are copies from the book and thus illegal. But they are much cheaper and students also consider them easier to handle.

University libraries often do not possess enough material for all students to use, and are therefore not seen as a viable source for accessing resources. In most cases, students photocopy books from photocopying shops which are usually located near their campus. These photocopying shops illegally create a few master copies of a book and then photocopy it for students at about 1/3 of the cost of the original book.

### 3.2.4 Difficulties in Accessing Knowledge

#### 3.2.4.1 Library Stocks

A student working on a new research topic told us that she was hardly able to find newly published foreign material. Her experience with the library in the Law School in Alexandria University, however, was better than her experiences in Cairo and Ein Shamss Universities.

Another student found the library in Alexandria Law School sufficient. He also stated that the librarian there often asked students for their needs and tried to find and buy the books which were needed. 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'.

Bibliotheca Alexandrina, being a new library, relied originally on donations. Therefore the library could not itself select the material for its stocks. The variety is, however, increasing and 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 facilities. As mentioned earlier, most libraries do not allow students to borrow books. Rather, they only allow 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 to the fear of destructive behaviour by students, such as not returning material or damaging it.

### 3.2.4.2 Internet Access

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

It is worth mentioning that some of the researchers we interviewed mentioned that the BA organised for them a 'super course' in which it was explained to them how to obtain open-access (yet well-revised) MS PowerPoint lectures and presentations. They appreciated the course because under the new applied credit system they are required to teach for extensive hours and obliged to provide their students with updated materials in their field of research or discipline.

### 3.2.4.3 Economic Situation

An often-mentioned reason for problems with accessing information 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 in general. They pointed out that access to learning materials is significantly linked with the price of such material. Generally, according to these users, all up-to-date foreign books are unaffordable for most, regardless of whether the copyright protected work in question is available in hard-copy or soft-copy.

Consequently, the users interviewed mainly rely mainly on photocopying of 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 required.

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 their Master's and Ph.D. degrees at their institutions.

### 3.2.4.4 Educational System

The educational system in Egypt presently 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, (3) educational methodologies that do not concentrate on developing the interactive, analytical and reasoning skills of students but instead depend on a single text book that is usually taught through what one of our interviewees described as 'spoon feeding'. Obviously, these problems have an impact on access to learning materials, directly or indirectly.

Two of our interviewees, a graduate student and a publisher, were of the opinion that the illegal reproduction of university books by copy shops would not pose the main threat to the copyrights of authors and publishers. This is because a recent decline in book prices makes it increasingly uneconomic to photocopy entire books. What is of greater concern for rights-holders, however, is the fact that students now resort to the aforementioned, illegally produced-summarised memos of these books. For example in the study of law, which is renowned for its over-long 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 law school students. Usually, the graduate 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. In other words, the issue is not only the cost of the book but also the willingness of the students to rely on books.

One comment we received was that an increasing number of undergraduate students are using the BA for research. Apparently, more and more people know about the BA, professors request more research papers and professors direct the students to the BA. 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 mainly come from universities located in Alexandria such as Alexandria University, Arab Academy for Science and Technology, and Pharos University. On the other hand, a number of postgraduate students, Ph.D. researchers, and researchers from different scientific backgrounds and professional posts, come from other Arab countries.

Another interesting observation made by one of the librarians was that some of the students do not come to carry out their own research for material. Rather, they merely come to ask for 'what their colleague asked for and photocopied'.

### 3.2.5 Disabilities

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

Having said this, the disabled people we interviewed said that they still encounter many difficulties in accessing learning materials. Their difficulties pertain to financial, technical and logistical aspects. One of the interviewees, a lecturer at a faculty of law, explained to us the difficulties he had to undergo in order to obtain his Ph.D. degree. He said that, among other things, he had to first convert a great amount of his research data into audio format. He added that although new technologies such as MP3s help persons with disabilities, particularly the visually impaired, and many technologies specifically designed to assist disabled people are often unaffordable and remain highly protected with TPMs. This situation is aggravated by the fact that Article 181(6) of the EIPRPA prohibits any act that aims to remove, neutralise or disable any technical protection device used by the copyright-holder; and the EIPRPA does not include any exceptions and limitations to this prohibition.

### 3.2.6 Policies

Both libraries we chose for our interviews have access-related policies in place. As a result of these policies, no borrowing of books is permitted and only limited photocopying activity is allowed. Moreover, in the Bibliotheca Alexandrina, the use of audiovisual material is considerably restricted. We were informed by one of the Bibliotheca librarians that its multi media library applies very strict policies regarding accessing audio visual materials and CDs in general. A user may access audio-visual materials in equipped study rooms but only a librarian is allowed to install and prepare the material for the user.

We noticed, however, that the actual enforcement of these strict policies varies from institution to institution. Especially in public libraries, it is usually possible to disregard these policies. Also, the main purpose of these policies is not to enforce copyright laws – in fact the policies go in some instances well beyond what is required by the EIPRPA. Rather, the policies' main aim is to prevent destructive behaviour by users. In both institutions we were told about patrons ripping pages from library books or hiding books to have exclusive access to these books.

In addition, Bibliotheca Alexandrina is attempting to create a standard of citation. Alexandria University has therefore recently issued a Code of Ethics that contains a significant part about plagiarism and proper citations.

### 3.2.7 Print-on-Demand Machines

Print-on-demand machines (PDMs), also called Espresso Book Machines, are machines that 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.<sup>45</sup> Worldwide, there are only two such machines: One is located in Washington DC, at the bookstore of the World Bank, and the second one is in Alexandria, at the Bibliotheca Alexandrina.<sup>46</sup>

Printing on demand requires that the whole book has previously been digitised. We understood from one of the librarians that in order for a book to be included and printed within the print-on-demand system, a prior agreement with the publisher of the book has to be obtained. At present, the PDMs at BA are not yet open for use by the public. Instead, their use is restricted to the library's so-called VIP visitors. Also, only a small number of books are licensed for reproduction by BA's PDMs. This is because publishers are still uncertain about royalty procedures and the impact of printing on demand on their economic rights. However, PDMs provide a convenient new approach to book publishing and information dissemination. In the near future, PDMs could therefore 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 of rights-holders by protecting their rights and ensuring the quick circulation of their works.

### 3.2.8 Exceptions and Limitations

We believe that in the context of access to learning material, the main two exceptions and limitations are the translation exception and the personal use exception.

#### 3.2.8.1 Translation

The translation exception gives a very important example of how the law functions in copyright matters. The Egyptian law has one of the most permissive exceptions, allowing an Egyptian to translate into Arabic any work that has not been translated by its author within three years of its issuance. The exception stretches what the Appendix to the Berne Convention allows, and has been criticised by some of the copyright scholars in Egypt.<sup>47</sup>

Having said that, in practice the exception hardly has an effect on the market. While well known in legal circles outside Egypt, Egyptian publishers are usually not familiar with this exception. Although the 'Reading for All' project as well as the 'Thousand Book – Second Series' book series both rely heavily on translation, they acquire licences for these translations.

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<sup>45</sup>The process is as follows: After selecting a book from the database, one clicks 'order' and the printing process starts. The content of the book is printed on a black and white laser printer and, at the same time, the cover is printed on a colour printer. After the printing process is completed, the book is assembled and aligned. Then the machine notches the spine of the book and glue is applied so that the cover is soundly attached. The book arrives on top of the cover and the machine presses on it. Then comes the trimming phase in which the book is clutched with a hand inside the machine and trimmed to size. Thereafter, the book is ready for collection.

<sup>46</sup>Bibliotheca Alexandrina International School of Information Science *Espresso book machine: print on demand* (PoD) (2008). Available at <http://www.bibalex.org/isis/FrontEnd/Projects/ProjectDetails.aspx?id=RrxJcG1yfqk7/gaSpiEs4A=> [Accessed 25 June 2009].

<sup>47</sup>This view was expressed by Professor Mohamed Hossam Lotfy, a prominent Civil Law and Copyright Professor at the Faculty of Law of Beny Swaif University, whom we interviewed. Professor Lotfy stressed that the translation exception infringes the Berne Convention itself and affirmed his vocal opposition to the current exception.

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Interestingly, when the famous Brazilian novelist Paulo Coelho visited Egypt he criticised the translation exception and considered it a ‘violation to international copyrights agreements’. Although Coelho’s view and criticism are not legally binding, arguably they could be what made a prominent publisher in Egypt, whom we interviewed, stress that he would never resort to the translation exception, in order 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 has been trying for quite some time to communicate with a European publisher to translate one of their books and has not been getting any response. Contrary to the first publisher, he did not fear a reprimand from foreign publishers, first because they have not been cooperative and second because he deals less with publishers from abroad.

### 3.2.8.2 Personal Use

While the Egyptian law allows for far-reaching photocopying of copyright-protected material for personal use, library policies – as mentioned above – differ in that regard. The Bibliotheca, for instance, has a strict and inflexible quota system: 20 per cent per day, regardless of the size the book photocopied from. When inquiring about the reason for adopting a 20 per cent daily quota policy, one of the library’s officers answered that such policy was adopted as a result of many authors’ requests despite the fact that such limitation is not explicitly required by the law.

These policies, however, are seldom enforced strictly. Public universities’ libraries, for instance, usually do not strictly enforce their quotas and may even tolerate the photocopying of whole books where possible because many librarians realise that books are not readily available to students and that they are also too expensive given the students’ usual economic situation.

## 3.2.9 Access Notwithstanding the Law

### 3.2.9.1 Internet

In addition to copy shops, an important source for (soft-cover copies of) 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 photocopy books and make them available free via Internet. This affects especially old Islamic books; despite the fact that these books are in the public domain, some publishers who print them still believe they should enjoy quasi-copyrights 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 competent ministry 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 paying a fee, such attitudes and practices reflect the apparent ignorance of the copyright law and the exceptions and limitations on the copyright holders’ rights. Again, the issue was, whether this is right ‘Islamically’, but not legally. That student expressed his belief that he is not committing any infringement because the book is already photocopied and left free on the Internet. The author or the publisher didn’t try to close the site, so it is not his fault.

A Master’s degree 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. The same student appreciated that some institutes allow their papers and articles to be freely accessed on the Internet, such as the International Centre for Trade and Sustainable Development (ICTSD).

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. This is because a lot of what is published on the Internet is initially published in violation of copyright law.

### 3.2.9.2 Effect of Access on Availability

In our research we have not detected 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 their material.

## 3.3 Summary of Qualitative Analysis

Awareness of A2K issues in Egypt, particularly in relation to copyright, is still in its early stages, and therefore much more focus and lobbying is needed. Nonetheless, we cannot overlook the fact that during the past two years some A2K initiatives have emerged. However, these initiatives have not reached beyond the research and academic communities, ie, they have not reached the point of creating public awareness of the importance of A2K for Egypt as a developing country. The initiatives do not strive to reach upwards to the levels of policymakers and norm-setting, seeking to accommodate copyright to developmental needs. Nor do initiatives reach downwards to the level of users, including civil society, students, library users and other stakeholders, to effectively increase the awareness of the importance of exceptions and limitations within the EIPRPA.

In our interviews with stakeholders we observed 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 the scope of existing copyright exceptions and limitations. Moreover, we noticed a general lack of awareness of access to knowledge issues. As mentioned earlier in this report, the lack of awareness of A2K could be attributed to the lack of understanding of copyright law and to the absence of influential lobbying stressing the importance of this perspective in Egypt.

Copyright-holders believe that there is neither ample knowledge of the law nor adequate implementation and enforcement of the law. They also believe that a broad interpretation of existing statutory copyright exceptions and limitations would be a real threat to their rights and jeopardise the protection they enjoy under the law.

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. Nonetheless, it appears that users do not entirely understand how the copyright system works. As a result, they do not take full advantage of existing copyright flexibilities that allow them to legitimately access and use/copy copyright-protected works, including learning materials.

In sum, the lack of understanding of copyright law, including its exceptions and limitations, necessitates more educational efforts in this respect. When we explained the law in general and exceptions and limitations in particular to our interviewees, we noticed that they readily accepted the importance of access to knowledge initiatives and, thus, the ACA2K project. It became clear to us that in Egypt, copyright infringement is not per se an objective. Therefore, users are willing to legitimise their route towards accessing knowledge if this legitimate route achieves, in a satisfactory manner, the objective of acquiring knowledge.

## 4. Information and Communication Technology (ICT)-Specific Findings

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Egypt started its e-learning project almost five years ago by establishing the National Centre for Electronic Learning (the Centre). In 2008, the Centre launched its National Project for Electronic Learning. The project gathered funds from the World Bank, the Centre and each Egyptian university collaborating in it. 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 a compensation for their contribution. Also, professors are entitled to receive an attractive percentage of the income derived from selling the material to a third party. The material is supposed to be exhaustive to the extent that a student can rely on it without needing to purchase other textbooks. In addition, the material usually contains previous exams and several presentations.

Although the project is still in its early phase and few courses are available electronically, we noticed that most of these courses require enrolment keys. In other words, access to courses and course material is restricted to students who are enrolled in those courses. Accordingly students who are not registered in such courses are not able to access the material even though it may be useful to them. Electronic learning materials are mostly protected with passwords and other digital rights management systems (DRMs) that do not allow free access. It is important to stress again in this context that Egypt's copyright law contains anti-circumvention provisions according to which the use of devices to circumvent such DRMs is considered illegal.

When Egypt's research team interviewed the coordinator of Alexandria's University e-learning centre, he explained that stringent protection measures are implemented due to requests by professors. Most professors require stringent DRMs for the maximum protection of their works. He also said, however, that the Centre intends to declare any software it develops free open-source software to encourage and maximise open and free access to software.

It is worthy of mentioning that 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 copyright exceptions and limitations. They repeatedly raised questions pertaining to what can be considered legal uses permitted by copyright law.

With regard to ICTs designed for the benefit of disabled students, we noted the following concern expressed by users of such technologies. Some disabled users explained that in order to operate such technologies, often additional external devices need to be installed/ attached to their PCs. Such devices are, however, usually very expensive and therefore often beyond what they can personally afford.

Therefore, some information and communication technologies (ICTs), including the Internet, are tools for facilitating access to and dissemination of knowledge. At the same time, however, ICTs such as technological protection measures (TPMs) and digital rights management measures (DRMs) may significantly hamper access to knowledge. Egypt's copyright law clearly prohibits the circumvention of potentially access-hampering ICTs. The use of information and communication technologies in Egypt, although still in early stages, shows that copyright holders are inclined to safeguard their works by means of technological protection measures.

## 5. Gender-Specific Findings

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Our interviewees did not express any concern about gender issues that hinder access to knowledge. From a cultural point of view, being a female may affect the ability to travel frequently, but this has not been the experience of those we interviewed. No discrimination was mentioned. It is worth noticing that the two librarians we met were women. One interesting comment we got from a librarian was that being female may sometimes actually make things easier in terms of accessing material, because being female sometimes carries the privilege of relying on male colleagues in finding the material and photocopying it from them. Such chauvinist remarks, however, should not be taken as conclusive, but may be reflective of deeper gender stereotypes worthy of further study in the future.

## 6. Conclusions

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This report attempts to discern the relation between the Egyptian copyright environment and access to knowledge, particularly access to learning materials. The research was conducted in two steps: (1) an examination of the current legal or regulatory framework that protects copyright and, at the same time, should promote access to knowledge, and (2) a qualitative analysis of the realities of the copyright environment on the ground, which included a literature review and interviews with selected stakeholders.

Our survey of the legal framework addressed legislative, regulatory and judicial aspects. Except for the text of the 2002 Act, studying the legal environment proved to be a daunting task. We noticed a dearth of relevant court decisions and literature that thoroughly examine the details and extent of the different legal provisions addressing the need for such access. More generally, literature that addresses copyright from an A2K perspective is scarce in Egypt.

We believe that the reason for the lack of relevant court decisions and literature is that people in Egypt are generally unaware of copyright law and that copyright law is hardly ever enforced. This situation was emphasised by many of our interviewees.

Our interviews were conducted with publishers and representatives from publishers' associations; graduate students and professors; librarians; IP lawyers; and government officials. In an attempt to examine access-related difficulties that women and persons with disabilities in particular may face, we selected eight female interviewees as well as one interviewee with a disability. While the number of interviewees may not be representative from a statistical point of view, we are of the opinion that our interviewees provided us with a sufficient and accurate indication of the status quo of the copyright environment in Egypt.

Our findings can be grouped into the following three categories.

### 6.1 Access to Knowledge

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, which are generally very expensive. Depending on books in foreign languages deepens the problem especially in the absence of timely and sufficiently translated 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 or private tutoring that upsets the entire educational process. Lack of sufficient space in libraries and shortage in the stocks make 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 the checking out of library books, justified on the basis of making the books available to a larger number and of physical protection of books from abusive usage.

Egyptians are trying to overcome these difficulties, both on the official level and on the popular front. Several national projects are in place, most importantly the 'Reading for All' initiative, that have increased the number of books published and translated to be sold at more affordable prices. Several translation initiatives are carried out by the governmental publishing agencies. The Bibliotheca Alexandrina also has its A2K initiative, in addition to its role in raising awareness regarding its collection, and conducting teaching courses on how to use material. Also, BA publishes some material of its collection on the Internet. 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.

On the individual level, we noticed that people try to access material in any manner possible. Most importantly, they willingly resort to mass photocopying and to photocopy shops that make study books available for cheaper prices. Moreover, a concerted effort is made to photocopy books and publish and exchange them on the Internet. People with disabilities rely on their relatives and friends to gain access to material needed for their studies. There are several small-scale initiatives to support the needs of people to access knowledge and learning material.

## 6.2 Copyright Laws

Egyptian copyright law abides by all international treaties to which Egypt is a signatory. However, its provisions deviate from such obligations both to increase and hinder access to knowledge. Except for a few provisions, the EIPRPA is not guided by the purpose to increase access to knowledge as opposed to protect copyright and collect royalties. Some of the most troubling provisions are those restricting the ability to lend or borrow written material; also requiring a licence to publish books that are already in the public domain; and providing that photocopying for personal use meets three conditions: (a) make a single copy (b) for one's exclusive personal use; in addition, (c) 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'.

Among the few provisions which are guided by the need to increase access, the translation exceptions are the most noticeable ones. These exceptions allow anybody to translate works into Arabic without permission after three years of their publication or to acquire a compulsory licence to translate material for educational purposes.

We believe that our research shows that the Egyptian copyright legislation needs amendments that are guided by the objective of increasing access to knowledge. One problem that will be faced, however, is that the industry seems to support the opposite approach by arguing for an overhaul of IP law in order to increase protection.

## 6.3 The Relation between Copyright and Access to Knowledge

If copyright laws can be amended to allow better access to knowledge, such amendment activity can be fairly easily initiated and executed by a theoretical review of the current provisions of the law. It is obvious, for example, that Egyptian copyright law presently lacks provisions that address access to knowledge and its main purpose is protection of copyright.

As a result, no provisions can be found that address e-learning or people with disabilities.

Yet the outcome of our impact assessment interviews calls into question whether activity on the legislative level would indeed yield the desired result of improved access possibilities. This is because we have not found a direct and tangible effect of the current law on access to knowledge, neither in an access-enabling way (people do not rely on the exceptions, or know about them) nor in an access-restricting way (enforcement is not strong enough to prevent access to the material). We found that other – for example, socioeconomic – obstacles are more important than copyright in affecting access to learning materials.

This makes us believe that not only does the Egyptian copyright law need to be amended to facilitate better access opportunities, but also generally that awareness needs to be improved in Egypt about the myriad issues at hand in the quest for better access to knowledge.

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