

The Conditions for Achieving the Private Copy of Protected Works in Jordanian Law

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Abstract

The narrow-mindedness towards the full authority of the writer and using sources without consent which is crime secured by the law; while not accepting the chief aspects has been an specific exclusion of cerebral workbooks according to Jordanian copyright protection law the authorities of Jordan restricted author began psychologically, taking advantages of others while applying this separation or to cling the terminology of this exemption. To become the advantageous of an exemption with own description regarding permissible official exemption which permits one from asking the permission of the author. Either one would be able to get a copy of his work or the description award officially would transform into forbidden restriction. The accomplishment of the personal description is connected to the recognition of the certified private version, which makes it mandatory for the copyist that the private copy of the protected work by the copyist must be kept one copy for his use and the process is done by him or others.

Key words: Private copy; Protected works; Copyrights; Jordanian legislations

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INTRODUCTION

There is no doubt about the complete authority of the author over his work's reproduction, clearly, no

implementation can be done without his consent or his lawyer's written permission. The law also protect the right of the author in the chief Article 17 it is described in the Jordan's law of protection for copyrighting "...may use published works without the author's permission and according to the conditions in the following cases:-b-use the work for personal and private use that makes a single copy of it by copying, recording or photography or translation, musical arrangement ...". However, the authorities use its power differently, for the mental work's private and personal copy and to decide that the private content's exemption for utilizing the work regarding assisting copy is critical with him as there is no legal restrictions relating to the specific copy brings about the work's legal defence which shows the reproduction as liable to be punished by law and comes in the parameters of limitations and accountability. It means the true conditions for making a private copy of protected works are different.

METHODOLOGY

The learning is purposeful for the subject according to the Jordanian law's restrictions to obtain a private copy of protected works and the study must be specific to just copyright and regarding the holder's rights relating to copyright among the rights of the keeper, and it is beyond the limit of the study to determine the legal aspects of mental ownership workbooks, therefore, the study will be done only for categorized works by the researchers as a physical thing is not the same as violation on mental reality.

Analytical comparison methods have been acquired in the learning of this subject by the researchers, keeping in mind the visibility of the legal approach of Jordan relating to the copyright defence by recognizing explanation extracted through the qualified law and a catalyst approach to enhance the research, to specify the point the Egyptian law 1954 for protecting the copyright which is an amendment in Law of Intellectual Property Rights

No. (82) 2002 to set an example in the history of modern times as first Arab law passed for protecting copyright as well as French law which is qualified example from the comparative laws of Europe, thus, the context of the comparison will be beneficial to fill in the gap through research for fortifying the copyright law of Jordan by scrutinizing weaknesses in the modern attained qualified legislation stipulations for solution in this regard the researchers have studied the Jordanian legislation criteria.

The Article (17) of the Copyright Protection Law Jordanian, which is mentioned earlier, exhibit the exemption of the private copy relating to the power of the authorities for developing their works, two kinds of atmospheres is mandatory to have full benefits of this exemption, that the permission of the author was noticed for the source of the copy which was trusted it, (A) the purpose of the copy is limited to the private use only for the copier and not for other reasons (B).

A-Legitimacy of Detection of Classified Workbook

The revelation has been already happened for a categorized workbook such as; to get benefits from a private copy, if the author has implemented its ethical power to reveal his work, if the author has not decided to divulge shall be supposed not legal for imitation of a workbook and perhaps not be able to get a copy, perhaps the categorized workbook in beginning stages may be not practicable removing from the character of the author, if the author agreed to reveal and discharge his work or he desired to be in front of the public only in such conditions others have the right to obtain a copy of the work and there is no requirement for the consent of the author regarding his work; specifically, this is prescribed in Article (17) of Jordanian legislator regarding Protection of copyright “published works may be used without the permission of the author and in accordance with the conditions, and in the following cases: ...”, in Article (171) of intellectual property law Egyptian legislator referred in paragraph (2), with reference to the mentioned law there is no need to get author’s consent about his published works and, moreover, as in French intellectual property prescribed (L 122-5-2) of the article; “If the work is published, the author may not be prohibited ...”. The most important aspect of the point is the meaning through revealing the original copy of the classified workbook and its detection as selected by the author for disclosing of his work, though the different approaches are not common in legal disclosure, yet, the copying is punishable if he

battered about the legal copyright in his own authority for revealing his work, particularly.

Whether the author knows about the reality that the workbook project is an imitation, or is it important to disclose a private obtained copy, for the legal version by the beneficiary, which has been adopted from the workbook?

France, Jordan and Egypt legislation on copyright has not taken in clearly, that the true copy obtained is needed for legitimacy principal¹, though it is not exempted in particular questionably despite prescribed, yet only in the last statement of the Code of Egyptian Intellectual Property Rights of the Article (172) where mentioned that “without prejudice to the rights of the author literary – according to the provisions of this law – the author or his successor cannot prevent newspapers or periodicals or broadcasting organizations to the extent that justifies the purposes of the following: First, to publish excerpts from his works available to the public as a legitimate ...”, however, it is inadequate to claim that the principal and its legal aspects are stipulations relating to private copy through its implementation of an exemption. All of them are highly dissimilar only for the exemption and they have been the concern of this study.²

The free of request of officiate in relation of the workbook which are logically, return him as private copy or in form of clear official texts, however, the idea to circumcise through restrictions is not permissible by the law, personal rights are distorted due to illegal and inappropriate actions, not only, it is not constitutional, but also unmatched with the policy of legislators regarding offence and penalty which gives that “no crime or punishment except as provided.”³

Additional aspect of the principal is there in dissimilarities to the previous point of view that true law is that do not take advantages of exemptions regarding special copy. Possibly, illegal usage, illegal possession, or perhaps revelation reluctantly author and without his consent, insufficient legal parameters create chances of illegal reproduction of the workbook, and to produce a copy of the workbook imitator is not permissible which is supposed to be “a imitation for counterfeiting”.⁴

There is an example within this context available, which is of a student Aurelien who was indicted in the forgery crime, he disobeyed the text article from the regulation regarding intellectual property French (L.122-5-2), he was accused of imitating 488 movies from workbooks, a friend of him provided him some of the parts of the movies and the remaining parts he

¹ French Constitutional Council said: the beneficiary of the exception does not have burden of proving that he get a copy of the source project. See Osama Abu Al-Hassan Mujahid (2010), *Protection Works on the Internet*, AlNahda AlArabia House, Cairo, p.122.

² Abdul Hadi Fawzi Al-Awadhi (2007), *The Legal System of a Private Copy of Protected Works*, AlNahda AlArabia House, Cairo, pp. 71-73.

³ de Oliveira (AF) (2005), *Private Digital Version - the Legal and Perspective Framework of the European and the Brazilian Law*, p. 24.

⁴ Lucas (A and H - G) (2006), *The Treaty of Literary and Artistic Property*, 3rd edition, p. 284.

downloaded through internet and copied them on the DVDs for the purpose of distributing. The court of Rodez⁵ and the appeal⁶, as private copy rule him not responsible according to article (L.122-5-2), however, the proceeding court of cassation terminated the verdict due to the exemption of private copy inclusive in the article (L.122-5-2) legally requires principal work's proof.⁷

Absence of legislative text according to the researchers⁸ belief, particularly, in France, Jordan or in Egypt relating to workbook and for its legal orientation force, request that there is no question about the legality of principal, specifically, according to the regulation of law regarding criminal instead of crime and only provided punishment and no additional. Though, it is difficult to determine legality of the true source of the workbook in several cases, yet, for instance in musical works, the Broadcasting Corporation perhaps decides to launch the music on air without the approval of the musician or author, while the recipient by making of imitations of these tracks thinking that the Broadcasting Corporation has the right from author of the track or his legal representative, and the workbooks which has been perceived through internet, for the beneficiary of the workbook it is a perplexed situation, there is a question of permission issuance if the author detecting like this or the reason is availability of the workbook on the web and the permission of the author is not available making the happening of the imitation crime, but a theory of legal system stresses that it is mandatory to know the source before downloading any contents, thus, either the source is legal or the case of imitator or illegality. Notwithstanding, the loading of a copy from the web it is dissimilar of private copy law, but the loaded copy is downloaded from an illegal site which has no legal rights to disclose or publicized the contents here the exemption is not applicable as private copy because the original work of an author has been imitated. The legislator of Jordan has been contacted by the researchers, keeping in view the above mentioned arrangements to depict their standing in the context of the issues. As we are living in the world of crime and punishment, and perhaps this is the breach against personal rights.

B-Must Restricted Use for Copier Only

The recipient of the private copy who has got an exemption and his classification is significantly important as he is without the other the only person to have the right to utilize the private copy, the clause (b) in Article (17) Jordanian law for the protection of copyright say "published works may be used without the permission of the author ... use the work for personal private use, and that makes a single copy of it ...", and clause (ii) of Article (171) of the Egyptian Code of Intellectual Property Rights "It is not for the author after publication of his work to prevent others from one single copy of the workbook to use duplicator...".

It is practicable for the Egyptian and Jordanian legislators, specifically dissimilar to the French lawmakers' route that just one copy of the workbook can be achieved by the others, however, the French and Egyptian lawmakers are not like Jordanian lawmakers and their structure for preventing exemption through assistance of the private copy uses only for duplication and not for other purpose, the identification of the beneficiary person for an exempted private copy is significant as he is the person who has the right to use the private copy without the other.

It is the trust of the researchers that the importance of clear recognition of the beneficiary person is mandatory for protecting Egyptian legislature legacy regarding exemption of private copy, the matter for perfection to ascertain beneficiary person from the exemption is "copyist person mere", as an exemption is before us, specifically. It may not enlarging and the improvement is not being suggested by the words of mere copyist private implementation at the rear of Article (17) and clause (b) of Protection of copyright of the Jordanian Law change "the use of the workbook makes a single copy of it for personal use of the copyist".

In this example it is rational to recognize the beneficiary person for private copy exemption, the copy of the work can be used by him lone, no other person is permitted not be facing a specific copy, if the limitation of the copy is being used for the copyist and not the other.⁹

The Recognition of the Copyist

The disregard of French, Egyptian and Jordanian

⁵ Lario (V.G), "Lading to Paradise? As for the Judgment of Montpellier Court of Appeal", <www.juriscom.net> accessed 24th May, 2012. See also Roja (S), "B2B, Judgment of Rodeh is Sanctioned by Appeal", <www.juriscom.net> accessed 24th May, 2012.

⁶ Soloviev (V. K), "Justice is not Decided on the Right of Copying of Pirated Files <http://01net.editorial/359722consultee> accessed 29th May, 2012.

⁷ Decision of the Constituent Assembly delivered on 27 July 2006, which implicitly shows that the unauthorized exchanges are resulted from a misdemeanor of forgery, Domnesc (V), With the Exception of Private Copying which Supposes the Legal Source <www.jurizne.net/index.php> accessed 1st June, 2012.

⁸ Alcaraz (B), The Concept of Private Copying, the Thesis of Certificate of Detailed studies in Intellectual Property, the University of Nantes, 2002/2003, p. 22. See also ROMPRE (S), The Private Copying System Against the Internet, Lex Electronica, Book 12, Number 1, Spring 2007, p. 7 <www.lexelectronica.Organization/materials/12.1/romper> accessed 2nd June 2012.

⁹ Bertrand Andre, Music and Law of Bach within the Internet, 2002, p. 62.

lawmakers for specification of the copyist is clear, the benefiter of the exemption of the special copy was surprisingly warranted about the need of the legitimacy of copy which is being permitted by the beneficiary as physical copyist itself on the other hand copyist means "commercial copyist" with equipment and machinery for the use of the store, he might be the issuer of the request after choosing copying from the original work to be consistent.¹⁰

For detecting copyist there are three questions which has appeared previously, and they are the following:

1-Concrete Standard:

This present position of the copy on person who is himself performing the concrete copy, through a device, machine or by his hand and the standard set parameters for the copyist, the person who select content copy version is different from the person who is performing copying himself is a copyist and the standardization was set by "Paris Court" for the private usage of the copy, the effort is individual, no other person is involved in copying process only the copyist himself.¹¹

According to the criterion considered copyist is a worker who works in an office for the purpose of photocopying documents¹², clearly, the client is not a copyist, and the same is the verdict of Cassation Rannon-graphie¹³ a French Court during the prosecution criticized a person who was a shopkeeper and worked as a photocopier for his customers, he imitated the protection covered work without the consent of the authors, it was decided by the court that the exemption of private copy is not applicable here, where copyist not doing copying for himself, and the work is done for others.

The similarity of the criterion locked the advantages only for the concrete copyist from the specific copy, which is standing on written with his own hand or through the functioning copying machine, specifically, for others

on their request, the leaving out of copyist structure for reproductive person, a copy for the person is made by the representative, and this analogy is contradictory to clause (b) from article (17) within Jordanian intellectual property rights law, while in article (L.122-5-2) in French law in clause (2), and as mentioned in the above rational statements, the implementation of the private copy if present no reproduction for monetary purposes only for the specific usage.¹⁴

2-Mental Standard:

The wide idea of copying is the source of this standard where schemas present "copyist" the person who request for copying, the process can be done by others or by the person, no need to below this standard manual user and copyist person.¹⁵

This standard is applicable in: (CNRC)¹⁶ Paris Court of First Instance gave verdict in a case the person who chose the copy content is a proof of copyist feature.¹⁷

3-Commercial Standard:

The person who puts the imitations at the public means is the copyist according to the Commercial standard, either his client does the copying or the person himself.

Consequently, one cannot take advantage of it due to the standard where copying describe as holder; the copy fulfil the purpose of his client and not for the person himself¹⁸, it shows a formula advantage of the specific copy and here ruled that "the copyist is one who puts the reproduction means of works at the disposal of its customers, and then cannot take advantage of the exception of private copy"¹⁹ as happened in the dealer case Laser storage as the crime of imitation, a huge number of cylinders were copied in his shop and publicized.²⁰ According to the commercial standard c the French Court of Cassation has detected the copyist, in the stance of Rannou-graphie like copying shop as he has

¹⁰ Francon (A), Observations of the Court of Commerce of Paris, 20th October 1980, a periodic review of the Commerce Act No. 4, 1981, p. 752 et seq.

¹¹ Court of Appeal of Paris, 25th June the Periodic Judicial Book 1997, p. 1348.

¹² Ashraf Jaber Sayed (2007). About Modern Concept of a Private Copy, A Comparative Study of the Concept of the Private Copy as One of the Restrictions Contained on the Author's Exclusive Rights and Rights Holders Between the Digital Copying Means and Technological Protection Measures, AlNahda AlArabia House, Cairo, p. 73.

¹³ Appeal of the first body, civilian, 7th March, 1984 International Journal of Copyright 3/1984, p. 151.

¹⁴ Ashraf Jaber Sayed, note 14 above, p. 74.

¹⁵ Lucas (A and H-G), note 6 above, pp. 285-288.

¹⁶ Abdul Hadi Fawzi Al-Awadhi, note 4 above, p. 77.

¹⁷ Paris Court of First Instance, the third room, 28th January, 1974: Dwazz. 1074, 337, Note Dubois (H), the Periodic Judicial Book 1975, 2, 18163. Franson (A) note 12 above, The court considered the copyist is a researcher who asked the copy and not for commercial carried reproduce the workbook, this rule has been subjected to criticism as it takes into account the interest of the beneficiary of this private copy at the expense of the author and publisher, because it makes the work permissible including caused losses for them, as it expands the scope of application of the exception of private copy. See Colin (C) Intellectual Property Law and the Concept of the Public, 1998, p. 17 <<http://legal.edhec.com/showroom/Articles/Memoires1-2001>> accessed 3rd June, 2012.

¹⁸ Ashraf Jaber Sayed, note 14 above, pp. 74-75.

¹⁹ Court of First Instance of Clermont - Ferrand, 27th October, 1999, the Attorney General, the author of a critique of Dwazz, Iris November 1999, Book V, No. 10.

²⁰ Criminal Court of Vallons, 2nd July, 1999, Commercial, October 1999, No. 5 Commercial, Experience April 1999, the International Journal of copyrights, January 2000, p. 348.

resources for copying for customers and he has the power for conducting this process, according to (L.122-5) he, in the light of the article was the copyist, however, he cannot take advantage of the exemption of private copy due to article (L.122-5) condition is correlated.²¹

Mental standard is more concerned with the logic the researchers found after reviewing the developed standards and, therefore, meet the criteria as copyist common person alone and not artificial person, as the private copy allows matched with exemption of private copy, there is no ground for development, on the other hand the implementation for artificial person not specific but professional and it is not allowed by the lawmakers, notwithstanding, the adoption of a definition deficiencies regarding natural person copyist feature beyond artificial person is desired by the researchers of Jordanian government, the researchers²² suggested to the government of Jordan to change the clause (b) and its text within Article (17) from Jordanian Protection of copyright the Law coherent through the directive where the definition of the copyist is "a natural person who is heading his will toward copying procedure, and implemented by himself or through others, provided that this is done for the private use of the copyist."

CONCLUSION

The special copy is an exemption to the restricted power, however, discrimination for the exclusive power of the author beyond his consent but not interfering on the right which are protective by the law. Notwithstanding, the application of this exemption as well advantages for others is significant. The exemption and its outcomes are; within legal parameters to take advantages of the exemption of the private copy without criminal intentions, thus, he is free from the permission of the author, either to permit him finding copy of his work and in contrast the allowing copy would transform into imitation preventive, the terms of accomplishment of a private copy is the source to detect the lawfulness of the original copy. The unnecessary legal terms are not acceptable and the researchers have the same opinion about the trend that the confiscation of the right is not permissible without law. The mismatching of the government regulations in addition to unconstitutional punishment and criminal activities that stimulates "no crime or punishment except as expressly". The beneficiary of the workbook finds it knotty in several cases to investigate the legality of the workbook, therefore, the researchers desire that perhaps

the government set its direction correctly, in this regard.

It is practicable for the Egyptian and Jordanian legislators, specifically dissimilar to the French lawmakers' route that just one copy of the workbook can be achieved by the others, however, the French and Egyptian lawmakers are not like Jordanian lawmakers and their structure for preventing exemption through assistance of the private copy uses only for duplication and not for other purpose, the identification of the beneficiary person for an exempted private copy is significant as he is the person who has the right to use the private copy without the other. Due to the detection process of the beneficiary person of exempting private copy, it is significant that the person who only can use private copy and not others, thus sprouted three standards to detect the exemption copy beneficiary, specifically, mental standard, commercial standard and tangible standard, seeing the rational approach and available texts of legislative of the mental standard the researchers chosen mental standard, here the criteria of natural person copyist beyond artificial person, thus, the legal advantages regarding private copy exemption must be implemented in a professional way not specifically.

Considering the previous research the researchers present some suggestions to find the answers of the issues along with applicable solutions that are following:

Clearly, the lawmaker understands his standing in this position regarding inadequate, irrelevant regulations of government that to imitate from it which exhibit the position clearly about the private copy. The society is surrounded criminals and punishment procedures and which may confiscate the personal rights.

However, the text of Jordan have been limitless and unable to detect the beneficiary copyist person of a private copy exemption, which has to be applied for artificial and to a natural person, therefore, it is unsuited regarding private copy exemption, not to be lengthened, there is another aspect that the legal person will not be specific but professional. As mentioned above it has been the desire of the researchers that the lawmakers of Jordan chose a close definition formula for the copyist relating natural person beyond artificial person, they as well as suggest modification in the text of clause (b) of the Article (17) from the Jordanian Copyright protection Act and set a compact and concise definition for the copyist "the natural person whose will is heading towards copying procedure and implemented by himself or through others, and that makes a single copy of it for the use of the copyist for his self."

²¹ Appeal of the first body, civilian, 7th March, 1984 International Journal of copyright 3/1984, p. 151. Periodic judicial book for the year 1985, 2,20351.

²² Abdul Hadi Fawzi Al-Awadhi, note 4 above, p. 82.

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