

Original Paper

The Role of Bahraini Law on Online Copyright Infringement

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Received: November 2, 2020 Accepted: November 18, 2020 Online Published: November 20, 2020

doi:10.22158/ibes.v2n4p23 URL: <http://dx.doi.org/10.22158/ibes.v2n4p23>

Abstract

The main aim of this research paper is to look at the role of Bahraini law in copyright infringement. In Bahrain, many commercially pirated audio and video markets have been eliminated through various laws. However, video, software and audio piracy by end-users is still a huge problem. A copyright infringement is considered to be a violation of an organization or individual's copyright. It describes the copyrighted material's unauthorized use, such as images, text, videos, software, music and other original content. Copyright infringements have been formally addressed through various copyrights law in Bahrain, but there are some glaring omissions as well. No other protect has been attacked more than computer hardware and software in Bahrain, copying of computer software is "out of control" in Bahrain. Many companies have been accused of using illegal copies of Microsoft computer software products. The study argues that country might have a beautifully tidy and coherent law, but it might not be followed. The mechanisms of criminal and civil enforcement, and the working of patent and trademark offices and of the judicial system itself, are essential to the enforcement of copyright laws in practice. The absence of governmental interference helps Bahraini software pirates to work at will. The study concludes while contended that there should be a law with regard to compulsory licensing since this compulsory licensing would be required by the companies to transfer data to a domestic partner. Furthermore, stricter enforcement of copyright laws is essential because they would help prevent copyright infringements in Bahrain.

Keywords

Bahrain, copyright, copyright infringement, enforcement, laws

1. Introduction

"While I shall think myself bound to secure every man in the enjoyment of his copyright, one must not put manacles upon science". Lord Ellenborough (1803, p. 679).

Copyright infringement has emerged to be rampant since cyber space's advent and the development of

other technologies. There are many factors such as low cost of download and distribution, convenience of sharing digital data/content, difficulties in locating violators, absence of supranational authority and uncertainties of law on copy right infringement, which have play their role in increasing copyright violations. We are living in a global village where communication is no more a problem. Technological developments with dazzling rapidity can be seen all over the world and everyone is familiar with this. For recording and transmitting sounds, texts visual images, many new techniques have been proliferated. Digital technology has led to prodigious capacities in order to store, distribute as well as retrieve knowledge (Waelde, 2014). Unprecedented possibilities are provided by this technology for communication between different industries and people across the globe. At the same time, governments have increasingly embarked upon protecting works; therefore, it is not surprising to say that copyright laws and international standards in many countries are being revised in order to meet new technologies' challenges (Jamaludin et al., 2016).

To comprehend the concept of copyright infringement, it is highly important to comprehend what rights are occupied by the one who holds copyright material, since it helps a researcher to determine whether there has been copyright infringement or not. These rights are as follows: the right to reproduce the work, the right to derivative works, the right to disseminate, the right to public display and the right to public performance. Copyright infringement occurs when one party uses or exploits someone's work without their consent; they do not have the copyright. Mostly, it involves the creation of a new work based on someone else's work or improper copying, which ultimately means the violation of copyright (Muruga, 2006).

Many countries have been facing the issue of copyright infringement and Bahrain is no exception. Bahrain is a small island country in the Persian Gulf. It is situated in the north of Qatar and east of Saudi Arabia. The King Fahd Causeway connects Bahrain with Saudi Arabia. Bahrain shares its Maritime borders with Qatar, Iran, and Saudi Arabia, it has an area of 741 km, which makes it larger than Singapore. The Government of Bahrain has made progress with regard to reducing copyright infringement (Orji & Uchenna, 2012). The Copyright enforcement campaign started by the Bahraini government in late 1997 and it was based on closures, inspections and public awareness (Waelde, 2014). The audio, video and software industries were targeted by this campaign which helped bring impressive results. This research paper would shed light on the role of Bahraini law on copyright infringement while addressing following questions:

- 1) What are the fundamental sources of law with reference to copy right infringement in Bahrain?
- 2) What acts constitute primary and secondary copyright infringement in Bahrain?
- 3) How does the Bahraini law play its role in reducing copyright infringement?

Section 1 of this research deals with the sources of law that are related to right infringement in Bahrain as it would help readers know about what is being practiced in Bahrain in this regard. Section 2 would shed light upon the acts which constitute primary and secondary copyright infringement. Section 3 would analyses the current state of copying in Bahrain and the enforcement and impact of the laws in

place in order to prevent copyright infringement. Finally, the research will be concluded while arguing that there should be stricter enforcement of copyright laws in Bahrain since they would ultimately play their role in preventing copyright infringements.

2. Sources of Law

In Bahrain the main sources of regulations relating to copyright and international laws and copyright litigations are as the following points:

2.1 International Framework

In Bahrain the fundamental sources of international law with reference to copy right infringement are as follows:

- WIPO Berne Convention for the Protection of Literary and Artistic Works 1971 (Berne Convention).
- WIPO Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations 1961 (Rome Convention).
- WIPO Copyright Treaty 1996.
- WIPO Performances and Phonograms Treaty (WPPT) 1996.
- National legislation
- In Bahrain the fundamental sources of national law with reference to copy right infringement are as follows:
 - Law No 22 of 2006 which is related to the Protection of Copyright and Neighboring Rights as amended by Law No 5 of 2014 (Fennessy & Balloch, 2015).
 - Decree Law No 47 of 2002 on the Organization of the Press, Printing and Publishing.
 - Constitution of Bahrain. (WIPO, 2014).

2.2 Court System

Matters relating to copyright and neighboring rights are tried in the regular courts. There are no specialized copyright courts in Bahrain. Judges are not copyright experts. However, in most cases the matters will be assessed by court-appointed experts from whom a good level of expertise can be expected.

Enforcement of copyright and neighboring rights can be done through:

- Judicial measures, by bringing an action before the court.
- Administrative action by lodging a complaint with the Copyright Protection Office at the Ministry of Information Affairs. The administrative actions are ultimately decided by the criminal court.
- Filing a complaint with customs to seek a suspension of the release of the suspected goods. The matter will ultimately be adjudicated by the competent civil court.

Arabic is the official language of Bahrain. All proceedings are conducted in Arabic. There is no choice of language. Certified Arabic translations are required for all documents that are written in any language other than Arabic (WIPO, 2014).

Bahraini courts are not bound by the foreign courts' judgments or opinions when cited as precedents. However, they are fairly tolerant with regards to taking their judgments and opinions into consideration. In particular, foreign courts' decisions from Egypt, Jordan, and Saudi Arabia may be considered while deciding a case involving identical or similar facts in Bahrain. The judgments of superior courts in Bahrain may have a stronger impact on the decision of a subordinate court in a similar matter. Bahrain is party to the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention). Accordingly, foreign arbitration awards made in the contracting states are recognized and can be enforced in the jurisdiction as long as they are not in conflict with Sharia law and public order (Cyber wellness Profile Bahrain, 2018).

Article 252 of the Bahrain Civil and Commercial Procedures Act No 12 of 1971 also allows the enforcement of final foreign court decisions and orders on a reciprocal basis on the fulfillment of certain conditions. Bahrain is a signatory to the Treaty for the Enforcement of Judgments, Judicial Delegation and Court Summons of the Gulf Cooperation Council (GCC) Member States. This means that judgments rendered by a court in a GCC country are enforceable in Bahrain (Al-Baharna, 1989).

3. Exceptions

These are excluded from protection (Article 4, Law No 22 which relates to Protection of Copyright and Neighboring Rights):

1. Only ideas.
2. Methods of work.
3. Procedures.
4. Principles.
5. Data or discoveries.
6. Mathematical concepts.
7. Official documents such as:
8. Regulations.
9. Laws;
10. Judicial decrees.
11. court decisions;
12. arbitration awards;
13. Decisions issued by international treaties, administrative committees, or any official translation
14. News of current events having purely informative nature (Muluk et al., 2016).

4. The Role of Bahraini Copy Right Infringement Laws

Bahrain law has played an immensely significant role in reducing copy right infringement by giving economic rights to the owner of a copyright work (BNCS, 2018).

4.1 Economic Rights

As in other jurisdictions, copyright work's owner also enjoys same exclusive rights. An exclusive right is given to the owner that he/she can reproduce his/her work, translation can be done, it can be distributed and ownership of copyright can also be transferred to third parties (Bently & Sherman, 2014).

If such a case happens in which any party uses work without getting permission from the owner, then he/she may seek court order:

- Presenting harms for losses which occurred due to infringement;
- Having demand of delivery up of the infringing works;
- Demanding for stopping the infringing act; or
- Demanding from the infringer that he/she has to disclose information about all those who were also involved in this act.

When there is failure to comply with the above given order, it results in custodial sentence (Cyber wellness Profile Bahrain, 2018).

4.2 Ownership and Assignment of Copyright

Creator is the one who is copyright work's first owner. Owner will be employer of the author as compared to some other countries such as UAE and Saudi Arabia where employee is the copyright work's author. This is consistent with the copyright work's ownership position created by employees in US and UK. Unlike USA where the "works for hire" concept exists, the commissioned party retains copy right in a commission work in Bahrain (Jim, 2000). Accordingly, if there is no assignment in the agreement (that is complied with the Copyright Law), copyright is retained by the commissioned party in the deliverables (Gilbert & Otoo, 2007). In Bahrain, for enforcing copyright in commission works, it is highly necessary to be able to demonstrate a chain of copyright work which has been done by one person for his owner. For companies, it is important to take steps with regard to placing this chain of ownership, since it would be helpful in ensuring that firms are now able to exploit, use as well as enforce copyright in works in the country. Economic rights can be transferred by the joint owners (or an individual owner) of any copyright work to a third party. In order to validate the assignment; there should be a written agreement between both parties (Gilbert & Otoo, 2007).

4.3 Enforcement of Laws

Copyrights issues are being formally addressed in Bahrain, but there is still a lot to be done. It has been argued by one lawyer that levels of enforcement have been different in Bahrain and many other Middle Eastern countries. According to foreign companies, despite introduction of many copyright related laws, they have been facing lots of problems with regard to protecting their own work due to the absence of stricter enforcement of laws. In Bahrain, there are many copyright policies which do not enforce copyright law against those who steal/pirate music, since they argue that their priorities are elsewhere, which allow infringers to pirate as much music as they can. According to many police officials, enforcement can be considered beneficial for the public, articulate a sentiment that may originate from higher sources within their governments (Muruga, 2006). When it comes to the enforcement of law and

passing judgment on infringers, courts also seem to be reluctant to give punishment to copyists. If they are given any punishment by the courts, these punishments do not play an effective role in deterring piracy. Although the legal code of country contains trademark, patent and copyright laws, there can also be seen some glaring omissions (Nehaluddin. 2009). The most consistent of these has been the absence or weakness of copyright laws in terms of protecting computer software and hardware (Jamaludin et al., 2016). Pharmaceuticals cannot be patented, but all the pharmaceutical companies need to patent their processes as well as instruments which would be used in the manufacture of a particular drug. There is no threat of any governmental interference; therefore, Bahraini software pirates work freely without any fear. Because of the principle that no invalid patent should be enforceable, the defendant in a patent action is usually allowed to bring in evidence of invalidity at any stage of the proceedings, and in some jurisdictions even during the trial itself. As a result, the position of the patentee during patent enforcement proceedings tends to deteriorate as a defendant makes searches and often finds evidence which is relevant to validity (Price, 2009). There is an absence of technology transfer requirements which require industries or firms to divulge or share technology to a domestic partner through compulsory licensing which is considered to be significant in order to prevent copyright Infringement all over the world. In Bahrain, there is also an issue that firms are also not required to undertake development and research activities in the country.

It can be argued that the importance of practice of law cannot be ignored, since a beautifully coherent and tidy law might be given by any country. But it needs to be implemented in its true spirit through the mechanism of civil and criminal enforcement and the working of trademark and patent offices and the judiciary itself. All these components can be considered essential in order to implement copyright laws for preventing copyright infringement. But there also some additional as well as less visible sites and players that play an important role in affecting the enforcement of these laws. A librarian who makes a decision as to whether to enable access to certain licensed databases to walk-in patrons, the technology start-up which considers applying for a patent, or the software developer who adorns her app with familiar images and symbols– are all examples of everyday behavior which can play an immensely significant role in understanding behaviors that shape their development (Shalhoub, Al Qasimi & Sheikha, 2010). Copyright infringement can be prevented through the sufficiency of installing modern copyright laws which are based upon a modernization and development theory, according to which the development of non-industrialized countries can be only through the norms' adoption that have been created by developed countries. According to this logic, it follows that some legal standards and norms of developing countries should be adopted by other counties that would help them in overcoming many issues they have been facing. Under this view, development has been portrayed as a progressive and linear process, with a single possible trajectory (Bently & Sherman, 2014). Bahrain can take ideas from various industrialized countries for the effective enforcement of copyright infringement laws.

5. Discussion

The aims of copyright law are to provide a balance between the author's rights for the purpose to control the use of their work and the society's members benefit from them, instead of grant authors an absolute right for their works. There is a continuous conflict in this context between two theories in justifying the author's rights protection.

The first theory is based on the principle of "natural rights" to justify the author's copyright, stating that copyright in its essence is considered as a creative work and an extension of the author's mind and results of his personal labor. (Axel Gosseries, Alain Marciano, & Alain Strowel 2008)

While the second theory is based on the principle of "utilitarianism" in its justification, that copyright is considered as a tool that was created to achieve a specific goal. Therefore, the monopoly right granted under the copyright represents an incentive for the author to give more and more works and therefore brings benefits to society (Jay Erstling, 1991). Therefore, this theory indicates that copyright is considered as a solution to many problems such as "free rider" and that without this protection, only a very small number will be invested in establishing intellectual property works (Paul Toremans, Holyoak, & Torremans, 2013).

The purpose of the issue of justification is to shed light on a very important question which is "to whom copyright is meant to serve; is it meant to serve society or authors?". the "natural" theory emphasizes on author right and does not pay attention to the society's needs, which therefore pushes towards giving stronger protection to copyright and publishing rights in favor of authors, even if this leads to restricting society's ability to utilize from these works. (Linel Bently & Brad Sherman, 2014)

On the other hand, the "Instrumental" theory is concerned with the extent to which copyright affects the basic rights of individuals in society, based on this theory the author must be granted the necessary copyright protection to achieve his economic, political, and social goals, and nothing more.

So it is easier understand that copyright law is not absolute right and in order to ensure that the authors' s interests unduly forbidden the society's interests it should be limited in numerous ways, Some of these restrictions in fact extend to the protection of the expression of ideas and not the ideas themselves, with exceptions that allow the public to use copyright in certain cases without the need for prior permission, taking into account that protection of economic rights is for a specific period of time. (Robert P Merges, Peter Seth Menell, & Mark A Lemley, 2012). Furthermore, these limitations are explicitly provided accordingly in article 9 (2) of the TRIPS convention (Peter Van Den Bossche, 2013) as well as Bahraini copyright law which provided that it is not an infringement of copyright law to replicate an underlying idea of a protected work in new work (Bahraini Copyright Law Art 4 (a)), as well as copyright is also limited through its regulation of a specific set of economic activities (Bahraini Copyright Law Art 6).

It is to be noted that the term copyrights protection under Bahrain copyright law applies to economic rights of authors not moral rights (Bahrain copyrights law Art 5), moral rights which includes; rights to proper attribution of work, integrity of work, to determine the release of work, and to determine the

withdrawal from circulation.

6. Conclusion

It can be concluded that the position of copyright infringement law in Bahrain is slightly different from other Middle eastern countries as many efforts have been made by the Bahraini government to prevent the violation of copyrights, but there is no getting away from the hard fact that copyright infringement is normally assessed while making comparison of the two works, and it's done from a holistic perspective. No attempt has been made so far to go in depth into subtleties in infringement analysis. Although economic rights have been given to copyright owners, but still there is no concept of compulsory licensing in Bahrain which makes infringement very easy for copyright pirates. It is argued that having only copyright infringement laws would never work for Bahrain as their complete enforcement is equally essential in order to prevent copyright infringements. Because poor law enforcement would further strengthen the position of copyright pirates as they would have any fear of governmental interference

References

- Al-Baharna, H. (1989). The Enforcement of Foreign Judgments and Arbitral Awards in the GCC Countries with Particular Reference to Bahrain. *Arab Law Quarterly*, 4(4), 332-344. <https://doi.org/10.2307/3381946>
- Al-Balushi, R., Lawati, N., & Mohsin, M. (2016). *The Term of Protection of Economic Rights under the Copyright Laws of the GCC*. London: Gerlach Press.
- Axel, G., Alain, M., & Alain, S. (Eds.). (2008). *Intellectual Property and theories of Justice* (Palgrave Macmillan 2008), 37.
- Bahrain National Cybersecurity Strategy. (2018). Retrieved from <https://www.bahrain.bh/CyberSecurity>
- Bahraini Law No 22 of 2006 Regarding the Protection of Copyright and Neighbouring Rights ("Bahraini Copyright Law"). (2006). <https://doi.org/10.1016/j.clsr.2005.10.003>
- Bently, L., & Sherman, B. (2014). *Intellectual Property Law* (4th ed.). London: Oxford University Press. <https://doi.org/10.1093/he/9780199645558.001.0001>
- Cyberwellness Profile Bahrain. (2018). Retrieved from https://www.itu.int/en/ITU/Cybersecurity/Documents/Country_Profiles/Bahrain.pdf
- Fennessy, C., & Balloch, H. (2015). *Bahrain: Copyright Protection in Bahrain, Mondaq*. Retrieved from <http://www.mondaq.com/x/429164/Copyright/Copyright+Protection+In+Bahrain>
- Gilbert, C., & Otoo, M. (2007). *Industrial production and capacity utilization: The 2006 annual revision*. Fed. Res. Bull. A17, 93.
- Jim, L. (2000). In *Fair Dealing and the Digital Agenda: Will the Copyright Balance Survive?* (Vol. 18, No. 1, Copyright Reporter 23-34).

- Jay, E. (1991). *The Protection of Intellectual Property—of Metaphysics, Motivation, And Monopoly. Law on the Protection of Intellectual Property Rights*. (Law 82, 2002). Retrieved from http://www.wipo.int/wipolex/en/text.jsp?file_id=126540
- Linell, B., & Brad, S. (2014). *Intellectual Property Law* (4th edn, Oxford University Press 2014) 186).
- Mahfizah, M., Nurul, Aqilah, M. Z., & Jamaludin, I. (2016). A Cyber Security Assessment of Muslim Countries. *International Journal of Information and Communication Technology Research*, 6(12), 1-8.
- Ministry of Foreign Affairs. (2017). Retrieved from <https://www.mofa.gov.bh/Portals/0/pdf/HumanRights/CCPR1-E.pdf>
- Muruga, P. (2006). Copy Right Infringements in Cyberspace: The Need to Nurture International Legal Principles. *International Journal of the Computer, the Internet and Management*, 14(3), 8-31.
- Nehaluddin, A. (2009). *Copyright Protection in Cyberspace: A critical study with reference Electronic Copyright Management Systems (ECMS): Communications of the IBIMA*, 7, 1943-7765. <https://doi.org/10.4324/9780203878941>
- Orji & Uchenna, J. (2012). *Cybersecurity Law and Regulation*. Netherlands: Wolf Legal Publisher.
- Price, D. (2009). *The Development of Intellectual Property Regimes in the Arabian Gulf States*. Routledge, New York .
- Paul Toremans, H. (2013). *Toremans intellectual Property Law* (7th edn, Oxford University Press 2013), 13. <https://doi.org/10.1093/he/9780199643318.001.0001>
- Robert, P. M., Peter, S. M., & Mark, A. L. (2012). *Intellectual Property in the new Techological Age* (6th ed, Aspen Publishers 2012, p. 461).
- Shalhoub, Z. K., & Al Qasimi, S. L. (2010). *Cyber Law and Cyber Security in Developing and Emerging Economies*. Cheltenham: Edward Elgar
- Waelde, C. (2014). *Contemporary Intellectual Property: Law and Policy* (3rd ed.) London: Oxford University Press.
- WIPO. (2014). *Economic Research Working Paper No. 18, The Egyptian Information Technology Sector and the Role of Intellectual Property: Economic Assessment and Recommendations*. Retrieved from http://www.wipo.int/edocs/pubdocs/en/wipo_pub_econstat_wp_18.pdf