



The Arab Copyright Convention of 1981 – The Necessity of Amendment to Accommodate Digital Rights

Bouzidi Ahmed Tidjani 

Research Professor of Law

Research Center in Islamic Sciences and Civilization (CRSIC). Laghouat, Algeria.

 a.bouzidi@crsic.dz

ARTICLE INFO

Article History:

Received	26.06.2025
Accepted	07.09.2025
Published	30.09.2025

Keywords:

Arab Copyright Convention,
WIPO Copyright Treaty, Digital
rights, Treaty amendment,
Strengthening the Arab legal
environment

ABSTRACT

The growing digital challenges accompanying the rise of digital creativity, alongside the efforts of Arab countries to enhance legal frameworks for protecting authors' rights and literary works, have exposed a misalignment between the provisions of the 1981 Arab Copyright Convention and the evolving national objectives. This discrepancy necessitates revising the Convention to align with the fundamental standards for copyright protection in the digital environment, as set out in the WIPO Copyright Treaty of 1996 – the first international treaty to address copyright in the context of the internet.

This paper explores the necessary revisions to the 1981 Convention to incorporate digital copyright protections. It examines the legal foundations required for recognizing such rights, including the originality and fixation of digital works, presumptions of ownership, the scope and limitations of rights, applicable legal protections, and enforcement mechanisms suited to the digital context.

The study offers significant academic value by addressing a key gap in comparative legal analysis between the Arab Copyright Convention and the WIPO Copyright Treaty. It integrates relevant international instruments and judicial precedents to propose practical legislative amendments compatible

with the demands of the digital age. The findings contribute to the development of intellectual property scholarship and offer a concrete basis for legal reform. Ultimately, this study aims to strengthen the rights of Arab authors and promote the harmonization of regional copyright frameworks with established international standards.

INTRODUCTION

The enactment of international and regional treaties related to copyright is an expression of the necessity to regulate and protect authors' rights at both international and regional levels, given their paramount importance in the age of technology and cross-cultural exchange among nations, as this imperative has manifested in the adoption of various agreements, most notably the Berne Convention for the Protection of Literary and Artistic Works (1886) and its subsequent amendments – Stockholm (1967), Paris (1971), and 1979 – which reinforced copyright protections; additionally, the TRIPS Agreement and the WIPO Copyright Treaty (1996) emerged as critical responses to a pivotal challenge in copyright protection: the digital dissemination of creative works.

The motivation behind subjecting copyright to international and regional regulatory frameworks lies in the widespread proliferation of creativity across the globe, transcending national boundaries, as the profound economic, social, and cultural impact of copyright protection on individuals and societies has driven Arab nations to adopt the Arab Copyright Convention (Baghdad, 1981), through which signatories expressed their commitment to establishing an effective and unified legal framework, where this framework aims to safeguard authors' rights, incentivize Arab creators,¹ and promote the advancement of literature, arts, and sciences.

However, the evolution of publishing meth-

ods – marked by the ease of reproducing works infinitely at minimal cost and their instantaneous global dissemination via the internet – has rendered the Arab Copyright Convention inadequate in addressing these rapid and transformative developments; consequently, there is a pressing need to revisit and adapt its provisions to align with contemporary creative and distribution methods, as well as the resulting shifts in copyright paradigms – much like the updates seen in relevant international treaties.

This paper seeks to establish a foundational critique by examining the shortcomings of the Arab Copyright Convention and proposing amendments to align it with developments in international copyright law, particularly the WIPO Copyright Treaty (1996), as this treaty serves as the benchmark for proposed revisions, being the first international agreement to address copyright in the digital environment and the pioneering "Internet Treaty".

Based on the above, this paper will seek to answer the following question: What provisions must be incorporated into the Arab Copyright Convention to keep pace with evolving digital copyright norms?

To address this question, the study relied on the comparative legal approach in addition to citing relevant case law and was divided into two parts.

Part One: Analyzes key provisions of the WIPO Copyright Treaty (1996) as the basis for proposed amendments.

Part Two: Identifies gaps in the Arab Copyright Convention and outlines necessary additions to ensure its relevance in the digital age.

1 Arab Convention for the Protection of Copyright. (1981). Preamble.

1. THE PROTECTION FRAMEWORK ESTABLISHED UNDER THE WIPO COPYRIGHT TREATY OF 1996

The 1990s witnessed a fundamental transformation, driven by the tremendous advancements in communication technologies and the widespread adoption of the internet and digital tools, as the field of intellectual property, particularly copyright law, was not immune to these changes, where the intersection of copyright with digital technology and the internet gave rise to new forms of artistic creations, distinct from traditional works in terms of their creation and distribution methods, which prompted nations to actively seek solutions by enacting treaties that keep pace with these developments, aiming to safeguard the moral and economic rights of authors.

To achieve this, and to harmonize global copyright norms², the World Intellectual Property Organization (WIPO) Copyright Treaty of 1996 was concluded and adopted by the Diplomatic Conference on December 20, 1996. The treaty consists of a preamble and 25 articles, clarifying its relationship with the Berne Convention (the foundational copyright treaty), establishing rights for computer programs and databases, and addressing distribution rights, rental rights, obligations concerning technological measures, rights management information, as well as enforcement provisions and administrative clauses.

The WIPO Copyright Treaty of 1996³ is regarded as the first international treaty to address digital copyrights, extending protection to works emerging from digital technology and internet connectivity while ensuring the safeguards provided by prior relevant treaties,

hence, it is commonly referred to as the “First Internet Treaty”, where this treaty is classified as a special agreement under Article 20 of the Berne Convention for the Protection of Literary and Artistic Works, it neither derogates from any obligations nor diminishes any rights established by the Berne Convention; rather, it maintains a close connection with it, as the treaty seeks to address the gaps in protecting digital works under the Berne Convention, as emphasized in its preamble, which states that the treaty was formulated in response to the parties’ recognition of the need for new international rules and the clarification of interpretations of existing provisions to provide appropriate solutions to issues arising from recent economic, social, cultural, and technological developments⁴ – particularly the profound impact of the latter on the creation and dissemination of literary and artistic works due to their integration with the internet.

1.1 Protected works

Article 2 of the 1996 WIPO Copyright Treaty (WCT) stipulates that the granted protection covers forms of expression, not ideas, procedures, methods of operation, or mathematical concepts as such; however, it refers, in defining the scope of protection, to Articles 2 through 6 of the Berne Convention⁵, which address protect-

2 Sheinblatt, J. S. (1998). The WIPO Copyright Treaty. *Berkeley Technology Law Journal*, (13) 535, p 550.

3 See: Hawi, F. H. (2014). *Web Sites and Intellectual Property Rights*. Jordan: Dar Al Thaqaafa, p. 118. Elbadraoui, H. (2007). *The International Legal Framework for the Protection of Copyright and Related Rights*, p. 9. Available at: www.wipo/lip/dipl/met/05/3.

4 Gami, H. (2004). International protection of copyright and related rights, WIPO national symposium on intellectual property for organization. The International Protection of Copyright and Related Rights: From the Berne Convention and the TRIPS Agreement to the WIPO Copyright Treaty-WIPO Performances and Phonograms Treaty, WIPO National Seminar on Intellectual Property for Government Officials, World Intellectual Property Organization, Manama, p. 20.

5 Article 2: Protected Works: 1. Literary and Artistic Works; 2. Possibility of Claiming Identification; 3. Derivative Works; 4. Official Texts; 5. Collections; 6. Protection obligation, beneficiaries of protection; 7. Works of applied arts, drawings and industrial models; 8. Daily news.

Article 3: Protection criteria: 1. Nationality of the author; Place of publication of the work; 2. Author’s residence; 3. Published works; 4. Simultaneously

ed works, the possibility of limiting protection for certain works, the criteria for protection, the standards for protecting cinematographic and architectural works, as well as certain works of graphic and plastic arts, the guaranteed rights, the possibility of restricting protection for works of nationals from non-Union countries, and the determination of moral rights; In contrast, the WIPO Treaty introduced additional works necessitated by digital technology, emphasizing the need for their protection, primarily including:

1.1.1 Computer programs

It is noteworthy that the first agreement to include specific provisions regarding computer programs and classify them as protected works was the TRIPS Agreement,⁶ unlike the Berne Convention and its subsequent amendments, and before the 1996 WIPO Copyright Treaty, as Article 10(1) of TRIPS affirmed that computer programs, whether in source or object code, are protected as literary works under the Berne Convention, and the 1996 WIPO Treaty reaffirmed this in Article 4, stating that computer programs are protected as literary works under Article 2 of the Berne Convention, irrespective of their mode or form of expression.

The European Court has supported this, stating in Case C 393/09 – *Bezpečnostní softwarová asociace (BSA)* that protection includes any form of expression of a computer program that allows replication in different computer languages, such as source code and object

code. Preparatory design work, from which a program is later formed, is also included in the protection if the design is of this nature.⁷

It is pertinent to highlight several concepts closely related to computer programs and their legal study:⁸

Source Programs: The initial form of program writing in a programming language, varying in simplicity, complexity, and effectiveness in achieving the program's purpose.

Object Programs (Machine Code): The form executable by computers.

Algorithms: A set of necessary steps to accomplish a task or calculation, either detailed initially or left for later elaboration; also defined as a sequence of instructions composed of logical and arithmetic structures representing numerous operations to achieve a specific result.

Programming Languages: A set of programs that convert high-level programming languages or assembly languages into machine code, generally categorized into three types: assemblers, compilers, and interpreters.⁹

1.1.2 Digital databases

The inclusion of databases as protected works under the 1996 WIPO Copyright Treaty necessitates reference to the TRIPS Agreement as the first to incorporate specific provisions for databases,¹⁰ classifying them as protected works, as Article 10(2) of TRIPS states that databases, whether machine-readable or in any

published works.

Article 4: Protection criteria for cinematographic works, architectural works, and certain works of graphic and plastic arts.

Article 5: Rights guaranteed: 1. and 2. Outside the country of origin; 3. In the country of origin; 4. In the country of origin.

Article 6: Possibility of restricting protection for certain works of nationals of certain countries outside the Union: 1. In the country of first publication and in other countries; 2. Non-retroactivity of restrictions; 3. Notification.

6 Article 10/1 of the TRIPS Agreement states: "1. Computer programs, whether in source or machine language, shall be protected as literary works under the Berne Convention of 1971".

7 *Bsa v Ministert vo Kultury*. (2010). Crc (Third Chamber), c393/9. Available at: <https://op.europa.eu/en/publication-detail/-/publication/3851211e-aaaf-47a0-96e0-b5e5fccb41bf#>>.

8 Issa, M. A. (2020). The Protection of Intellectual Property Rights for Digital Works under International Law. *King Abdulaziz University Journal, Arts and Humanities*, 30 (7), p. 73.

9 *Ibid.*, p. 74.

10 Article 10/2 of the TRIPS Agreement states: "2. Compilations of data or other material, whether in machine-readable or other form, which constitute an intellectual creation as a result of the selection or arrangement of their contents shall be protected. This protection does not extend to the data or material as such and is without prejudice to the copyright in respect of such data or material".

other form, constitute protected works if their content selection or arrangement represents intellectual creativity, under the Berne Convention's provisions for literary and artistic works; however, this protection does not extend to the data or materials themselves and does not affect any pre-existing copyrights on such data, which was reaffirmed in Article 5 of the WCT, which clarified that databases or compilations of data enjoy the same protection as works under the Berne Convention if they constitute intellectual creations due to their content selection or arrangement; nonetheless, the constituent materials are excluded from protection, and the article emphasizes that such protection must not prejudice any copyrights applicable to the data or materials within the database. This was confirmed by the European Court in *Football Dataco Ltd v Yahoo! UK Ltd* (Case C 604/10), stating that the standard for copyright protection of a database depends on whether the selection and arrangement of the data within the database demonstrates the author's intellectual creation, through freedom of choice and creative arrangement.¹¹

1.2 Special provisions

To address the need for regulating copyright in the digital environment, the WIPO Copyright Treaty, in addition to the newly included works, established rules tailored to the intangible nature of digitally published works,¹² primarily

encompassing the right of rental, the right of communication to the public, the comprehensive solution, limitations on rights in the digital environment, and technological protection measures and rights management information.

1.2.1 Right of rental

The Treaty includes a provision granting the right to rent digitally published works, as authors of literary and artistic works hold the exclusive right to authorize the public availability of the original or copies of their works; additionally, the Treaty grants authors of computer programs, cinematographic works, and works embodied in sound recordings (as defined by national laws of contracting parties) the exclusive right to authorize commercial rental of their works;¹³ however, an exception applies if the computer program itself is not the essential object of the rental, or if the rental of a cinematographic work does not materially impair the exclusive reproduction right.¹⁴

1.2.2 Right of communication to the public

Article 8 of the WCT grants authors the exclusive right to authorize the communication of their works to the public by any means, including making them available in a way that allows access at a time and place have individually chosen, which aligns with the electronic publi-

11 *Football Dataco Ltd and Others v Yahoo! UK Ltd and Others*. (2012). CJEU, C-604/10. Available at: <https://curia.europa.eu/juris/document/document.jsf?cid=1199&dir=&docid=147582&doclang=en&mode=req&occ=first&pageIndex=0&part=1&text=&utm=>

12 It is worth noting that some jurists consider the first Internet Treaty to be of no importance. In fact, they consider it a modest agreement, and this will not change in the future, given that it cannot replace the Berne Convention, the Copyright Convention, or replace the TRIPS Agreement. Furthermore, they believe that it does not serve the interests of some countries that desire to be subject to lower-level obligations in the field of international copyright, in addition to the desire of countries to join the World Trade Organization. See in this regard: Lewinski, S. V. (2006). The role and future of

the Universal Copyright convention. E-Copyright Bulletin, p. 18. Abdullah, A. A. (2009). The Legal Protection of intellectual Property Right on the internet. Egypt: New University House, p. 260.

13 Hawi, F. H., *ibid.*, p. 124.

14 Article 7 of the Convention states: "Right of rental. 1. Authors of the following works: a. Computer programs, b. Cinematographic works, c. Works embodied in sound recordings, as defined in the national law of the Contracting Parties, shall enjoy the exclusive right of authorizing the public rental of the original or copies of their works for commercial purposes. 2. Paragraph (1) shall not apply in the following two cases: "a. If the subject matter is a computer program and the program itself is not the principal subject of the rental. b. If the subject matter is a cinematographic work, unless such rental has resulted in widespread copies of that work that materially prejudice the exclusive right of reproduction..."

cation of digital works on the internet, enabling public access per the user's discretion;¹⁵ nevertheless, the article underscores that this must not conflict with relevant Berne Convention provisions.¹⁶

1.2.3 The comprehensive solution

The 1996 WIPO Copyright Treaty adopted the "comprehensive solution" for digitally published works, granting authors the exclusive right to authorize the transmission and dissemination of their works by wire or wireless means, including digital transmissions, ensuring public access at any chosen time and place. National legislators retain the authority to define its legal nature, scope, and liability for infringement.¹⁷ The European Court has upheld the provisions of the 1996 WIPO Copyright Treaty, in case C 306/05, SGAE v Rafael Hoteles S.A., brought by SGAE (a Spanish copyright management association) against Rafael Hoteles S.A., a hotel chain, because the hotel provided broadcasts of audiovisual works (such as films and music) via televisions in its guest rooms, on the basis that this constituted "communication to the public" and therefore required the authorization of the rights holders. The court upheld this view, as it was in line with Article 8 of the WIPO Copyright Treaty (WCT), which states that an author has "the exclusive right to authorize communication to the public of his works by any means, including making them available to individuals at a place and time of their choosing".¹⁸

1.2.4 Limitations on rights in the digital environment

Article 10(2) permits member states to adopt exceptions and limitations for digitally

published works, provided they align with the Berne Convention's three-step test (no conflict with normal exploitation or unreasonable prejudice to authors' rights).¹⁹

1.2.5 Technological Protection Measures and Rights Management Information

Negotiating parties agreed on the necessity of technological safeguards²⁰ complementing legal protections for digitally published works, as effective legal enforcement relies on such measures,²¹ as the Treaty mandates member states to implement legal protections against the circumvention of technological measures and the removal or alteration of rights management information, deeming such acts copyright infringements.²² This is what the European Court explicitly stated in the case of C 355/12, "Nintendo Co. Ltd and Others v PC Box Srl and 9Net Srl", dated January 23, 2014, where it stated that technological measures protected under Article 6 must be designed to prevent or restrict unauthorized acts (reproduction, communication to the public, distribution, etc.) that require the right holder's permission.²³

19 Article 10/2 of the Convention states: "2. In applying the Berne Convention, the Contracting Parties shall limit any limitations or exceptions to the rights provided for in that Convention to certain special cases that do not conflict with the normal exploitation of the work, and do not cause unreasonable harm to the legitimate interests of the author"; see: Elganbihi, M. (2005). *International Cooperation in the Protection of Intellectual Property Rights*. Alexandria. Dar Al fikr Al jam'i, p. 128.

20 Although digitization poses a clear challenge to copyright principles, it can also reinforcing existing rights or establishing others. Burchardt, D. (2023). Does Digitalization Change International Law Structurally? *German Law Journal*, Special Issue: International Law and Digitalization, 24(3), p. 441.

21 Hawi, F. H., *ibid.* p. 126.

22 Articles 11 and 12 of the First Internet Convention. Talhouni, B. A. (2004). *The internet and digital rights management*. Muscat. p. 8.

23 Nintendo Co. Ltd and Others v PC Box Srl and 9Net Srl. (2014). CJEU, C-355/12, Available at: <https://app.livv.eu/decisions/LawLex20140000076BJ>.

15 Elsaghir, H. E. (2005). *Emerging Global Issues in Intellectual Property*. p. 3. Available at: www.wipo-las/jiuru/cai/5/2.

16 Article 8, last paragraph, states: "...without prejudice to the provisions of Articles 11(1), 11(2), 11(1), 1(2), 11(1), 1(2), 14(1), 1(2), and 14(1), 1(1) of the Berne Convention".

17 Hawi, F. H., *ibid.* p. 124.

18 SGAE v Rafael Hoteles S.A. (2006). CJEU, C306/05. Available at: <https://curia.europa.eu/juris/document/document.jsf?docid=64884&doclang=EN>.

2. THE RULES TO BE INCLUDED IN THE ARAB AGREEMENT

The WIPO Copyright Treaty of 1996 stands as one of the most prominent international treaties that established new rules for the protection of authors' rights in the digital age, making it a benchmark for amending and adapting the Arab Copyright Agreement. A meticulous review of its provisions is essential to integrate the substantive norms introduced by the 1996 WIPO Treaty, particularly concerning the conditions for granting protection, digital rights, the presumption of ownership, protected works, exceptions and limitations, and technological protection measures.

2.1. Conditions for granting protection

International copyright treaties unanimously agree that any creative work meeting the formal and substantive conditions for protection deserves safeguarding,²⁴ including the 1981 Arab Copyright Agreement. However, its regulatory provisions fall short of encompassing newly emerging forms of creativity and their means of dissemination.

2.1.1. Originality

The 1981 Arab Copyright Agreement adopted the same foundational principle as relevant international copyright treaties – the criterion of originality, as it stipulated that intellectual creations must fulfill the condition of original-

ity to qualify for protection, expressed through the term “innovation”, where the Agreement also embraced the broad approach of the Berne Convention by employing flexible terminology²⁵ capable of accommodating evolving developments, including digitally published works; In contrast, the 1996 WIPO Copyright Treaty implicitly addressed digitally published works under Article 8, which discusses the author's exclusive right to exploit their work by any means, including electronic publication.²⁶

The Arab Copyright Agreement relies on flexible wording to accommodate new intellectual creations, this does not exempt it from the need to adapt to emerging standards of originality for digitally published works, as adopting an expansive interpretation of originality – an example of disputes over computer programs brought before courts – is advisable; these rulings favored a broad understanding of originality,²⁷ shifting from the traditional notion of “intellectual effort” to “intellectual contribution”, as the former proved inadequate for new digital creations, which are characterized more by intellectual or mental contribution than sheer intellectual labor.²⁸

Parallel to this, legal scholars, led by Counselor M. Jorqueres, argue that applying the classical standard of originality fails to protect works originating in the digital sphere, particularly those generated by machines; consequently, they advocate abandoning the classical criterion in favor of an impersonal standard, incorporating principles akin to those in indus-

24 It is worth noting that some jurisprudence calls for the re-Reinstatement of formalities, given that technological developments enable the adoption of a “register once, register everywhere” regime. The argument is that different national implementations of official procedures result in incompatible records, which increases the costs of searching for information rather than reducing them. This necessitates a review of the international agreement on this subject. Samuelson, P. (2013). Is Copyright Reform Possible? A critical evaluation of two major contributions to the copyright reform literature. *Harv. L. Rev.* (126)3, p. 748.

25 Issa, M. A., *ibid.* p. 67.

26 *Ibid.* p. 68.

27 The French Court of Cassation's decision of March 7, 1986, in the Pachot/Babolat case, was considered a development in the concept of originality in the field of computer software protection. It defined what could be protected in a software program and provided a definition of originality by stating: “The author has demonstrated the existence of a special intellectual effort that goes beyond simple, automatic, and binding implementation, and that the embodiment of this effort exists within an independent variable”. See: Lucas, A. (1998). *Droit d'auteur et Numerique*. Litec. Paris. pp. 32-35.

28 Wansa, D. I. (2002). The protection of copyright on the internet, a comparative study. Sader, Lebanon, p. 28.

trial property law, as M. Jorqueres contends that the intellectual effort must surpass mere selection by the creator and incorporate an element of novelty or original work. In other words, objective concepts from industrial property law should be integrated with the notion of originality.²⁹

In light of the above, it is advisable to reformulate Article 1 of the Arab Copyright Agreement as follows: *“The authors of original intellectual creations shall enjoy full moral and artistic rights over their intellectual contributions...”*

2.1.2 The tangible embodiment of the work

The formal or tangible embodiment of a work is considered a prerequisite for granting legal protection under copyright law, as it signifies the transition of the work from the realm of thought into reality, acquiring a perceptible form,³⁰ as copyright law aims to protect the formal aspect of works rather than their content, leaving ideas³¹ outside the scope of the literary and artistic property, which applies solely to the form ideas take and how they are expressed,³² consequently, an author's rights pertain to the tangible medium in which creativity manifests.

The Arab Copyright Agreement, in Article 1(c), stipulates that a work must have a tangible embodiment to qualify for protection; however, the agreement uses the term “material publicity”, which is likely a typographical error, with the intended term being “material support”, where an adopting the former term deviates from the objective of emphasizing the work's tangible embodiment.

Assuming the correct legal wording of Article 1(c) is “material support,” influenced by the Berne Convention (Article 2(2)), this does not

exempt it from the need for an amendment to align with contemporary copyright realities, as the emergence of an idea into existence is not limited to material existence but extends to perceptible existence, as the term “material existence” unduly narrows the scope of legal protection for certain works, such as the public recitation of the Holy Quran, which some copyright laws explicitly protect, because recitation lacks a material existence consistent with the internationally established interpretation of the term “expression of a work”, which refers to the means enabling a work to be perceived, whether physically or intellectually, including performance, recitation, fixation, material formation, or any other suitable method;³³ this interpretation was adopted by the WIPO Copyright Treaty of 1996, which, in Article 2, uses the term “expressions of works” to encompass all forms of creative manifestation; similarly, the Berne Convention (Article 2(2)) references this in the context of protecting works like publicly delivered speeches and lectures.

Moreover, the tangible embodiment of a digital work entails its occupation of a specific space in the digital medium, whether online (on the internet) or offline³⁴ (such as CDs, floppy disks, or hard drives); thus, the embodiment of a digital work poses no issue, as it remains perceivable by the public, therefore, it would be preferable to draft Article 1 of the Arab Copyright Agreement as follows:

“Authors of original creations shall enjoy full moral and artistic rights over their intellectual contributions from the moment of creation, regardless of their merit, purpose, type, or mode of expression, and whether or not they are fixed on any medium that allows their communication to the public”, where the phrase “any medium that allows the work to be communicated to the public”, accommodates the electronic publication of works, whether online or offline.

29 The European Union has adopted this principle in determining the authenticity of computer software in Article 1 of the Directive on the Protection of Computer Software.

30 Lucas, A. Ibid., p. 24.

31 Maskus, K. (2024). Intellectual Property Rights And Knowledge Diffusion In The Global Economy, Review of Economic Research on Copyright Issues, vol. 21. p. 10.

32 Wansa, D. I., Ibid., p. 23.

33 Kanaan, N. (2009). Copyright, Contemporary Models of Author's Rights. Dar Al Tha'qafa, Jordan, p. 206.

34 Issa, M. A. Ibid., p. 71.

2.2 Digital rights

The Arab Copyright Convention recognizes the rights of authors of intellectual creations in Article 1/A, which states: “Authors of original works in literature, the arts, and sciences shall enjoy protection, regardless of the value, type, purpose, or method of expression of these works”, as despite the Convention’s reliance on broad terminology, which could potentially include any new creations, and its stipulation of a set of rights inherent to the author in Articles 4/A, 6/A, and 6/B, and its adoption of the phrase “or any other means” in Article 7, Paragraph 3, which can be relied upon to encompass any new developments in the means of creativity or its dissemination, the Convention is therefore considered to be inclusive of new developments and does not require amendment; however, to keep pace with developments in electronic creativity and publishing, it is advisable to refer to the digital rights applicable to digital works published electronically; the text of the aforementioned article should read as follows: “Authors of original creations shall enjoy full moral and artistic rights...”.

The adoption of the broad term “full rights” allows for the inclusion of digital rights generated by digital creations published electronically, such as rental rights, the right to communicate the work to the public, and the comprehensive solution adopted by the 1996 WIPO Copyright Treaty in Articles 6, 7, and 8, which also recognizes the obligations imposed by electronic publishing on the publisher or electronic distributor, in addition to what is established in the context of the publishing contract.

In parallel, it is necessary to point out the necessity of the Arab Copyright Convention stipulating that digital reproduction of protected works is a right granted to the author, similar to what was adopted by the 1996 WIPO Copyright Convention, as Article 4/1 states that the right of reproduction stipulated in Article 9 of the Berne Convention applies fully to the digital medium, whether it concerns the exploitation or storage of the digital work; accordingly, this

can be referred to in the first paragraph of Article 7 of the Convention by stating: “The author, or his direct representative, shall have the following rights: 1. Reproduction of the work in all forms that permit public access to or perception of the work, whether by photography, cinematography, or any other electronic means”.

In contrast, and in connection with discussing copyright within the Arab Copyright Convention, it is worth noting that the Convention extends protection for only 25 years after the author’s death, which is in contrast to the Berne Convention, which explicitly states in Article 7/1 that protection extends for the lifetime of the author and 50 years after his death, which is also the position taken by the 1996 WIPO Copyright Convention in Article 1/4; this requires the Arab Copyright Convention to keep pace with this by amending Article 19 and stating that the term of protection extends for the lifetime of the author and 50 years after his death.

Amending Article 1/A of the Arab Convention is an urgent necessity to keep pace with the development in human creativity, which has created rights for authors over their digital works, which jurisprudence has agreed to call digital exploitation rights,³⁵ and which has been approved by relevant international legislation, most importantly the first Internet Convention, or the WIPO Copyright Convention of 1996, as these rights have also seeped into most national copyright legislation, and therefore, the amendment is considered to be keeping pace with electronic publishing in Article 1/A, and to restore the status of the Convention within international and regional legislation concerned with copyright, where it is also part of its efforts announced in its preamble,³⁶ which seeks to encourage Arab authors to innovate, create, and develop literature, science, and the arts.

35 Passa, J. (2001). Internet et Droit d’auteur. Juris-Classeur. LexisNexis. France, p. 29.

36 See the preamble to the 1981 Arab Convention for the Protection of Copyright, p. 1.

2.3 Presumption of ownership of rights

It is self-evident to state that the author is the creator of the work; however, the focus must be on how to establish proof of this creator's identity, as typically, work is published under the name of a specific individual, with that name appearing on the cover and the first page of the work, indicating authorship, which constitutes a legal presumption that the person named is indeed the author, and the burden of proof falls on anyone who claims otherwise to substantiate their claim by all available means, as they are contesting a factual matter,³⁷ where the author may also choose to place a distinctive mark on their work, in which case they must prove – through all possible methods – that this mark is uniquely theirs and leaves no doubt as to their identity; alternatively, an author may publish under a pseudonym or anonymously.³⁸

The Arab Copyright Agreement aligns with the presumption that ownership rights over a work belong to the person under whose name it was published or broadcast, as Article 4(a) clarifies that the author of a work enjoys copyright protection, and authorship is presumed in favor of the person who published,³⁹ broadcast, or is recognized as the work's creator, which mirrors the approach of the Berne Convention (Article 15(1)).

However, digital works present challenges in attributing authorship, necessitating explicit

provisions in the Agreement – even if broadly worded – to acknowledge technological methods that establish ownership rights over digital works; alternatively, civil and criminal penalties could be imposed for tampering with electronic rights management information, following the model of the 1996 WIPO Copyright Treaty, as Articles 12(1)(1) and 12(2) of the WIPO Treaty stipulate that any interference with information identifying the work, its author, the rights associated with it, or any data essential for its exploitation – including electronic codes or meta-data attached to the work upon publication – constitutes an infringement of the author's rights under both the WIPO Treaty and the Berne Convention, given that the former defers to the latter in defining protected rights.⁴⁰

Accordingly, it would be preferable to amend Article 4(a) of the Arab Copyright Agreement as follows: *“The author of a work shall enjoy copyright protection, and authorship shall be presumed in favor of the person under whose name the work was published, broadcast, or recognized, or whose rights are indicated by a technological mechanism attached to the work upon publication – unless proven otherwise”*.

2.4 Protected works

The digital revolution has ushered in new forms of creative works and methods of dissemination, encompassing both works traditionally protected by legislation – now digitized, such as texts, images, and sounds – and works that owe their very existence to digital technology, such as digital databases, computer programs, and multimedia works, as these innovations pose practical and legal challenges, necessitating an adaptation of the Arab Copyright Convention to accommodate them, thereby fulfilling its stated objectives.

The Arab Copyright Convention adopts a non-exhaustive enumeration of protected works under Article 1(b) and Article 2(1) and (2);

37 Talabah, A. (2006). The protection of intellectual property rights. Modern university office. Alexandria. p. 6.

38 Al-Sanhouri, A. R. (2005). Al-Wasit fi Sharh Al-Qanun Al-Madani (Property Rights with a Detailed Explanation of Things and Property Legal Publications). Lebanon, p. 326.

39 The presumption of ownership of rights in digital works submitted electronically raises several issues. The first issue that must be taken into account is the multiplicity of authors, which makes determining the paternity of each author extremely difficult, especially if the work is created and published directly online. In addition, there is a diversity of contributions, as the adoption of digital technologies leads to the emergence of complex works that include computer programs, a phenomenon evident in database works and multimedia works.

40 WIPO Convention regarding its relationship with the Berne Convention. Article 1, para. 54.

while following the footsteps of the Berne Convention⁴¹ by introducing its list with the phrase “Protection shall include, in particular:” – implying that the scope of protection extends beyond the explicitly mentioned works – it lacks broad terminology that could implicitly encompass digitally emerging works; consequently, its text must be amended to align with the provisions of the 1996 WIPO Copyright Treaty concerning electronically published digital works, particularly computer programs and digital databases, where it would be advisable for the Convention to adopt the inclusive language, such as adding the phrase “regardless of the mode of publication, including electronic media” to Article 1(b) (1), or introducing an additional paragraph under Article 1(b) explicitly recognizing works published on electronic media as protected under the Convention’s provisions; furthermore, the Convention should explicitly state that computer programs are protected as literary works, in line with the 1996 WIPO Treaty.

Notably, while the Arab Convention acknowledges databases as protected works deriving originality from their arrangement or selection, it fails to address machine-readable or electronic databases, as to keep pace with technological advancements, these should be explicitly included in the enumeration of protected works under Article 1(b), or Article 2(a)(2) could be revised as follows:

“Protection shall also extend, and authorship shall be recognized for this Convention, to the authors of encyclopedias, anthologies, or collections of independent works, data, or other materials, systematically or methodically arranged in a way that reflects intellectual creativity or demonstrates a substantive intellectual contribution, and which may be accessed or consulted individually by electronic means or any other enabling medium”; Such a formulation would ensure that the Arab Copyright Convention comprehensively covers digitally emergent works while remaining adaptable to future innovations brought forth by the digital revolution.

41 Ibid., Article 2, para. 1.

2.5 Exceptions and limitations

The recognition of digital works and their associated rights under the Arab Copyright Convention necessitates adapting copyright exceptions and limitations to accommodate the unique nature of these rights, and while the Convention establishes restrictions on copyright in Articles 9 through 16 under the heading “Freedom of Use of Works” – laying out exceptions that align with the general principles of the Berne Convention, primarily concerning limitations and exceptions to economic rights – these provisions allow for the use of protected works without the copyright holder’s authorization or remuneration, known as “free use”,⁴² in addition, they partially⁴³ adhere to the three-step⁴⁴ test enshrined in Article 9(2) of the Berne Convention, which requires that exceptions (1) apply only in certain special cases, (2) do not conflict with the normal exploitation of the work, and (3) do not unreasonably prejudice the author’s legitimate interests.⁴⁵

However, this does not exempt the Convention from the need for reassessment to ensure compatibility with digital works, as the three-step test should be explicitly incorporated into the framework of exceptions and limitations, following the model of the 1996 WIPO Copyright Treaty as articulated in Article 10; consequently, Article 9 of the Arab Copy-

42 The free use cases in the Berne Convention include reproduction in certain special cases (Article 9/2); quotation and use of works – by way of illustration – for educational purposes (Article 10); reproduction of newspapers or similar materials and use of works for the purpose of reporting current events (Article 10B); and temporary recordings for broadcasting purposes (Article 11 B.3).

43 Arab Copyright Convention. Article 12.

44 Hugenholtz, B. (2009). Conceiving a document on Limitations and Exceptions to Copyright Laws. The Bibliotheca Alexandria. Alexandria. p. 31.

45 Berne Convention. Article 9/2: “The legislation of the countries of the Union shall be a matter for the right to authorize the making of copies of these works in certain special cases, provided that such making does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author”.

right Convention should be revised as follows:

“The use of protected works in certain special cases without the author’s authorization shall not constitute copyright infringement, provided such use does not conflict with the normal exploitation of the work by the author and does not unreasonably prejudice the author’s legitimate interests, as the following uses shall be deemed lawful and shall not require authorization from the rights holder: ... (remainder of the article unchanged)”.

Moreover, the Convention must move beyond the traditional exceptions and limitations derived from the Berne Convention and adopt provisions suited to the digital environment, such as those governing digital publishing, private digital copies, and exceptions compatible with modern educational and academic technologies, including digital libraries.

It would also be advisable for the Arab Copyright Convention to incorporate, alongside digital-specific limitations, exceptions catering to persons with disabilities – particularly recognizing accessible formats as a permissible exception for the visually impaired and individuals with physical disabilities that prevent them from handling or using printed books with ease, where this adjustment would ensure that the Convention remains responsive to both technological advancements and the needs of vulnerable groups.⁴⁶

2.6 Technical protection measures

The technical protection measures endorsed by the 1996 WIPO Copyright Treaty aim to safeguard the rights associated with digitally published works; these measures generally encompass any digital-based technical mechanism designed to prevent any infringement of the rights granted to authors over their works,

as they are primarily divided into two categories: the first facilitates the identification and designation of works by specifying rights holders,⁴⁷ while the second seeks to prevent any act that may violate authors’ rights.⁴⁸

The Arab Copyright Agreement does not include any reference to technological protection measures, necessitating a revision of its provisions to explicitly adopt these measures and recognize them as tools or mechanisms available to authors or rights holders, as such measures would reinforce the legislative protection granted to electronically published works, in line with the 1996 WIPO Treaty; accordingly, it would be advisable to amend Article 4 under the second section, titled “Authors’ Rights,” to read as follows: *“The author of a work shall enjoy authorship rights, and authorship shall be attributed to whoever publishes, broadcasts, or identifies the work under their name, or makes it available to the public in a manner that allows their recognition as the rights holder – including technical systems for work identification that aim to specify rights-related information”.*

By incorporating this provision, the Arab Copyright Agreement would align with advancements in the field of creativity and its dissemination, while further strengthening authors’ rights in the digital environment, which would establish a presumption of ownership over digital works and ensure their attribution to their creators.

To reinforce the aforementioned, the Arab Agreement – should it adopt technical systems for identifying works in the digital environment as a protective mechanism – must extend copyright protection to these systems and explicitly stipulate that any infringement upon them constitutes an infringement of the copyright in the work itself.

Concurrently, the Agreement should include an explicit provision enabling authors and rights holders to employ technological measures that prevent any unauthorized acts not permitted by the rights holders or prohibited by law, in line

46 Bouzidi, A. T. (2023). Accessible formats as an exception to copyright in Algerian legislation. *The Academic journal of legal and political research*, 7(1), pp. 496-476.

47 WIPO Copyright Treaty. Article 12/2.

48 Ibid., Article 11.

with Article 11 of the WIPO Copyright Treaty of 1996;⁴⁹ accordingly, Article 7 of the Arab Agreement would be amended as follows: *“Authors or rights holders shall have the right to exercise the following rights and prevent any infringement thereof by any means, including the adoption of any effective technological measure linked to the work, which restricts acts they have not authorized or that are prohibited by law...”*.

To strengthen the role of protective technological measures, the Arab Agreement should explicitly extend copyright protection to these measures, provided they meet the three conditions established by the WIPO Copyright Treaty of 1996 under Article 11, which could be incorporated into Article 25 under the sixth section titled “Means of Copyright Protection,” with the addition of a second paragraph stating: *“Member states shall enact laws extending copyright protection to any technological measure that is linked to the work, effective, and implemented by the author or rights holders to exercise their rights or prevent any infringement thereof”*.

CONCLUSION

In light of escalating digital challenges and the flourishing creative economy, it has become imperative to amend the 1981 Arab Copyright Convention to incorporate the substantive provisions enshrined in the 1996 WIPO Treaty, as this legislative update does not merely represent compliance with international standards but also constitutes essential protection for Arab creators, enhances the competitiveness of Arab culture in the global digital sphere, stimulates investments in creative and digital industries, holds sway over the efficiency and

innovation of the creative industries,⁵⁰ and facilitates harmonization with relevant international agreements.

Accordingly, the study proposes the following Suggestions:

1. Amending Article 1 of the Arab Copyright Convention as follows: “Authors of original creations shall enjoy full moral and material rights over their intellectual contributions from the moment of creation, regardless of their merit, purpose, form, or mode of expression, and whether or not they are fixed on a medium that allows their communication to the public”;
2. Amending the first paragraph of Article 7 of the Convention as follows: “The author or their representative shall have the following exclusive rights: (1) the right to reproduce the work in all forms that enable public access or perception, whether through photographic, cinematographic, or any electronic means that facilitate such reproduction”;
3. Amending Article 19 to stipulate that the term of protection shall extend throughout the author’s lifetime and for 50 years after their death;
4. Revising the text of Article 4(a) of the aforementioned Arab Convention as follows: “The author of a work shall enjoy copyright, and authorship shall be attributed to the person under whose name the work was published, broadcast, or recognized, or whose name is associated with the work upon its publication through a technological mechanism that identifies their rights, unless proven otherwise...”;
5. The Convention should adopt broad terminology encompassing digital works, such as adding the phrase “regardless of the mode of publication, including pub-

49 Article 11 states: “The Contracting Parties shall provide in their laws for appropriate protection and effective remedies against the circumvention of effective technological measures used by authors in the exercise of their rights under this Treaty or the Berne Convention, which prevent the performance of acts concerning their works not authorized by the authors concerned or permitted by law”.

50 Muthoo, A. (2023). Some Remarks On Bargaining Power, Innovation, and 21st Century Copyright Law. *Review of Economic Research on Copyright Issues*, vol. 20, p 7.

- lication on electronic media” in Article 1(b)(1), or introducing an additional paragraph under Article 1(b) explicitly recognizing works published on electronic media as protected under the Convention’s provisions, also the Convention must expressly protect computer programs as literary works, in alignment with the 1996 WIPO Treaty;
6. Reformulating Article 9 of the Arab Convention as follows: “The use of protected works in specific, limited circumstances without the author’s authorization shall not constitute an infringement, provided such use does not conflict with the normal exploitation of the work by its author and does not unreasonably prejudice their legitimate interests, where the following uses shall be deemed permissible and shall not require authorization from the rights holder: ... (the remainder of the article remains unchanged)”;
 7. The Arab Copyright Convention should incorporate, alongside digital limitations, specific exceptions for persons with disabilities, recognizing accessible formats as an exception tailored to the visually impaired and individuals with physical disabilities that hinder their ability to hold or use a book with ease;
 8. Amending Article 4 under the second axis concerning authors’ rights to read as follows: “The author of a work shall enjoy copyright, and authorship shall be attributed to the person under whose name the work was published, broadcast, or recognized, or whose name is associated with the work through any means that identifies them as the rights holder, including technical systems for work identification designed to specify rights-related information”;
 9. The Convention must include an explicit provision permitting authors and rights holders to employ technological measures that prevent unauthorized acts not permitted by law, identify rights holders, and extend copyright protection to such measures.

REFERENCES

Scientific literature:

- Abdullah, A. A. (2009). *The Legal Protection of intellectual Property Rights on the internet*. Egypt: New University House.
- Al-Sanhouri, A. R. (2005). *Al-Wasit fi Sharh Al-Qanun Al-Madani (Property Rights with a Detailed Explanation of Things and Property)*. Legal Publications. Lebanon.
- Bouzidi, A. T. (2023). Accessible formats as an exception to copyright in Algerian legislation. *The Academic journal of legal and political research*, 7(1).
- Burchardt, D. (2023). Does Digitalization Change International Law Structurally? *German Law Journal*, Special Issue: International Law and Digitalization, 24(3).
- Elbadraoui, H. (2007). *The International Legal Framework for the Protection of Copyright and Related Rights*. Available at: www.wipo/lip/dipl/met/05/3.
- Elganbihi, M. (2005). *International Cooperation in the Protection of Intellectual Property Rights*. Alexandria. Dar Al fikr Al jam’l.
- Elsaghir, H. E. (2005). *Emerging Global Issues in Intellectual Property*. p. 3. Available at: www.wipo-las/jiuru/cai/5/2.

- Gami, H. (2004). International protection of copyright and related rights, WIPO national symposium on intellectual property for organizations, Manama.
- Hawi, F. H. (2014). Web Sites and Intellectual Property Rights. Jordan: Dar Al Thaqafa.
- Hugenholtz, B. (2009). Conceiving a document on Limitations and Exceptions to Copyright Laws. The Bibliotheca Alexandria. Alexandria.
- Issa, M. A. (2020). The Protection of Intellectual Property Rights for Digital Works under International Law. King Abdulaziz University Journal, Arts and Humanities, 30 (7).
- Kanaan, N. (2009). Copyright, Contemporary Models of Author's Rights. Dar Al Thaqafa, Jordan.
- Lewinski, S. V. (2006). The role and future of the Universal Copyright Convention. E-Copyright Bulletin.
- Lucas, A. (1998). Droit d'auteur et Numerique. Litec. Paris.
- Maskus, K. (2024). Intellectual Property Rights And Knowledge Diffusion In The Global Economy, Review of Economic Research on Copyright Issues, vol. 21.
- Muthoo, A. (2023). Some Remarks On Bargaining Power, Innovation, and 21st Century Copyright Law. Review of Economic Research on Copyright Issues, vol. 20.
- Passa, J. (2001). Internet et Droit d'auteur. Juris-Classeur. LexisNexis. France.
- Samuelson, P. (2013). Is Copyright Reform Possible? A critical evaluation of two major contributions to the copyright reform literature. Harv. L. Rev, (126)3.
- Sheinblatt, J. S. (1998). The WIPO Copyright Treaty. Berkeley Technology Law Journal, (13) 535.
- Talabah, A. (2006). The protection of intellectual property rights. Modern university office. Alexandria.
- Talhouni, B. A. (2004). The internet and digital rights management. Muscat.
- Wansa, D. I. (2002). The protection of copyright on the internet, a comparative study. Sad-er, Lebanon.

Legal acts:

- Arab Convention for the Protection of Copyright. (1981).
- WIPO. (1998). Berne Convention for the Protection of Literary and Artistic Works, Paris Act dated July 24, 1971, amended on September 28, 1979. Geneva: WIPO Publication.
- WIPO. (2003). WIPO Copyright Treaty. Geneva: WIPO Publications.
- WIPO. (2017). Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement).

Case law:

- Bsa v Ministert vo Kultury. (2010). Crc (Third Chamber), c393/9. Available at: <https://op.europa.eu/en/publication-detail/-/publication/3851211e-aaaf-47a0-96e0-b5e5fccb41bf#>>.
- Football Dataco Ltd and Others v Yahoo UK Ltd and Others. (2012). CJEU, C-604/10. Available at: <https://curia.europa.eu/juris/document/document.jsf?cid=1199&dir=&docid=147582&doclang=en&mode=req&occ=first&pageIndex=0&part=1&text=&utm=>>.
- SGAE v Rafael Hoteles S.A. (2006). CJEU, C306/05. Available at: <https://curia.europa.eu/juris/document/document.jsf?docid=64884&doclang=EN>>.
- Nintendo Co. Ltd and Others v PC Box Srl and 9Net Srl. (2014). CJEU, C-355/12, Available at: <https://app.livv.eu/decisions/LawLex201400000076JBJ>>.