



IRAQ
CPA Order no. 81
Amendments to the Patent & Design Law:
Law no. 65 of 1970

COALITION PROVISIONAL AUTHORITY ORDER NUMBER 83
AMENDMENT TO THE COPYRIGHT LAW

Pursuant to my authority as Administrator of the Coalition Provisional Authority (CPA) and under the laws and usages of war, and consistent with relevant U.N. Security Council resolutions, including Resolution 1483 and 1511 (2003),

Having worked closely with the Governing Council to ensure that economic change as necessary to benefit the people of Iraq occurs in a manner acceptable to the people of Iraq,

Acknowledging the Governing Council's desire to bring about significant change to the Iraqi intellectual property system as necessary to improve the economic condition of the people of Iraq,

Determined to improve the conditions of life, technical skills, and opportunities for all Iraqis and to fight unemployment with its associated deleterious effect on public security,

Recognizing that companies, lenders and entrepreneurs require a fair, efficient, and predictable environment for protection of their intellectual property,

Noting that several provisions of the current Iraqi copyright legislation does not meet current internationally-recognized standards of protection,

Recognizing the demonstrated interest of the Iraqi Governing Council for Iraq to become a full member in the international trading system, known as the World Trade Organization, and the desirability of adopting modern intellectual property standards,

Acting in a manner consistent with the Report of the Secretary General to the Security Council of July 17, 2003, concerning the need for the development of Iraq and its transition from a non-transparent centrally planned economy to a free market economy characterized by sustainable economic growth through the establishment of a dynamic private sector, and the need to enact institutional and legal reforms to give it effect,

Having coordinated with the international financial institutions, as referenced in paragraph 8(e) of the U.N. Security Council Resolution 1483, In close consultation with and acting in coordination with the Governing Council, I hereby promulgate the following:

Section 1

Purpose

The purpose of this Order is to amend Copyright Law No. 3 of 1971 to ensure that Iraqi copyright law meets current internationally-recognized standards of protection, and to incorporate the modern standards of the World Trade Organization into Iraqi law.

Section 2

Amendments to Copyright Law

1) Article 1 of the Copyright Law No. 3 of 1971 ("the Law") is amended to read as follows:

"1. This law protects the authors of original literary, artistic and scientific works, whatever their type, method of expression, importance and purpose.

2. The person in whose name the work is published, whether by mentioning his name on the work or by any other means, shall be considered the author, unless there is evidence to the contrary. This provision shall apply to pseudonyms, provided there is not the least doubt as to the identify of the author."

2) Article 2 is amended to read as follows: "The protection shall include the works whose method of expression is in writing, sound, drawing, painting or movement, and in particular the following:

1. Written works of all types
2. Computer programs, whether in source or object code, which shall be protected as literary works
3. Works conveyed verbally such as lectures, lessons, speeches, sermons and the like
4. Works entered under the arts of drawing and painting with lines and colors, engraving, sculpture and architecture
5. Dramatic works and musical plays
6. Works performed by artistic movements or steps and are materially prepared for production
7. Musical works, whether accompanied by words or not
8. Photographic and cinematographic works
9. Works prepared for radio and television
10. Charts, drawings and scientific three-dimensional figures
11. Public recitals of the Holy Koran
12. Sound recordings
13. Compilations of data"

3) Article 3 is amended to read as follows: "Protection shall include the title of the work, if it is characterized by originality and not indicative of the work's subject matter."

4) Article 6 is amended to read as follows: "Protection shall include the following where characterized by originality, arrangement or any other personal effort which deserves protection:

1. Collections which comprise various works of verse, prose, music and other collections, without affecting the copyrights of the author of each of these works
2. Collections of works which have fallen into the public domain
3. Collections of official documents, such as texts of international laws, regulations and agreements, judicial judgments and various official documents"

5) Article 8 is amended to read as follows: "The author holds the exclusive right to exercise the rights in his/her works. Without the written permission of the author or his/her successors, no person shall do any of the following acts:

1. Reproduce a work in any manner or form, whether transitory or permanent, including onto photographic (including cinematographic) film or onto a digital or electronic storage medium.
2. Translate, adapt, musically arrange or otherwise transform a pre-existing work.
3. Authorize commercial rental to the public of the original and copies of the work.
4. Distribute the original and copies of a work through sale or other transfer of ownership.
5. Import any copies of a work. This includes copies that were prepared with the permission of the copyright owner.
6. Transmit or otherwise communicate a work to the public by means of a recital, speech, lecture, display, acting performance, radio or television broadcast, cinema or any other wire or wireless means, including the making available to the public of works in a way that the members of the public may access the work from a place and at a time individually chosen by them."

6) Article 9 is suspended.

7) A new provision is supplemented between Articles 10 and 11 to read as follows:

"1. If the work was created on behalf of another person, the rights in the work shall revert to the author unless there is a written agreement stipulating otherwise.

2. Notwithstanding subparagraph (a), and in any other Law, if an employee created during his employment a work related to the activities or business of the employer, or uses the experiences, information, instruments or articles of the employer under the employee's own disposal in his attempt to create such work, the rights in the work shall be to the benefit of the employer, unless otherwise agreed upon in writing.

3. The rights in the work shall be to the benefit of the employee if the rights created by the same are not related to the business of the employer, and the employee does not use the experiences, information, instruments or raw materials of the employer in his attempt to create the work, unless otherwise agreed upon in writing."

8) Article 11 is suspended.

9) Article 15 is amended to read as follows: "Copying may not be made of serialized novels, short stories or other literary, artistic or scientific works published by their authors in the newspapers or periodicals, except with their permission."

10) A new provision is supplemented between Article 15 and Article 16 to read as follows: "Exceptions to exclusive rights of the author shall be confined to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder."

11) Article 20 is amended to read as follows:

"1. The author's economic rights provided for in this Law shall be protected throughout the lifetime of the author and for 50 years from the date of his death.

2. The economic rights relating to works of joint authorship shall be protected throughout the lives of all co-authors and for 50 years from the death of the last survivor.

3. Where the copyright holder is a legal entity, the economic rights relating to the authors of collective works, other than authors of works of applied art, shall be protected for 50 years from the date on which the work was published or made available to the public for the first time, whichever comes first. Where the copyright holder is a natural person, the protection period shall be calculated according to the rule stipulated in subparagraph (a) and (b).

The economic rights relating to a work published for the first time after the death of the author shall expire after 50 years from the date on which the work was published or made available to the public for the first time, whichever comes first.

4. The economic rights relating to a work published anonymously or under pseudonym shall be protected for a period of 50 years, from the date on which the work was published or made available to the public for the first time, whichever comes first, unless the identity of the author is known and established or revealed by the author, in which case the term of protection shall be calculated according to the rule stipulated in subparagraph (a).

5. The economic rights of the author of a work of applied art shall expire after a period of 50 years from the date on which the work was published or made available to the public for the first time, whichever comes first.

6. In cases where the term of protection is calculated from the date on which the work was published or made available to the public for the first time, the term shall be calculated taking into consideration the date that comes first, regardless of any re-publication or making available to the public, unless substantial changes were made by the author in the work so that it may be considered as a new work. Where the work consists of several parts or volumes published separately and at intervals, each part or volume shall be considered as an independent work for the purpose of calculating the term of protection."

12) Article 21 is suspended.

13) Article 23 is suspended.

14) A new provision is supplemented between Article 34 and Article 35 to read as follows:

"1. Performers shall have the following exclusive rights:

(a) broadcasting and communication to the public of their unfixed performances except where the performance is already a broadcast performance and the fixation of their unfixed performances;

(b) authorizing the direct or indirect reproduction of their performances fixed in phonograms in any manner or form whether transitory or permanent, including digital electronic format;

(c) distributing to the public the original and copies of their phonograms containing the fixations of their performance through sale or other transfer of ownership;

(d) importing copies of their phonograms whether or not the phonogram was made with the performer's authorization;

(e) making available to the public, by wire or wireless means, any performance fixed in a phonogram, in such a way that members of the public may access the fixed performance from a place and at a time individually chosen by them.

2. Independently of a performer's economic rights, and even after the transfer of those rights, the performer shall, as regards his/her live aural performances or performances fixed in phonograms, have the right to claim to be identified as the performer of his/her performances, except where omission is dictated by the manner of the use of the performance, and to object to any distortion, mutilation or other modification of his/her performances that would be prejudicial to his/her reputation.

3. Performers shall enjoy an exclusive economic right for the exploitation of their performances for a period of 50 years calculated from the date on which the performance or the recording took place, as may be the case.

4. The producer of phonograms shall have the following exclusive rights:

(a) broadcasting and communication to the public of their unfixed performances except where the performance is already a broadcast performance and the fixation of their unfixed performances;

(b) authorizing the direct or indirect reproduction of their performances fixed in phonograms in any manner or form whether transitory or permanent, including digital electronic format;

(c) distributing to the public the original and copies of their phonograms containing the fixations of their performance through sale or other transfer of ownership;

(d) importing copies of their phonograms whether or not the phonogram was made with the performer's authorization;

(e) making available to the public, by wire or wireless means, any performance fixed in a phonogram, in such a way that members of the public may access the fixed performance from a place and at a time individually chosen by them.

5. Producers of sound recordings shall enjoy an exclusive economic right to exploit their recordings for a period of 50 years calculated from the date on which the recording was made or made public, whichever comes first.

6. Broadcasting organizations shall have the following exclusive rights:

(a) fix and record their broadcasts and to authorize direct or indirect reproduction of the fixations of their broadcasts

(b) rebroadcast their programs by wireless means and transmit them to the public.

7. Broadcasting organizations shall enjoy an exclusive right to exploit their programs for a period of 50 years calculated from the date on which the program was broadcast for the first time."

15) A new provision is supplemented between Article 34*bis* and Article 35 to read as follows: "In order to ensure that no hierarchy is established between rights of authors, on the one hand, and rights of at least performers and producers of phonograms, on the other hand, each Party shall establish that in cases where authorization is needed from both the author of a work embodied in a phonogram and a performer or producer owning rights in the phonogram, the need for the authorization of the author does not cease to exist because the authorization of the performer or producer is also required. Likewise, each Party shall establish that in cases where authorization is needed from both the author of a work embodied in a phonogram and at least of a performer or producer owning rights in the phonogram, the need for the authorization of the performer or producer does not cease to exist because the authorization of the author is also required."

16) Article 35 is suspended.

17) Article 36 is suspended.

18) Article 44 is amended to read as follows: "Each author whose rights in his work provided in accordance with the provisions of this law are infringed upon, shall be entitled to appropriate compensation. In deciding compensation, the cultural standing of the author, the literary, scientific or artistic value of the work and the extent the infringer benefited by exploiting the work shall be taken into consideration."

19) Article 45 is amended to read as follows: "Any act committed by any of the following shall be considered an act of piracy punishable by a fine of not less than 5,000,000 dinars and not exceeding 10,000,000 dinars."

20) Article 45(2) is amended to read as follows: "2. Whoever offers for sale, distribution or rental of an infringing work, transmits an infringing work to the public in any manner, uses an infringing work for material gain, brings an infringing work into or out of Iraq, knowing or having adequate reason to believe that the work is unauthorized."

21) The final paragraph of Article 45 is amended to read as follows: "In case of subsequent conviction, the offender shall be sentenced to imprisonment for a period not less than five years and not more than ten years and to a fine not less than 100,000,000 dinars and not more than 200,000,000 dinars or to any one of these penalties. The Court may also, in the case of subsequent conviction, order the closure, for a certain period or for good, of the establishment which has been used by the counterfeiters or their partners to commit the offense."

22) An additional paragraph of Article 45 is added to read as follows: "The Court may also order the forfeiture and destruction of all infringing copies or sound recordings and all implements, devices or equipment used in the manufacture of such infringing copies or sound recordings."

23) Article 46 is amended to read as follows:

"1. The Court may upon proper application by the copyright owner or any of his/her heirs or successors issue injunctive relief in relation to any infringement of the rights set forth in Articles 5, 7, 8, 10 and 34*bis* of this Law provided that the application contain a detailed and complete description of the work, performance, phonogram, or program against which the infringement occurred.

The Court may decide to:

- (a) Order the infringer to cease infringing activities;
- (b) Confiscate the infringing copies and any materials and devices used in the commission of the infringement; and
- (c) Confiscate the proceeds of the infringement.

2. The request may be presented before, during or after filing the lawsuit.

3. Upon verification that the petitioner is the owner of the right and that his rights have been violated or that a violation is imminent, the Court may apply any of the procedures provided for in subparagraph (a) of this Article on a provisional basis to prevent the occurrence of the infringement or to preserve some evidence related to the act of infringement.

4. In cases where delay may cause damage to the right holder which is difficult to calculate, or in cases where there is a proven risk that delay may lead to the loss of evidence related to the infringement, the Court may adopt any of the procedures stipulated in subparagraph (a) of this Article on a provisional basis without notifying the defendant and in his absence. The defendant shall be notified of the procedures adopted by the Court as soon as the procedure is implemented. The defendant may request a hearing within a reasonable period after his notification of the procedure. The Court shall decide to confirm, amend or nullify the provisional measure at the time of the hearing.

5. The request for application of provisional measures provided for in subparagraphs (c) and (d) of this Article must be accompanied by an adequate monetary guarantee to prevent abuse and to guarantee any damages which may occur to the defendant if the plaintiff is not justified in his claim.

6. Upon request of the defendant, the provisional measures applied prior to the filing of a lawsuit under subparagraphs (c) and (d) of this Article shall be nullified if the lawsuit is not filed within eight days from the date on which the Court issued the decision to apply the provisional measures.

7. In cases where the provisional measures applied in accordance with subparagraphs (c) and (d) of this Article are nullified due to a lapse of the filing period of the lawsuit, the default of the claimant, or based on evidence that there is no infringement or threat of infringement, the court may, upon the request of the defendant, order adequate compensation for the damages resulting from these procedures.

8. The Court may order the claimant who acted abusively in requesting any of the procedures listed in this article to adequately compensate the party against whom the procedures were taken for damages incurred as a result this abuse."

24) Article 47 is amended to read follows:

"In no case shall buildings and what they have in or on them of engravings, drawings, ornamentations or geometrical shapes be subject to seizure. Furthermore, no ruling shall order their destruction, the change of their features, or their confiscation for the purpose of safeguarding the copyrights of the architect whose designs were used for the building and whose drawings were put in them illegally. This shall not violate his right in obtaining fair compensation for the foregoing."

25) Article 48 is suspended.

26) Article 49 is amended to read as follows:

"The provisions of this law shall apply to the works of Iraqi and foreign authors which are published, acted or presented for the first time in the Republic of Iraq, as well as to the works of Iraqi authors which are published, acted or presented for the first time in a foreign country. The protection of copyright and related rights provided under this Law shall be extended to foreigners whether natural persons or legal entities, on the basis no less favorable than that accorded to Iraqi nationals with regard to the protection and enjoyment of such intellectual property rights and any benefits derived from such rights."

27) A new provision is supplemented between Article 49 and Article 50 to read as follows: "the provisions of this Law shall apply to works existing at the time it takes effect, provided the term of protection for those works have not yet fallen into the public domain in their country of origin."

Section 3

Entry into Force

This Order shall enter into force on the date of signature.

L. Paul Bremer, Administrator

Coalition Provisional Authority