



ICLG

The International Comparative Legal Guide to:

Copyright 2017

3rd Edition

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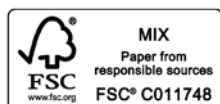
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United Arab Emirates



Hamdan AlShamsi Lawyers & Legal Consultants

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1 Copyright Subsistence

1.1 What are the requirements for copyright to subsist in a work?

Copyrighted works in the UAE must be distinguished pieces of work. This usually involves two elements that are taken into consideration when accessing a piece of work: existence of an earlier work; and creativity of the work. The copyright should also be known to the public.

Additionally, there is a requirement of what work may be protected by the copyright Federal Law, which will be listed in question 1.2 below.

1.2 On the presumption that copyright can arise in literary, artistic and musical works, are there any other works in which copyright can subsist and are there any works which are excluded from copyright protection?

Copyright protection arises for the following works under UAE copyright law:

- Books, booklets, articles, and other printed works.
- Computer software/applications, and similar databases.
- Lectures, dramas, sermons and preachments.
- Drama/musical dramas and pantomimes.
- Musical works, with or without accompaniment of language.
- Audio, visual and audio-visual works of art.
- Architectural works of art and engineering plans and drawings.
- Works of drawing in lines/dyes, sculpture, engraving, impressions, etc.
- Photographic art.
- Diagrams, geographical maps, sketches, plans or any three-dimensional works pertaining to geography or other architectural works.
- Derivative works of art.

Protection does not include concepts, procedures, techniques, mathematical theories, or abstract principles and facts; however, there is an exception to this because protection does in fact apply to the original expression of them. Works that are not protected by the copyright laws include: official documents such as laws, regulations, resolutions, etc.; news bulletins or current event stories; and works of art that are in the public domain.

1.3 Is there a system for registration of copyright and if so what is the effect of registration?

Copyrighted works are submitted to the Ministry of Information and Culture by the creator or author (as it is referred to in the UAE Federal copyright law). Works are submitted to the Intellectual Property Department (IPPD) in the Ministry. There is a process for this which is as follows:

1. Submission: this should be done in the Ministry by the author or an attorney via the relevant submission form, which usually includes details of the copyright such as its description and usage.
2. Investigation: the copyright is then entered into the Intellectual Property Department's internal database to ensure the copyright submitted is unique.
3. Publication: if the search in the investigation phase shows that the copyright is new and unique material then it will be able to be registered. Once it is registered, the copyright will then be announced in local newspapers in different languages and on several occasions. This gives the opportunity for anyone who has an objection to the copyright to bring their claim.
4. Issuance: if there have been no objections, the final certificate will then be issued.

The effect of registration allows the owner of the copyright protection, and whether the copyright is tangible or non-tangible, it has become the owner's intellectual property which gives the owner protection against non-authorised use of his property or infringement under civil and criminal law.

1.4 What is the duration of copyright protection? Does this vary depending on the type of work?

Copyright protection usually spans a whole lifetime and 50 years after death. This protection applies to authors and joint authors of copyrighted works. In the case of authors of applied works of art, copyright protection spans for a whole lifetime and 20 years after death. Performers shall be protected for a period of 50 years to be calculated from the beginning of the next calendar year in which the performance was accomplished. Producers of phonograms shall be protected for 50 years starting from the date of publication. Broadcasting organisations' copyrights are protected 20 years from the date of the broadcast.

1.5 Is there any overlap between copyright and other intellectual property rights such as design rights and database rights?

Copyrights, patents, and trademarks are all administered through the Intellectual Property Department at the Ministry of Economy. The UAE is also a member of various international conventions concerning intellectual property, such as Trade Related Intellectual Property Rights (TRIPS), the Paris Convention, the Rome Convention, and the Gulf Cooperation Council (GCC). The GCC has made it possible to register all intellectual property.

1.6 Are there any restrictions on the protection for copyright works which are made by an industrial process?

The UAE Patent and Design law originally provided for the registration of industrial designs, and the Ministry of Economy previously accepted design applications. However, the Ministry was actually only able to distribute design certificates in 2008 through the Intellectual Property Department.

Furthermore, there is no explicit restriction made on industrial designs in the law; the scope of copyright protection in the UAE does not extend to abstract material or concepts. Three-dimensional industrial designs that are an original expression of a piece of work will generally be protected by the copyright law and trademark law and may be duly registered. The only instance where designs are restricted is if they are in breach of UAE public order.

2 Ownership

2.1 Who is the first owner of copyright in each of the works protected (other than where questions 2.2 or 2.3 apply)?

The owner of a copyright is usually the creator; the creator is referred to as the author. The author has the following rights under UAE copyright law: to use; to sell; to assign; to lend; to gift, etc.

2.2 Where a work is commissioned, how is ownership of the copyright determined between the author and the commissioner?

This usually takes place in the form of agreements. Ownership is usually stated in a contract between parties. In the event that there is no agreement between an author and commissioner, the courts will try to assume an owner. This is done with the help of experts who will decide what percentage each party owns. This is determined by each party's input in the work, such as the creation of the work or the amount of financing that has gone into it. This is similar to the notion of Joint Venture agreements.

2.3 Where a work is created by an employee, how is ownership of the copyright determined between the employee and the employer?

If an employee creates a piece of work using instruments and sources of the employer during working hours, and the creation is related to the employer's business, then ownership usually belongs to the employer.

2.4 Is there a concept of joint ownership and, if so, what rules apply to dealings with a jointly owned work?

The UAE Copyright law provides for joint and collective ownership of a copyright or successors of the author's work. A copyright is property and can be stated as such in an ownership certificate itself. When a certificate is registered under more than one name, a percentage usually indicates how much each person owns. When no percentage has been indicated, this means that the percentage will be assumed to be divided equally.

In such structures, it is advisable to always register any kind of intellectual property as a Special Purpose Vehicle (SPV), where percentages are clarified and then also described in an Memorandum of Association (MOA). This enables a more transparent relationship between parties.

3 Exploitation

3.1 Are there any formalities which apply to the transfer/assignment of ownership?

An owner of copyrighted work will retain ownership; however, they are able to transfer part or all their rights to a third party. The manner in which the third party will use this copyright must be stipulated in writing, specifying the object of the right and the duration of its usage. Contracts between parties must be registered in the Intellectual Property Office for them to be valid.

There is also the concept of a derivative work. The law allows a derivative work as long as it is authorised by the original author of the work. It is important to note that the owner of the copyright is not selling his right or permitting plagiarism when authorising this exploitation; the author/owner is simply allowing someone to create something new, which has been derived from his work.

3.2 Are there any formalities required for a copyright licence?

Licences may be provided to third parties by the Ministry for reproduction or translation purposes. These licences may be issued to anyone that has a justifiable purpose. Article 21 of the copyright law states "those licences shall be issued, pursuant to a justified decision, in which is specified the scope of time and place of its exploitation, as well as the fair consideration due to the author, provided, however, that the objective of issuing such licence shall always be restricted to the fulfilment of the requirements, of all kinds and on all levels, of education; or the requirements of public libraries and archives".

3.3 Are there any laws which limit the licence terms parties may agree (other than as addressed in questions 3.4 to 3.6)?

Limitations include any usage of the copyright for illegal purposes or against the regulations of the particular emirate or using the copyright for a purpose that has not been mentioned in the copyright licence and in violation of the Public Order in the UAE.

3.4 Which types of copyright work have collective licensing bodies (please name the relevant bodies)?

In the UAE, copyright registration is controlled by the IP Department at the Ministry of Economy, and no other legal body has the right to issue a copyright registration.

3.5 Where there are collective licensing bodies, how are they regulated?

The UAE has no collective licensing.

3.6 On what grounds can licence terms offered by a collective licensing body be challenged?

An objection should be lodged with the IP Department at the Ministry of Economy, and a committee will meet with the parties and determine the objection. Any decision can be objected to and the committee may reconsider its decision. Following that, there is a right to refer the matter to the relevant Court. The case should be registered with the Court against both the Ministry and the other party.

4 Owners' Rights

4.1 What acts involving a copyright work are capable of being restricted by the rights holder?

The owner of the copyright has the following rights under UAE copyright law:

1. The right to determine the first publication of the work.
2. The right to write the work in his name.
3. The right to protect his work against any alteration.
4. The right to withdraw his work if there are serious reasons. (This may be done through the competent court.)
5. The right to exploit his work by any means, for example, by copying to electronic loading, or broadcasting, altering, modifying, etc.
6. The right to transfer part or all of his economic rights to a third party. The author will still remain the owner of all the rights.
7. The right to charge cash in consideration for transferring his rights.

4.2 Are there any ancillary rights related to copyright, such as moral rights, and if so what do they protect, and can they be waived or assigned?

Yes, moral damages are available in intellectual property disputes. Moral rights protect a copyright author from someone infringing their property. Damages are awarded in disputes when an owner's rights are infringed or unlawfully exploited.

4.3 Are there circumstances in which a copyright owner is unable to restrain subsequent dealings in works which have been put on the market with his consent?

Yes, there are some cases where copyrighted work may be used without permission from the author. This is an exception of fair usage, and is defined in the UAE copyright law in Article 22, which

states "without prejudice to the literary rights of the author provided for in this law, the author may not prevent third-parties, after the publication of his work from performing any of the following acts". The law goes on to list circumstances which shall not be considered as infringement of the copyright of the author. Such examples include works such as studies or research or citations within. Another example can be copyrights that are known to the public such as the painting of the Mona Lisa. Anyone who sells copies of the Mona Lisa painting is not an infringer and this is based on the assumption that the public knows of the famous painting and would therefore know that they are purchasing a copy, and that there is only one true original of that painting. Any other such instances where the work is used beyond the scope of the above instances is considered as plagiarism and copyright infringement.

5 Copyright Enforcement

5.1 Are there any statutory enforcement agencies and, if so, are they used by rights holders as an alternative to civil actions?

The Economic Department in Dubai is able to receive complaints for the unauthorised use of a copyright. This is done through the Consumer Rights department in the Economic Department, a civil claim may be made there, or a criminal complaint may be made to the police or directly to the Public Prosecution.

5.2 Other than the copyright owner, can anyone else bring a claim for infringement of the copyright in a work?

Yes, an official beneficiary or successor of the copyright or an assigned third party is able to bring a claim. For a third party to bring a claim, it must have an interest in the copyright or receive a benefit from that copyright, and which will be harmed and affected by the infringement.

5.3 Can an action be brought against 'secondary' infringers as well as primary infringers and, if so, on what basis can someone be liable for secondary infringement?

Yes; under the Federal Penal Code, an accomplice to an infringer is considered as an infringer too and will be punished in the same regard as the primary infringer.

5.4 Are there any general or specific exceptions which can be relied upon as a defence to a claim of infringement?

Copyrights that are well known to the public may be copied and will not be considered as infringement as stated before. This is the case unless the person copying has claimed the copyright as an original. Also, copyrights that have not been registered duly will not be protected, and an infringer would therefore not have done anything wrong.

5.5 Are interim or permanent injunctions available?

There are court injunctions available to stop an infringer from further copying, and there are also injunctions to collect all the fake versions of the copyrighted work.

5.6 On what basis are damages or an account of profits calculated?

There are three damages available:

1. Direct damages: direct losses incurred from an infringer or breach of contract.
2. Potential/expected profits: these are the profits that would have been calculated and the copyright owner may have made before an infringement or exploitation or whatever it may be occurred.
3. Moral damages: moral damages are also awarded when assessing damages for infringement.

5.7 What are the typical costs of infringement proceedings and how long do they take?

- Criminal: criminal complaints do not cost anything to make. A claimant will go to the relevant public prosecutor to make his claim. It takes around six months to a year to have the final judgment. This is dependent on expert reports to give their opinions on the crime and elements of the copyright too.
- Civil: costs in civil proceedings are dependent on the amount that will be claimed. A percentage is calculated based on the claim amount. It may take around two years for the final judgment and includes damages experts to assess the claim.

5.8 Is there a right of appeal from a first instance judgment and if so what are the grounds on which an appeal may be brought?

A copyright case, whether a criminal or civil one, is subject to the Federal Procedural Law which allows for appeals. A first instance judgment may be appealed to the Court of Appeal, and this may also be appealed to the Supreme Court which will have the final say. There is no specific or limited reasons to bring an appeal; any party may bring an appeal based on the procedural law.

5.9 What is the period in which an action must be commenced?

A claimant is generally supposed to make a claim from the date that they became aware of the crime. In civil proceedings, the claimant has the right to make a civil claim from the day of the final criminal judgment if there has been a criminal case filed first.

6 Criminal Offences

6.1 Are there any criminal offences relating to copyright infringement?

Yes, the penal code lists several offences to infringement and penalties include jail time or a fine.

6.2 What is the threshold for criminal liability and what are the potential sanctions?

This is assessed on the severity of the action, but it will range from a substantial fine to imprisonment.

7 Current Developments

7.1 Have there been, or are there anticipated, any significant legislative changes or case law developments?

There have not been significant changes, but the UAE is aiming to adhere to international standards on the protection of copyrights.

7.2 Are there any particularly noteworthy issues around the application and enforcement of copyright in relation to digital content (for example, when a work is deemed to be made available to the public online, hyperlinking, etc.)?

Yes; as stated previously, public works may be copied but this is dependent on the type of material and how it will be used.

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