

Copyright Protection in the UAE: The Berne Convention and the Principle of Automatic Protection



Copyright refers to a form of protection granted to authors over their original works; specifically, artistic and literary works, whatever the manner or mode of expression, purpose or significance of such works. This broad scope of application means copyright is often relied on as a 'catch-all' and fall-back enforcement measure in the protection of intellectual property, especially given the Automatic Protection Principle espoused by the Berne Convention for the Protection of Literary and Artistic Works (hereinafter 'Berne Convention'). Under this Principle, no formal requirements, such as copyright registration, are to be accorded copyright protection in the respective Member States of the Berne Convention. Nonetheless, as a Member State of the Berne Convention, whilst the UAE does not impose any copyright registration requirements, in practice, this is something that may well be needed for the adequate protection and enforcement of copyright works in the UAE.

The Berne Convention and its Fundamental Principles

First signed in Berne, Switzerland in 1886 by Belgium, France, Germany, Italy, Spain, Switzerland, Tunisia and the United Kingdom, today 177 Member States are contracting parties to the Berne Convention; including, the UAE, which acceded to the Berne Convention on April 14, 2004. The Berne Convention thereafter entered into force in the UAE on July 14, 2004.

With the stipulated, central aim of protecting the rights of authors in their literary and artistic works, "in as effective and uniform a manner as possible", the Berne Convention, as amended on September 28, 1979, adopts the following fundamental principles (hereinafter 'Fundamental Principles'), highlighted under Article 5 therein:

'(1) Authors shall enjoy, in respect of works for which they are protected under this

Convention, in countries of the Union other than the country of origin, the rights which their respective laws do now or may hereafter grant to their nationals, as well as the rights specially granted by this Convention.

(2) The enjoyment and the exercise of these rights shall not be subject to any formality; such enjoyment and such exercise shall be independent of the existence of protection in the country of origin of the work. Consequently, apart from the provisions of this Convention, the extent of protection, as well as the means of redress afforded to the author to protect his rights, shall be governed exclusively by the laws of the country where protection is claimed.

(3) Protection in the country of origin is governed by domestic law. However, when the author is not a national of the country of origin of the work for which he is protected under this Convention, he shall enjoy in that country the same rights as national authors.'

These three Fundamental Principles encompass what are separately known, and referred to, as the principles of National Treatment, Automatic Protection and Independence of Protection. The Principle of National Treatment provides that copyright works originating in any one of the Member States of the Berne Convention must be accorded the same protection that each Member State respectively accords to such works of its own nationals. Additionally, the Principle of Automatic Protection prohibits the imposition of any formalities as pre-conditions to protection: including, but not limited to, registration; or notice or recordation of copyright works. Lastly, the Principle of Independence of Protection serves to ensure Member States accord the same protection to foreign copyright works, as is otherwise accorded to local copyright works, irrespective of whether or not, and to what extent, protection is afforded to such works in the Member State in which that work originated.

The Principle of Automatic Protection and its Application in the UAE

As a Member State of the Berne Convention, and pursuant to the Principle of Automatic Protection therein, the UAE does not require any formal requirements: such as, copyright registration; notice or recordation for an original literary or artistic work to be protected as copyright. This is re-iterated under the applicable domestic Federal Law No. 7/2002 as amended by Law No.32/2006 Concerning Copyrights and Neighbouring Rights (hereinafter the 'Copyright Law'). According to Article 4 of the Copyright Law, *"failure to register the creative work or its copyright or any assignments or licenses in copyright shall not prejudice the protection or rights provided by this Law."* Thus, whilst the Copyright Law provides for a copyright registry whereby copyright works may be registered, this is not mandatory and such works are, nonetheless, afforded automatic copyright protection from the moment of their creation in a fixed medium.

However, copyright registration, as evidenced through a copyright registration certificate, creates a favourable legal presumption of ownership over the said work registered, which is especially useful where copyright ownership is, or may be, a contentious issue. Therefore, it is prudent for an author of original literary and/or artistic works to register their copyright in such works with the UAE Ministry of Economy. This is especially important to ensure the availability of administrative enforcement actions, which is the more common, time efficient and cost-effective route of enforcement initiated via the concerned authorities of the Department of Economic Development in each of the respective Emirates and which allows for a range of penalties from seizure and destruction of infringing works to fines and possible closure of business premises responsible for such infringing works. The reason for this is that, unlike courts, the administrative authorities are generally unable to assume the role of the court in adjudicating on such copyright issues and thereby rendering the necessary determinations to initiate such administrative enforcement actions, on the basis of copyright infringement, where conclusive evidence of a copyright registration certificate is not available. Accordingly, in practice – save for a few rare, albeit increasing number of, instances, copyright registration with the UAE Ministry of Economy may be

necessary for effective protection, as the concerned authorities will usually require a copyright registration certificate to initiate enforcement actions against third parties for copyright infringement.

Conclusion

The Berne Convention has certainly made major in-roads in the protection of original artistic and literary works, by implementing, and thereby inviting, a uniform system aimed at according authors universal protection over their works. Specifically, the Principle of Automatic Protection, as espoused under the Berne Convention, serves to afford original artistic and literary works automatic global protection from the moment of their creation, in a fixed medium, ultimately ensuring equal treatment is provided to such works. Nonetheless, in practice, in the UAE, it is always highly desirable and advisable for authors of such works to register their copyright, so they may benefit from the favourable legal presumption of ownership over such works, in addition to ensuring such authors are capable of availing themselves of the available enforcement measures in the protection of copyright works.

Al Tamimi & Company's [Intellectual Property team](#) regularly advises on copyright matters. For further information please contact [Elias Nassif](#) (e.nassif@tamimi.com).