

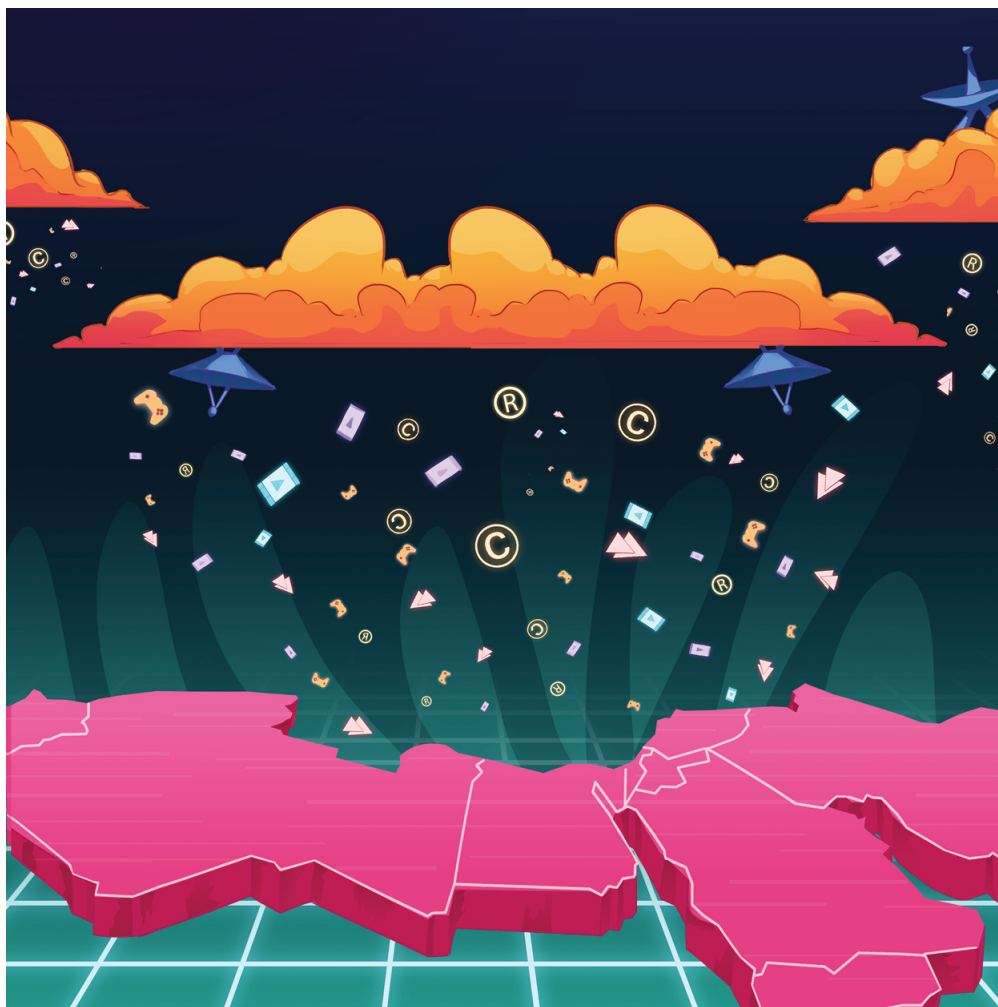
# C is for content, clients, claims and copyright: ten short notes about copyright for the Middle East

- Partner

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Copyright forms the basis of the rights that are incorporated within any piece of content. Be it a photograph, a short video, a jingle, a film or a game, the hard work that you put into development and creative output is generally going to be covered by the law of copyright in the country of origin.

For creators it is really important to understand the basis for the protection. It is elusive, intangible and often misunderstood. Today we remind you of the ten basic things that a creator in the Middle East should understand as they venture into the exciting work of content production.

## 1. **Originality forms the core of copyright**

For copyright to exist in a work, it must be original. This underlies the protection. If a person takes a

photograph of a fence, they cannot then stop another person from also taking a photo of a different fence, or even that same fence.

It is, after all, simply a photograph of a fence. An excellent example of this was a case that arose between two cook book authors in the United States. One lady wrote a children's recipe book, based on the idea of hiding vegetables in the food. Another author sued her, claiming that this was her idea. However, the judge said the whole thing failed for lack of originality; mums have been doing this for generations! This case also nicely pointed out that placing a photo of a carrot next to a photo of carrot soup is not going to be considered original.

2. **An idea is not copyrightable, and in fact nor are a few other things** Copyright covers the substantial work, not the idea behind a substantial work. Clients regularly seek advice about the protection of pitches for advertising work for example. Our view is that they can protect the images that they use to sell the pitch, and possibly some of the more developed content that is contained in the pitch, such as a storyboard or storyline. But the idea itself - 'let's show the sports car driving over the roof of the Dubai cricket ground' is not going to be developed enough to attract copyright.
3. **Creation is the basis for copyright** Copyright exists in a work as soon as a work is created in a tangible form; it is automatic. It is owned by the person who created it (unless a binding contract says otherwise). Many people were amused by the case raised in relation to a photograph that was taken by Naruto, a crested macaque monkey from Indonesia. PETA took on the case for Naruto, arguing that, as Naruto created the photo, he should be able to own it. Unfortunately, the judge did not agree, stating that the Copyright Act had no provision for non-human creation. But all human creators will be the owners of the work in the first instance. In some jurisdictions (UAE and USA to name but two) a creator can register copyright works with the authorities however, this does not add to or alter the nature of the copyright that the creator already acquired when the works were created. Do get advice if you are considering registration as, in some cases, the registration can be important to the protection of the work against future infringements.
4. **Decisions rest with the copyright owner** With copyright works, the creator is the one who decides if a copy can be made, if it can be publicly shown, if it can be licensed or altered and re-sold to others. Any dealing with a copyright work needs permission from the owner. The owner can, of course, sell (known as assigning) their right to another party and in that case, they also relinquish their ability to make decisions as to what happens to their copyright. Always make sure you are dealing with the current owner of any copyright work.
5. **Employers might not always own what their employees create** Some countries have what is known as a 'work-for-hire' provision which deems any work created by an employee to be the property of the employer, where it was created as part of the employee's normal workplace role. So, by way of example, if an employee designs a logo for a client, under this regime, the ownership would rest with the employer, and the employer can easily pass the rights in the logo to the client. However, not all countries have such provisions and in such countries (of which there are several in the Middle East), a contract with each and every employee is vital in order to ensure that copyright passes to the party that should rightfully own it. If this is not done, then the employer cannot pass the rights to the client; they will still be owned by the employee.
6. **Consents, licence, permissions and fees** As mentioned above, only the copyright owner can give permission to do anything with their copyright work. A party may have physical ownership of materials but this does not mean that they have any right to deal with the work itself. Given that a party must get permission from the copyright owner in order to use their work in any way, this means that consents and licences must be sought, and inevitably fees must be paid. A website owner cannot licence the right to use a photograph that is uploaded to the site by someone else. A gallery cannot licence the right to copy a painting that hangs on its wall. An ad agency cannot licence the use of someone else's music. There are exceptions to the need to licence content for example those times when you do not have to ask for permission. These vary from country-to-country but an example that applies in most countries is the reporting of news; if a singer dies, for example, you can play clips of their songs when reporting that news. Once that story ceases to be newsworthy (and that can be in as little as 24 hours) you cannot use the song without consent from the owners.
7. **Copycats and soundalikes** For someone to make a copy, they need to have taken your work and

actually made a copy of it. In the 80s, Annie Leibovitz took a photo of Demi Moore whilst Moore was pregnant. Paramount Pictures, the producers of 'The Naked Gun', decided to replicate the pose with another pregnant woman, adding the head of its star Leslie Nielsen. It created a lot of publicity and attracted a lawsuit from Leibovitz. However, in court Leibovitz failed in her attempt to have the alleged infringement of the Demi Moore photograph recognised, as the judge held that the photo had been created by someone else. Further, the stance of the woman, the theme and the lighting were all different. Legal commentary on this decision has been mixed though so it is advisable to consult with expert professionals before undertaking any such activities with other people's work.

8. **What constitutes an infringement?** Any use that is not undertaken with consent and where a legal basis for use does not exist (and as we noted above, this varies from country to country) can amount to infringement. It is true that everyone has a story about getting away with taking someone else's copyright works. Rumours abound about what can and cannot be done with copyright works. It is not, for example, true that you can use "less than 10 per cent" without consent. A judge will be more likely to consider whether you have taken the heart and soul of a work, not whether you have taken a certain percentage. In other cases one may take a few small, but key, elements and be found to be infringing. Similarly, do not think that, because you give the final product away for free, that you are not infringing. Collecting images of work from Andy Warhol on a website that anyone can access for free is still breaching the copyright in those works.
9. **Infringing costs money** Do not, unless you are prepared to pay an enormous fee, use work from well-known and powerful brands without first obtaining consent. Disney will not thank you for using Winnie the Pooh, even if you do it in context with the brand! It is important to note that owners of copyright will double their usual licensing fee (at least) when they find infringements. Courts have been known to award up to four times the usual licence fees as damages, so infringement can be costly.
10. **Watching your own rights** It is important to keep an eye on your own valuable intellectual property as well. It is advisable to undertake regular searches to ensure that an obscure ad campaign in Mexico is not using your work. From a business perspective, licensing is a money making business and legitimate covers, copies and adaptations can make good money; the American version of The Office had much greater success than the original UK version and in doing so, made Ricky Gervais a rich man. Kylie Minogue had a bigger hit with Locomotion than Little Evie.

## Conclusion

Clearing copyright and protecting copyright makes good business sense. Always assume that clearance is required and budget for it accordingly. If you think you might have the right to use it under an exemption at law, check with a professional to ensure that letters do not start coming in from lawyers; and if you do get a lawyer's letter, take it to a lawyer to obtain a view as to how to proceed. Early legal advice can be instrumental in containing the potential damage payment and assisting in managing the reputational fallout.

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