

Protecting copyright of Audiovisual work in Cinematic, TV and Radio works in Jordan

Samer Al Zuriekat - Partner, Head of Litigation - Jordan - Litigation / Insurance / Employment and Incentives / Legislative Drafting / Real Estate / Construction and Infrastructure
s.alzuriekat@tamimi.com - Amman

April 2011

In today's modern world, it has become a common phenomenon for news broadcasts, cinematic and documentary films, television series and the like to broadcast works containing copyrighted material belonging to others; further, it is also similarly common for many to publish photographs, articles without first obtaining the consent of their owners. The question which naturally arises is; are all such occurrences considered breaches of law? And if so, what penalties do such acts entail?

The starting point to understand is that the Jordanian Visual and Audio Media Law Provisional Law No. 71 of 2002 has made deference to and respect of copyrights belonging to others, one of the most important obligations which persons with a broadcasting license must abide by. Article 20 of the aforementioned Law provides that (rough translation) "licensed persons are obliged to respect the literal, artistic and intellectual rights of others." Further, it is common practice for the license between such licensed persons and the Jordanian Audiovisual Media Commission (the "Commission") to contain further provisions to that effect.

The Visual and Audio Media Law provides a number of penalties for contravening the aforementioned obligations as follows; Article 29 of the Law provides that a licensed person is penalized if he broadcasts or re-broadcasts work in contravention of the conditions of his licensing agreement (other than those relating to employment matters) or any of the obligations provided for by this Law, by a fine of not less than 10,000 JOD and not exceeding 50,000 JOD. Further, he is obliged to compensate any damages arising as a result of such a breach. In addition, the Law provides that the Commission is entitled to suspend his broadcasting rights for a period not exceeding 2 months for the same. The penalty is multiplied if the contravention is continuing or repeated. Further, the Commission may, upon the referral of the relevant Minister and in accordance with the recommendation of the director of the Commission terminate the offender's license.

The aforementioned penalties are further supplemented by the Jordanian Copyright Law No.22 of 1992 (as amended). The Copyright Law, however, does not include a specific section dealing with cinematic, TV and radio works; rather, the protection so granted to their authors was implicitly provided for in protections provided to theatrical, artistic and musical works. For instance, the Copyright Law grants the author of works the exclusive right to broadcast and publish his work, as well the right to solely determine the time at which he wishes to do the same. The Copyright Law, however, exempted certain works from such protection, including but not limited to written or broadcast news, works which are part of the public domain, and the like; unless personal creativity or effort was used to create or organize such works. Further, the Copyright Law allowed the broadcasting of such works for certain educational, non-commercial purposes.

It is worth noting that the aforementioned laws permit official television and radio broadcasters to make and keep for a period not exceeding one year (unless the author agrees to extend the same) a temporary

copy of certain works which they are licensed and/or permitted to broadcast, provided that they do not keep more than one copy of any such work.

As regardsWith regard to photographic works, however, the aforementioned laws allow photographers to take and broadcast pictures of places, facts and/or events which have been previously photographed. In such a case, the new photographs are considered original works belonging to the photographers. The photographers, however, are not entitled to publish their photographs if the pictures include persons who have not consented to display or publish the photos, unless the picture taken relates to a public accident or news, or if the relevant persons are officials or celebrities, or if the public authorities allow the publication of the same. The photographer must, however, ensure that the photographs do not touch upon the integrity, honor or social standing of the person so photographed. Please note that the above provisions apply equally to live photographs, as the aforementioned Copyright Law applies to all photographs irrelevant of the means for capturing them, and irrelevant of their type.

The Copyright Law grants similar exclusive broadcasting rights to the owner of the broadcasting/publishing right. The critical issue here is that it grants certain persons the right to broadcast events without granting others the same right. The aforementioned laws have dealt with this issue by differentiating between works which are merely reporting of news events or other such works in the public domain on the one hand, and between works which arise as a result of the personal creativity or effort of the author/broadcaster. The former only can be re-broadcast, without the need to obtain the consent of their original broadcaster, and in certain situations, without the need to cite the source of the original broadcast. Thus, while the author cannot prevent others from broadcasting simple recordings of an event unfolding, exposés, critical journalism and the like can be copyrighted.

While the difference outlined above may seem arbitrary, the fact remains that the government needs to balance the rights of authors and/or licensed persons to protect their works against the greater right of the public to information; and which they have done, by ensuring that one cannot prevent others from broadcasting news events.

Further, it is important to note that the fact that the aforementioned laws have not extended their protection to include broadcasting of news events does not mean that such works are without any protection. Rather, the authors or broadcasters of such works retain the right to protect their works, through reliance on various anti-competition laws in Jordan, certain licensing arrangements and the like; albeit within certain limited situations.

Finally, it is important to note that a single work may have more than one author, or else more than one person (whether as author, performer, broadcaster or the like) may have rights to a single work. The person or persons whose approval must be obtained in order to publish the work depends firstly on the type of work in question, and secondly on the persons' specific rights to the work. Thus, for instance, while generally speaking the approval of all the authors of the work must be obtained to publish a certain work, the Law provides that where the work is divisible, an author cannot prevent his co-author from publishing his part of the work, provided that this does not contravene his rights or the rights of any other author. A further example can be found as regards cinematic works, where the producer of the work can for the period for which he is granted the permit, contract with others to make use of the work, without contravening the rights of the authors, unless otherwise agreed.