



Defects in the Moral Rights Regimes of the Countries of the Middle East

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Received 13 September 2022 | Accepted 7 October 2023 |

Published online 8 November 2023

Abstract

This article focuses on the protection of moral rights in Egypt, Israel, Lebanon, and the UAE. While moral rights are recognised in the four jurisdictions subject to this study, the level of protection is unsatisfactory. This article analyses the many defects surrounding the subsistence and exercise of moral rights and makes a host of suggestions to enhance the level of protection granted under national laws.

Keywords

exercise – Middle East – moral rights – right of integrity – right of paternity – right of withdrawal from circulation – right to divulge the work – subsistence

1 Introduction

In addition to economic rights, the copyright and *droit d'auteur* systems grant authors a bundle of moral rights. These rights protect the non-pecuniary interests of the creative author and as such, in their most comprehensive form, comprise the rights of divulgement, paternity, integrity, withdrawal from circulation and access. While moral rights are recognised in the national laws of the countries of the Middle East, the level of protection granted is unsatisfactory.

Unfortunately, little has been written on moral rights in the Middle East. As a result, there is dearth of research on the deficiencies surrounding the characteristics, subsistence, scope and exercise of moral rights in the region. This article modestly aims to fill this gap by discussing the existing defects and makes a number of suggestions to improve the protection of moral rights in the Middle East.

1.1 *Scope and Structure*

From the outset, it should be noted that this article is concerned solely with author's rights.¹ Neighbouring rights are excluded from the discussion and are referred to briefly only where necessary to clarify the position with regard to author's rights. Similarly, it should be noted that trying to cover all the countries of the Middle East may result in a superficial analysis of the topic. Therefore, this article focuses on four jurisdictions: Egypt, Israel, Lebanon and the United Arab Emirates (UAE).

Egypt, as discussed in Section 2, has been the most influential jurisdiction in shaping the *droit d'auteur* or the author's rights laws of the countries of the region. As for Lebanon, it was not only the first country in the region to grant statutory protection to moral rights but has also been the most loyal follower of the French approach, which is widely recognised as the standard *par excellence* for the protection of moral rights. Thus, out of all the Arabic-speaking countries of the Middle East, Lebanon seems to have been the only jurisdiction that completely managed to escape the overreaching influence of Egyptian law.

In contrast to all other countries in the Middle East, which are mainly *droit d'auteur* jurisdictions, Israel follows the copyright system. Therefore, in relation to other countries in the region, Israel has developed its own unique approach to moral rights protection.

While the UAE, to a certain extent, still follows the Egyptian model, it has recently started to develop its own approach. The new Federal Author's Rights Act of 2021 (hereinafter FARA) seems to have borrowed several features from the copyright systems of the Anglo-Saxon tradition.² For example, the provisions governing authorship and ownership of commissioned and employees' works reflect a hybrid between the *droit d'auteur* and the copyright systems.³ Furthermore, Dubai and Abu Dhabi are currently investing heavily in the

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- 1 In the context of the *droit d'auteur* in the Middle East, the Arabic term "author" is normally used in the singular and hence the terminology "author's rights/author's rights law".
 - 2 Federal Law No. 38 for 2021, for the Protection of Author's Rights and Neighbouring Rights. Enacted on 20th of September 2021 and came into force on 2 January 2022, available online at <https://wipolex.wipo.int/en/text/584938>.
 - 3 See Article 28 (1), (2) and (3) of FARA.

creation and dissemination of copyright works and thus it will not be long before they become regional cultural hubs.⁴ Undoubtedly, this will have a positive impact on the author's rights law of the UAE, which in the near future could overtake other national laws and become the most dominant system for the protection of literary and artistic works in the Middle East.⁵

This article is divided into six sections. Section 2 examines the origin and development of the protection of moral rights at the national and international level. This is followed by a brief discussion of the muddled characteristics of moral rights in the Middle East in Section 3. While Section 4 discusses the recognised rights and the uncertainty surrounding their scope of application, Section 5 examines the lack of equality among the beneficiaries of protection. Section 6 discusses the duration of moral rights and the inconsistency surrounding their exercise *post mortem auctoris*.

2 Origin and Development of the Protection of Moral Rights

Some commentators have attempted to trace the origin of moral rights to Roman law.⁶ However, the lack of any supporting evidence renders this proposition questionable. As correctly pointed out by Liemer: "it is hard to find genuine precursors to *le droit moral* in the law of ancient Rome ... no unbroken line of law can be found connecting ancient Rome to the modern law of *le droit moral*."⁷ Furthermore, as Adeney put it "what was at issue in the era before printing was not moral rights in the sense in which the term has later come to be used in legal language."⁸ Therefore, reference to moral rights under Roman law could be perceived, at best, as ethical aspiration that remained outside the sphere of positive law.

4 For the investment made by the UAE government in the copyright industries, see Media in the UAE, <https://government.ae/en/media/media#films> (accessed 11 August 2022). For Dubai's creative economy strategy, see <https://u.ae/en/about-the-uae/strategies-initiatives-and-awards/local-governments-strategies-and-plans/Dubai-Creative-Economy-Strategy#creative-fields> (accessed 11 August 2022).

5 Following the customary practice within the field of comparative copyright law, the term "literary and artistic works" is used here as a shorthand for all copyright subject matter.

6 See the intervention by the Italian delegate at the Rome Revision Conference of the Berne Convention of 1928, *Actes de la Conférence réunie à Rome, du 7 mai au 2 juin 1928* (Berne: Bureaux Internationaux Réunis pour la Protection de la Propriété Intellectuelle 1929) 316.

7 S.P. Liemer, 'On the Origins of le Droit Moral: How Non-Economic Rights Came to be Protected in French IP Law', *Journal of Intellectual Property Law* 19 (2011): 65–115, at 75.

8 E. Adeney, *The Moral Rights of Authors and Performers: an International and Comparative Analysis* (Oxford: Oxford University Press, 2006), 10.

It was not until the nineteenth century that moral rights were recognised as part of the legal culture in Europe.⁹ This stemmed from the increased social importance of the author, who became to be perceived as a genius.¹⁰ This social ascendancy of 'author status' coincided with another significant development within legal circles that led to the recognition of moral rights, namely the expansion of the natural rights theory to encompass the author's personality.¹¹

Expanding the catchment area of the natural rights theory to cover the author's personality stemmed from the belief that the work is an extension of the author's personality. Accordingly, it was argued that the law should maintain the strong bond between the author and the work and protect the personality of the author as expressed in the work. This was to be achieved through *droit moral* or moral rights.¹²

While German scholars are normally credited for creating comprehensive, and often competing, theories for the protection of moral rights,¹³ it was the French judiciary that first applied moral rights in the nineteenth century.¹⁴

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- 9 Cheryl Swack argues that notwithstanding the absence of moral rights protection in Europe during the sixteenth century, by sheer force of reputation, Michelangelo Buonarroti (1475–1564) enjoyed similar protection to that currently enjoyed by authors under the doctrine of *droit moral* or *droits moraux*. See Cheryl Swack, 'Safeguarding Artistic Creation and the Cultural Heritage: a Comparison of Droit Moral between France and the United States', *Columbia Journal of Law and the Arts* 22 (1998): 361–406, at 368.
- 10 For the development of the author's status, see Martha Woodmansee, 'The Genius and the Copyright: Economic and Legal Conditions of the Emergence of the Author', *Eighteenth Century Studies* 17 (1984): 425–448, at 428 *et seq.*
- 11 For the natural right theory pre-nineteenth century, see B. Tierney, *The Idea of Natural Rights: Studies on Natural Rights, Natural Law, and Church Law 1150–1625* (Cambridge: Eerdmans Publishing, 2001), 43 *et seq.*
- 12 The term moral rights was first coined by the French scholar André Morillot in his seminal work '*De la personnalité du droit de publication qui appartient à un auteur vivant*', *Revue critique de législations et de jurisprudences* (1872): 29–50, at 31; retrieved from L. Bently & M. Kretschmer (eds), *Primary Sources on Copyright (1450–1900)*, available online at www.copyrighthistory.org. However, the notion of moral rights under French law seems to have been developed earlier by Alfred Bertauld, *Questions pratiques et doctrinales du Code Napoléon* (Paris: Librairie générale de de jurisprudence, 1869), 183–184.
- 13 For the influence of Fichte, Kant and the nineteenth century jurists Joseph Kohler and von Gierke on the evolution of moral rights, see Adeney, *supra* note 8 at 25–29; P. Kamina, 'Author's Rights as Property: Old and New Theories', *J. Copyright Society of the USA* 48 (2001): 383–448, at 414–422; and Swack, *supra* note 9 at 370–374.
- 14 *Billecocq v Glendaz*, Trib. Civ. Seine, 17 August 1814, [unreported] cited in J. Brown-Pedersen, 'The Inadequacy of UK Moral Rights Protection: A Comparative Study on the Waivability of Rights and Recontextualisation of Works in Copyright and *Droit D'auteur* Systems', *LSE Law Review* 3 (2018): 115–128, at 119. See also, *Marle c Lacordaire*, Cour de Lyon, 17 July 1845, D.1845.2.128; *Clésinger et Lanevville c Gauvain*, Trib. Corr. Lyon, 5 January 1850, D. P. 1850. 3. 14; reversed on other grounds, Cour d'Appel de Paris, 6 April 1850, D. P. 1852. 2. 159.

For a long while, this judge-made-doctrine evolved in France without a unified underlying theory,¹⁵ which led Strömholm to describe the development of moral rights as a result of “strange interaction which takes place between, on the one hand, French practical solutions — with a weak or non-existent theoretical basis — and, on the other hand, German theorizing, which develops, for a long time, with no or hardly any support in legislation and case law”.¹⁶

Although France and Germany belong to the *droit d'auteur* system, as opposed to the copyright system that is mostly prevalent in the English-speaking world, each follows a different school of thought for the protection of moral rights. Under the monist approach of Germany, economic and moral rights live and die together and therefore have definite duration of seventy years *post mortem auctoris* (*pma*).¹⁷ However, under the dualist approach of France, moral rights and economic rights are treated as separate and independent sets of rights. As a result, while economic rights last for seventy years *pma*, moral rights enjoy perpetual protection.¹⁸ Furthermore, as Professor Mira Sundara Rajan correctly pointed out “in practice, dualism means that limitations on economic rights need not apply to moral rights”, which preserves the pre-eminence of moral rights.¹⁹

At the international level, the Berne Convention for the Protection of Literary and Artistic Works 1971 [hereinafter the Berne Convention] was the first multilateral treaty to specifically recognise moral rights. Although neither the original text of 1886 nor that of the 1908 Berlin Revision mentioned moral rights, the International Institute of Intellectual Cooperation and the

15 Surprisingly, while the French legal system stresses the importance of legislation, the moral rights doctrine was originally entirely judge-made, see J.M. Dine, ‘Authors’ Moral Rights in Non-European Nations: International Agreements, Economics, Mannu Bhandari, and the Dead Sea Scrolls’, *Michigan Journal of International Law* 16(2) (1995): 545–582, at 550.

16 S. Strömholm, ‘Droit Moral — The International and Comparative Scene from a Scandinavian Viewpoint’, *Scandinavian Studies in Law* 42 (2002): 218–253 at 225, available online at <http://www.scandinavianlaw.se/pdf/42-14.pdf> (accessed 30 May 2022).

17 For the origin of the “monism theory”, see S. Strömholm, *Le droit moral de l'auteur, en droit allemand, français et scandinave, avec un aperçu de l'évolution internationale, étude de droit compare, t. 1, l'évolution historique et le mouvement international* (Stockholm: P.A. Norstedt & Söners Förlag, 1967), 205 *et seq.*

18 Although this theory seems to have been developed by the French judiciary in the late nineteenth century, it only gained statutory recognition with the first codification of moral rights in 1957, see Loi No. 57–298 du 11 mars 1957 sur la propriété littéraire et artistique, JO, 14 mars 1957, p. 2723. For a different view that the Book Trade Regulations of 1777 had introduced a right that may represent the first statutory recognition of moral rights in France, see M.T.S. Rajan, *Moral Rights* (Oxford: Oxford University Press, 2011), 53–55.

19 Rajan, *ibid* at 67.

Association Littéraire et Artistique Internationale [ALAI] seem to have pressed the Italian government to table a proposal for the recognition of moral rights at the 1928 Rome Revision Conference. After a contentious debate between the *droit d'auteur* and the countries belonging to the copyright system, which sometimes created conflict among the individual members of the former group, Article 6*bis* was adopted by the Rome Revision Conference.

This provision, together with its amendment in Brussels 1948, Stockholm 1967 and Paris 1971,²⁰ successfully manages to accommodate the interests of three different groups of countries.²¹ In order to accommodate the interests of the copyright systems of Australia and the UK, which had traditionally been hostile to the notion of moral rights, Article 6*bis* sacrificed the rights of divulgation and withdrawal from circulation and ended up recognising only the right of paternity and that of integrity.²² Similarly, in order to accommodate the interests of the monist countries, with their definite term of protection, the provision does not require national laws to protect moral rights beyond the duration of economic rights. As for the dualist countries, Article 5 of the Convention makes it clear that all the provisions of that instrument, including that of Article 6*bis*, constitute a minimum standard of protection. Therefore, members of that group are at liberty to offer a higher standard than that stipulated under the Convention and to grant moral rights perpetual protection.

20 For the evolution of Article 6*bis* of the Berne Convention from the Rome Revision Conference of 1928 to the Paris Revision Conference of 1971, see S. Ricketson, *The Berne Convention for the Protection of Literary and Artistic Works: 1886–1986* (London: Kluwer, 1987), 455–476.

21 Article 6*bis* of the Berne Convention for the Protection of Literary and Artistic Works (1971) states: "(1) Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honour or reputation.

(2) The rights granted to the author in accordance with the preceding paragraph shall, after his death, be maintained, at least until the expiry of the economic rights, and shall be exercisable by the persons or institutions authorized by the legislation of the country where protection is claimed. However, those countries whose legislation, at the moment of their ratification of or accession to this Act, does not provide for the protection after the death of the author of all the rights set out in the preceding paragraph may provide that some of these rights may, after his death, cease to be maintained.

(3) The means of redress for safeguarding the rights granted by this Article shall be governed by the legislation of the country where protection is claimed."

22 It is worth noting that the right of access did not attract much attention at the international level and thus was not the subject of any meaningful discussion during the various Revision Conferences of the Berne Convention.

In the context of the Middle East and by virtue of its 1924 Decree, Lebanon was the first country in the region to grant statutory recognition to moral rights.²³ This well-structured Decree, which was issued by the French Administration, devoted the whole of its Seventh Book to *droit d'auteur*,²⁴ which eased Lebanon's accession to the Berne Convention later that year.²⁵ Surprisingly, this Decree, with a couple of amendments, remained in force for seventy-five years. However, in order to comply with TRIPS and join the WTO, Parliament passed the new Lebanese Law for the Protection of Literary and Artistic Works in 1999 (hereinafter LLLAW).²⁶

Out of all the countries of the Middle East, Lebanese law remains the most heavily influenced by French law and as a result French legal principles and rulings may still be cited before Lebanese courts.²⁷ Similarly, the little literature that exists on moral rights in Lebanon frequently makes use of French authorities. Unsurprisingly, therefore, and as discussed further below, the minor defects of moral rights protection under French law seem to have found their way into the author's rights system of Lebanon.

Compared to Lebanon, moral rights gained statutory protection relatively late in Egypt. It was not until 1954, in its first Author's Rights Law, that the Egyptian legislature recognised moral rights.²⁸ However, according to the Cairo Court of Appeal, moral rights, or at least the right of paternity, had enjoyed perpetual protection even before the enactment of the 1954 Law.²⁹ Therefore, it could be argued that the statutory recognition of the right of paternity under the 1954 Law was of declaratory, as opposed to constitutive, nature. With the enactment of the Egyptian Intellectual Property Code of 2002 (hereinafter EIPC), which repealed the 1954 Law, the provisions governing moral rights

23 Articles 145 and 146 of the Arrêté portant règlementation des droits de propriété commerciale, industrielle, littéraire, artistique, No. 2385, 7 janvier 1924, [1924] DA 99.

24 Although the Decree of 1924 was the first to recognise moral rights, statutory protection for literary and artistic works goes back to the Ottoman Decree of 1872, see G. Rabah, *Qanon Hemait El Milkia El Fikria Wa El Fania El Gadid*, 2nd edn (Beirut: Nofel, 2003) 33.

25 For the history of copyright law in Lebanon, see M. El Said, *Intellectual Property Law in Lebanon* (Alphen aan den Rijn: Kluwer Law International, 2012), 35–39.

26 Law No. 75 for the Protection of Literary and Artistic Works, enacted on 3 April 1999, 18 *Official Journal* (13th April 1999).

27 M. Nordanskog, 'The Legal System of Lebanon: From French Influence to Globalisation and European Community Law' (2002), available online at <https://www.lunduniversity.lu.se/lup/publication/1560682>.

28 Enacted on 24th June 1954, published in 49 bis *El Waqae* of 24th June 1954.

29 Cairo Court of Appeal, Nos. 280 and 349, Vol. 74, 18 November 1958.

are now systematically and methodically arranged under Book Three of the said Code.³⁰

Although Lebanese law was the first to offer statutory protection to moral rights in the region, the author's rights law of Egypt, including its moral rights regime, has been the most influential system for the protection of literary and artistic works in the Middle East. This arose mainly for the following four reasons. First, Egypt was the first country in the Middle East to develop comprehensive national codes, covering substantive and procedural laws. From these codes, most Arabic-speaking countries borrowed while developing their own laws. For instance, the Syrian Civil Code of 1949 is a faithful copy of its Egyptian counterpart. Secondly, as Nathan Brown correctly pointed out, the Egyptian courts structure was used as a model in almost every other Arabic-speaking country.³¹

Thirdly, Egyptian judges are often seconded to serve in Arabic-speaking countries that do not have enough qualified national judges, such as Kuwait and UAE. Therefore, while applying the laws of the jurisdiction venue to which they are seconded, they naturally import Egyptian legal principles to the host country.³² Fourthly, the impact of Professor Sanhuri. Arguably, no one person had influenced the development of the laws of the region more than Sanhuri. He co-drafted the Egyptian Civil Code and after falling out with the leaders of the *coup d'état* of 1952 offered his expertise in drafting civil and commercial codes to other countries in the region.³³ As a result, the civil codes of the Arabic-speaking countries of the Middle East were described, by an eminent Lebanese scholar, as "the Sanhuri Codes".³⁴

As a result of Sanhuri's work, legal principles, and even legal disciplines, that had developed in Egypt found their way into the national laws of other countries in the Middle East.³⁵ One of these legal disciplines was author's rights law,

30 See Articles 143–146 of the IP Code, Law No. 82 of 2002, *22bis al Jar'idah al-Rasymah* (2 June 2002).

31 N. Brown, 'Law and Imperialism: Egypt in Comparative Perspective', *Law & Society Review* 29 (1995) 103–126, at 106.

32 In some other countries, like Yemen, a great number of national judges and academics were trained in Egypt.

33 It is worth noting that Professor Sanhuri's involvement in drafting the laws of other countries in the region goes back to 1943, where he became a member of the drafting committee of the Iraqi Civil Code which was enacted in 1951.

34 N. Saleh, 'Civil Codes of Arab Countries: The Sanhuri Codes', *Arab Law Quarterly* 8 (2) (1993): 161–167, at 161.

35 For a general discussion of Sanhuri and his influence, see G. Bechor, *The Sanhuri Code, and the Emergence of Modern Arab Civil Law 1932 To 1949* (Leiden: Brill, 2007) and E. Hill, 'Al-Sanhuri and Islamic Law: The Place and Significance of Islamic Law in the Life

in which Sanhuri's expertise was unparalleled. Not only was he a co-drafter of the Egyptian Author's Rights Law of 1954, on which a number of countries in the region based their own laws, but also his chapter on author's rights of his ten-volumes treatise is, arguably, the most cited work on the protection of literary and artistic works in the Arabic-speaking countries of the Middle East.³⁶ Thus, it was unsurprising that the Egyptian model for the protection of literary and artistic works, including moral rights, has been followed by a great number of countries in the region such as Bahrain, Kuwait, Libya, Saudi Arabia, Syria, Yemen and, to a certain extent, the UAE.

Unlike the other jurisdictions subject to this study, the UAE is a federal system. As such, the Constitution sets out the division of power between the Federal Government and the individual Emirates. Similar to the position adopted under Article 1 (8) of the US Constitution, the pre-emption clause of Article 121 of the UAE Constitution reserves to the Federal Government the exclusive jurisdiction to promulgate legislation for the protection of literary and artistic works.³⁷ Consequently, individual Emirates are specifically prohibited from enacting their own author's rights laws.

By enacting its first federal law for the protection of literary and artistic works, the UAE preferred to follow the Egyptian model and hence the author's rights system. Thus, the moral rights provisions contained in its first UAE Author's Rights Law of 1992 seem to have been derived indirectly from the old Egyptian Law of 1954.³⁸ However, in order to join the WTO, with its TRIPS requirement of compliance with the substantive provisions of the Berne Convention, the UAE enacted its Federal Author's Rights Act of 2002.³⁹

To maximise the contribution of the creative industries to the UAE economy, the Federal government has recently embarked on a major overhaul of

and Work of 'Abd al-Razzaq Ahmad al-Sanhuri, Egyptian Jurist and Scholar, 1895–1971 [Part II], *Arab Law Quarterly* 3 (2) (1988): 182–218, 202 *et seq.*

36 A. Al-Razzaq Al-Sanhuri, *Haq El Milkia*, 8 *Al-Waseet Fi Sharh Al-Qanun Al-Madani* (Cairo: Dar El Nahda El Arabia, 1961), 282–437. This article references Sanhuri's work as updated and edited by M.M. El Feqy, 8 *Sanhuri, Al Waseet Fi Sharh El Qanun El Madani* (Cairo: Dar El Nahda El Arabia, 1991).

37 UAE Constitution, signed on 18 July 1971, available online at https://www.constituteproject.org/constitution/United_Arab_Emirates_2004.pdf.

38 For a view that a limited protection for authors of creative works had existed under Federal Law No. 15 of 1980, which regulated printed matter and publishing in general, see P.W. Hansen, *Intellectual Property Law and Practice Of The United Arab Emirates* (Oxford: Oxford University Press, 2009), 171.

39 The UAE Author's Rights and Neighbouring Rights Act, Federal Law No. 7 for 2002 [1 July 2002], 383 *Official Gazette*, Year 22 (4 July 2002).

the author's right law.⁴⁰ This, in turn, led to the enactment of the new FARA of 2021.⁴¹ While FARA seems to have followed the structure of Egyptian law, it still borrowed from the copyright systems. Consequently, as discussed below, the substantive law provisions governing moral rights left much to be desired.

In contrast to Lebanon, Egypt and the UAE, Israel follows the copyright system for the protection of literary and artistic works. This is mainly because, on the establishment of Israel in 1948, much legislation deriving from the British mandate was kept in force; including the Copyright Act 1911 and the Copyright Ordinance 1924.⁴² Predictably, therefore, the legislature had been reluctant to incorporate moral rights into Israel's copyright law. Even after joining the Berne Convention in 1950, Israel was rather unenthusiastic about implementing the moral rights provisions of that instrument in its national law.⁴³ This, as pointed out by Oron, led the Supreme Court to echo the views held by some scholars and call for legislative intervention.⁴⁴

In response, the legislature intervened in 1981 and introduced moral rights in the form of an amendment to the Copyright Ordinance of 1924.⁴⁵ Although this amendment could have been used by the legislature to recognise a comprehensive set of moral rights, it failed to do so. In actual fact, the amendment adopted a minimalistic approach, whereby only the two moral rights specifically recognised under the provisions of the Berne Convention were incorporated into Israel's copyright law, i.e., the right of paternity and that of integrity.

Notwithstanding its minimalistic approach, the Israeli legislature should be given credit for granting statutory protection to moral rights at a time where most copyright systems, including the UK and the US, were still reluctant to do so.⁴⁶ However, as discussed below, neither the Amendment of 1981 nor the

40 See, *UAE Adopts Largest Legislative Reform in its History*, available online at <https://wam.ae/en/details/1395302997239>.

41 Federal Law No. 38 for 2021, for the Protection of Author's Rights and Neighbouring Rights. Enacted on 20th of September 2021 and came into force on 2nd of January 2022, available online at <https://wipolex.wipo.int/en/text/584938>.

42 See M.D. Birnhack, N.J. Wilkof and J. Weisman, 'Israel', in P.E. Geller, M.B. Nimmer and L. Bently (eds) *International Copyright Law and Practice* (New York, NY: LexisNexis, 2017), ISR-6.

43 The Berne Convention Copyright Order 1953, *Kovetz Hatakanot* (Collection of Regulations) 384, 818 (4 March 1953).

44 Gadi Oron, 'Israel' in G. Davies and K. Garnett (eds.), *Moral Rights*, 2nd edn. (Oxford: Oxford University Press, 2016), 895.

45 Law to Amend the 1924 Copyright Ordinance 1981, *Reshumot*, Issue 1029, at 300 (published 28 May 1981).

46 It was not until 1988 and 1990 that the rights of paternity and integrity gained statutory recognition in the UK and the US respectively, see sections 77–84 of the UK Copyright,

new Copyright Act of 2007 seems to reflect a full-hearted commitment by the legislature to the notion of moral rights.⁴⁷

3 Muddled Characteristics Of Moral Rights

A major defect in the four jurisdictions subject to this study is the relatively sparse literature devoted to author's rights/copyright in general, and the nature of moral rights in particular.⁴⁸ Arguably, this renders the moral rights regimes of the countries of the region unequipped to deal with modern techniques of creating copyright works using artificial intelligence, new copyright subject matter, such as electronic databases, or new means of disseminating copyright works, including video streaming and hyperlinking.⁴⁹

3.1 *Personality Rights*

Notwithstanding the absence of extensive studies on the nature of moral rights, it could be argued that in all four jurisdictions the work is perceived as the author's spiritual child.⁵⁰ As correctly pointed out by the Israeli Supreme Court in the context of the right of paternity: "*a person is entitled to have his name attributed to the 'children of his spirit'. His spiritual relationship to these is akin, almost, to his relationship with his offspring*".⁵¹ Put differently, a work is regarded as an extension of its author's personality, which may explain the prevailing logic of classifying moral rights as personality rights.⁵²

Designs and Patents Act 1988 and The Visual Artists Rights Act 1990, Pub. L. 101-650 ("VARA"), incorporated into sections 101, 106A and 113 of the US Copyright Act.

47 The Copyright Act 2007 [5768-2007] came into force on 25 May 2008.

48 It seems that the first work to focus exclusively on the subject of moral rights in Arabic was that of A. El Rashid Mamoon, *Al Haq El Adby Lil Moalif* (Cairo: Dar El Nahda, 1978).

49 For the uncertainty surrounding the application of moral rights to modern technologies in general and software in particular, see S.G. Shalakamy, *El Haq El Adaby Li Mou'alef Barameg El Hasseb El A'ly* (Alexandria: Dar El Game'a El Gadida, 2008), 35-48.

50 A. El Mene'm El Badrawy, *Mabade' El Qanoun* (Cairo: Dar El Nahda, 1981), 319; K.M.K. Al Muharey, *Mouso'at El Milkia El Fikriah* (Dubai: Ma'had El Qanoun El Dawly, 2007), 80; S.S. Abd El Salam, *Al Hamaia El Qanoonia Li Haq El Mo'alif* (Cairo: Dar El Nahda El Arabia, 2004), 87.

51 *Eisenman v Qimron* [2000] Civil Appeals 2790/93 and 2811/93, P.D. 54(3) 817, cited in M.F. Makeen and G. Oron, 'The Right of Paternity under the Copyright Laws of Egypt and Israel', *European Intellectual Property Review* 33(1) (2011): 26-34, at 27.

52 For Egypt, see A. El Hamid El Menshawy, *Hemait Al Milkia Al Fikriah* (Alexandria: Dar El Fekr El Game'i, 2000), 46 and Y.A. El Gelil, *El Hemayah El Madania Wa El Gina'ia Lahaq El Mou'alef* (Alexandria: Munsha'et El Ma'ref, 2005), 35. For Lebanon, see N. Moghabgheb, *El Malkia El Adabia Wa El Faniah* (Beirut: Manshourat El Halaby El Hoquqia, 2000), 174.

Since moral rights are recognised as personality rights, it is unsurprising that in all four jurisdictions subject to this study moral rights and economic rights are governed by separate legal provisions.⁵³ The pre-eminence of moral rights is reflected in the drafting of the EIPC and FARA where the moral rights provisions precede those governing economic rights. Curiously, the Lebanese legislature did not follow the drafting technique prevalent in the *droit d'auteur* countries and thus under the LLLAW moral rights provisions follow those governing economic rights.

Furthermore, in order to maintain the supremacy of moral rights, the laws of Egypt, Lebanon, and to a lesser extent that of the UAE, make it clear that in case of conflict between moral rights and economic rights, the former prevail.⁵⁴ In Israel, however, the legislature followed the drafting technique adopted in most copyright systems and accordingly the two brief provisions governing moral rights come after economic rights and no ascendancy of moral rights is recognised.⁵⁵

3.2 *Inalienable Nature of Moral Rights and Assignability*

At least in theory, the laws of the four countries subject to this study recognise the inalienable nature of moral rights.⁵⁶ Whilst in Israel the inalienability principle only prohibits assignments of moral rights, its catchment area in Egypt, Lebanon, and arguably also in the UAE, covers both assignments and waivers.⁵⁷ As such, moral rights in all four jurisdictions may pass to the heirs and/or legatees of the author but cannot be transferred *inter vivos*.⁵⁸

For the UAE, see K. Al Muharey, *supra* note 50 at 75 (footnote 80). Unlike most laws of the region, Israeli law explicitly recognises moral rights as personal rights, see Section 45 of the Copyright Act of 2007.

53 Since moral rights survive the death of the author, classifying them as a type of personality rights, or closely related to personality rights, was heavily debated in France. In the context of the Arabic-speaking countries of the Middle East, Kadfour Al Muharey argues that since moral rights protect the “intellectual personality” of the author, which normally outlives the “physical personality”, their survival beyond the natural life of the beneficiary is not inconsistent with the essence of the personality right theory, see Kadfour Al Muharey, *supra* note 50, at 75.

54 For a view that the LLLAW “equally recognizes the moral and financial rights of the copyrighted work”, see El Said, *supra* note 25, at 63.

55 See Sections 45 and 46 of the Copyright Act of 2007.

56 In the context of moral rights, the term “inalienable” could mean either non-assignable or non-assignable and non-waivable. This article attempts to accommodate both meanings throughout.

57 For the controversy surrounding waivers under UAE law, see *infra*, Section 3.3.

58 See Section 45 (b) of the Copyright Act of Israel, Article 22 of the LLLAW, Article 145 of the EIPC and Article 5 of FARA.

As reasoned by the District Court of Jerusalem, the non-transferrable nature of moral rights stems from the need to protect authors and to ensure that they do not give up invaluable assets at times of financial hardship.⁵⁹ Put differently, had the Law permitted the assignability of moral rights, it would have implicitly encouraged the wealthy to exploit destitute authors.⁶⁰

Notwithstanding the clarity of Article 22 of the LLLAW, which unequivocally prohibits assignment of moral rights, a curious decision by the Beirut court seems to imply that this prohibition could be subject to “narrow” exceptions.⁶¹ It is respectfully submitted that this decision reflects lack of understanding of the nature of moral rights in Lebanon and could only be the result of a hasty reading of the provisions and the *travaux préparatoire* of the LLLAW. Furthermore, this decision seems to have overlooked that permitting assignments of moral rights would not only be harmful to authors but could also cause irreversible damage to the public interest. This is especially so, since an assignment would normally allow the assignee to be falsely given the credit for the creation of the work and to amend or modify the work in a way that may betray the author’s expression, which in turn could have pernicious effect on the preservation of cultural heritage.

3.3 *Inalienable Nature of Moral Rights and Waivability*

In accordance with the inalienability principle, moral rights are unwaivable under the EIPC and the LLLAW. This prohibition against waiver is recognised as an imperative statutory rule reflecting public policy and therefore any agreement to the contrary is deemed null and void.⁶² Disappointingly, no such a rule is explicitly recognised under the old or new law of the UAE law.⁶³ As a result, two conflicting views seem to have emerged.

According to Kadfour Al Muharey since moral rights are subcategory of personality rights, no advance waiver could be valid.⁶⁴ *A contrario*, this view seems to indicate that, similar to the position adopted under Belgian law, *a posteriori*

59 *Cohen v Solomon* (Civil Case 9080/07) November 30, 2009 Jerusalem District Court [unreported], cited in Makeen and Oron, *supra* note 51, at 29.

60 Abd El Rashid Mamoon, *supra* note 48, at 250.

61 Interim Order No. 17/2004 of 19 January 2004, published in R.J. Sadr, *El Marga'a Fi Igt-Hadat El Melkiah El Fikriah* (Beirut: Sader, 2006), 503.

62 Article 145 of the EIPC and Article 22 of the LLLAW.

63 Notwithstanding the absence of an explicit imperative rule that renders any waiver null and void, Peter Hansen seems to criticise FARA for making moral rights unwaivable, see Hansen, *supra* note 38, at 188–189.

64 Kadfour Al Muharey, *supra* note 50, at 91.

waiver could still be legally binding.⁶⁵ Another school of thought advanced by Noury Khater argues that under UAE law any transfer or waiver is considered null. He seems to base his view on the nature of moral rights as personality rights and the position adopted under the laws of Egypt and France.

It is difficult to agree with Khater's view. First, Khater himself earlier in his work accepted that recognising moral rights as a type of personality rights would not automatically render them inalienable. He even went as far as giving examples of other types of personality rights, such as the right of personal image, that could be transferrable.⁶⁶ Secondly, a number of countries, such as Israel [discussed below] and Belgium, recognise moral rights as personality rights while also sanctioning waivers.

Thirdly, for the lack of support under UAE law, Khater's entire argument seems to be based on the position adopted under the author's rights laws of Egypt and France.⁶⁷ While FARA had in general followed the inner structure of Egyptian law, it is reasonable to infer that any deviation from the EIPC was intentional. Therefore, it could be argued that by not recognising a similar imperative rule to that of Article 145 of the EIPC, the UAE legislature had clearly rejected the Egyptian approach and followed in the footsteps of the UK legislature.⁶⁸ Accordingly, any interpretation of FARA based on Article 145 of the EIPC would go against the clear intention of its drafters. Furthermore, any reference to French law is otiose since it is a foreign law that can neither bind nor guide UAE courts. It is hoped that any future amendment of FARA will introduce an imperative statutory rule that renders any waiver of moral rights null and void.

In the field of comparative author's rights law, a superficial distinction is often made between waiver of moral rights and the situation where the author undertakes to refrain from exercising those rights. Whilst it is clear that no waiver of moral rights could be valid under the laws of Egypt and Lebanon, it is unclear whether the catchment area of that rule is wide enough to cover the situation where the author merely forgoes in advance the *exercise* of moral rights. Unfortunately, a decision from the *Conseil d'etat* of Egypt seems to confirm the validity of an administrative contract between an author and the

65 See Article XI. 165 (2) of the Belgian Code on Economic Law of 2014, came into force on 31 December 2014.

66 N. Khater, *Shareh Qwaed Al Milkia Al Fikria* (Abu Dhabi: UAE University Publications, 2008) 209.

67 *Ibid.*, 213.

68 Interestingly, while belonging to the Civilian system, the UAE frequently seeks the input of jurists from the common law systems, including UK and Australia, to assist in drafting its copyright and industrial property laws.

Ministry of Education, in which the author forwent in advance any exercise of his right of integrity.⁶⁹ According to the Court, the author's agreement to relinquish his right to prevent the Ministry of Education from modifying his work, which was widely used in primary schools, was a contributory factor to the smooth operation of the ministry and therefore education. Regrettably, this decision seems to imply that where a contractual promise to refrain from exercising moral rights could be justified on public interest grounds, then the validity of such a promise may be upheld.

Unfortunately, Lebanese law seems to be oblivious to the issue. Since this issue has not been raised before Lebanese courts, and is completely overlooked in the literature, it might be useful to consult French law.⁷⁰ However, French law does not seem to follow a uniform approach. According to an old French decision, the author may forgo in advance the exercise of their moral rights without falling foul of the inalienability requirement.⁷¹ On the other hand, a modern view seems to indicate that only *a posteriori* forbearance could be valid.⁷² Notwithstanding that both approaches seem to undermine the inalienable nature of moral rights, it remains to be seen which will be followed in Lebanon.

Be that as it may, the silence of FARA, the Administrative Court's approach in Egypt and the likely approach of Lebanese courts seem to betray the inalienability principle. Recognising the validity of an agreement that includes a promise not to enforce moral rights, be it prior or post the event triggering moral rights liability, may contribute to the dilution of national culture. This goes against one of the primary purposes of moral rights, namely the preservation of cultural heritage. Thus, it is hoped that any future amendment to the EIPC, LLLAW, and FARA will expand the scope of the prohibition against waiver to also cover the situation where the author forgoes the exercise of moral rights.

In Israel, as discussed above, moral rights are unassignable. Except for few countries, such as the UK and USA, most national laws that prohibit assignments of moral rights also prohibit waivers.⁷³ Unfortunately, by not explicitly proscribing waivers, Israeli law seems to fall within the minority group of

69 *Conseil d'etat*, High Administrative Court, May 18, 1968.

70 For the influence of French law on its Lebanese counterpart, see *supra*, Section 2.

71 *Banque de France c. Consorts Luc-Olivier Merson*, Cour d'appel Paris, 1936 D.H. 2.246, 12 March 1936.

72 A. Francon, *La liberté contractuelle dans le Domaine du droit d'auteur* 1976 D. chronique 55.

73 Even within the Civilian systems, the correlation between assignments and waivers is not always maintained. For example, while moral rights cannot be transferred under German law, they could still be waived within certain limits determined by "balancing of interests",

national laws that recognises an unnecessary distinction between assignments and waivers.⁷⁴

During the debates that preceded the enactment of the Copyright Act of 2007 a single procedural aspect of waiver, i.e. the introduction of writing as *ad validitatem* requirement, was discussed and swiftly dropped.⁷⁵ However, no attempt seems to have been made to discuss waiver in the context of substantive law. As a result, case law that recognised the validity of waivers prior to the enactment of the 2007 Act still stands as good law. Whilst some of those cases sanctioned the author's consent to waive any future entitlement to the right of paternity,⁷⁶ others recognised the validity of waiving the right of integrity.⁷⁷ Unfortunately, case law went as far as indicating that a waiver could be implied by conduct. Accordingly, a photographer who missed the opportunity to alert the defendant before publication that he had failed to name him as author, was held to have implicitly waived his moral right of paternity.⁷⁸

In commenting on the waivability of moral rights under UK law, which is of much narrower scope for its writing requirement,⁷⁹ Professor Gerald Dworkin states “{w}hatever views one may have about moral rights, most objective observers would acknowledge that such wide waiver provisions, both in theory and in practice, erode significantly, indeed drive a coach and horses through, the moral rights provisions.”⁸⁰ Given the weak negotiating position of the vast majority of authors vis-à-vis content providers and/or distributors, it is not infrequently that authors are required to waive their moral rights. Thus, it is difficult to disagree with Dworkin's statement, which is even more pertinent in the context of Israeli law where waivers could be implied. By permitting

see A. Dietz, 'The Moral Right of the Author: Moral Rights and the Civil Law Countries', *Columbia Journal of Law & the Arts* 19 (1994): 199–228, at 220.

74 The history of waivers within the common law countries could be traced back to Canadian law, which in the early thirties of the last century introduced specific provisions recognising the validity of waivers of moral rights.

75 Oron, *supra* note 44, at 926.

76 *Elchanani v the Municipality of Tel Aviv* [1992] Civil Appeal 782/87, P.D. 46(3) 529; *Lianni v Sharon* (Civil Case 5384/01) Unreported October 3, 2006 Haifa Magistrates Court, cited in Makeen and Oron, *supra* note 51, at 28.

77 *Atiya v the Municipality of Tel Aviv* [1998] Civil Appeal 2965/96, P.D. 50(1) 668, cited in Oron, *supra* note 44, at 926.

78 *Hondant v Kavim Chevra Lepirsum* (Leave to Appeal 1780/98) Unreported April 22, 1998 Supreme Court, cited in Makeen and Oron, *supra* note 51, at 28.

79 For the frailty of the writing requirement under UK law, see L. Bently and B. Sherman, *Intellectual Property Law*, 3rd edn. (Oxford: Oxford University Press, 2009) 259.

80 G. Dworkin, 'The Moral Right of the Author: Moral Rights and the Common Law Countries', *Columbia Journal of Law and the Arts* 19 (1995) 229–268, at 257.

waivers, Israeli law has undoubtedly undermined the value and usefulness of moral rights.⁸¹

It is hoped that Israeli law will soon turn its back on the half-hearted approach to moral rights and expand the scope of the inalienability principle to prohibit waivers. This will not only benefit authors but may also help Israeli law to become a guiding light that other common law countries, such as the UK and U.S., may follow.

In summary, none of the four jurisdictions subject to this study manages to consistently uphold the inalienable nature of moral rights. Whilst the Israeli approach restricts the scope of the inalienability principle to assignments, the Lebanese judiciary seems to go against the clear wording of the LLLAW and recognises the assignability of moral rights. As for waivers, major discrepancies exist among the four national laws. While Israeli law recognises the validity of waivers, explicit or implied, UAE law, in contrast to Lebanon and Egypt, fails to make it clear that no waiver could ever be valid.

Unfortunately, the clarity of the laws of Egypt and Lebanon does not extend to the situation where the author forgoes the exercise of moral rights. It seems that at least in respect of administrative contracts, which normally contains special clauses in favour of the administrative body, the Egyptian judiciary is inclined to uphold the validity of such agreements. Thus, it could be argued that in order to circumvent the inalienability principle in the context of administrative contracts, Egyptian courts have introduced an unnecessary, and arguably a superficial, distinction between subsistence and exercise of moral rights. As for Lebanon, where gaps in national law is normally filled by French jurisprudence and doctrine, it is unfortunate that the validity of a *posteriori* consent to refrain from exercising moral rights would likely be upheld.⁸²

4 Sets of Rights with Uncertain Scope

Unlike economic rights under EIPC and FARA, where the individual rights are mentioned by way of illustration and not limitation,⁸³ moral rights are

81 Although moral rights fall outside the scope of harmonisation/unification of EU law, for waivers within European context, see J. De Werra, *The Moral Right of Integrity*, in: E. Derclaye (ed.), *Research Handbook on the Future of EU Copyright* (Cheltenham: Edward Elgar, 2009), 274–278.

82 It is worth noting that in France, the term “jurisprudence” is used to mean case law and the term “doctrine” is used to refer to scholarly works.

83 Article 147 of EIPC and Article 7 of FARA. Interestingly, Article 15 of the LLLAW grants the copyright owner the exclusive right to exploit the work commercially, but still goes on to enumerate an exhaustive list of economic rights.

catalogued in the form of an exhaustive list.⁸⁴ As such, no new rights may be introduced by the judiciary in addition to those specifically recognised in the legislation.⁸⁵ Thus, notwithstanding that Israel belongs to the copyright right system and the other three jurisdictions to that of the *droit d'auteur*, all four countries restrict the categories of moral rights to those rights specifically recognised by the legislature.⁸⁶

While the EIPC, FARA and LLLAW went beyond the minimum requirements of Article 6bis of the Berne Convention and offered authors the rights of divulgation, paternity, integrity, and withdrawal from circulation, Israeli law elected to follow the minimalistic approach of the Convention. Accordingly, only the moral rights of paternity and integrity are recognised in Israel. Oron argues that this minimalistic approach may confirm that the recognition of moral rights under Israeli law was based “on perceived need to meet international obligations, rather than a desire to give statutory recognition to personality-based doctrines”.⁸⁷

Since Israel followed the minimalistic approach, it was unsurprising that it did not recognise the rights of divulgation, withdrawal from circulation or access right. However, the omission of access right from the list of moral rights in the *droit d'auteur* jurisdictions of Egypt, Lebanon and the UAE is puzzling. The right of access entitles the author to demand access to his work where the physical ownership of the original work or a copy of the work has passed out of his hands.⁸⁸ The ultimate aim of the right of access is to enable the author to closely review his own work to be inspired to create new works, adapt the existing work, or even produce copies of the work that do not conflict with the legitimate interest of the owner of the original or copy thereof.

This right, which is explicitly recognised in a number of jurisdictions including Germany, Greece, Hungary,⁸⁹ normally applies to works of unique embodiment. These are essentially works of visual art, such as paintings and sculptures, but may also cover unique manuscripts.⁹⁰ The absence of the right

84 Article 21 of LLLAW, Article 143 of EIPC and Article 5 of FARA.

85 For the same meaning, see Kadfour Al Muharey, *supra* note 50, at 76.

86 For an example of a *droit d'auteur* country that enumerates moral rights in the form of a non-exhaustive list, see Article 4 of the Greek Author's Rights Act, Law 2121 of 1993.

87 Oron, *supra* note 44, at 897.

88 G. Davies and K. Garnett (eds.), 'The Nature and Origins of Moral Rights', in *Moral Rights* (Oxford: Oxford University Press, 2016), at 8.

89 See Article 25 of the German Copyright Act 1965; Article 4(1) of the Greek Copyright Act 1993; and Article 69(1) of the Hungarian Copyright Act 1999. Strangely enough, it seems that the Czech Copyright Law of 2000 recognises access right as an economic right.

90 Although French law does not explicitly recognise the right of access, the Paris Court of Appeal acknowledged its existence and its application to an unfinished audiovisual work, *Les Films de l'Atalante v. Joel Farges*, CA Paris, 4th Ch. 29 September 1995, (1996) *RIDA* 293.

of access in all three jurisdictions cannot be merely attributed to poor drafting, but rather to the lack of clear understanding of the nature and scope of moral rights by the legislature. This is especially so, since the term “access right” or “right of access” was not even mentioned in the *travaux préparatoires* of any of the laws of the three countries. Curiously, this omission is duplicated in the literature, where not a single scholarly work seems to be concerned with the absence of access right; let alone advocating its recognition. Since the recognition of any new moral right, as discussed above, requires a legislative intervention, it is hoped that any future amendment of the EIPC, LLLAW and FARA will take this into consideration and expand the list of statutory moral rights to include the right of access. The rest of this section focuses on the uncertainty surrounding the scope of each of the recognised statutory rights.

4.1 *The Right to Divulge the Work*

In general, the right to divulge the work, often referred to as the right of disclosure or the right to put the work into circulation, gives the author the exclusive right to decide whether to publish the work or to keep it from the public eye. It guarantees that only the author has the right to decide when the work is ready for publication and/or communication in, or to the, public. Furthermore, this right grants the author the sole discretion to determine the method, or methods, of publication or communication of the work.

While the right to divulge the work is recognised under the EIPC, LLLAW and FARA, it has attracted little attention in the literature.⁹¹ It is submitted that this right can only be exercised through the author’s explicit consent and thus leaves no room for implied consent.⁹² It is clear from the provisions of the EIPC and LLLAW, and to a lesser extent from those of FARA for the absence of an explicit imperative rule nullifying waivers,⁹³ that this right reflects a public order rule and thus prevails over any agreement the author may have concluded to the contrary. What is less clear, however, is the scope of the right and more precisely whether the right is exhausted by first disclosure.

According to the divulgation right provision of Article 143(1) of the EIPC and that of Article 5(2){A} of FARA, the author has the exclusive right to publish the work *for the first time*. Following the literal rule of interpretation, it could be argued that under both provisions this right is exhausted by the first authorised disclosure.⁹⁴ There is not the least doubt that the FARA provision

91 Article 143 (1) of EIPC; Article 21 (1) of LLLAW; and Article 5 of FARA.

92 For the same meaning, see Dubai, Civil cases 84 for the Year 2005 and 89 for 2005 (unreported).

93 See *supra* Section 3.3.

94 For a similar view, see Khater, *supra* note 66, at 223.

is based on its Egyptian counterpart. However, it is doubtful whether the Egyptian legislature has actually intended for the first exercise to exhaust the right. This is especially so, since the issue of “exhaustion” was not discussed at all in the *travaux préparatoires* of the EIPC. Furthermore, it is inconceivable that the Egyptian legislature insists on specifying the purpose and scope as *ad validitatem* requirements for any instrument authorising the exploitation of an economic right,⁹⁵ but still sanctions a general exhaustion of the right of divulgation with no regard to the purpose, or the mode of exploitation, for which it was exercised.

In Lebanon, the issue of exhaustion is enveloped in ambiguity. While discussing the scope of the right of divulgation, Naim Moghabgheb argued that the owner, or the assignee, of the economic rights may not republish the work without the consent of the author.⁹⁶ Put differently, he advocates the view that the right of divulgation is not exhausted by first use. In contrast, Professor Edward Eid holds the view that once the right of divulgation has been exercised it ceases to exist. According to Eid, the right of divulgation is exhausted by the first use and thus could not be invoked to control new methods/modes of exploitation.⁹⁷

It is submitted that the right of divulgation must adapt to the remarkable pace of technological advancement, where new means of delivery of copyright works regularly appear. Not in the too distant past, the terms “broadcasting” and “cabling” were comprehensive enough to cover all means of dissemination of works in non-material form to people geographically dispersed. Nowadays, in addition to broadcasting and cabling, the dissemination of works may take place through retransmission by cable, webcasting, on demand streaming, internet retransmissions and hyperlinking. Therefore, exercising the right of divulgation in respect of broadcasting must not preclude the author from exercising the same right at a later stage in respect of webcasting, on demand streaming and/or internet retransmissions.⁹⁸ Thus, each of the EIPC, LLLAW and FARA may need to be amended to make it clear that the right of divulgation

95 Article 149 (1) of the EIPC.

96 Moghabgheb, *supra* note 52, 180.

97 Edward Eid, *Haq El Moualef Wa El Huquq El Mugaura* (Beirut: Sader, 2001) 350.

98 For the various types of streaming, see M. Makeen, ‘Video Streaming and the Communication to the Public Right in the United States and European Union’, in: T. Aplin (ed.), *Research Handbook on Intellectual Property and Digital Technologies* (Cheltenham: Edward Elgar, 2020), 246–276.

could be exercised in stages and that any exhaustion of that right must be restricted to the specific purpose or purposes for which it was exercised.⁹⁹

In Israel, the right of divulgation has never been recognised as a member of the moral rights family. While some scholars, such as Professor Weisman, questioned the logic of omitting the right of divulgation and called for a statutory intervention to introduce it into Israeli domestic law,¹⁰⁰ it is unlikely that this call will be soon acknowledged by the Knesset. This is especially so, since the right of divulgation normally prevails over any contractual agreement to the contrary and the fear that it may prejudice the economic interests of assignees seems to have made most copyright countries, with their natural tendency of overstressing the importance of economic rights, reluctant to introduce it into their own domestic law.

Although other causes of action under Israeli law may partially cover situations that are normally covered by the right of divulgation in other jurisdictions, they all suffer from inherent limitations. For example, seeking protection under the Privacy Act 1981 may only benefit authors of one specific type of literary works, i.e. letters and for a very limited duration.¹⁰¹ It is hoped that Israel will abandon its minimalistic approach to moral rights and expand the list of statutory rights to include the right of divulgation. Whether Israel will be prepared, even in the longer term, to abolish its minimalistic approach and recognise the right of divulgation is an intriguing issue for the future.

4.2 *The Right to Withdraw the Work from Circulation*

This right, like all other moral rights, aims to protect the intellectual dignity of the author. As such it comes into play only when continuous publication or display of the work would be damaging to the author's reputation. For instance, when the author publishes a work in his/her youth and at a later stage in life denounces the views expressed in the work.¹⁰²

Although this right is widely known in the Middle East as "the right of withdrawal from circulation", in Egypt it comprises two sub-rights: repentance and

99 A similar approach is adopted in Greece, where the law empowers the author to exercise the right of divulgation in stages and accordingly the author's consent is required not only for the first publication but also for any subsequent publication, see Irini A. Stamatoudi, 'Greece', in G. Davies and K. Garnett (eds), *Moral Rights* (Oxford: Oxford University Press, 2016), 497. A very similar approach was also followed by the Paris Court of Appeal, see *Ste La Cinq v. M Badarou*, CA Paris, 4. ch, 7th April 1994, (1995) RIDA 354.

100 Cited in Oron, *supra* note 44, at g22.

101 *Ibid.*

102 Since Israel does not recognise the right of withdrawal from circulation, and to avoid repetition, whatever has been said in respect of the right of divulgation above is also applicable *mutatis mutandis* to the right of withdrawal.

full retraction.¹⁰³ The right of repentance allows the author to reconsider his earlier approach by modifying the work after publication. Whereas the right of retraction permits the author to put an end to the circulation of the work by withdrawing it from the marketplace.

Unfortunately, the scope of the right of withdrawal under FARA and the LLLAW is restricted to retraction of the work and does not explicitly grant authors the option to modify the work.¹⁰⁴ It is hoped that any future amendment to the laws of the UAE and Lebanon will take this into consideration and recognises the right of repentance as a further sub-category of the right of withdrawal from circulation.

It is worth noting that the right of withdrawal from circulation is hardly ever used in practice. This is mainly because of the conditions which the three laws attach to its exercise. Imperfect as they are, as discussed below, these conditions aim to protect the licensees or assignees of economic rights from any potential abuse by unscrupulous authors who might otherwise invoke the right of withdrawal to get out of contractual obligations they consider to constitute bad economic bargain.

While under FARA the author could only exercise the right through a court order, which will only be issued for a good reason, under the LLLAW three requirements must be met: necessity; change of conviction; and compensation.¹⁰⁵ According to the first requirement, the author may only exercise the right if it is necessary to do so to protect his personality or reputation. Unfortunately, Lebanese law fails to define the term “personality” and “reputation” or to clarify the distinction between them, if any.

The second requirement restricts the author’s ability to invoke that right to situations involving the author’s “change of conviction or circumstances”. While the change of conviction is easily understood, it is less clear what the legislature actually means by change of “circumstances”. According to the third requirement, the author needs to compensate third parties for any damage the withdrawal may cause. Unfortunately, the LLLAW does not require the

¹⁰³ Article 144 of the EIPC states: “Notwithstanding assignment of his economic rights, the author alone — should serious reasons arise — shall have the right to request the Court of First Instance to order the withdrawal of his work from circulation, to cease its circulation, or to order significant amendments to be introduced to the work. In such a case, the author shall be required to pay in advance an equitable compensation to the holder of the economic rights. The compensation shall be paid within the period specified by the court, otherwise the order is vacated.”

¹⁰⁴ Article 5 (2) (D) of FARA and Article 21 (5) of the LLLAW.

¹⁰⁵ It is a shame that FARA deviated from the wording of the old 2002 Act and no longer requires the payment of equitable compensation as a prerequisite for the exercise of the right.

compensation to be paid within a specific period of time. Furthermore, it seems that the Lebanese legislature failed to specify a remedy for non-payment.

Under the EIPC, on the other hand, four conditions must be satisfied before the author could exercise the right of withdrawal from circulation. First, the author needs to prove the “seriousness” of the reason or reasons that dictate the repentance or retraction. Notwithstanding that the legislature neither defined the term “serious” nor attempted to guide courts on how to distinguish between serious and trivial reasons, it is submitted that this right comes into play only where the change in the author’s conviction is for intellectual or moral reasons. However, Egyptian law, as discussed below, adopts a subjective test. Hence, the assessment of the gravity or seriousness of the intellectual or moral reasons is done solely by reference to the author’s view at the time.¹⁰⁶

Secondly, the author has to request the competent court to order such withdrawal. Thirdly, the author must indemnify the assignee beforehand for any economic harm the court order may cause. Naturally, this third condition could be cost prohibitive and therefore may explain the reluctance of authors to exercise the right of withdrawal. Fourthly, the indemnity, which needs to be in the form of a financial compensation, must be payable within the period specified in the court order; otherwise, the order for withdrawal is vacated.

At first sight, it could be argued that the absence of reported cases in all three jurisdictions involving the right of withdrawal may support the view that the statutory conditions have succeeded in serving the purpose for which they were devised, i.e., the protection of licensees and assignees of economic rights. Upon closer inspection, however, it appears clearly that the most important statutory requirement of indemnity under the EIPC, or its equivalent of compensation under the LLLAW, may still be met by authors with enough financial clout. As a result, wealthy authors could still invoke the right of withdrawal from circulation to pursue a concealed financial purpose, such as more advantageous terms with a new business partner.

It is submitted that the right of withdrawal from circulation as it stands in Egypt, Lebanon and the UAE is poorly drafted and does not strike a balance between the author’s interests and those of licensees and assignees of economic rights. This balance could only be achieved with the introduction of an additional requirement that makes it absolutely clear that should the author decide to have their work re-published after having exercised the right of withdrawal, the author will be required to offer the work first to the original contracting party and under the same initial conditions.

¹⁰⁶ For a different view, see Abd El Gelil, *supra* note 52, at 33.

Another shortcoming of the laws of Egypt, Lebanon and UAE is their insistence on making the application of the right of withdrawal from circulation subject matter neutral.¹⁰⁷ How may an author of an artistic work, who on his own accord sold his creation to another, exercise the right of withdrawal from circulation? Once the work is sold, the purchaser will have property rights at least over the tangible medium on which the work is fixed. If the work cannot be detached from that medium, which is normally the case in respect of sculptures and drawings, then any attempt to exercise the right of withdrawal by the author will be in direct conflict with the owner's property rights. It is hoped that any future amendment to the EIPC, LLLAW and FARA will take this into consideration and specifically exclude artistic works that cannot be detached from the medium on which they are fixed from the scope of the right of withdrawal from circulation.

4.3 *The Right of Paternity*

The right of paternity, which is also known as the right of attribution, may be defined as the right to be identified as the author of the work. Similar to all other moral rights, the right of paternity seems to be based on the romantic view of the work as the author's spiritual child. As such, the ultimate aim of the right of paternity is to create and maintain a strong bond between the author and the work.

All four national laws subject to this study recognise the right of paternity, and none links its existence or exercise to any formality requirements.¹⁰⁸ Unlike the copyright law of the UK,¹⁰⁹ none of the four jurisdictions recognises a specific right of false attribution or expand the scope of the right of paternity, as in the U.S., to cover false attribution.¹¹⁰

While this omission could be perceived as a defect in the moral rights regimes of the four countries, it is this author's view that the right of false attribution falls outside the scope of copyright law. This is especially so, since the said right may protect authors as well as non-authors and therefore is not a moral right

¹⁰⁷ The UAE government never masked its intention of making the country the information technology hub of the region and therefore Article 5 (2) (D) of FARA specifically excludes the application of the right of withdrawal to computer software.

¹⁰⁸ For a national law that requires the compliance with a formality requirement, i.e., assertion, as a prerequisite for the exercise of the right, see Section 78 of the UK Copyright, Designs and Patents Act 1988 (CDPA).

¹⁰⁹ Section 84 of the CDPA. For a similar approach in other common law countries, see section 195A of the Australian Copyright Act 1968 and Section 96 of the Hong Kong Copyright Ordinance 1997.

¹¹⁰ Section 106A (a) (1)(B) of the U.S. Copyright Act 1976.

stricto sensu. As such, it should not be included within the scope of a discipline of law that is solely concerned with the protection of authors. Furthermore, adequate protection against false attribution could be found under the general principles of tort law and unjust enrichment in Egypt, Lebanon, the UAE and under the Defamation Act 1965 and the Privacy Act 1981 in Israel.

Although it is clear that the right of paternity applies to all types of works, including those published anonymously or pseudonymously, it is less clear under the laws of Egypt and the UAE whether this right is also available to the individual contributors to a collective work. Under the EIPC and FARA, a “collective work” is defined as “a work in the creation of which more than one author has participated under the direction of a natural or juridical person who publishes it under his name and supervision and in which the personal contributions of the various authors are merged in the overall work, without it being possible to identify and separate each author’s contribution in the work created.”¹¹¹

Some scholars in Egypt and the UAE argue that collective works should not be treated differently from any other type of work. Accordingly, they maintain that each individual contributor to a collective work enjoys a right of paternity over their contribution.¹¹² Three reasons render the accuracy of this view questionable.

First, as discussed above, the ultimate aim of the right of paternity is to maintain the strong bond between the author and his work. However, in the case of a collective work, no such a bond exists. For a work to be categorised as a collective work, the contribution of each individual author must be unidentifiable, indistinguishable and/or inseparable from that of others. Put differently, extending the right of paternity to each individual contributor over his/her own contribution could only be based on a bond that is, at best, fictional.

Secondly, if the contribution of each individual author could be identified, this would automatically disqualify the work from being a collective work. Thirdly, according to the wording of Article 27 of FARA, in the absence of an agreement to the contrary, the only person who is entitled to exercise moral and economic rights stemming from a collective work is the natural or juridical person under whose direction the work was created. Although the corresponding provision of Article 175 of the EIPC uses “all rights” instead of “moral and economic rights”, it aims to achieve exactly the same result, namely the

¹¹¹ Article 138(4) of the EIPC and Article 1 of FARA.

¹¹² For Egypt, see Abd El Salam, *supra* note 50, at 92; and for the UAE, Khater, *supra* note 66, at 225.

exclusion of individual contributors to a collective work from exercising the right of paternity.

Undoubtedly, granting the exclusive right to exercise moral rights to the person who initiated and supervised the production of a collective work makes little sense. This is especially so, since neither the EIPC nor FARA considers that person to be an author. Given the definition discussed above, it is suggested that collective works should be considered authorless. It is hoped that the legislature in Egypt and the UAE will soon gather enough courage to accept that position and state in unequivocal terms that no moral rights could stem from a collective work.¹¹³

In contrast to the uncertainty that surrounds the application of the right of paternity to collective works, it is clear that under the laws of Egypt, Lebanon and the UAE each individual contributor to a work of collaboration is entitled to a separate right of paternity.¹¹⁴ Similarly, each co-author of a joint work under Israeli law enjoys a separate right of paternity.¹¹⁵ Accordingly, a work of collaboration in Egypt, Lebanon and the UAE, or a joint work in Israel, must be attributed to all co-authors.¹¹⁶ Furthermore, in its decision of *Witness who did not Witness a Thing*, the Egyptian Court of Cassation went as far as saying that the attribution of the work to its co-authors must not only be made when the work is performed publicly but also whenever the work is advertised in a brochure, leaflet, newspaper, television or radio broadcasting.¹¹⁷

Notwithstanding the clarity of the law, it is a customary practice within the broadcasting industries of the four jurisdictions not to mention the names of the composer or lyricist of a musical work. Bizarrely, the same practice is not extended to performers of the said works, whose names are normally announced either before or after the broadcast of their performances. It

113 Since unidentifiability and inseparability are not requirements under the LLLAW and since Israeli law does not recognise a corresponding concept to that of “collective works”, neither is further discussed here.

114 Although there are some cosmetic differences, in all three jurisdictions a work of collaboration is a work that does not fall within the meaning of a collective work and in the creation of which more than one author has participated.

115 According to Section 1 of the Copyright Act 2007, a joint work is “a work created jointly by several authors, wherein it is not possible to discern each author’s contribution to the work”.

116 See the decision of the Lebanese Court of Cassation No.7, issued on 5 November 1961, cited in Mohammed El Said, *supra* note 25, a 63–64. For Israel, see *Zarodi v Shankman* [2002], Tel Aviv District Court, Civil Case 2014/99, 19 June 2002 (unreported), *Ezer v Porat-Shoval* [2009], Tel Aviv Magistrates’ Court, Civil Case 41030/04, 28 October 2009 (unreported) cited in Oron, *supra* note 44, at 910–911.

117 Court of Cassation [Civil Chamber], No. 1352 Vol. 53, 7 January 1987.

is hoped that the four national laws will resolve this contradiction between law and practice by either adopting a similar approach to that of Section 77 of the UK CDPA and recognise a specific disc-jockey exception or by making it absolutely clear that the right of paternity applies uniformly to all types of copyright subject matter and to all media, including broadcasting, webcasting, internet retransmissions and on-demand services.

In addition to this customary exception, the attribution of a work to its author under the copyright law of Israel is only required “to the extent and in the manner suitable in the circumstances”.¹¹⁸ This terminology, which was introduced in 2007, places a twofold burden on authors: first, they have to prove that the alleged infringer failed to attribute the work to its author{s} and, secondly, they must prove that such an attribution was appropriate in the circumstances. As a result, a number of cases denied the application of the right of paternity for the author’s failure to provide sufficient evidence to prove that attribution was required in the circumstances.¹¹⁹ It is submitted that this unnecessary restriction may discourage authors to seek the enforcement of their right of paternity through courts, which in turn may severely undermine the value of that right.

4.4 *The Right of Integrity*

Although there is no universal definition for the right of integrity, for the purposes of this article it may be defined as the author’s right to respect for his intellectual dignity (honour or reputation) as reflected in the work. Since the work embodies its author’s personality, this right protects the work from being subjected to derogatory treatment. Given the conflict that this right may cause between authors and holders of economic rights, national laws vary in the rigor with which they formulate and apply the right of integrity.¹²⁰

This right represents one of the two moral rights specifically recognised under Article 6*bis* of the Berne Convention. Under the Convention, the right of integrity protects both: the form and the spirit of the work. The protection of the form comes into play when there is unauthorised interference with the internal structure of the work, i.e., by addition, deletion or alteration. On the other hand, the protection of the spirit comes into play when the work is used

¹¹⁸ Section 46 (1) of the Copyright Act 2007.

¹¹⁹ See *Mor v Levi* [2009] Netanya Magistrates’ Court, Civil Case 5006/06, 19 October 2009 (unreported) and *Kook v Sivan in House Ltd* [2008] Tel Aviv District Court, Civil Case 1299/04, 13 February 2008 (unreported) cited among other cases in Oron, *supra* note 44, at 912–913.

¹²⁰ P. Goldstein and B. Hugenholtz, *International Copyright: Principles, Law, and Practice*, 3rd edn. (Oxford: Oxford University Press, 2015), 363.

in its unaltered form, but in a context that was not intended by, or betrays the intention of, its author.¹²¹

Although the right of integrity is recognised in the four national laws subject to this study, its scope in Egypt, Lebanon, and the UAE seems to be unjustifiably restricted to the protection of the form of the work. As such, none of these laws explicitly protects the spirit of the work.¹²² Undoubtedly, this lack of protection against recontextualisation renders the EIPC, LLLAW, and FARA incompatible with Article 6bis of the Berne Convention.¹²³

While it is generally accepted that the scope of the right of integrity is less comprehensive in the copyright countries than in those following the *droit d'auteur* tradition, Israel seems to be the only country in the region that protects the spirit of the work. Section 46 of the Copyright Act of 2007 faithfully follows the wording of the Berne Convention and explicitly extends the protection of the right of integrity to cover “any other derogatory act in relation to the work”. It could be argued that even before the coming into force of the new Act of 2007, the Israeli judiciary had successfully expanded the scope of the right of integrity to cover the protection of the spirit of the work. Notwithstanding that the old law did not explicitly protect the spirit of the work, it was held that the unauthorised use of an author’s work in an election campaign amounted to infringement of the right of integrity, since it could give the impression that the author supported the candidate’s political agenda.¹²⁴

In addition to the lack of protection for the spirit of the work, none of the author’s rights laws of Egypt, Lebanon and the UAE seems to extend the scope of the right of integrity to cover the complete destruction of the work.¹²⁵ Although partial destruction would automatically engage the right of integrity, the position is less clear with respect to “complete destruction”. This is

121 At the 1948 Brussels Revision Conference of the Berne Convention, the concluding words of Article 6bis (1) “or other derogatory action in relation to the said work” were specifically introduced to extend the protection of the right of integrity to cover the spirit of the work, see Ricketson, *supra* note 20, at 469–470.

122 Astonishingly, the lack of protection for the spirit of the work is completely overlooked in the existing literature.

123 Curiously, it seems that the Lebanese legislature has overlooked that under French law the right of integrity covers the spirit as well as the form of the work, see *Chant du monde c. Fox Europe*, 28 RIDA 361 [1960], *Sony Music c. Farmer*, 171 RIDA 250 [1996], and *FADAGP et autres c. Association Front National et autres*, 192 RIDA 448 [2002].

124 *Yediot Tikshoret v Godovitz* [2008] Tel Aviv Magistrates’ Court, Civil Case 1652/05, 15 January 2008 (unreported), cited in Oron, *supra* note 44, at 917.

125 For a controversial view that extending the right of integrity to cover destruction threatens art because it fails to free the work from the control of the author, see A.M. Adler, ‘Against Moral Rights’, *California Law Rev.* 97 (2009): 263–300, at 265.

especially so, since it may be argued that with the complete destruction, the work ceases to exist, and the author's reputation could no longer be damaged. Strangely enough, this issue has not been raised before national courts in any of the three jurisdictions and the literature seems to be entirely uninterested in the question of destruction.¹²⁶

In the absence of guidance from statutes, case law, the *travaux préparatoires* or existing literature, it might be helpful to consider the position under the Berne Convention, which all three countries had ratified. Unfortunately, however, the Convention is silent and therefore it is unclear whether the right of integrity under Article 6bis of the Berne Convention is of a wide enough scope to protect authors against full destruction of their works.¹²⁷ While Professor Sam Ricketson argues that destruction falls outside the scope of the above provision, Adeney maintains that a tacit prohibition against destruction could be found in the provision "if a country wanted to find it".¹²⁸

Even outside the Middle East, the issue of destruction remains contentious among the national laws of the *droit d'auteur* countries and thus no unified approach has emerged. For example, the Supreme Court of the Netherlands held that the right of integrity could not protect authors against the complete destruction of their works. The Court reasoned that the right of integrity in Dutch law was derived from Article 6bis of the Berne Convention and that the latter provision was not intended to cover destruction. Thus, it concluded that total destruction does not infringe the author's moral right of integrity.¹²⁹ In contrast, French courts seem inclined to extend the scope of the right of integrity to protect authors against the destruction of their works.¹³⁰

In Israel, the Copyright Act 2007 does not explicitly grant authors the right to object to the destruction of their works. Fortunately, however, not only did Israeli courts extend the scope of the right of integrity to cover destruction but also refused to interpret Israeli domestic law narrowly to mirror Article 6bis of

126 The only exception being Naim Moghabgheb, who discusses the issue in a single sentence and concludes that nothing under Lebanese law "could prevent the lawful owner of an artistic work from destroying it" and that the author would be entitled to photograph the work before its destruction, Moghabgheb, *supra* note 52, at 187.

127 It is worth noting that during the Brussels Conference Hungary proposed that destruction should be specifically mentioned as an infringement of the right of integrity. Unfortunately, no consensus could be reached and the proposal was withdrawn, see *Actes de la Conférence réunie à Bruxelles*, du 5 au 26 juin 1948 (Berne : Bureaux Internationaux Réunis pour la Protection de la Propriété Intellectuelle, 1951), 188.

128 Ricketson, *supra* note 20, at 470 and Adeney, *supra* note 8, at 137–138.

129 *Jelles v. Municipality of Zwolle* (Unreported, February 6, 2004), *E.I.P.R.* 2004, 26(9), N155–156.

130 *Sudre v. Commune de Baixas*, 1936, D. III, 57 [Conséil d'État, 3 April 1936.]

the Berne Convention.¹³¹ Here again, while belonging to the copyright system, which traditionally has been hostile to the notion of moral rights, Israel seems to be the only country in the region that extends the reach of the right of integrity to cover full destruction.

It is hoped that future amendments to the EIPC, LLLAW and FARA would explicitly expand the scope of the right of integrity to cover unauthorised destruction of the work. Furthermore, it is hoped that none of the three national laws would follow in the erroneous footsteps of the U.S. legislature and restricts such a protection to visual artworks of recognised stature.¹³² This is especially so, since the U.S. system of protection has been so ineffective that it was only applied successfully twice in its thirty years of existence.¹³³

Undoubtedly, extending the scope of the right of integrity to cover destruction may trigger a conflict between the author's interest in preserving the work and the owner of the tangible object who, at least in theory, should be allowed to do with their property as they wish. Accordingly, any future change in the law will need to balance the interest of the parties carefully. This can be achieved by distinguishing works that exist in multiple copies from unique works that exist in a single copy or very limited number of copies. As Stamatoudi put it in the context of Greek law, in cases where multiple copies of a work exist, e.g., books, recorded music, etc., the property owner's interests should prevail.¹³⁴ Whereas in cases of unique works, it is submitted that the author's interests should always prevail. This system will not only succeed in balancing the conflicting interests of the parties but may also help moral rights in serving one of its unappreciated functions, namely preservation of cultural heritage.

5 Lack of Equality among the Beneficiaries of Protection

Since moral rights are personality rights, it would have been expected of the four national laws to treat all authors equally. Unfortunately, this does not seem to be the case in respect of audiovisual works and foreign works translated into Arabic under the compulsory licensing mechanism.

131 *Fabian v. the Municipality of Ramat Gan* [1997] Tel Aviv Magistrates' Court, Civil Case 73028/95, 15 September 1997 (unreported), cited in Oron, *supra* note 44, at 917.

132 Visual Artists Rights Act 1990, 104 Stat. 5128, incorporated as sections 106A and 113 of the US Copyright Act 1976.

133 *Martin v. City of Indianapolis*, 192 F.3rd 608 (7th Cir. 1999) and *Jonathan Cohen et al v. G & M Realty and Gerald Wolkoff*, 320 F. Supp. 3d 421 (2018); affirmed 950 F.3d 155 [2nd Cir 2020].

134 Stamatoudi, *supra* note 99, at 493.

5.1 *Audio, Visual and Audiovisual Works*

The creation of an audiovisual work involves the contribution of a number of people that is rarely equalled in producing any other copyright subject matter. As such, audiovisual works present national laws with challenging questions regarding authorship and moral rights.¹³⁵ As yet, no unified position has developed in the Middle East and therefore the different approaches need to be examined.

Unfortunately, the EIPC and FARA left the terms “audio”, “visual” and “audiovisual” undefined. Nevertheless, they introduced special rules to govern authorship and ownership of this category of works. Under both, an audio, visual or audiovisual work created by more than one author is classified as a work of collaboration.¹³⁶ Accordingly, rights stemming from such a work can only be exercised by the common accord of all co-authors.

In accordance with Article 177 of the EIPC and 29 of FARA, a number of contributors to an audio, visual or audiovisual work are listed as co-authors, these are:

- (1) The author of the scenario or the creator of the written idea of the programme;
- (2) The author of the adaptation;
- (3) The author of the dialogue;
- (4) The author of the musical compositions, if specially composed for the work;
- (5) The director who made a positive intellectual contribution to the work; and
- (6) If the work is adapted or derived from pre-existing work, the author of that work shall be considered joint author of the audiovisual work.¹³⁷

It is unclear whether the above list constitutes an exhaustive list or whether the judiciary can expand the list to cover other contributors not specifically mentioned in the legislation.¹³⁸ Be that as it may, under the general authorship

135 For authorship and ownership of audiovisual works in the Middle East, see M. Makeen, ‘The Protection of Cinematographic Works Under the Copyright Laws of Egypt and Lebanon’, *Journal of the Copyright Society of the USA* 55 (2008): 223–255, at 235–240.

136 Under the EIPC and FARA, cinematographic works are included under the broad category of audiovisual works.

137 In order to maintain the strong link between the audiovisual work and its authors, the legislature considered the author of the pre-existing novel or play on which the work is based as a co-author of the audiovisual work. For a criticism of this approach, see Sanhuri, *supra* note 36, at 432.

138 The same question was also raised before French and Belgian courts, where different approaches were adopted. Although the Court of Appeal of Paris had extended the list to cover a chef who performed a recipe in front of the camera, Cour d’appel de Paris,

rules of Egypt and the UAE, each contributor to a work of collaboration enjoys a separate set of moral rights. Curiously, however, not all co-authors of an audio, visual or audiovisual work enjoy equal moral rights protection.

For the sake of so-called “practicality”, Articles 177 (4) of the EIPC and 29 (4) of FARA deprive any co-author who fails to finish his contribution to an audio, visual or audiovisual work from having any control over his/her incomplete contribution.¹³⁹ Accordingly, the incomplete part could still be incorporated into the audio, visual or audiovisual work without its author’s consent. It is submitted that this approach, which withholds the benefits of the rights of divulgation, and arguably that of integrity, from the author of the incomplete part, sacrifices the principle of equality among co-authors and is in direct conflict with the inalienability rule, which underpins moral rights protection in both countries.

To compound matters, Article 177 (2) of the IP Code states: “Notwithstanding the refusal of the author of the pre-existing work or the author of the musical composition, and without prejudice to the rights deriving from their participation, the authors of the scenario, adaptation, dialogue and the director shall collectively have the right to authorise the presentation of the audio, visual, or audio-visual work”. Unfortunately, this provision fails to distinguish between first and subsequent presentations of the work. Thus, it could be argued that by virtue of Article 177 (2), the legislature has cemented its partial approach and inexplicably deprived the authors of the pre-existing work and that of the musical composition from the benefits of the right of divulgation.

Since the right of withdrawal from circulation has never been invoked by any co-author of an audio, visual or audiovisual work, mainly due to the obligation of prior indemnification as discussed above, the moral rights protection granted to the authors of the pre-existing work and musical composition would normally be restricted to the right of paternity and that of integrity.¹⁴⁰ Regrettably, therefore, it seems that under the EIPC and FARA some co-authors are more equal than others.

March 17, 1999, 182 RIDA 202 [1999], the Court of Cassation reversed and denied the chef authorship status, 193 RIDA 372 [2002]. In Belgium, however, a radio presenter was considered an author, see *BVBA Habrasaje v. De Vlaamse Radio*, October 15, 2002, Case Comment by Julie Van Nuffel, 26 [5] EIPR N61 [2004].

139 For a criticism of the poor drafting of Article 177 (4) of the EIPC, see Makeen, *supra* note 135, at 242.

140 Even outside the Middle East, the general right of withdrawal is very rarely exercised in the context of audiovisual works in the *droit d'auteur* countries, see P. Kamina, *Film Copyright In The European Union* (Cambridge: Cambridge University Press, 2002), 333.

Contrary to the position adopted under the EIPC and FARA, the LLLAW does not provide for a specific provision to govern authorship of audiovisual works and seems to be solely concerned with ownership of this category of works. According to the general theory of authorship under the LLLAW, works in the creation of which more than one author participates are split into two specific categories: collective works and works of collaboration. Each is governed by a distinct set of rules.

According to Article 1 of the LLLAW, Collective works are defined as “works in which more than one natural person participates at the initiative, and under the supervision, of a natural or legal person who publishes it under his name.” Unlike the laws of Egypt and the UAE, discussed above under Section 4.3, this provision omits the unidentifiability and inseparability requirements from the definition. This omission is puzzling and seems to strip “Collective Works” of any value, effectively rendering them commissioned works. A collaborative work, on the other hand, is defined as “every original work that does not fall within the meaning of collective work and in the creation of which more than one author participates”.

While some scholars argue that an audiovisual work is, in principle, a collective work,¹⁴¹ others advance the view that it could be either.¹⁴² This difference in classification is of utmost importance with respect to moral rights. If the audiovisual work is classified as a collaborative work, then it is jointly owned by all co-authors, and each would enjoy equal moral rights protection.¹⁴³ However, the position would be less clear, if audiovisual works were classified as collective works. This is especially so, since according to the general ownership provision of Article 7 of the LLLAW, “in the absence of an agreement to the contrary, the natural person who, or legal entity which, took the initiative and supervised the creation of a collective work shall be considered the *copyright holder*.” Furthermore, according to Article 9, which specifically covers ownership of audiovisual works, “the producer shall, in the absence of any agreement to the contrary, be considered the *copyright holder*.”¹⁴⁴

141 Moghabgheb, *supra* note 52, at 142.

142 Eid, *supra* note 97, at 211–212.

143 Article 6 of the LLLAW. Even before the enactment of the LLLAW, Lebanese courts had recognised the equality of entitlement to moral rights protection among all contributors to a collaborative work, see Decision of *Mahkmat el Tameez El Madania*, Issue 5, Order No. 7 for 4 Tishreen (November) 1961.

144 It would be unconvincing to argue that the term “*copyright holder*” was used merely to confirm Lebanon’s adherence to the French system of *presumptio juris tantum*. This is mainly because under French law that system comes into play only as a result of having a number of people specifically listed in the legislation as co-authors of the cinematographic or audiovisual work, which is not the case under the LLLAW.

The term “copyright holder” as used in both provisions may be interpreted widely to cover moral as well as economic rights. In such a case, the sole beneficiary of moral rights will be the producer and all other contributors would be deprived from moral rights protection.¹⁴⁵ Since producers of audiovisual works are normally legal entities, this raises another fundamental question: could a legal person, as opposed to a natural person, benefit from moral rights protection under Lebanese law? In the absence of a clear answer in the literature, and following the Lebanese legal tradition, a reference may be made to French law. Oddly enough, when this issue was raised before the Court of Cassation in France, which is normally perceived as the purist moral rights jurisdiction, it gave an answer in the affirmative.¹⁴⁶ Thus, it is likely that Lebanese law would follow the defective approach of its French counterpart and recognises legal entities as holders of moral rights.

To sum up the position under Lebanese law, it is unfortunate that determining the beneficiaries of moral rights protection depends on whether the audiovisual work is classified as a collective or collaborative work. It is hoped that this potential inequality among contributors to the same copyright subject matter will be eliminated by adopting a new amendment to the LLLAW that makes it absolutely clear that audiovisual works are collaborative works. Hopefully, any such amendment will resist the temptation of following in the erroneous footsteps of the Egyptian and UAE legislatures and afford equal moral rights protection to all co-authors of audiovisual works.

In Israel, audiovisual works are not recognised as a specific category of copyright subject matter. Instead, Israel uses the narrower category of “cinematographic works”,¹⁴⁷ as a subcategory of dramatic works, to cover visual and audiovisual productions.¹⁴⁸ Furthermore, Israeli law does not provide for special rules to govern authorship of cinematographic works. As a result, cinematographic works are not treated differently from other types of copyright subject matter.

In 2003, before the Tel-Aviv District Court, it was argued by a plaintiff that the director of a cinematographic work was entitled to authorship status. In

145 For a different view that the natural or legal person who takes the initiative for the creation of the collective work may only own the economic rights, see M. Ferran, ‘Lebanon’s New Copyright Act’, *UNESCO Copyright Bulletin* 35 (2001): 79–101, at 88.

146 Cour de Cassation (First Civil Chamber), 22 March 2012, [2013] E.C.C. 10.

147 Section 1 of the Copyright Act 2007 defines Cinematographic work as “including a television work and any work which is substantially similar to a cinematographic work or a television work.”

148 “Dramatic works” are defined as “including plays, cinematographic works, musical-dramatic works, choreography, and pantomime”.

agreeing with that submission, the Court stated: “It is impossible to make a film without a director and there are almost no films, created without someone having directed them. Therefore, the Director is entitled to recognition of his rights”.¹⁴⁹ In the context of moral rights, it is submitted that the value of this judgment is relatively insignificant and should not be overstated. This is especially so, since moral rights under Israeli law, as discussed above, are waivable. Accordingly, only directors with enough clout could resist the pressure that is normally exerted by producers to waive their moral rights. This will undoubtedly create uneven playing field among directors and do away with any notion of equality among beneficiaries of moral rights protection.

5.2 *Authors of Foreign Literary Works*

Unfortunately, the lack of equality among authors goes beyond audiovisual works. As far as the right of integrity is concerned, the laws of Egypt and the UAE seem to distinguish between national and foreign authors.

For development purposes, Egypt and the UAE have always been conscious of their need to make foreign works available in Arabic. To that end, both countries availed themselves of the compulsory licensing mechanism of the Appendix of the Berne Convention. According to Articles 148 of the EIPC and 21 of FARA, unless translated into Arabic with the author’s consent within three years from the date of first publication, the exclusive economic rights of translation and reproduction of foreign literary works is replaced by a compulsory licensing mechanism. It was thought that the compulsory licensing mechanism on its own would not serve the development agenda as authors of foreign works could still invoke their moral rights of integrity to disrupt, or even put an end to, the translation and reproduction of their works in Arabic. As a result, both jurisdictions narrowed down the scope of the right of integrity, lest it hinders the application of the compulsory licensing mechanism.

In general, the application of the right of integrity in Egypt and the UAE follows the subjective test. Therefore, unlike the objective test of the U.S., UK, and Israel,¹⁵⁰ courts in Egypt and the UAE are not required to ascertain how the modification or alteration of the work was perceived by the public or a

149 Case No 1148/01 *TALI (The Collecting Society of Film and TV Creators in Israel) v. ACUM (The Association of Composers, Authors and Music Publishers, Ltd)*, available online at <http://www.tglaw.co.il/index.php?dir=site&page=articles&op=item&cs=10041> (accessed 30 June 2022).

150 For the objective test under U.S. law, see *Martin v. City of Indianapolis* 192 F.3rd 608 (7th Cir. 1999); *Massachusetts Museum Of Contemporary Art Foundation, Inc., v. Christoph Büchel*, 593 F.3d 38 (1st Cir 2010); and *Jonathan Cohen et al v. G & M Reality and Gerald Wolkoff* 950 F.3d 155 [2nd Cir 2020]. For the objective test as applied by courts in the UK,

segment of the public.¹⁵¹ As such, courts in both jurisdictions would normally follow the author's subjective view.¹⁵² Furthermore, under both systems the author is not required to show actual damage to their reputation and therefore it could be argued that any unauthorised modification or alteration would automatically infringe the author's right of integrity.

In order to make foreign works available to their public in Arabic, the laws of Egypt and the UAE combined the compulsory licensing provisions with a specific limitation on the scope of the right of integrity, which unjustifiably sacrifices the subjective test with respect to foreign authors. Accordingly, both recognised a specific provision, which states: "For translation purposes, a modification shall not be considered derogatory unless no reference is given to the areas of omission, change or is prejudicial to the author's reputation or honour".¹⁵³

While commenting on exactly the same provision under the 1954 Author's Right Law of Egypt, Professor Sanhuri argued for the cumulative application of the two requirements of no reference and no harm.¹⁵⁴ According to his view, unless any omission or change is clearly referenced and causes no harm to the original author, the translation would fall foul of the provision and amount to an infringing act. However, it is respectfully submitted that the two requirements need not apply cumulatively. For Sanhuri's argument seems to have overlooked that the "no harm" requirement is naturally broader than the reference requirement and unless each was intended to serve a different purpose, the reference requirement under his cumulative approach would almost always be redundant.¹⁵⁵

Be that as it may, it is patently clear that by virtue of Articles 143 (3) of the EIPC and 6 of FARA the application of the right of integrity to translations of foreign literary works is governed by the objective test. Undoubtedly, this amounts to a discrimination against foreign authors. This is especially so,

see *Tidy v. Trustees of the Natural History Museum EIPR*. D-81 [1996] and *Confetti Records v. Warner Music UK* [2003] EWHC 1274. For Israel, see *infra*.

151 For the poor drafting of the right of integrity provision under the old law, which has sadly been copied verbatim in FARA, see M. Makeen, 'The Protection of Musical Works Under the UAE Copyright Law', *Journal of the Copyright Society of the USA* 57 (2010): 743–797, at 768–770.

152 While most countries follow either the subjective or the objective test, Canadian courts seem reluctant to commit to either, see *Snow v. The Eaton Centre* 70 CPR [2D] 105 [1982].

153 Articles 143 (3) of the EIPC and 6 of FARA.

154 Sanhuri, *supra* note 36, at 514.

155 M. Makeen, 'Egypt', in G. Davies and K. Garnett (eds.), *Moral Rights*, 2nd edn. (Oxford: Oxford University Press 2016), 860–861.

since foreign authors could lose actions under the objective test that under the stricter subjective approach they would have won.

Furthermore, this discrimination between national and foreign authors may be in direct conflict with the provisions of the Berne Convention. Under the principle of national treatment of Article 5 of the Convention, every country is required to offer authors of other Berne countries the same level of protection it grants its own authors.¹⁵⁶ Thus, it is hoped that any future amendment of the EIPC and FARA will abolish the inequality between national and foreign authors and extend the application of the subjective test to benefit those whose works are translated into Arabic, even when such a translation is made in accordance with the compulsory licensing mechanism.

It could be argued that the proposed amendment would have little impact on the so-called “development agenda” of either country. This is especially so, since there is a host of more compelling societal obstacles, including lack of freedom of expression, high percentage of illiteracy (particularly in Egypt),¹⁵⁷ a natural distrust of the printed word in general and foreign works in particular, a struggling publishing industry, lack of interest in reading combined with curious passion for audiovisual content ... etc, that needs to be addressed first before discussing whether the right of integrity could ever hinder their cultural development.

Israel neither recognises a compulsory licensing mechanism in respect of translations nor discriminates against authors of foreign literary works. However, two factors may generally invite inequality among beneficiaries of the right of integrity, namely the assessment criterion of “honour and reputation” and the “reasonableness test”.

Unlike in Egypt, Lebanon, and the UAE where the author does not need to prove that they have an honour or reputation that is worth protecting, Israel adopts the objective test. Accordingly, the author may be required to prove to the competent court that their honour and/or reputation are worthy the protection afforded by the right of integrity, which by no means an easy feat. Furthermore, this objective test would require the author to provide evidence of harm to support their claim of prejudice to the honour and reputation.

¹⁵⁶ It is worth noting that under the Berne Convention, the application of the national treatment principle is not restricted to citizenship. It also covers authors who have their habitual residence, or first publish, or simultaneously publish, their works, in one of the member states. Moreover, the protection of the national treatment principle extends to authors of cinematographic works the maker of which has its headquarters in a Berne country and authors of works of architecture erected in any Berne member state.

¹⁵⁷ Notwithstanding the absence of a single authentic report, it is safe to say that the illiteracy rate in Egypt hovers around 20%.

It could be argued that this objective test creates an unnecessary distinction between two groups of authors. While well-known authors could easily prove their honour and reputation, less known or obscure authors may struggle to satisfy that requirement. Certainly, this amounts to inequality among potential beneficiaries of moral rights protection. This is especially so, since when an English court followed the objective test in the context of a relatively known author of garage music, it concluded *inter alia* by stating “I have no evidence about the author’s honour or reputation”.¹⁵⁸

For all intents and purposes, the “reasonableness test”, which was introduced as recently as 2007, operates as a defence for claims of infringement of the moral right of integrity. According to this test, an act done in relation to a work that is protected by copyright shall not constitute an infringement of the right of integrity where the act was “reasonable in the circumstances” of the case.¹⁵⁹ The legislation enumerates a number of factors, in the form of a non-exhaustive list, that courts may take into consideration while assessing whether the defendant’s actions were reasonable in the circumstances. These factors include:

- the character of the work in respect of which the act was done;
- the nature of the act and its purpose;
- whether the work had been commissioned or made by an employee in the course of employment;
- customary practice in any particular sector; and
- weighing the need for doing the act against the damage caused to the author by the act.

In criticising the reasonableness test in its country of origin, i.e. Australia, Professor Adeney states “in cases where the author’s honour or reputation has been prejudiced, it may be unrealistic to talk about the defendant’s behaviour being reasonable, honour and reputation being fundamental personal values that should arguably take precedence over the interests or motives of the defendant.”¹⁶⁰ Therefore, as Guy Pessach pointed out, the reasonableness test

158 *Confetti Records v. Warner Music UK* [2003] EWHC 1274, para. 157. For analysis of the obscure approach adopted by UK courts and whether defamation law can contribute to a better understanding of the concept of reputation, see T. Aplin and S. Mohamed, *The Concept of Reputation in the Moral Right of Integrity*, *Journal of Intellectual Property Law & Practice* 14 (4) (2019): 268–277.

159 Section 50 (b) of the Copyright Act 2007.

160 Adeney, *supra* note 8, at 591.

of Israeli law appears to support and legitimise a reduction in the status and enforceability of the author's moral right of integrity.¹⁶¹

Furthermore, it is submitted that this reasonableness test may render the application of the right of integrity unpredictable. This is especially so, since the statutory factors do not constitute an exhaustive list and thus courts may introduce and/or rely on other factors not specifically mentioned in the Act. This would naturally lead to inconsistency in the application of the reasonableness test, which may inadvertently result in treating the beneficiaries of the moral right of integrity unequally.

6 Terms of Protection for Moral Rights and Contradictory Rules for Their Exercise *Post Mortem Auctoris*

Since Egypt and Lebanon follow the dualism theory,¹⁶² it is unsurprising that both offer perpetual protection for moral rights.¹⁶³ Similarly, it is unsurprising that as far as duration is concerned, Israel with its minimalistic approach elected to follow the monism theory; whereby economic rights and moral rights live together and die together.

As for the UAE, FARA follows the inaccurate approach of the old 2002 Act and therefore does not explicitly specify a term of protection for moral rights. Some commentators mistakenly refer to Egyptian law as an indication of the perpetual nature of moral rights in UAE.¹⁶⁴ Others confuse the imprescriptible nature of moral rights with duration and consequently implicitly argue that imprescriptibility points to an indefinite term of protection.¹⁶⁵ A third group

161 G. Pessach, 'The New Israeli Copyright Act- a case study in reverse comparative law', *International Review of Intellectual Property and Competition Law* 41 (2) (2010):187–201, at 200.

162 For the distinction between "dualism" and "monism", see *supra*, Section 2.

163 Articles 143 of the EIPC and 53 of the LLLAW. Interestingly, while discussing the moral rights provisions of the Egyptian Author's Rights Law of 1954, which are very similar to those of the EIPC, Professor Sanhuri argued that the legislature did not commit to either the dualism or the monism theory of protection, see Sanhuri, *supra* note 36, at 444. However, Sanhuri's view cannot be supported by the text of the law, its *travaux préparatoires* or the limited literature on moral rights in Egypt. Furthermore, since economic rights and moral rights are governed by separate sets of rules that make the former assignable and run for a limited duration and the latter non-assignable and of indefinite duration, it is difficult to argue that the legislature did not wholeheartedly follow the dualism theory.

164 Khater, *supra* note 66, at 212–213.

165 Kadfour Al Muharey, *supra* note 50, at 96.

seems to interpret FARA in a way the text cannot accommodate and concludes that “{t}he UAE Copyright Law states that moral rights are perpetual and inalienable”.¹⁶⁶ In doing so, they seem to have misread the Arabic term *adabia* [moral] of Article 5 of FARA as *abadia* [perpetual]. This is an easy mistake to make, for switching the order of the second and third letters in the Arabic word *adabia* would render it *abadia*.

Notwithstanding the absence of a specific provision determining the duration of moral rights, Article 44 of FARA states that after the expiry of the economic rights, moral rights of the deceased author, in the absence of an heir or a legatee, shall be exercised by the competent ministry. Undoubtedly, this provision implies the survival of moral rights beyond the term of protection specified for economic rights [50 *pma*]. However, this provision does not make it clear that moral rights are perpetual. It is submitted that Article 5 of FARA needs to be amended to make it absolutely clear that in addition to being inalienable and imprescriptible, moral rights are perpetual.

Since moral rights survive the death of the author in all four jurisdictions, they could still be exercised *post mortem auctoris*. While the exercise of the right of paternity and integrity by the successors in title is arguably straightforward, the same is not true in respect of the rights of divulgation and withdrawal from circulation.¹⁶⁷

It is submitted that the right of divulgation provisions in the EIPC, FARA and the LLLAW are poorly drafted. While under the old Egyptian Author's Rights Law of 1954 there was a specific provision that required all successors in title to respect the author's wishes as expressed during their lifetime,¹⁶⁸ no similar provision was adopted in the EIPC, FARA or the LLLAW. It is hoped that future amendments will correct this flaw by adopting a similar provision to that of the old Egyptian law of 1954 and forbids the successors in title from *posthumously* publishing the work of the deceased author against the latter's explicit wishes.

As for the right of withdrawal, Article 144 of the EIPC makes it clear that this right does not pass to the author's successors in title.¹⁶⁹ The phrase “the author alone”, as used in that provision, explicitly excludes the author's heirs

166 O. Omotunde and E. Macharia, Does your employee own “your” copyright? A review of copyright law in the UAE, *Anjarwalla Collins & Haidermota* (2022), available online at <https://ach-legal.com/blog/copyright-law-uae> (accessed 11 August 2022).

167 Since Israeli law does not recognise the rights of divulgation and withdrawal from circulation, the discussion focuses only on the laws of Egypt, Lebanon, and the UAE.

168 Article 19 of the Author's Rights Law No. 354 for 1954.

169 For the wording of Article 144 of the EIPC, see *supra*, note 103.

and/or legatees from ever exercising this right.¹⁷⁰ It is unfortunate that neither Lebanon nor the UAE has adopted a similar provision.¹⁷¹ It is hoped that future amendments to the LLLAW and FARA will make it clear that unlike all other moral rights, the right of withdrawal from circulation is not transmissible *mor-tis causa*.

Bizarrely, while depriving the successors in title of the deceased author from the possibility of exercising the right of withdrawal from circulation, Article 146 of the EIPC permits the Competent Ministry, *in the absence of an heir or a legatee*, to exercise that right *post mortem auctoris*. The peculiar wording of that provision could only be the result of poor drafting. This is especially so, since it implies that the right of withdrawal from circulation may survive the death of the author and pass to heirs and/or legatees, which would be in direct conflict with the explicit wording of Article 144. Furthermore, it is inconceivable that the Egyptian legislature intended to ban the heirs or legatees from exercising the right of withdrawal, yet also bestowed that privilege on the Competent Ministry. Moreover, the wording of Article 146 as it stands seems to encourage the Egyptian government, through its administrative bodies, to use the right of withdrawal from circulation *post mortem auctoris* as a censorship tool.¹⁷²

Hopefully, any future amendment to the EIPC, FARA and the LLLAW would consider making it unequivocally clear that the right of withdrawal from circulation does not survive the death of the author and thus neither the heirs/legatees nor any competent ministry could exercise it *post mortem auctoris*.

7 Conclusion

Moral rights are enshrined in the laws of the four countries subject to this study. However, as this article has demonstrated, the protection of moral rights in all four jurisdictions is defective. While some of those defects are of general nature and thus affect two or more of the national laws subject to this study, others are jurisdiction-specific. To rectify the existing defects, a number of general and jurisdiction-specific suggestions are made.

170 Sanhuri, *supra* note 36, at 517–518; Abd El Salam, *supra* note 50, at 96. M.H. Lotfy, *AlMarga AlAmly Fi AlMilkia AlAdabia Wal Fania* (Cairo: El Hay'a El El Massrya EL Ama Li El Ketab, 1992), 36.

171 Interestingly, Article 53 of the LLLAW makes it unequivocally clear that the right of withdrawal from circulation can be exercised by the heirs and/or legatees.

172 Regrettably, Article 44 of FARA followed in the erroneous footsteps of the Egyptian legislature and copied almost *verbatim* the wording of Article 146 of the EIPC.

As far as the general suggestions are concerned, it is hoped that all four jurisdictions will consider expanding the list of statutory moral rights to include the right of access. Similarly, it is hoped that Egypt, Lebanon, and the UAE will adhere strictly to the inalienability principle and extend the scope of the prohibition against waiver to cover the situation where the author forgoes the exercise of moral rights.

As for the scope of the right of divulgation, the EIPC, LLLAW and FARA may need to be amended to make it clear that the right could be exercised in stages and that any exhaustion of that right must be restricted to the specific purpose, or purposes, for which it was exercised. With respect to the right of withdrawal from circulation, it is unfortunate that its scope in Lebanon and the UAE is restricted to the retraction of the work. Hopefully, any future amendment to the LLLAW and FARA will recognise the right of repentance as a further sub-category of the right of withdrawal from circulation. Additionally, as it stands, the right of withdrawal from circulation in Egypt, Lebanon and the UAE could be abused by unscrupulous authors. Therefore, all three laws must adopt an additional provision that unequivocally states that should the author decide to have the work republished after having exercised the right of withdrawal from circulation, the right of first refusal would automatically vest in the original contracting party and under the same initial terms and conditions.

In respect of the right of paternity, it is a customary practice in all four jurisdictions for broadcasters to mention the names of performers but to omit the names of lyricists and composers of popular music from the content of their programmes. This undoubtedly creates a conflict between law and practice. Thus, it is advisable for the four national laws to resolve this conflict by either adopting a specific disc-jockey exception or by making it clear that the right of paternity applies uniformly to all types of copyright subject matter and to all methods of disseminating works in non-material form.

As for the right of integrity, future amendments to the EIPC, FARA, and the LLLAW may need to consider extending protection to the spirit of the work. Similarly, they may need to expand the scope of the right of integrity to protect authors against the unauthorised destruction of their works. Furthermore, it is hoped that Egypt and the UAE will discontinue using the so-called “development agenda” as a justification for the unnecessary restrictions they impose on the application of the right of integrity to foreign authors and/or authors of foreign language works.

Obviously, the lack of equality among beneficiaries of moral rights is not restricted to authors of foreign language works, but also seem to affect co-authors of audiovisual works. Hopefully, the legislatures of Egypt and the UAE will desist from being guided by practicality and extend the benefits of the

rights of divulgation to cover co-authors of “incomplete parts” of audiovisual works.

As far as the exercise of moral rights is concerned, it is desirable for future amendments to the laws of Egypt and the UAE to correct the teleological mistake of allowing a non-author to exercise moral rights over collective works. This may require both laws to adopt a new provision that makes it clear that collective works are authorless and thus could not be granted moral rights protection.

As for the exercise of moral rights *post mortem auctoris*, the laws of Egypt, Lebanon and the UAE left much to be desired. Hopefully, future amendments will forbid the successors in title from *posthumously* publishing the work against the deceased author’s explicit wishes. Similarly, it is hoped that all three laws will be amended to make it clear that the duration of the right of withdrawal from circulation is limited to the author’s life. Thus, neither heirs or legatees in the case of Lebanon and the UAE, nor a competent ministry in the case of Egypt and the UAE, could exercise it *post mortem auctoris*.

In terms of jurisdiction-specific suggestions, the author wishes to make only one further recommendation regarding Egypt, in relation to which eleven of the twelve general comments previously made apply. It is hoped any future amendment will make a clear distinction between the first presentation of an audiovisual work, which engages the right of divulgation of all co-authors, and subsequent presentations that merely engage the economic rights and thus need not require the authorisation of all co-authors.

As for the UAE, it is hoped that the duration issue will soon be settled by adopting a new provision that makes it clear that moral rights are perpetual. Hopefully, any future amendment of FARA will also introduce an explicit imperative rule that renders any waiver of moral rights null and void. Furthermore, it might be wise for the UAE legislature to revive the compensation requirement of the 2002 Act as a prerequisite for the exercise of the right of withdrawal from circulation.

As for Lebanon, it is unfortunate that determining the beneficiaries of moral rights protection of works in which more than one author participates is linked to a superficial distinction between collective and collaborative works. Since Lebanese law does not use the term “collective work” in its traditional *Civilian law* sense, it is hoped that the legislature will soon abolish this meaningless distinction and grants all contributors equal moral rights protection. Hopefully, this amendment will be coupled with a new provision that categorically rejects the erroneous approach of the French court of cassation by making it clear that no legal entity could ever become a beneficiary of moral rights protection. Moreover, it is desirable for Lebanese courts to refrain from

improvising and to find that, in accordance with the inalienability principle, no assignment of moral rights is valid.

As for Israel, this article has demonstrated that contrary to popular belief the copyright system of Israel offers a higher level of protection to the author's moral right of integrity than that recognised by the *droit d'auteur* systems of the region. It is hoped, however, that Israel will soon abandon its minimalist approach and expand the list of statutory moral rights to include the rights of divulgation and withdrawal from circulation. Similarly, it is hoped that the Israeli legislature will adopt the subjective test as the governing criterion for the application of the right of integrity. Hopefully, this will be combined with abolishing the "suitability" and "reasonableness" defences, which taint the application of the right of paternity and that of integrity respectively.

Additionally, it is hoped that Israeli law will once and for all turn its back on the half-hearted approach to moral rights and expand the scope of the inalienability principle to prohibit waivers. This will not only benefit authors but may also help Israeli law to become a beacon for other common law countries, such as the UK and U.S., to follow.