



المعهد القومي للملكية الفكرية

The National Institute of Intellectual Property  
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## المجلة العلمية للملكية الفكرية وإدارة الابتكار

دورية نصف سنوية محكمة يصدرها

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جامعة حلوان

الكتاب الثاني

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## **Translation between the derivatives and the Fair Use**

**Laila Sayed Mohamed Al-Araby**



## Translation between the derivatives and the Fair Use

Laila Sayed Mohamed Al-Araby

### Abstract:

The need for translation is an urgent necessity, especially in this era. The scope of communication has expanded and information technology has taken its place in all fields. This has been followed by an increase in the scope of translation from one language to another so that communication among civilizations is continuous.

Since the translation in its content contains the transfer of a book from one language to another, it dictates that we examine the relationship between translation and protection of intellectual property rights enjoyed by both the owner of the original work and the translator in Egyptian law and other international laws.–

This act of translating a work into a different language can be prohibited or authorized by the author of the copyright work. Is translation just a derivative work or it can be seen as a transformative fair use? this is the point or the problem I would like to discuss in my research in the light of a comparative study of Egyptian ,US, Canadian and some Arab states` intellectual property laws.

### Chapter One: 1.1-Introduction

The translation evolved greatly after it was carried out by man when he was translating literally, the developments took on the diversity and acceleration of human translation and the development of the translation to include also the work of the machine ,thus creating two types of translation :Human Translation and Machine Translation .These two types also refer to the case of a translator who uses the machine to facilitate his work, as well as the computer translation process after feeding it with dictionaries and analytical programs that turn words into digital texts that the computer can read and translate in clear language from one language to another.

Hence, the impact of informatics on the spread and development of the translation movement has been transferred from the stage of human translation to electronic translation via computers<sup>1</sup>.

Since the translation in its content contains the transfer of a book from one language to another, it dictates that we examine the relationship between translation and protection of intellectual property rights enjoyed by both the owner of the original work and the translator in Egyptian law and other international laws.

The author of a copyrighted work has the exclusive right to authorize or prohibit the following acts: Reproduction: This covers copying a work in any way. For example, photocopying, reproducing a printed page by handwriting, typing or scanning into a computer, or taping recorded music .Distribution: This covers issuing copies of a work to the public. Rental and lending: This covers renting or lending copies of a work to the public. For example, renting from a video store or loaning a CD from a library. Publicperformance: This covers performing, showing or playing a work in public. This would include performing a play in a theatre, and playing sound recordings or showing films in public .This right does not extend to the exhibition of literary, dramatic, artistic or musical works (for example, in a museum or gallery).

Communication to the public: This covers communication of a work to the public by electronic transmission. This would include broadcasting a work or putting it on the internet. Adaptation: This covers the making of an adaptation of a work. This would include making a film out of a novel, transcribing a musical work,

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<sup>1</sup> ورقة عمل مقدمة من عبد الله عبد الله ضمن اعمال الملتقى الدولي الثاني للترجمة الذي تنظمه مؤسسة الفكر العربي في الفترة من ١٨-٢٠ سبتمبر ٢٠٠٦/ بيروت- لبنان (ص١)-مترجم.



translating a work into a different language or converting a computer program into a different computer language or code.<sup>1</sup>(2)

Thus this act of translating a work into a different language can be prohibited or authorized by the author of the copyright work and this is the point or the problem I would like to discuss in my research in the light of a comparative study of Egyptian ,US, Canadian and some Arab states` intellectual property laws

## 1.2 The research subject matter(problem)

Since translation is a highly creative art, I think that translation should be placed differently and we should draw a line between derivative works, over which the author holds an exclusiveright, and transformative fair uses. Translation can be seen

more like transformative uses that should be permitted by fair use, instead of derivative works that are entirely under the control of the original author. Consider a highly creative work like a poem or play; once it is translated into a new language, all of the expression has changed, the aesthetic is very likely quite different, and what remains seems very much like the underlying idea of the original. So it is possible then to imagine that the idea/expression dichotomy in copyright could be used to argue against the appropriateness of giving the original author exclusive rights over translations .This case may be different with the technical or scientific translation. Academic works, of course, are different than poetry in most cases. On the one hand, there is likely to be more room for fair use when a work is critical or factual than there is for a highly creative poem. On the other hand, there may be a stronger argument for giving the academic author some level of control over translations

<sup>1</sup> From Intellectual Property Office,The rights granted by Copyright,Gov.UK,2015(first page).

of her work, precisely because it is intended to inform and educate, purposes which could be undermined by a poor translation<sup>1</sup>.

### 1.3-The research methods

The research adopts the deductive analytical method where I start with the general to move to the more specific, from the whole to the partial. It started with the intellectual property law from which the copyright branched ,then we come to the derivative works represented by the translation in an attempt to apply the law .Besides, this analytical method is supported by the comparative method where the derivative works protection in the Egyptian IP law is compared to the IP laws in USA ,Europe and some Arab states ,based on Bern and TRIPS agreements and the WIPO principles ,in attempt to find out these laws protection of the translated literary text compared with that of the Egyptian law.

### 1.4 Overview

My research paper start with an introduction on the intellectual property,copyright and the derivative works protection including the translation.Then I mention the method adopted by this paper namely the deductive analytical method supported by the comparative one.this is followed by the point or the problem handled by the research and its results in an attempt to prove my vision considering translation not a derivative work but a transformative work based on fair use.I also demand the issuance of a law applying it together with a liability rule and a compensation imposed on the translator in case of hurting the author reputation .This theoretical part is enhanced by real cases in and outside Egypt. The research includes the following chapters: The first chapter defines the intellectual property with its branches of copyright and industrial property and what is meant by derivative work.It includes

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<sup>1</sup> Kevin Smith,On Copyright,Translations and Moral rights ,In The Open,Kansas,USA,2016.(page one)

the definition, kinds and conditions of the derivative works and how they are protected by the IP Law in Egypt and some Arab states. The second chapter introduces different types of translations, the nature of the translator and real cases related to the moral and financial rights granted by the Egyptian law to the translators long decades ago, what is meant by Fair Use and different models of fair use doctrines such as US, U.K. The fourth and last chapter includes real cases of translated works as judged by Egyptian and international laws. Finally comes the conclusion with research results and recommendations including the call for the issuance of legislations supporting this study.

### 1.5-Previous studies

There are a lot of public and special books and several studies and researches made for obtaining master and PHD degrees and several journal articles that dealt with this topic, and my research is an attempt to add something new as I mentioned above. From among these books is "The copyright and the neighboring rights" by Delia Lipzek, translated by Dr. Hossam Lotfy. The author said "The translations..A work can be expressed by translating it into a language other than that used in the original work and this translation should be honest to the content of the original work and its style. This necessitates the translator overcome the linguistic difficulties that may lead to real recreation of the original work and this is what always happen to the poetry"<sup>1</sup>

## Chapter Two

There is no doubt that the trend to protect the intellectual property rights in the legislative and jurisprudential manner was delayed due to the lack of modern technologies in the field of communication and transfer of intellectual works to the public, which led to the absence of the need for protection. The absence of

<sup>1</sup> دليا ليبزيك، حقوق المؤلف والحقوق المجاورة، مطبعة مركز الملك فيصل للبحوث والدراسات الإسلامية، ٢٠٠٣، ترجمة د. محمد حسام لطفى، ٢٠٠٤.

such modern techniques led to the discouragement of creators and innovators to creativity and innovation for the difficulty of contacting with the public

However, the countries then realized the importance of protecting the intellectual property rights and the necessity of issuing their own legislations to protect the rights of creators and innovators. Intellectual property rights enjoy a great deal of prestige and glory because they are associated with the most elevated thing owned by man, which is the human mind, and they are the basis of Civilizational progress, therefore the IP rights are worthy of protection at both the national and international levels<sup>1</sup>.

2.1-Copyright legislation is part of the wider body of law known as intellectual property (IP) which refers broadly to the creations of the human mind. IP rights protect the interests of innovators and creators by giving them rights over their creations. IP is usually divided into two branches, namely industrial property and copyright:

## 2.2-Industrial property

It takes a range of forms, including patents for inventions, industrial designs (aesthetic creations related to the appearance of industrial products), trademarks, service marks, layout-designs of integrated circuits, commercial names and designations, geographical indications and protection against unfair competition.

## Copyright property

It relates to literary and artistic creations, such as books, music, paintings and sculptures, films and technology-based works (such as computer programs and electronic databases). The expression copyright refers to the act of copying an original work

<sup>1</sup> دز شحاتة غريب شلقامي، الملكية الفكرية في القوانين العربية-دار الجامعة الجديدة، اسكندرية- اسكندرية، مصر، ٢٠٠٩، ص ١-٢  
-خاطر لطفي، موسوعة حقوق الملكية الفكرية، ناس للطباعة-عابدين، ٢٠٠٣، ص ٧

which, in respect of literary and artistic creations, may be done only by the author or with the author's permission. The expression authors' rights refers to the creator of an artistic work, its author, thus underlining that, as recognized in most laws, authors have certain specific rights in their creations that only they can exercise, which are often referred to as moral rights, such as the right to prevent distorted reproductions of the work. Other rights, such as the right to make copies, can be exercised by third parties with the author's permission, for example, by a publisher who obtains a license to this effect from the author.

2.3-The Berne Convention lists the following examples of works protected by copyrights:

- Books, pamphlets and other writings; • lectures, addresses, sermons;
- Dramatic or dramatic-musical works; • choreographic works and entertainments in dumb show;
- Musical compositions with or without words; • cinematographic works to which are assimilated works expressed by a process analogous to cinematography;
- Works of drawing, painting, architecture, sculpture, engraving and lithography; • photographic works to which are assimilated works expressed by a process analogous to photography;
- Works of applied art; • illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science;
- "translations, adaptations, arrangements of music and other alterations of a literary or artistic work," which "shall be protected as original works without prejudice to the copyright in the original work"; and

- “collections of literary or artistic works such as encyclopedias and anthologies which, by reason of the selection and arrangement of their contents, constitute intellectual creations” – again, the Convention provides that these “shall be protected as such, without prejudice to the copyright in each of the works forming part of such collections<sup>1</sup>.”

It should be noted that the issuance of legislations that provides for the protection of the rights of the author and neighbouring rights is important to guarantee the respect of the rights of the authors as through the broad knowledge of the rules governing the rights of the author, different communities can effectively establish the basis of relations among different parties involved in cultural life and to mobilize their efforts for the creation and production of works that enrich the cultural balance

#### **.4-Egyptian and Arab copyright laws**

The Egyptian legislator paid attention to the need of respecting the rights of the author .Hence, Law No. 345 of the year 1954 was issued on the protection of the copy right. This law was repealed by Law No. 82 of 2002 on the protection of intellectual property rights. All Arab countries have taken care to protect the rights of authors and neighbouring rights and thus, The Qatari Law No. 7 of 2002 on the protection of the copy right and the neighbouring rights was issued. The Bahraini Law No. 22 of 2006 on the protection of the rights of the author and neighbouring rights, which repealed Decree Law No. 10 of 1993 on the protection of the right of the author, United Arab Emirates No. 7 for the year 2002 on the rights of the author and neighbouring rights, Decree No. 5003 of July 19, 2003 on the rights of the author and rights of the neighbouring of the Democratic Popular Republic of Algeria was issued .This comes in addition to the issuance of Royal Decree

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<sup>1</sup> Understanding Copyright and Related Rights, WIPO (world Intellectual Property Organization),2016, Geneva ,Switzerland,p4

37/2000 on the law of protecting the rights of the author and neighbouring rights in the Sultanate of Oman, the protection of the rights of the author in the Republic of Syria, The Decree Law No. 5 of 1999 in the Intellectual Property Law in the State of Kuwait. Royal Decree No. M 11 in 19/5/1410 was issued by Saudi Arabia for the copy right protection beside that issued by Sudan in 1996 for the protection of the author rights and the neighbouring rights

It is clear from all these laws that this statement is concerned only with the rights of the author and the neighbouring rights and left the protection of patent and industrial designs and trademarks and trademarks of other laws and this is contrary to what the Egyptian legislator did as he issued a unified law of intellectual property governing copyright and Neighbouring rights, patents, neighbouring rights, patents, trademarks, industrial designs, and plant varieties. The third book of this law is devoted to the rights of copyright and neighbouring rights. And this is preferable, especially that the protection is based on one basis which is the creativity and innovation whether in the copy right or the patent with little differences .Therefore there was no need for the issuance of several laws related to each topic separately and the Egyptian law No 82 for the year 2002 cancelled all the previous laws. It became a unified law of intellectual property governing copyright and neighbouring rights, patents, neighbouring rights, patents, trademarks, industrial designs, and plant varieties<sup>1</sup>.

## **2.5-What are the Derivative works:**

They are works which derive their origin from previous works such as translations, distributions and collections of works, including Databases, whether from computer or others and

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<sup>1</sup>دشحاته غريب شلقامي، الملكية الفكرية في القوانين العربية، دار الجامعة الجديدة، اسكندرية  
مصر، ٢٠٠٩ ص ٤ - ٦

expressions of folklore as long as innovative in terms of the order or selection of contents. Derivative works imply that there are previous works from which they have been derived, but it should be noted that the protection of derivative works is conditional on the effort of their authors and that the author of the previous work is not a contributor. In the new work, it must be noted that the protection of the derivative work does not prejudice the protection of previous works from which it derived<sup>1</sup>.

### **2.5.1 Definition of the derivative work in the Egyptian law and other Arab states**

The Egyptian law defines derivative work as: "a work whose source derives from a previous work such as translations, distributions, collections of works, including readable databases, either from the computer or from others, and the collection of folkloric expression, as long as it is innovative in terms of ordering or selecting its contents."<sup>2</sup>

It is defined by UAE law as: A work that derives its origin from a previous work, such as translations, and also sets literary, artistic and folkloric collections as long as it is innovative in terms of ordering or choosing its contents<sup>3</sup>.

-For its part, Bahraini law shortened the definition of derivative work as: a work whose source derives from another earlier work or expressions of folklore<sup>4</sup>.

As for the situation in the Sultanate of Oman, we find that the Royal Decree No. 37/2000 issuing the law protecting the rights of the author and neighbouring rights has been devoid of the definition

<sup>1</sup> نفس المرجع السابق ص ٦٩ - ٧٠.

<sup>2</sup> Article 138 of Law No. 82 of 2002

Article 6 of Article 138 of Egyptian Law No. 82 of 2002

<sup>3</sup> The first article of the UAE Federal law No. 7 of 2002

<sup>4</sup> Article 1 of the Bahraini Law No. 22 of 2006



of derivative works, but we find that the third article of this law provided that: Those who enjoy the protection of this law are the following:

A person who translates a work into another language as well as a person who summarizes, modifies or modifies it or any other aspects that make the work appears well.

### **B) Collections of works and folkloric expressions of**

Traditional folklore, anthologies and databases if these collections are innovative because of their order or choice of contents

Similarly, we find the third article of the Qatari law where it stipulates that, taking into account the protection provided in the previous article, protection is enjoyed by the following derivative works:

1. Translation, summarizing, editing, annotation and other adaptations
- 2 - The collection of subjects and selections if they are innovative in terms of selection of materials or order
- 3 - Databases if these groups are innovative because of the order or choose their contents
- 4 - The collection of works and expressions of folklore if these groups are innovative because of the order or choose the contents.

The same meaning is included in the second paragraph of the fifth article of the Sudanese law issued in 1996.

The protection provided in the preceding two paragraphs shall not prejudice the protection enjoyed by the authors of the original works and their successors

It is clear to us from this text that it fully agrees with the definition of derivative work contained in Article 138 of the

Egyptian Law and the first article of the UAE law and Bahraini law. If the law of protection of the author of the Sultanate of Oman did not explicitly define the derivative work, the text of the third article expresses it

It should be noted that Syrian Law No. 12 of 2001 did not define the derivative works and did not include them in works protected by copyright law <sup>1</sup>. However, this does not mean that these works will come out of the protection if they meet the protection requirement provided by law, for instance, if they are expressed in a certain way, are innovative and have the personal imprint in, then they are subject to legal protection. The protection of derivative works has been written by the Kuwaiti law twice, in the first and third articles<sup>2</sup>.

The derivative works require, the existence of an original work to benefit from it, so that the person who undertakes these derivative works benefit from the ideas and the use of subjects presented by the author of the original work. And some have indicated that consequently “the provisions of derivation are applied considering this person being the author of his new work, and then he shall have all the rights prescribed for the authors under the intellectual property rules, so long as he has obtained permission to use these ideas or subjects from the original author, whether in exchange for money or without remuneration. If these ideas or topics Has not been subjected to protection because they are taken from the cultural heritage of the community and fall into the public domain, for example, there is nothing to prevent the author of the derivative work from the use of them with permission of the

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<sup>1</sup> As seen in articles 1&3 of the Syrian copyright law No 12/2001

<sup>2</sup> Item (L) in article (1), article 3 of the Decree of Kuwaiti law No 5/1999 concerning IP law.

competent authorities for a financial equivalent of what is known as the given public domain”<sup>1</sup>

### **2.5.2-Conditions of the derivative works protection**

#### **The use of a previous work (original work):**

This condition means that the author of the new work (derived work) must use the original work that precedes his new work. The derived work must derive its origin from the original work. This is confirmed by most Arab legislations when they defined the derivative work as the work that draws its origin from Previous Workbook. And the use of the previous work means the integration of the 2 original and derivative works, which is expressed by the integration of material and intellectual and first means the transfer of the content of the previous work as it is without prejudice to it except only some additions to it 1. Regarding intellectual integration it means that the author of the derivative work interprets it in his own style and to show his own idea and make some adjustments, but without departing from the general goal of the original work, the new work must be expressed in his own way within the limits of thought of the original work.

#### **2 - Non-participation of the author of the original work in the derivative work:**

Some of the doctrines mentioned this condition where the author of the original work should not be involved in the new work, but I believe that it is an axiom where the author of the original work, if he participated with the author of the derivative work, then the work is considered a joint work, but we must remember that this type of work is also subject to legal protection decided in intellectual property laws

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<sup>1</sup> الملكية الفكرية في القوانين العربية ص ٧٣ - ٧٤.

The absence of the author of the original work participation in the Derivative Work has been expressed by some as the derivative work author's exclusive right to intellectual work, i.e., while merging the original work with the derivative one, the author of the derivative work 'doesn't submit to any supervision, direction, or intervention by the previous author. The derived work is distinguished from the joint work and the collective work at this point where the first is characterized by cooperation among the authors in the work of a common thought and the second is based on guidance from others<sup>1</sup>

It's worth mentioning that this condition was not mentioned in the Egyptian Intellectual property law but it was included in various Ip laws in different world countries as the case in the French intellectual property legalization and the US copy right law as these legislations necessitate the non-participation of the author of the previous work in the new work as an essential condition for applying the derivative works rules<sup>2</sup>

### 3. Availability of innovation:

It is not sufficient to impose legal protection on derivative works that derive their existence from previous works, but they must be created in an innovative manner, ie, that the personal imprint of the author of the Derivative Work must appear in the performance of this work. This was expressed by the Arab legislations when stipulating that the derivative works must be innovative in terms of order, format and selection of contents.

<sup>1</sup> من نفس المرجع السابق ص ٧٤ وما بعده

عبد الرشيد مامون، محمد سامي عبد الصادق، حقوق المؤلف والحقوق المجاورة، المرجع السابق، ص ١٤٨

صبري حامد خاطر، الملكية الفكرية، الطبعة الاولى، ٢٠٠٧، مطبعة جامعة البحرين ص ٥٦

<sup>2</sup> د خالد ممدوح ابراهيم، حقوق الملكية الفكرية، نادي القضاة، ص ص ٤٩٢٢٠ - ١١١٠

We may recall again the definition of the Egyptian Law No. 82 of 2002 for Derivative Work<sup>1</sup> where it is stated that:” a work that derives its origin from a previous work such as translations, musical distributions and assemblies of works, including readable databases either from the computer or from others, As long as innovative in terms of the order or selection of its contents”. This definition emphasizes the need for the availability of innovative stamp in derivative works, so that they can enjoy legal protection.

It should be noted that the derivative works are multiple forms as mentioned by the laws of intellectual property in various Arab countries .Most of the Arab copyright legislations have mentioned many forms that represent a derivative work worthy of legal protection. It is worth mentioning that these types contained in the Arab legislations of derivative works are not the only forms, but have been mentioned as examples, and therefore if the conditions of derivative works are fulfilled in the work done by one author or more, it may benefit from the provisions to which derivative works are subject.

### **2.5.3-Types of derivative works**

By reading the texts of the intellectual property laws we can mention the following forms of derivative works:

First: Translation works

Second: Databases

Third: Different assemblies and re-editing of previous works

Fourth: Add, comment and revise workbooks

Fifth: Summarize and edit the works.

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<sup>1</sup> Article 138 of the Egyptian law No 82/2002

-And the derivation of a subsequent work from a previous work ranges, from the mere re-presentation of the work as in its original language to the extent that the work is displayed in a language other than its original language by means of the translation of the previous work. The derivative new work is brought closer or farther to the previous work in different degrees:-

1-The next work of the previous work shall be brought closer when the previous work is re-presented as it is in its original language without any amendment, either because this work became in the public domain after the expiry of its term of protection and it became permissible for any publisher to re-present it without having to take permission from anyone and with no-payment, or The new work is a compilation of some official documents such as the texts of laws and judicial decisions where any publisher may re-display these documents without having to ask permission from anyone or that the subsequent work is a selection from a previous work or works. In this case, the author of this anthology asks the permission from authors of those works which he has chosen or their successors, at the publication of these works.

2- and the subsequent work became farther slightly from the previous work if the author re- show previous work, but after adding to it an explanation or comment or definition or after being altered and amended through the audit and revision, or after careful investigation and comparison among its different manuscripts and this is what known as the publication of ancient manuscripts, and except for the publication of the ancient manuscripts the author of the subsequent work must ask permission of the author of the previous work or his successors before the publication of previous work after being annotated or defined or modified following the revision.

3- and the subsequent work `s distance or remoteness from the previous work is much more deliberately if the author of subsequent

work, quoted the previous work through the summary or by conversion from one type to another of the arts or sciences .In all these cases the author of the subsequent work must ask permission of the author of the previous work or his successors before publishing the summary or conversion from one art to another.

4- And the subsequent work distance from previous work increases if the author of the subsequent work deliberately intends to show previous work as it is, but in a language other than the native language, through translation and in this case, the translator should ask the permission of the author of the original work or his successors before publishing Translated work<sup>1</sup>.

-This first type of translation works is my focus point that will be explained in detail.

#### 2.5.4-Translation works

The translations have been included in the examples of the derivative works presented by the Arab laws, but it is noted that these laws did not establish a legislative definition of the translation work. We can use the definition defined by the International Organization of Intellectual Property for translation where the organization defined the translation as: "expression of any oral or written works in a language different than That of the original text and the translation must reflect the content of the work and its style, with all accuracy and honestly, and the copyright of the translators is granted in recognition of the use of another language in an innovative manner without prejudice to the rights of the author of the translated work. The translation should be permitted in a proper way as the translation of the work is a specific element of copyright."

<sup>1</sup> عبد الرازق السنهوري الوسيط في شرح القانون المدني ( حق الملكية) الجزء الثامن، القاهرة، ٢٠١٠، ص٢٥٥ - ٢٥٦

The translation means the expression of a previous original work in a language other than the language in which the text is written, and the translator makes a remarkable effort in this translation, since he does not deliberately limit the literal translation of the words of the previous work but he endeavours to create and innovate in the use of the appropriate words and synonyms, which express the feelings and ideas of the author of the translated work. Using an innovative method, the translator can make a new work that deserves protection in the texts of copyright laws, to the extent that we should go beyond the area of the provisions of the derivative works, considering translation not only a derivative work but also a transformative fair use, the point to be discussed in this paper in details later on.

It should be noted that the translator's modification of the original work according to his own style and vision should not prejudice or harm the original author's reputation. The translator or author of the derivative work should refer to the deletion or change, so that this does not constitute an infringement of the original author copyright.

The author shall have the exclusive right to license or to prevent any exploitation of his work in any way and in particular by means of translation. The translation may not be performed without the approval or permission of the author of the original work. The latter has the right to prevent the translation of his work<sup>1</sup>.

If this is the case, we must confirm that the Egyptian legislator has restricted this exclusive right to license or ban translation works in order to protect the Arabic language or to support and develop Arab culture where the protection of the copyright of a written work in foreign language ends in translating

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<sup>1</sup> المادة ١٤٧ من القانون المصري رقم ٨٢ لسنة ٢٠٠٢

المادة ١٤٨ من القانون المصري رقم ٨٢ لسنة ٢٠٠٢



it into Arabic if This author didn't use This right himself or through others within three years from the date of the first publication of the original work written in a non-Arabic language.

And from among other restrictions included by the Egyptian legislator on the original author in preventing the translation of his work is what was provided in Article 170 of Law No. 82 of 2002 stating that "any person may request the competent ministry to grant him a personal license to copy or translate, or together, any protected works in accordance with the provisions of this law, without the permission of the author and for the purposes set out in the next paragraph for the payment of fair compensation to the author or his successor, on condition that this licence not to conflict With the normal exploitation of the work or cause undue harm to The legitimate interests of the author or the owners of copyright and the license will be issued by a reasoned decision which determines the time and spatial scale and for the purposes that meet the needs of education with all its types and levels<sup>1</sup>.

The Executive Regulations of this Law shall specify the cases and conditions for the grant of the license and the amounts of the fee payable not exceeding one thousand pounds for each work<sup>2</sup>

It is clear from this text that any person may request the competent ministry to grant him a license to translate any work without obtaining the permission of the author, but this translation license shall comply with the following:

1 - The need to pay fair compensation to the author or his successor

<sup>1</sup> شحاته غريب شلقامي، الملكية الفكرية في القوانين العربية. د.شحاته غريب شلقامي، الملكية الفكرية في القوانين العربية.

<sup>2</sup> عن الترخيص الاجباري بالترجمة، شوقي صلاح، حقوق المؤلف بين الاطلاق والتقييد تطبيقا علي الحق في الترجمة، بحث مقدم في ندوة الحماية القانونية والامنية لحقوق الملكية الفكرية، اكااديمية الشرطة، مركز بحوث الشرطة، القاهرة، ٢٠٠٦، ص ٨، وما بعدها

2. The license to translate is not inconsistent with the normal exploitation of the work
- 3 - Not to cause unjustified damage to the legitimate interests of the author or the owners of copyright
4. The license decision must be reasoned and specific in terms of temporal and spatial scope
- 5- The license shall be for the purpose of meeting the educational needs of all kinds

### **Some Arab states and Translation**

It should be noted that some other Arab laws have stipulated the protection of translations as being a derivative work and have given the author the right to allow translation of his work and its financial exploitation. For instance, the Bahraini law states that the author enjoys exclusive financial rights, including the right in translating his work into another language<sup>1</sup> and the same attitude is adopted by the Qatari law<sup>2</sup>

. -But what can be observed on some Arab legislations is that they seem free of text similar to the text existing in the Egyptian law and support for Arab culture through the right to translate any written work written in foreign language into the Arabic language as long as it was not translated within three years from the date of publication

Some of the Arab laws provide for the right to translate without obtaining the author's consent but to achieve certain objectives. Therefore, we find the Qatari project that stipulates the right to translate the protected work without the permission of the author, provided that this does not conflict with ordinary

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<sup>1</sup> Article (6) of Bahraini law and Article (5) of Sultanate Oman law.

<sup>2</sup> Article (7) of Qatari law

exploitation and does not cause unjustified harm to the legitimate interests of the author<sup>1</sup>.

This is consistent with the attitude of the Egyptian legislator as I have already explained, but these legislations have not included the text on the compulsory license for translation, as stipulated in the Egyptian law, which means the right to resort to the competent ministry to apply for a license for translating any protected work .In this context, we can refer to The UAE legislator, who provided for this compulsory license of translation to meet the needs of education at all levels and to meet the needs of public libraries<sup>2</sup>

In this regard, it is worth noting that the Arab Convention for the Protection of Copyrights has given the right to the competent national authority to follow up the application of the copyright protection system in each of the member countries to license the translation of foreign works into Arabic language and publish them after one Gregorian year on the date of publishing the original work for the first time, in accordance with the conditions specified by the national legislation without prejudice to the rights of the author provided for in this Convention<sup>3</sup>.

It became clear, as I have already explained, that the Egyptian legislator was the only one that explicitly provided for the licensing of translating foreign works in Arabic .It's worth mentioning that the licence of translation stipulated by the Egyptian legislation came to agree with the annex of Bern agreement concerned with the literary and artistic works protection.The annex mentioned the developing states` right in granting licences according to specific

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<sup>1</sup> Article 18 of the Qatri law.

<sup>2</sup> Article 21 of the Emirati Federal law stipulating” any person may request the competent ministry to grant him a personal license to copy or translate, or together, any protected works in accordance with the provisions of this law, after 3 years of the date of the first publication.”

<sup>3</sup> Article (16) of the Arab convention for the copyright protection

conditions that agree with their economic, social and cultural position (Article 1 of Bern Agreement Annex)

However, in my paper I seek to go beyond the three years granted by the Egyptian and Arab legislations and the one year granted by the Arab convention for the protected work to be translated without permission of the author of the original work in case of not being translated during this time ,or even the grant of a licence for translating the protected work given by the competent national authority .I want to place the translation differently and to be allowed from the first moment of publishing the original work .This is possible if we consider translation a transformative fair use, not just a derivative entirely controlled by the exclusive rights of the author, as the translation of the original work in the first case will be accepted but in the second case ,will be an infringement.

## Chapter Three

### 3.1 The Concept of Translation

It is necessary to address first the concept of translation and its fields and then to clarify the factor of originality and character of its author.

The translation is one of the intellectual works protected by copyright law<sup>1</sup> (15) ,it is one of the most important categories prevalent since the old times and has currently become more popular and interesting as it exceeded the usual written works and oral speeches to the audio- visual and electronic media work. Translation is not just replacing a term by another from the source language to the target language, as the linguistic aspect is not the most important, but it goes beyond it to reach more general and

<sup>1</sup> شتيوي حسبية، الحماية القانونية لحقوق المؤلف في التشريع الجزائري - مذكرة مقدمة لاستكمال متطلبات شهادة ماستر اكاديمي، جامعة قاصدي مرباح و رقلة، كلية الحقوق و العلوم السياسية، الموسم الجامعي ٢٠١٥-٢٠١٦ ص ١٠٢-١٠٦

comprehensive meanings. Thus translation becomes the transfer of ideas from one language to another with the careful selection of the most proper words transferring these ideas and meanings.

In the first place, translation is a process whose tool is the language whether oral or written, and it transmits a message between the two parties, the sender and the recipient, it is based on the substitution of the written text in one of the languages, which is referred as source language to a corresponding text, written in another language, which is the target language. It conveys the effect which is produced by the original text and not just the transfer of linguistic components. The translator, who transmits a literary text, for example, always seeks an aesthetic goal through renewed forms of expression. Thus, the translation is the expression of what is written in the source language. Moreover, it is seen as a language or an inter-culture or as a bridge between 2 different cultures, between (the recipient's language and that of the author of the original text).

### **3.2 Types of Translations**

Translation can be divided into 3 basic fields: the official, oral and the written translation .

#### **The official Translation**

It is possible to note that the official translation is excluded from the copyright law protections as it is not considered an intellectual work ,it is the translation of the laws, regulations, decisions and administrative contracts issued by the institutions of the state And local communities and justice decisions because the public authorities that issue these acts in the framework of their official function does not bear the title of author and also the machine translation is excluded .It is the translation carried out through the computer program using a special logger intended for translation and then there is no existence of the personal effects of its doer and he cannot be considered as an author because his work

is to use the information previously stored in the program and to follow the instructions contained in.

### **The Oral translation**

As for oral translation, it translates oral works or speeches that are used in the dialogues and speeches of politicians and their negotiations, as well as for the translation of lectures and articles delivered especially in large international meetings. This type of translation can be logically considered among the derivative intellectual works for two reasons: The Egyptian legislator stipulates in Article 140 the protection of oral works such as lectures, speeches, sermons and other similar works. These works also require an intellectual effort and highlight the personality of the cast and are considered original works and therefore their translations are derivative work and on the other hand the legislator didn't limit the types of the translated intellectual works ,but it came on a broad scale and therefore they can be considered protected works as well as translations of works written. All translations of oral works protected by copyright. The system of oral translation, especially what is called simultaneous translation, which is translated orally to meet the needs of Understanding between speakers in different languages, is one of the most difficult translations because it is limited to the use of the interpreter of only the sense of hearing so that the distance between the translator and the translated oral text is much closer than the distance between the translator and the translated written text .

### **Written Translation**

The written translation includes translations of the written original works by the transfer of the meaning of ideas from one language to the other. Its most important fields are the translation of literary and scientific works and the first includes translation of poetry and prose art , fiction ,theatrical works ,novels and literary

articles and this is what is called literary translation While the second deals with all areas of science. but some of the jurisprudents see the need to differentiate between the 2 translations as the translation of scientific works require accuracy in the selection of terms and full knowledge of the scientific subject of the topic of translation and therefore the topic is the most important and then comes the performance and style in the second rank. The literary translation is not only a process of transferring ideas from one language to another, but it is above this a creative process. Therefore, the translation of literary works was the most important and broadest activity in this field. For this reason, it is preferable to use the term "creative translation" when referring to the literary translation because it relates to the creative texts and the translator in these works is also creative in the translated text.Hence,it should be taken out from this area of the derivative works to the that of the transformative fair use particularly that translation meets the elements or factors of fair use doctrines as I will clarify in this section but first I'd like to refer to the nature of the intellectual effort and creative work done by the translation author or the translator.

### 3.3 -The nature of the intellectual effort and the creative work done by the translation author or the translator

He leaves an impression of his character on the work, so that his work can be regarded as one of the protected works by copyright law and this is by clarifying the formal elements borrowed from the translated original work and the original elements attributed to his personal creativity. The translation is the expression with a second language of the meanings expressed in the first language so the author transforms the expression of the original work and retain all other elements and therefore the translation acts as original expression and the best translations are those that make the reader forget that it is a translation.This is not easy in its implementation.

The translator seeks to choose the best vocabulary and terms to reach this end. He selects what seems better for him to reflect the spirit and style of the original text and not the literal meaning because the latter kills translation so the translator enjoys, especially in the Literary text, as much of creative freedom and thus he may have to delete a phrase and add something else because he seeks to reach the corresponding meaning of the original text ,hence, the translator is characterized by encyclopaedic familiarity with all the rules governing source and target language alike.

This means that before he begins the process of translation he must understand the original text based on the rules of its language through which he then initiated the process of rethinking to find the image and the appropriate expression to which it will be transferred and which is equivalent to the meaning that came in the original text, but the translator must respect the original work, it is not possible for him to change its composition or add his personal position .Therefore, multiple translations of one work enjoy original expression and deserve protection, but they have similar installation.

To sum up, the author of the derivative work is not satisfied with the original work or its elements. When he derives and creates the new work he relies on his mental effort and transforms these elements or introduces new elements of his creativity. No one can deny the personal imprint that this author leave on his derivative production, hence it is classified as protected by the copyright law .For the completion of his work he also depends on the rules, ideas and principles common to all and owned by no one. when translating the original work ,the translator is obliged to reach the goal by relying on all the rules and principles of translation that are available to any translator beside the rules of the target language



grammar which are considered to be general principles and ideas for culture of the country of the target language<sup>1</sup> .

3.4 -It's worth mentioning that Egyptian law, several decades ago, granted the translator his financial and moral rights as illustrated by the following legal cases<sup>2</sup>

**(Court of First Instance), January 20, 1930, the Mixed Courts Gazette, Year 22, No. 35, p.35(FatmaRoshdy play case)**

#### **Facts:**

The author Henry Bernstein was surprised by, Fatima Rushdi, and Mustafa Hafni, the director and owner of theatre (Printania) presenting his play (Judith) seven times without prior written permission. He filed a suit to the judiciary asking them to pay 750 Egyptian pounds to compensate him for the second defendant moral and financial damage he suffered. The defendants asserted that foreign works are not protected in Egypt under any national law or international agreement and the play was prepared on the basis of an Arabic translation by Professor Mohammed Rami . The second defendant held that he is just as a mere owner of the theatre (lessor) and that the person responsible for the infringement- if it exists – is the renter .And the defendants continued performing the play despite the warning sent by The author to both of them.

#### **Judgment**

The court gave the right to the author and judged a compensation for him estimated to L.E 25 according to the rules of justice and obliged the defendants to pay the sum in solidarity without taking into account the second defendant`s denying of responsibility of infringement .the court confirmed that the theatre

<sup>1</sup> نفس المرجع ص ٦٣ .

<sup>2</sup> Principles of Copyrights-Cases And Materials ,professor David Vaver&DrHossamLotfy ,WIPO Organization ,Geneva ,July 2002.

نفس المرجع ص ١١٠-١١٣ .

is managed with his knowledge and his name shown on Avishes and that he is involved in the administration as a register and he receives, for this work, part of the income. The court ruled on the insistence of Fatima Rushdi – despite of the warning speech of the author on October 20 and the judicial warning on October 30 - on acting the play which complicates the strict responsibility for her. In particular, it has been stated in the circumstances of the lawsuit that the play has been translated in Arabic by Mohamed Rami without a license from the author, which confirms that the author has double damages, first public performance and the second translation of his work without permission and The court confirmed that the amount it judged was a compromise between the amount of 1500 francs requested by the plaintiff and which the court found very high ,and the amount of 800 piasters presented by the defendant Fatima Rushdi as the plaintiff usually takes such amounts of money in similar circumstances .court finds that this amount should be determined and when it estimated the compensation, the court has taken into consideration the low return of the play 1928.

**2- Egypt, Court of Egypt National College on June 2, 1929, law shop, ninth year, No. 601, p. 1110(the Book of the Ruins of Egypt)**

### **The facts**

Two people translated the Book of (Ruins of Egypt) from the English language to the Arabic language and printed it and they were surprised by another person transferring their translation with a slight modification in addition to printing and offering to sell their book and they insisted that his behaviour is a way of achieving wealth at the expense of others and an infringement on their moral rights and they provided a copy of the original book in English , a copy of their Translated book and another copy of the book printed by this person and assumed to be his translation. The 2 translators resorted to the judiciary and demanded to prove that they were

entitled to the translation in the face of their adversary and in return The defendant asked to reject the lawsuit on the basis that he actually started translating some chapters of the book and published them in Al-Rasheed magazine successively before the translation of the plaintiffs appeared in the same year and he insisted that he thought first in the translation and The copy of the full translation has been lost and the possibility that the plaintiffs may have obtained it, especially that it has been shown to many before the book of the plaintiffs appeared in 1927. And the defendant wanted to doubt the eligibility of the plaintiffs as they claim the rights to the Arabic translation of the book, the subject of dispute

### **Judgment**

The court ruled to support the plaintiffs and rejected the defendant`s allegations and confirmed that by reading the translations, there was a strong correspondence between many chapters and phrases between The authors' book and the defendant's book, which appeared four years after their writing,.The court rejected the claim that the similarity in many terms was due to the fact that the 2 translations are of the same origin because the style with Which the defendant translated his work and published in Al-Rashid Al-Rasheed was different than that recently appeared in the book printed in 1927 and that the defendant had thought first in the translation of the book and he offered the translation to many before the book of plaintiffs appeared didn't deny that he quoted their translation to be included In his book that appeared in 1927 as well as the defendant did not prove what he claimed that the copy of his translation had been lost and the possibility that the plaintiffs had obtained it because he did not provide any proof. The Court has thus demonstrated that the right of translation is legally protected and that any infringement on it by others is considered to be detrimental to it and obliges its actor to compensate in accordance with the general rules of liability.

### **3-Egypt, Southern Cairo Court of First Instance (Fifth Circuit Civil) Proclamation No. 3465 for the year 1988, a total civil court on December 29, 1990 (the case of NahdetMisr)**

#### **The facts**

A publishing house contracted with a professor of French literature at one of the Egyptian universities to translate one of the works of the writer Dr. Anwar Abdel Malik, the book of NahdetMisr (Reinissuance of Egypt) from the French language, which is the original language of the work into the Arabic language and he was financially rewarded. The author was surprised that the book is published in Arabic without mentioning his name and he called for compensation for what he had suffered Of moral and financial damage as a result of this act that prevented him from including this work within the precedents of his works as well as the restitution of the psychological damage caused by what happened

#### **Judgment**

The court confirmed the moral right of the professor of French literature for his name to be mentioned beside the name of the author as he is considered the author of the Arabic translation and awarded him a monetary compensation for what was caused by the absence of his name on the work translated into Arabic.

-If I search for a new place for the translation and to be seen differently, not just a derivative work entirely controlled by the exclusive rights of the original author but as a Transformative Fair Use We should first know what is meant by Fair Use .

#### **3.4-Fair Use Concept**

Copyright laws of many countries recognize the concepts of fair use or fair dealing. These broad, general limitations or exceptions allow the use of works without the right owner's permission, taking into account factors such as the nature and

purpose of the use, including whether it is for commercial purposes; the nature of the work used; the amount of the work used in relation to the work as a whole; and the likely effect of the use on the potential commercial value of the work.

There are three models of fair use/fair dealing: 1) the U.S. fair-use model that allows an open-ended list of permissible uses based on consideration of statutory factors; 2) the fair dealing model in most U.K. Commonwealth and Continental European countries that features an enumerated list of defined copyright limitations and exceptions; and 3) a combination of the U.S. and U.K. models found in the Taiwanese Copyright Act and the recently revised South Korean Copyright Act, which offer both an enumerated list of permissible uses (as with the United Kingdom) and a number of factors to be considered in determining whether the particular use is fair (as with the United States).from among them ,I'm concerned more with the USFair due to its flexibility with its open-list of permissible uses.

### **U. S. Legislation.**

A. Under U.S. Copyright law, fair use is a limitation on the select rights granted to the copyright owner. In a case of copyright infringement, the defendant must prove fair use as an affirmative defense. The doctrine originated from judicial interpretation of the Statute of Anne of 1710, one of Great Britain's first copyright laws, in cases including *Gyles v. Wilcox*. Justice Story drew on these English cases when he introduced the fair use concept under U.S. copyright law in his 1841 opinion in *Folsom v. Marsh*. Fair use was later codified into the Copyright Act of 1976, 17 U.S.C. § 107.

Section 107 includes three parts: 1) a preamble that identifies the fair use of a copyrighted work as an exception to the copyright owner's exclusive rights and provides a non-exhaustive list of potentially permissible uses such as "criticism, comment, news

reporting, teaching (including multiple copies for classroom use), scholarship, or research” for illustrative purpose, 2) a list of four factors that courts must consider in determining whether or not a particular use is fair; and 3) an additional statement added in 1992 regarding unpublished books. Section 107 does not provide a rule to be automatically applied in deciding whether a particular use is fair or not. Instead, all four factors must be considered in each specific fair-use case\*<sup>1</sup>

### **107. Limitations on exclusive rights: Fair use**

Notwithstanding the provisions of sections 106 and 106A,(the exclusive rights of the owner of the copyright) the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—

- (1) The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (2) The nature of the copyrighted work;
- (3) The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (4) The effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

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<sup>1</sup> Seagull Haiyan Song ,--Reevaluating Fair Use In China—A Comparative Copyright Analysis Of Chinese Fair Use Legislation, The U.S. Fair Use Doctrine, And The European Fair Dealing Model,2011

-Courts will consider four primary factors in determining whether a particular use qualifies as "fair." One of the factors weighing in favor of finding fair use is when the use of the original material is "transformative." Transformative uses take the original copyrighted work and transform its appearance or nature to such a high degree that the use no longer qualifies as infringing. This case is applied on translation, classified as the farthest type of derivatives from the original work, as I mentioned before, because in translation the original work's appearance or nature is entirely transformed.

The transformative use doctrine is relatively new. In 1994, the U.S. Supreme Court reviewed a case involving a rap group, in the case *Campbell v. Acuff-Rose Music*, 510 U.S. 569 (1994). The band had borrowed the opening musical tag and the words (but not the melody) from the first line of the song "Pretty Woman" ("Oh, pretty woman, walking down the street"). The rest of the lyrics and the music were different.

The copyright world was astonished as the Supreme Court ruled that the borrowing was fair use. Part of the decision was colored by the fact that so little material was borrowed. But the Supreme Court also added a new dimension to the fair use analysis. It focused on one of the four fair use factors, the purpose and character of the use, and emphasized that the most important aspect of the fair use analysis was whether the purpose and character of the use was "transformative."

The inquiry "focuses on whether the new work merely supersedes the objects of the original creation, or whether and to what extent it is 'transformative,' altering the original with new expression, meaning, or message," Justice Souter wrote in the opinion. "The more transformative the new work, the less will be the significance of other factors, like commercialism, that may weigh against a finding of fair use." Throughout the past decades,

the standards of "transformative" have continued to evolve. Still, the status of a transformative work seems to be defined by two questions:

- Has the material taken from the original work been transformed by adding new expression or meaning?
- Was value added to the original by creating new information, new aesthetics, new insights, and understandings?

While content creators cannot simply 'derive' their work from an earlier protected work, they do have the legal right to create a 'transformative' work. This is a very important distinction. If a work is sufficiently transformative, even if it was inspired by, or used some elements of a copyright-protected work, it will not be considered copyright infringement. Indeed, not only will sufficient transformativeness allow a work to be excused from potential liability for infringement, but it will allow the new work to qualify for its own copyright protection.

As I mentioned the 1994 Supreme Court case of *Campbell v. Acuff-Rose Music, Inc.* provides the legal basis for how transformative works are viewed under the fair use doctrine. In this case, the Supreme Court made it extremely clear that transformativeness was a key principle of fair use.

In *Campbell*, a musical artist was sued for copyright infringement following the production of a parody of the song 'Oh, Pretty Woman'. The court noted that the parody, while clearly taking elements from the original, still brought considerable new insight to consumers and the public, hence, it was sufficiently transformative on those grounds.

Certainly, the line between what is derivative (copyright infringement) and what is transformative (acceptable) is somewhat



vague and is hard to apply. Ultimately, it requires a fact specific review of the individual circumstances of the case in question.

Translation is typically considered a derivative work. While this varies from country to country, translation is considered derivative because it exists in relation to an original work, in this case a work of literature such as a novel or poem.

Even though it is derivative, translations are eligible for copyright as an original work. Since a translation, especially literary translation, involves considerable creative effort, labor and skill on the part of the translator it can be registered as an original work<sup>1</sup>

Furthermore, The Canadian Act does not distinguish between derivative works and underlying works. This is in sharp contrast to the Berne Convention ° which expressly provides for the grant of copyright in certain derivative works:

Article 2(2) Translations, adaptations, arrangements of music and other reproductions in an altered form of a literary or artistic work, as well as collections of different works, shall be protected as original works without prejudice to the rights of the author of the original work.

The Convention, the text of which is annexed to the Canadian Act as the Third Schedule, does not, however, form part of Canadian copyright law and no provision conforming to article 2 has been included in the copyright statute

--. In Canada, a derivative work is granted copyright if it is a "literary, dramatic, musical or artistic work", and if it qualifies as "original". With respect to the first requirement, the terms "literary", "dramatic", "musical" and "artistic" work are all defined, in the Canadian Act and in many instances expressly include within their definitions various derivative works .A translation of a novel, for

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<sup>1</sup> Michael Pike and Daniel Lustig , Copyright Law, Derivative Works, West Palm Beach Copyright Litigation Attorney, Miami, 2017( page1-3,9-10 ).

instance, is just as much a literary work as the novel upon which it is based .

The statutory requirement of "originality" raises a problem peculiar to all derivative works-their dependency upon the underlying work. One queries whether a work based on an earlier work can at the same time be original. In *University of London Press Ltd. v. University Tutorial Press Ltd.* Peterson J. considered the meaning of "original" in the context of the Imperial Copyright Act, 1911:

The word "original" does not in this connection mean that the work must be the expression of original or inventive thought... (T)he Act does not require that the expression must be in an original or novel form, but that the work must not be copied from another work-that it should originate from the author. (Emphasis added)

While this passage may accurately describe the test of originality under Canadian copyright law, it does not indicate how the test is to be applied in the context of derivative works since all such works are, to a degree, "copied from another work."

Later cases make it clear, however, that the prohibition against copying is not an absolute one. Rather, originality is to be measured in relative terms looking to the author's independent input into the existing work. If a sufficient amount of time, effort, judgment and skill is exerted by the author the work will be original and entitled to copyright. It is through the concept of originality that copyright law assesses whether sufficient creative effort is involved in order to warrant the grant of a monopoly. The application of this test of originality to derivative works varies with the nature of the work. For some derivative works it will be a question of degree whether their production involved sufficient time, skill and energy, whereas with other derivative works the effort involved in transferring or transforming the underlying work to a different

medium will, by definition, satisfy the statutory criterion of originality.

Translations of literary works from one language to another are always considered to be the product of sufficient time, effort and skill. Indeed, there is no need to inquire into the amount of effort involved in a particular translation; it is accepted as a proposition of law that a translation is an original literary work<sup>1</sup>.

#### 4-Conclusion

-These reflections point up to me the need for more flexibility in Egyptian copyright law, even beyond what fair use already provides .The law should recognize the diverse motivations and incentives that different authors have, and adjust to that diversity. Poets and physicists write and publish for very different reasons.in this context I suggest that in contrast to an exclusive right, which is what copyright now grants to creators, a liability rule would not prevent someone other than the creator from making a specified use of the work, but would require compensation in certain conditions. Under a liability rule regime, then, an author could not prevent a translation by asserting an exclusive right over that form of derivative work, as she can today, but would have to be compensated if, for example, the translation was detrimental to her reputation, or even if it enjoyed commercial success. This kind of liability rule could introduce into copyright the kind of flexibility to deal with the different motivations for creativity and the uncertainty around translations.

Moreover,In my paper I seek to go beyond the three years granted by the Egyptian and Arab legislations and the one year granted by the Arab convention for the protected work to be translated without permission of the author of the original work in

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<sup>1</sup> Braithwaite, William J.. "Derivative Works in Canadian Copyright law." Osgoode Hall Law Journal 20.2 (1982)- P.193-197.

case of not being translated during this time ,or even the grant of an obligatory licence for translating the protected work given by the competent national authority .I want to place the translation differently and to be allowed from the first moment of publishing the original work .This is possible if we consider translation a transformative fair use - following the example of the US Fair Use doctrine 107 and the Canadian Copyright Act-not just a derivative work entirely controlled by the exclusive rights of the author, as the translation of the original work-without taking its author`s permission- in the first case(transformative fair use) will be accepted but in the second case (derivative work),will be an infringement.

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