



Derivative Works and the Rights of their Authors: A Comparative Study

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Abstract

This article examines the legal status of derivative works and the rights of their authors through a comparative analysis of selected civil-law and common-law copyright systems, with particular attention to Algerian legislation and the Berne Convention. It first clarifies the concept of a derivative work and distinguishes derivative works from joint and collective works by focusing on three core requirements: incorporation of a pre-existing work, absence of direct collaboration by the original author in creating the new work, and originality in the derivative author's contribution. The study then considers the principal forms of derivative creation, including compilations, adaptations, summaries, transformations, and translations. It further analyses the moral and economic rights of derivative authors and the limits arising from the continuing rights of original authors, particularly the requirements of prior authorization, respect for integrity and attribution, and compliance with agreed modes of exploitation. The article concludes that, although domestic legislation and international instruments recognize substantial protection for derivative authors, important regulatory gaps remain in relation to conflicts between the exploitation rights of original and derivative authors. Clearer rules are therefore needed to govern overlapping moral and economic interests while preserving an appropriate balance between creative transformation and the protection of pre-existing works.

Keywords: derivative works; copyright; moral rights; economic rights; adaptation.

Introduction

International conventions and national copyright laws protect a wide range of literary and artistic works. These include derivative works such as translations, anthologies, literary adaptations, musical arrangements, databases, and other forms of transformed or reorganized expression.

Derivative works are governed by a distinctive legal regime that differentiates them from other works involving more than one author, such as joint and collective works. Under this regime, copyright in the new contribution, and the rights arising from it, vest in the person who creates a new work on the basis of a pre-existing work or certain elements of that work.

International instruments and domestic copyright laws recognize protection for authors of derivative works generally, and for translators in particular, in acknowledgment of the intellectual effort involved, which may be comparable to that undertaken by authors of original



works. Yet, despite this recognition at both national and international levels, derivative works have received less scholarly attention than joint and collective works, notwithstanding their theoretical and practical importance.

This gives rise to two central questions: what conditions must be satisfied for a work to qualify as a derivative work, and how may derivative authors exercise their rights when the authors of the underlying works retain rights in relation to the same subject matter? This article addresses these questions by clarifying the concept of derivative works through selected civil-law and common-law legislation, identifying their principal forms and conditions, examining the moral and economic rights of their authors, and analysing how those rights should be balanced against the rights of the authors of the original works, particularly their moral rights. The discussion therefore proceeds in two parts: Part I addresses the concept of derivative works, while Part II examines the rights of their authors.

I. The Concept of Derivative Works

Domestic legislation and international conventions address derivative works in different ways. Some identify elements necessary to define them, others enumerate examples, and still others emphasize the relationship between the author of the derivative work and the author of the original work.

A. Derivative Works in Legislation and International Conventions

Derivative works receive copyright protection in the legal systems that recognize them, alongside other categories such as joint and collective works. The following discussion considers selected Arab statutes, with particular emphasis on Algerian legislation, that regulate this category of works (Lebanese Copyright Law No. 3, 1999, art. 3; Iraqi Copyright Law No. 3, 1971, art. 4; Sudanese Copyright and Related Rights Protection Act, 2013, art. 5; Bahraini Copyright Law No. 22, 2006, art. 3).

1. Derivative Works in Selected National Legislation

The analysis first considers selected jurisdictions within the civil-law tradition of *droit d'auteur* in order to identify the constituent elements found in statutory descriptions of derivative works, given the absence of a single comprehensive definition.

a. Derivative Works in Civil-Law Legislation

Under the French Intellectual Property Code, a derivative or composite work is a new work into which a pre-existing work is incorporated without the participation of the author of the pre-existing work (French Intellectual Property Code, 1992, art. L. 113-2). A limitation of this definition is that it does not expressly refer to the requirement of originality.

French law provides that a composite work belongs to the person who created it, subject to the rights of the author of the pre-existing work. Spanish copyright law adopts substantially the same approach.

Under Algerian copyright law, a composite, and therefore derivative, work is a work into which another work, or elements of original works, are incorporated by inclusion, juxtaposition,



or intellectual transformation without the participation of the author of the original work or of the incorporated elements. The rights in the composite work belong to the person who creates it, subject to the rights of the author of the original work (Algerian Ordinance No. 03-05, 2003, art. 14).

Egyptian intellectual property legislation defines a derivative work as a work whose origin is derived from pre-existing works, such as translations, musical arrangements, compilations of works, including machine-readable or other databases, and collections of expressions of folklore, provided that they are original in the selection or arrangement of their contents (Egyptian Intellectual Property Law No. 82, 2002, art. 138(6)).

The Egyptian legislature therefore expressly recognizes that a derivative work must originate in a pre-existing work. However, the definition does not clearly require the absence of participation by the original author in the new work, nor does it formulate originality as a general requirement applicable to all derivative works.

By contrast, Moroccan copyright legislation expressly refers to originality, defining a derivative work as any new creation conceived and produced on the basis of one or more pre-existing works (Moroccan Copyright Law No. 2.00, 2000). It does not, however, expressly require that the author of the original work take no part in creating the new work.

Under Sudanese copyright law, a derivative work is a work derived from a pre-existing work, such as a translation. Collections of literary and artistic works and collections of expressions of folklore are also treated as derivative works where they are original by reason of the selection or arrangement of their contents (Sudanese Copyright and Related Rights Protection Act, 2013, art. 3).

b. Derivative Works in Common-Law Legislation

The United States Copyright Act defines a derivative work as a work based upon one or more pre-existing works, including a translation, musical arrangement, dramatization, fictionalization, motion-picture version, sound recording, art reproduction, abridgment, condensation, or any other form in which a work may be recast, transformed, or adapted (Copyright Act, 1976, § 101).

Canadian copyright legislation likewise addresses derivative forms by identifying particular categories and examples, while emphasizing the distinction between such works and works created through joint authorship (Canadian Copyright Act, 1985).

The concept of derivative works is generally narrower in common-law legislation than in civil-law systems. Collections and literary anthologies that merely reproduce or present pre-existing works may, in some contexts, fall outside the category of derivative works and instead be governed by rules applicable to collective or compilation works (Baudel, n.d., p. 120).

2. Derivative Works under International Conventions

The Berne Convention for the Protection of Literary and Artistic Works addresses derivative works principally by enumerating examples while specifying the protection afforded to their authors. It provides that translations, adaptations, arrangements of music, and other alterations of



a literary or artistic work are protected as original works, without prejudice to the copyright in the original work (Berne Convention, n.d., art. 2(3)).

This rule indicates that protection of a derivative work must not prejudice the rights of the author of the original work. It also presupposes an original contribution by the derivative author, for example through creative selection or arrangement.

Thus, translations, adaptations, musical arrangements, and other alterations of literary or artistic works receive protection comparable to that afforded to original works, without prejudice to the rights subsisting in the underlying work (Berne Convention, n.d., art. 2).

B. Conditions for Protection of Derivative Works

A derivative work is based on the incorporation of a pre-existing work into a new work. In addition, the author of the original work must not participate as a co-author in creating the derivative work, and the derivative contribution must satisfy the requirement of originality.

1. Incorporation of a Pre-Existing Work into a New Work

Mere reproduction of an original work does not, by itself, constitute a derivative work. The derivative work must be distinguishable from the original through the personal intellectual contribution of its author. That contribution may arise through either material or intellectual incorporation of the original work into the new work.

a. Material Incorporation

Material incorporation occurs when the original work is incorporated in its existing form into the derivative work. A typical example is the incorporation of a photographic work into an advertising work (Cour d'appel de Paris, 1994).

Material incorporation may also occur when an original work is republished with explanation, commentary, or revision. New material may be added; commentary may explain or evaluate the original; and revision may correct deficiencies or errors or incorporate subsequent developments (Badawi, n.d., p. 107).

One important form of material incorporation capable of attracting copyright protection is the use of original material through creative selection, arrangement, classification, or organization. An author may, for example, compile selections of poetry or prose and publish them in an arrangement that reflects an individual creative contribution. Where the underlying work remains protected, authorization from the original author is required, or from the author's successors if the author has died (Pierrat, 1998, p. 40; Kanaan, 1992, p. 215).

b. Intellectual Incorporation

Translation and transformation are clear examples of intellectual incorporation. French legal doctrine uses the term *œuvres composites* to refer particularly to works formed through the incorporation of a pre-existing work, in which the originality of the new work may be relative to the material incorporated (Lucas et al., 2012, p. 227).

The derivative author nevertheless contributes individual intellectual expression. For this reason, international conventions and domestic legislation afford the derivative author legal



protection comparable to that granted to the author of the original work, while preserving the rights of the latter.

Translation, adaptation, transformation, and other alterations of an original work are paradigmatic forms of intellectual incorporation. A translator does more than mechanically transfer an author's thoughts from one language to another; translation requires an intellectual and creative contribution that may independently merit protection.

2. Absence of Joint Participation

Absence of participation means that the author of the original work does not collaborate in creating the derivative work. A joint work arises from a common creative undertaking among co-authors, whereas a derivative work is based on the material or intellectual incorporation of a pre-existing work (Abd al-Sadiq, 2002, p. 137).

Legal scholarship has accordingly described the derivative work as involving multiple authors in a temporal rather than collaborative sense: the original and derivative authors do not create simultaneously, but at successive stages (Lucas, n.d., fasc. 1185, no. 119).

If the author of the original work participates as an author in creating the new work, the result may instead be characterized as a joint work. Both French intellectual property law and United States copyright law reflect the importance of this distinction (Copyright Act, 1976, § 101).

3. Originality

Originality is a necessary condition for copyright protection and lies at the foundation of such protection. It has a personal and subjective character insofar as the work must bear the imprint of its author's personality. Depending on the type of derivative work, originality may lie in structure, as in anthologies; in both structure and expression, as in certain adaptations; or primarily in expression, as in translations (Belqadi, 1997, p. 82; Lipszyc, 2004, p. 118).

For a derivative work to receive protection, its author must contribute a sufficiently personal element to distinguish it from the original. In a translation, for example, creativity may be reflected in the choice of words, expressions, syntax, and stylistic equivalents. Without originality, the derivative contribution does not itself attract copyright protection (Lutfi, 2003, p. 411; Commercial Court of Brussels, 1987).

The same requirement applies to adaptations, whose authors must make their own creative contribution to the transformed work. Collections and anthologies may likewise display originality through the selection and arrangement of their contents (Cour d'appel de Paris, 1989; Al-Roumi, 2009, p. 56).

C. Principal Forms of Derivative Works

Derivative works may take numerous forms. Some remain close to the original, as where a derivative author republishes a pre-existing work with added explanation, commentary, definition, revision, editorial intervention, critical apparatus, or comparison among different manuscripts. Others involve more substantial transformation.



1. Reuse and Re-Presentation of the Original Work

Where a person makes an original contribution by collecting pre-existing works and arranging them according to an independently conceived plan—for example, by grouping works from the same historical period to illustrate the characteristics of that period—the degree of originality may be sufficient to confer copyright protection on the compilation. Others may not reproduce the compilation in the same creative arrangement without authorization (Al-Sanhuri, n.d., para. 174, p. 279).

a. Collections of Official Documents

This category includes statutes, decrees, administrative decisions, international agreements, judicial decisions, arbitral awards, and similar official materials.

Legislative rules generally exclude official documents, as such, from copyright protection. They may therefore be copied or printed without authorization and without payment of remuneration.

However, where a person makes an original contribution through the selection or arrangement of official documents, copyright may subsist in the resulting compilation. Originality may arise, for example, from alphabetical arrangement or organization by date of issuance designed to facilitate research and access (Al-Shaykh, 2014, p. 42).

b. Anthologies of Poetry, Prose, and Other Collections

Where copyright protection in the underlying works has expired, those works may be used without authorization from the author's heirs. Where the selected works remain protected, authorization from the author or another right holder is required (Egyptian Intellectual Property Law No. 82, 2002, art. 183). Derivative activity may include republication with additions, editing or scholarly verification, revision and correction, or publication of old manuscripts.

2. Adaptations and Other Forms of Transformation

Adaptations and transformations take many forms and cannot readily be reduced to an exhaustive list. They include, among other examples, databases, musical arrangements, editorial revisions, and related forms of transformation.

a. Works Derived from Folklore

This category encompasses traditional cultural expressions arising from folklore, including drawings, collections of anecdotes, poetry, and other manifestations of traditional culture (Husayn, n.d., p. 42; UNESCO, 1989, p. 8).

Such derivative works draw on pre-existing traditional material and may also be described as works derived from traditional heritage. The derivative author does not create the underlying subject matter, but may contribute protectable expression, selection, arrangement, or adaptation.

b. Abridgment and Summarization

A person who creatively condenses an original work and gives the resulting summary an individual form may acquire copyright in the original elements of that summary. Protection



entitles the author to prevent unauthorized exploitation of that creative contribution (Al-Shaykh, 2014, p. 51).

c. Adaptation through Transformation

Transformation involves recasting a work from one form into another. The creative contribution may consist, for example, in converting a story or novel into a play or motion picture, or adapting it for television or radio.

Transforming a work into a different genre or medium requires the consent of the author of the original work. This principle is reflected in the Berne Convention, which recognizes the exclusive right of authors to authorize adaptations and arrangements of their works and, in the cinematographic context, relevant reproductions and transformations (Berne Convention, n.d., art. 12).

The Berne Convention also recognizes rights in cinematographic works. In their domestic implementation, Algerian and Egyptian legislation treat a person who adapts a pre-existing literary work for audiovisual expression as participating in the authorship of the resulting audiovisual work (Berne Convention, n.d., art. 14(2); Algerian Ordinance No. 03-05, 2003, art. 16; Egyptian Intellectual Property Law No. 82, 2002, art. 177).

d. Translation

Translation consists in expressing a work in a language other than that of the original text (Omani Copyright Law, n.d., art. 1). The translator performs a creative task by understanding the author's ideas and re-expressing the work in another language. This requires careful selection of words and formulations in the target language so that, as far as possible, the translation achieves an expressive level comparable to that of the original (Al-Sanhuri, n.d., para. 177, p. 287). Translation therefore presupposes command of another language and substantial intellectual effort in conveying the author's ideas (Lipszyc, 2004, p. 120).

Because translation is a form of derivative work, it is subject to the general rules governing derivative works. Where copyright in the original work remains in force, authorization from the right holder is generally required. This applies whether the original work is written or oral and whether the translation is intended for publication as a book or journal contribution, for theatrical, cinematographic, or television presentation, or for another form of exploitation (Abd al-Sadiq, 2002, p. 128).

II. Rights of Authors of Derivative Works

The author of a derivative work enjoys moral and economic rights comparable to those granted to the author of an original work. These rights coexist with, and remain subject to, the rights subsisting in the original work. It is therefore necessary to examine both the exercise of the derivative author's rights and the obligations arising from the coexistence of these two sets of rights.



A. Exercise of the Rights of Derivative Authors

Like authors of original works, authors of derivative works enjoy moral and economic rights protected by international conventions and domestic legislation.

1. Exercise of Moral Rights

The moral rights granted to the author of a derivative work, particularly the right of attribution, do not extinguish or diminish the original author's right to be identified as the author of the underlying work. This principle is reflected in several legal systems, including Algerian, French, and Egyptian law (French Intellectual Property Code, 1992, art. L. 121-6; Egyptian Intellectual Property Law No. 82, 2002, arts. 13–140).

The author of the derivative work also has the right to decide whether and when the derivative work will be disclosed or published (Algerian Ordinance No. 03-05, 2003, art. 22). Although the derivative work depends on the original work, there is no direct creative collaboration between the two authors. Once the derivative work has been lawfully created with the authorization of the original right holder, the derivative author ordinarily determines whether and when the derivative work is disclosed.

Accordingly, where the derivation has been authorized, the author of the original work does not participate as a co-author in the derivative author's decision to communicate the derivative work to the public. The right to disclose the derivative work belongs to its author rather than to the author of the original work (Muslih Muhammad & al-Naqrahi, 2015, p. 140).

The original author therefore cannot exercise the derivative author's right of disclosure. By granting permission for the authorized derivation, the original author accepts that a derivative work may be created and, within the scope of the authorization, disclosed by its own author (Beshikh, 2013, p. 215).

Because the author of the original work does not participate in creating the derivative work, the derivative author alone holds copyright in the original elements contributed to that work. Intellectual property legislation often recognizes this protection without setting out sufficiently detailed rules governing every aspect of the exploitation of derivative works.

The derivative author also benefits from other moral rights recognized by law, including, where applicable, the right to withdraw the work from circulation. After publication, the derivative author may conclude, in light of criticism or subsequent reflection, that the work requires modification or that continued circulation in its existing form may harm the author's reputation or literary standing. The right of withdrawal therefore protects personality interests that may outweigh purely economic interests, subject to statutory compensation requirements where withdrawal causes loss to transferees or licensees (Algerian Ordinance No. 03-05, 2003, art. 24; Raslan, 2010, p. 125).



2. Exercise of Economic Rights

a. Modes of Exploitation

Intellectual property legislation grants the author of a derivative work exclusive rights in the protectable elements of that work across legally recognized modes of exploitation, whether known at the time of contracting or subsequently developed, subject to applicable statutory rules (Plaisant, n.d., fasc. 320, no. 1; Algerian Ordinance No. 03-05, 2003, art. 27). Such modes may include reproduction, broadcasting and rebroadcasting, public performance, and communication of the work to the public through electronic processing or transmission systems.

The derivative author may assign or license a mode of exploitation to a third party, for remuneration or gratuitously, provided that doing so does not prejudice the rights of the author of the original work. A translator, for example, cannot confer upon a third party rights exceeding the translator's own rights in the translation or the scope of authorization relating to the underlying work. This principle is supported by legislation, legal scholarship, and case law (Algerian Ordinance No. 03-05, 2003, art. 70(1); Desjonquères, 1990, p. 109; Le Ternec, 1966, p. 154; TGI Avignon, 1988; Cour de cassation, 1994).

b. Financial Remuneration

The principle of proportional remuneration is intended to protect authors from disposing of their rights in return for an inadequate lump-sum payment (Algerian Ordinance No. 03-05, 2003, art. 64(2)). As a general rule, authors should participate in the economic success of their works through a percentage of the revenues generated by exploitation; proportional remuneration is therefore often regarded as the fairest model (Algerian Ordinance No. 03-05, 2003, art. 95(2)–(3)).

Legislation nevertheless identifies exceptional circumstances in which remuneration may be fixed as a lump sum, particularly where the conditions of exploitation make precise calculation of proportional remuneration impracticable; where the contribution forms part of a larger work such as an anthology or dictionary; where it is secondary to a larger work, as with prefaces, introductions, commentaries, annotations, drawings, or illustrations; where the work is created for publication in a newspaper or periodical under an employment or service relationship; or where the right holder resides abroad (Algerian Ordinance No. 03-05, 2003, art. 65(2)).

Economic rights are protected for the benefit of the author during the author's lifetime and, under the legislation considered here, for the benefit of successors for fifty years beginning at the start of the calendar year following the author's death (Algerian Ordinance No. 03-05, 2003, art. 54). Protection of a derivative work cannot, insofar as its exploitation depends on a protected underlying work, extend the term of protection applicable to the original work. French case law has addressed the relationship between these periods of protection (Cour d'appel de Paris, 1970).

Special rules may apply to literary or artistic works produced in printed, audio, audiovisual, or other forms and intended for school or university education.



Algerian legislation, for example, provides in specified circumstances for a compulsory, non-exclusive licence to translate a work for publication in Algeria, whether in written form or through sound or audiovisual broadcasting, where the work has not previously been translated into the national language and made available or communicated to the public in Algeria within the statutory period following first publication (Algerian Ordinance No. 03-05, 2003, art. 33(1)).

The legislation examined also provides that, for purposes of translation into Arabic, the exclusive position of the author or of a translator who has translated the work into another foreign language may cease where that right has not been exercised by the author or translator, personally or through another person, within three years of first publication of the original or translated work (Egyptian Intellectual Property Law No. 82, 2002, art. 148).

This shortened period constitutes an exception justified by the public interest in making major foreign works available in Arabic. Egyptian and Kuwaiti legislation have provided a five-year period from first publication of the original work or foreign translation in order to encourage the translation of foreign-language books into Arabic (Egyptian Intellectual Property Law No. 82, 2002; Kuwaiti Law No. 64, 1999, art. 16). Such provisions have been criticized as departing from the ordinary operation of the Berne Convention insofar as they prioritize a public-interest objective over the individual interest of the author (Berne Convention, n.d., art. 8).

The legal basis for such mechanisms lies in the possibility available under the Berne framework for certain eligible states to establish systems of non-exclusive and non-transferable translation licences after the expiration of periods specified by the applicable rules (Berne Convention, n.d., Appendix, art. II).

B. Limitations on the Exercise of Rights in Derivative Works

The author of a derivative work must obtain authorization from the author or right holder of the original work where such authorization is legally required and must respect the moral rights subsisting in the original work.

1. Requirement of Authorization from the Original Author

The author of a derivative work cannot assert rights in a manner that disregards rights subsisting in the underlying work. Where the original work remains protected, the derivative author must obtain prior authorization from the original author or, where appropriate, the author's successors, in accordance with the principle that protection of derivative works operates without prejudice to the rights of authors of original works (Algerian Ordinance No. 03-05, 2003, art. 5).

Civil-law legislation places particular emphasis on the continuing rights of original authors by requiring new authors to obtain consent before reproducing, incorporating, or transforming protected works that have not entered the public domain. Creative production in literature and science often builds on prior works, but such reliance also entails respect for the intellectual efforts and legal rights of earlier authors. This is an ethical obligation as well as a legal one (Ben Ayad, 2021, p. 105).



Authorization expressed in general terms, without identifying the permitted modes of exploitation, should not automatically be interpreted as conferring every possible right to exploit the original work. Written authorization may therefore be required for each form of derivation, and the permission granted should extend only to the agreed mode of use. This reflects the principle of strict interpretation of contracts transferring or licensing copyright exploitation rights (Algerian Ordinance No. 03-05, 2003, art. 72(1)).

The original author may determine the permitted mode of exploitation—for example, cinematographic adaptation—and may also limit the duration of the authorization. Once the agreed period expires, the derivative author may no longer rely on that authorization for continued exploitation (Cour de cassation, 1986; Cour de cassation, 1994).

The agreed remuneration must likewise be paid to the author of the original work. Where applicable, the original author is entitled to proportional remuneration from revenues generated by exploitation of the derivative work (Cour de cassation, 2000).

2. Requirement to Respect the Original Author's Moral Rights

The derivative author must respect the moral rights of the original author, while due account is taken of the degree of transformation necessarily involved in creating the derivative work.

a. The General Principle

An author is entitled to require respect for the integrity of the work and to object to modifications, distortions, or mutilations that prejudice the author's reputation, honor, or legitimate interests. A derivative author must therefore respect the original author's right to the integrity of the underlying work (Algerian Ordinance No. 03-05, 2003, art. 25; Berne Convention, n.d., art. 6bis).

The degree of permissible creative freedom varies according to the nature of the transformation. In adaptations, the original author may object where the adapter departs from essential or fundamental elements of the original in a manner that harms the original author's reputation. Although the adapter must enjoy sufficient creative freedom to produce a genuinely new work, that freedom cannot extend to distortion of the original work (Cour de cassation, 1966).

A contract authorizing the cinematographic adaptation of a novel does not amount to a waiver by the original author of the right to respect for the work. Rather, it implies that the adapter is granted the degree of creative freedom necessary to produce the derivative work, namely the motion picture inspired by the original literary work (Cour de cassation, 2001).

b. The Particular Case of Translation

The greatest degree of interpretive freedom among derivative authors often arises in translation. Modifications inherent in translation do not, in themselves, constitute an infringement of the original author's moral rights. Liability may arise, however, where the translator fails to disclose significant omissions or alterations, where the translation harms the



author's reputation or standing, or where it substantially distorts the spirit of the work (Muslih Muhammad & al-Naqrashi, 2015, p. 144; Le Ternec, 1966, p. 156).

Egyptian legislation expressly reflects this approach by providing that modifications inherent in translation do not constitute an infringement merely because they alter the original text, unless the translator fails to indicate omissions or changes or the translation prejudices the author's reputation or standing (Egyptian Intellectual Property Law No. 82, 2002, art. 143).

Conclusion

The foregoing analysis shows that most of the legislation examined defines a derivative work by reference to a pre-existing work and by the absence of direct participation by the original author in creating the derivative work. In all cases, originality remains essential: the derivative contribution must possess a creative character comparable, in principle, to that required for other literary or artistic works protected by copyright.

For the author of a derivative work to enjoy independent legal protection, the derivative contribution must reflect personal intellectual effort that re-presents or transforms the original through compilation, translation, adaptation, abridgment, or another form of modification. Protection extends only to the original contribution embodied in the derivative work.

Both national legislation and international conventions emphasize that protection of derivative works must not prejudice the rights of authors of original works. Where the underlying work remains protected and no exception applies, authorization from the original right holder is therefore required. Unauthorized derivation may give rise to civil or criminal liability under the applicable law.

By contrast, once the original work has entered the public domain following expiry of its term of protection, it may generally be used without authorization or remuneration. A person may then create a derivative version, and copyright may subsist exclusively in the original elements contributed by the derivative author, without reviving copyright in the public-domain material itself.

The legislation of several states, particularly developing states, has also sought to facilitate translation of foreign works into Arabic in order to broaden Arabic-language access to major works of literature, science, and the arts. This policy is reflected in shortened periods associated with certain translation-licensing mechanisms, including the three-year period discussed in relation to Algerian law and five-year periods referred to in other legislation.

At the same time, a derivative work cannot wholly disregard the moral rights of the original author. Authorization to adapt or transform a work necessarily permits a degree of modification, but it does not extinguish the original author's moral rights. The rights of derivative authors may therefore parallel, and at times compete with, those of original authors.

The comparative analysis reveals significant gaps in the legislation examined, particularly in the limited regulation of the relationship between original and derivative authors and the absence of sufficiently precise rules for resolving conflicts over exploitation of the same work.



International conventions and domestic legislation commonly identify the elements of derivative works and recognize rights in favor of their authors, but they do not always regulate in detail how those rights are to be exercised or how conflicts between the economic and moral rights of original and derivative authors should be resolved. In the absence of clear statutory rules, such disputes are left to general principles of copyright, contract, and civil law.

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