

WIPO/IP/MOW/02/12

ORIGINAL:English

DATE:May2002



RUSSIAN AGENCY FOR PATENTS  
AND TRADEMARKS (ROSPATENT)



WORLD INTELLECTUAL  
PROPERTY ORGANIZATION

**WIPO INTERREGIONAL FORUM  
ON SMALL AND MEDIUM-SIZED ENTERPRISES (SMEs)  
AND INTELLECTUAL PROPERTY**

organized by  
the World Intellectual Property Organization (WIPO)  
in cooperation with  
the Russian Agency for Patents and Trademarks (ROSPATENT)

**Moscow, May 22 to 24, 2002**

SMEs AND COPYRIGHT OWNERS AND/OR COPYRIGHT USERS

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## Introduction:

It is my great honor to be in this forum among well-reputed figures with different backgrounds, including politicians, policymakers, practitioners as well as representatives of international organizations that have gathered for three days to discuss an issue of great importance.

The lecture that I am delivering deals with two important issues, that despite each of them have been handled separately; tackling them together could imply evolution of new ideas. There are several studies that have dealt with the importance of copyrights protection and identified its importance for the innovation process. Moreover, there are several studies that correlated the degree of development and the extent of copyrights' protection and have reached conclusions that are not rigorous to a large extent. As Watt has mentioned, "In general it is fair to say that the true economic effects of piracy are not well understood" (Watt, 2000) or as Maskus puts it "Reforming IPRs could raise or lower economic growth, though the relationships would be complex and dependant on circumstances. We are left with a difficult empirical question and only a limited body of research" (Maskus, 2000). On the other hand, there is an evolving body of literature that deal with SMEs, though still relatively in its infant stage due to problems associated with the definition of SMEs, their heterogeneity and the inability to collect data on them. However, what has been missing is dealing with the two issues, SMEs and Copyright Protection, simultaneously, which is the topic of this lecture.

The lecture is divided into several sections:

1. *Importance of SMEs in developing countries with special emphasis on Egypt and the Arab countries*
2. *What do we mean by Copyright Industries?*
3. *The Cases where SMEs are copyright owners*
4. *The Cases where SMEs are copyright users*
5. *What is the optimal degree of copyright protection required for a better environment for SMEs to flourish*
6. *Conclusion and Policy Implications*
7. *An Overview of the IPR Laws in Some Arab Countries*

1. *Importance of SMEs in developing countries with special emphasis on Egypt and the Arab countries*

SMEs form, by number, the majority of manufacturing enterprises in a large set of countries at different stages of development. Moreover, they provide the bulk of employment and in many cases they also contribute significantly to exports and innovative capacity. On average, they represent more than 90% of the number of enterprises in both developed as well as the developing world. Moreover, they employ a minimum of 50% of the labor force in

developed countries that can reach more than 90% in developing as well as developed countries. For example, the statistics available on some of the Arab countries show that the manufacturing firms with less than 10 employees account: in Egypt for 95%<sup>1</sup>, in Jordan 93%, in Lebanon 88%, in Palestine 89%, in Tunisia 42% and in Morocco 50% (Gallina, 2001). The available data indicate that the situation is highly similar in other countries all over the world.

Governments in developing countries, as well as developed countries, started to realize the important role played by SMEs. Hence, they have been trying to support them by enacting a number of policies and designing laws and regulations that help SMEs to develop and perform in a healthy economic and business friendly environment. SMEs face problems of a different type from those faced by large enterprises.

The literature has identified three main problems that are confined to the SMEs:

*Problems related to their small size* which deprive them from benefits accruing to their large counterparts as enjoying economies of scale.

*Facing segmented factor markets:* Large firms may have privileged access to input, credit, labor, infrastructure information and technology markets than SMEs. The reason for this is that providers of factors of production find it easier, cheaper and safer to deal with well-established large enterprises than to deal with SMEs.

*Biases in Government Policies:* In the majority of countries and especially in developing countries governments are biased towards large enterprises<sup>2</sup>. The systems prevailing and the laws and regulations enacted favor large enterprises to a large extent. The high transaction costs resulting from inefficient bureaucracies imply that in many cases only large enterprises are capable of dealing with such costs (Lall, 2000).

The above mentioned problems led SMEs to specialize in certain economic activities where they can overcome many of the above mentioned problems and enjoy enough flexibility and large maneuver for exploiting their small size advantages. One of such economic activities has been the copyright industries.

## 2. What are Copyright Industries:

Copyright or as sometimes called "Cultural Industries" are broadly divided into two subsets of industries: "Core" and "Non Core".

The Core Copyright Industries include book publishing, newspapers, periodicals, printing, advertising, radio and television broadcasting, sound recording, musical and audiovisual works, motion pictures and films and computers software. Each of these sectors deals with the generation of material protected by copyright, and with the dissemination of this material.

<sup>1</sup>For a field study elaborating the specific nature of problems faced by SMEs in Egypt, however in different sectors namely shoe and furniture see (Sisken, 1996).

<sup>2</sup>For example, in Egypt there are tax concessions for large firms (with capital exceeding 200 million Egyptian pounds = 40 million US\$) in film production.

The Non-Core Copyright Industries include activities that are in some measure copyright dependant and include: industries that deal with the production of equipment or hardware needed for the use of copyright material (radios, television sets, computers, recording and listening devices) as well as output of printers, binders, paper and printing machine manufactures, which contribute to the output of the copyright industries, and institutions as libraries, theaters, etc (Alikhan, 2001)

In fact the copyright industries are not new. They date back to the first half of the twentieth century. Theodor W. Adorno, Max Horkheimer, and Walter Benjamin of the Frankfurt School in the 1930s and 1940s coined the term "culture industry". They referred mainly to the emerging radio, film, and music recorded music sectors. For the term culture industry was a contradiction which drew critical distinction between the perversion of cultural values through the standardized mass production of cultural goods and the "associations of transformative power and aesthetic elements that transcend the concept of culture carried with it" (see Footer and Gaber, 2000). Nowadays, Cultural industries play an important role in the economies of developed as well as developing countries. For example, it estimates range from 1% to more than 5% of GDP for a large set of countries. In the Arab States, with their centuries of culture, the book publishing and music industry, in particular, are well established. More recently the software industry has progressed rapidly in some countries.

In concentrate in this presentation on four main core copyright industries which include "Book Publishing", "Sound Recording", "Computer Software" and "Film Industry". We will try to identify the strong link between SMEs and those set of Industries. Our initial hypothesis is that the correlation between those industries and SMEs is highly evident. If such hypothesis is proved to be right, then this implies the need for a stronger move on the policy front to address the specific problems faced by SMEs in those industries to enhance their development. On the other hand, the analysis will reveal the optimum level of copyright protection required for the SMEs to develop in such industries. The majority of the following discussion is based on the findings of a report submitted by the author to the World Intellectual Property Organization on the status of the cultural industries in Egypt (Ghoneim, 2002 forthcoming).

### 3. The Cases where SMEs are Copyright Owners:

The percentage of SMEs in the four core industries is high on average when compared to other industries (cultural or non-cultural) because of the specific nature of such industries which depend to a high extent on the innovation and creative abilities of individuals.

#### *The Egyptian Case:*

**Book publishing:** The book publishing houses are not necessarily SMEs. For example in Egypt there are two sets of Book publishing houses. Large ones which employ between 70 - 80 employee and small ones which employ on average 15 employee.

**Sound recording:** Sound recording firms are not necessarily SMEs. On the contrary such business is dominated by large firms in developed countries. In developing countries like Egypt, the market is divided among large firms and medium sized firms which employ 25 employees on average.

Film Production: is experiencing a trend of vertical integration. Nevertheless, in Egypt for example, small and medium sized firms still represent the majority of firms in the industry where the average number of employees in such firms is about 15.

Software Industry: has both large enterprises and SMEs. In Egypt the average number of employees in SMEs is about 5 employees.

As copyright owners SMEs face specific problems where their impact is magnified because of the nature of the product they produce which is “nontangible” and their small size disadvantage. Moreover, technological progress in the form of advanced worldwide communications (as satellites and internet) facilitated and increased the dissemination of copyright products and hence complicated their ability to track the dissemination of their output.

Most of the problems characterizing SMEs identified in *Section One* are magnified because of the nature of products they produce. For example, the inability to access finance has been one of the major obstacles facing SMEs and it has been identified as a major problem for producers of copyright goods (whether large or SMEs). Banks, and especially in developing countries, are reluctant to finance non-tangible goods as the thoughts or ideas embedded in a book or appear in a long fiction film. Moreover, the SMEs working in the field of cultural industries are likely to face higher exposure to legislative problems related to intellectual property rights (IPR) protection because of the nature of their products which is highly subject to piracy. Their status as SMEs worsens the matters as they are unable to save aside the required financial resources needed to preserve their rights. Again this complicates matters and adds to their competitive disadvantages in the field of cultural industries, despite the natural comparative advantage they acquire in such industries.

It can be argued that there are two forces that affect SMEs as copyright owners in their business. One force enhances their comparative advantages as many of the copyright industries are based mainly on talents, individual innovative and creative capacity with no need for a relatively large capital to start their business with. The other force which pulls them in the other direction adding to their competitive disadvantages is the nature of the products regarding their intangibility which complicates matters related to access to factors of production as well being eligible for higher piracy rates.

#### 4. The Cases where SMEs are Copyright Users:

The case of SMEs as copyright users represent the other face of the coin. The four core industries mentioned above are full of examples of SMEs that are heavily dependant of copyright products as inputs in their production process. For example, a music sound recording industry has the songs and melodies as their main inputs. Those are pure copyright products. The same is true for a film production firm, a book publishing company or a software development agency. The formal definition of related rights to copyrights include rights to: performing artists: (such as actors and musicians) in their performance, producers of sound recordings: (e.g. cassette recordings and compact discs) in their recordings, and broadcasting organizations: in their radio and television programs.

One might argue that since such industries are heavily dependant on copyright products and since higher protection of IPR imply higher prices, then a lax protection of copyrights can be beneficial for SMEs working in the four core industries. But is that true? The answer is more complicated than it might seem due to the entangled effects of IPR protection. To give a flavor of the complexity of the issue, which will be handled in the coming section, we provide a hypothetical example. Let A be a music sound recording firm which suffers from high prices of copyright products (songs and melodies) and wishes if prices were lower, may be through weaken enforcement of IPR. Let us trace the impact of weaken enforcement of IPR on the firm A: Weaker enforcement of IPR will imply lower prices of copyright products that are used as inputs in the production process of firm A. In the very short run, firm A could enjoy higher profits. But is that the end of the story? Definitely not. SMEs in other related industries which feed the firm A will be reluctant to innovate and be creative since their monopolistic rents are lowered due to the high piracy rate. The supply of their output will start to decrease, competition will start to fade and the end result will be less inputs for firm A and the similar firms. Finally, their profits will decline and many of them will leave the market. The problem is complicated further due to the fact that core industries depend to a large extent on the output of individuals and SMEs as their input. Since SMEs in general are highly vulnerable to weaken enforcement of IPR, this implies that the negative impact of weak enforcement will trigger as it passes through chains of SMEs which lack the ability to protect their copyright effectively due to the problems identified in *Section One*.

This leads to the question of what is the optimal protection of copyrights for a better flourishing of SMEs as users and owners, an issue that is handled in the following section.

5. The optimal degree of copyright protection required for a better environment for SMEs to flourish:

The answer to the question of the optimal degree of copyright protection that is required for a better environment for SMEs to flourish is not easy for several reasons though its concept is clear:

Each country should decide upon the optimal size based on two main criteria: the market size and the capacity for innovation. The balance between encouraging new creative activity and providing economical access to works that have already been created is affected by the scope, duration, conditionality, and transferability of copyrights. The geographical domain over which these rights can be exercised is also important (Acheson and Maule, 2001). A number of observers have argued that since developing countries have limited markets and weak capacity for innovation, then the degree of IPR protection should be relaxed (McCulloch, Winters and Cirera, 2002). The argument, despite the fact that it can be easily challenged, enjoy justification in many cases where developing countries are net importers (e.g. protection of patents for drugs production). However, in the case of copyright protection, the argument requires scrutiny. The reason is that in copyright products, the matter is highly different. With the exception of standard software applications, the core (and non-core) industries in developing countries have products that do not represent the general assumptions of weak innovation capacity and limited market size. The cultural flavor of the copyright products and the strong involvement of SMEs in their production lead us astray if we adopted the "conventional wisdom" of the assumptions identified above. On the contrary, the market is huge for large variety of copyright products produced by developing countries - witness the market of the Indian film industry and the Egyptian songs - which alter the

presumption of developing countries as pure importers of copyright products. On the contrary, they can benefit producers and exporters. Moreover, in many cases, with the exception of software<sup>3</sup>, the innovative capacity is not necessarily contingent on advancements of technology (where developed countries have a comparative advantage) but rather is highly dependant on cultural aspects and personal talents. In addition, the domination of SMEs as the majority of enterprises in those fields simply the necessity for a prudential calculation of the benefits versus costs of strong IPR protection where traditional analysis is simply irrelevant results.

A weak IPR enforcement for copyright industries might result in lower prices to the end consumer, but it will ultimately reduce the variety of output and lessen the quality since the incentives for producers are absent.

A strong IPR enforcement for copyright industries is favorable for producers and especially SMEs which represent the majority of enterprises in such industries in developing countries. The lack of capable financial means among SMEs could magnify the negative impact of weak enforcement, kill competitive initiatives and deter the innovation and creative capacities. A strong IPR in this field is likely to have positive impact on consumers as long as the competitive behavior among producers is preserved.

*Each Case has to be considered separately:*

**The Book publishing Industry:** The relatively low piracy rates of published books in home country language in developing countries (e.g.) compared to foreign books suggest that the problem is in the right pricing policy that should be adopted. The high marginal costs of reproducing or pirating a book written in the native language suggest that the problem has two aspects: the moderate price of the original which makes the pirated copy relatively expensive to reproduce and the easy access to such books. This is in contrast to foreign imported books (especially University stuff) that suffer from high piracy rate due to low accessibility (in terms of several original versions available in libraries) and low marginal cost in reproduction due to the high price of the original version. The imported foreign books resemble to a large extent the case of software which because of its wrong pricing policy had suffered from a higher piracy rate.

**The Software Development Industry:** Software development, in contrast, suffers from piracy but not through the conventional way of copying the software itself but rather stealing the idea by employees. The recent developments in copyright protection has not extended the rights to ideas. It was rather confined to expressions, and hence it preserves itself only to stumble for a while. This might affect negatively the incumbent enterprises (whether large or SMEs) but its final impact on potential SMEs cannot be easily determined. The reason is that pirates of ideas probably start a new firm and use such ideas and hence this leads to the establishment of new SMEs. Hence the final impact is ambiguous. Software developers have other means of protecting copyright which depend on technology. They can monitor their customers or embody special technical specifications that ensure that their work will not be subject to piracy.

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<sup>3</sup>The software industry is characterized by network externalities which complicates the analysis in reaching the optimal degree of copyright protection

Bottomline, with special attention to the case of copyright industries in developing countries where they enjoy a comparative advantage and where SMEs heavily prevail the balance tilt towards a stronger enforcement of IPR if the aim is a better welfare for consumers and producers. Protecting copyrights is essential to human creativity, by giving creators incentives in the form of recognition and fair economic rewards. This in turn increases access to and enhances the enjoyment of culture, knowledge, and entertainment all over the world. s

## 6. Conclusion and Policy Implications:

The realization of the specific nature of the SMEs and the need for a different treatment is appreciated. But there are still missing issues like copyright protection that has not been dealt with adequately whether on the research level or on the policy oriented level. Especially in developing countries, SMEs heavily involvement as owners and users of copyright products complicates the analysis of the benefits versus costs of a stronger IPR system but our initial hypothesis of a strong relationship between SMEs and Copyright Industries still holds.

SMEs face specific problems related mainly to their small size, distortions in markets and the bias of governmental policies against them. The nature of cultural industries complicates the matters regarding the intangibility of their products and the negative complications dependant on such specific characteristics as identified above. Since such industries are dominated by SMEs in developing countries, this simply that more attention by their governments should be devoted to them. There are several aspects that create an incentive for governments of developing countries to act in this direction, mainly: the recent revival of the cultural plurality preserves and the role played by the core cultural industries in that regard; the chronic unemployment problem and the important role played by SMEs in its curing. Paradoxically, strengthening IPR can provide a solution for the problem of absence of a collateral for obtaining capital from financial institutions and funding innovation projects. In other words, a protective IPR system can help in solving the problems of SMEs. The role of IPR in providing value for the assets that would otherwise would not have acquired this value because of a fragile IPR system is of vital importance. This will definitely support the position of SMEs in asking for finance, hence solving one of the chronic problems facing SMEs especially in developing countries.

The flourishing of research on both issues is still segregated, economics of IPR protection and economics of SMEs, despite their urgent need for the marriage of those two evolving bodies of literature.

### *What is needed are two main issues:*

A rich research agenda that merges the two evolving bodies of literature together to provide us with a better understanding of the specific nature of SMEs when IPR are addressed with special emphasis on copyright issues, given their high relevance to both SMEs and developing countries.

A well designed policy and institutional framework that lessens the bias against SMEs and address their particular needs especially in issues related to IPR in general and copyrights in specific. A complementary institutional infrastructure is of vital importance. For example, to avoid monopolistic rents and abusing dominant positions due to a stronger IPR system, a competition policy that is well designed and efficiently enforced is a must.



Moreover, public awareness about the importance of IPR protection for SMEs should be enhanced. This might lead to the importance of establishing collective management organizations that should be responsible for disseminating such information. Nowadays, there is a weak access of SMEs to collective management organizations especially in developing countries. A better access of SMEs to such organizations is a right step in this direction.

#### 7. Copyright Protection in Selected Arab Countries:

##### *The Case of Lebanon:*

The Lebanese copyright law protects all types of literary, artistic, and musical creation without explicit exclusions. Copyrights are provided for life of the author plus 50 years in the case of corporate copyrights. These periods are fully consistent with international norms. Copyrights provide exclusive rights to produce and sell copies of literary and artistic creation and are fully transferable by creators (Maskus, 2000).

In the entertainment and media sectors (films, music, publishing, and broadcasting), copyright protection is a key component of incentives for creation. Despite limited copyright enforcement, Lebanon has established a clear literary and creative works, including films, television, advertising, music and books and periodicals. The ultimate source of this advantage is the relatively large pool of creative talent in Lebanon.

Unauthorized copying of videotapes and music recordings is common, and book publishers complain that their texts are frequently copied and sold, both in Lebanon and in the neighboring countries (Maskus).

##### *The Case of Egypt:*

In response to calls for improved legal protection for copyrighted works, the government passed law 38 of 1992, amending the 1954 copyright law. The Berne Convention to which Egypt acceded in 1977, is self-executing according to Egypt's constitution. Thus, international copyright holders may be able to rely directly on Berne Convention provisions in Egyptian courts in areas where the coverage of the Egyptian copyright law is vague or non-existent. In March 1994 the government amended provisions of law 38 to ensure that computer software was afforded protection as literary work (allowing it a 50-year term of protection). In addition, in April 1994 a ministerial decree clarified rental and public performance rights, protection for sound recordings and the definition of personal use. Copyright piracy is still widespread and affects all sections of ownership, however progress is being made in most areas except software where most piracy seems to be in the local market, with some imports of pirated works coming from Lebanon and the Gulf States.

Egypt is in the process of modernizing its laws related to IPR and lumping them in one law that is now being discussed in the Parliament for final release.

The Copyright Administration under the Supreme Council for Culture in the Ministry of Culture has taken substantial steps in promoting creative activity and protection of intellectual property rights. The music industry has developed in the 1990s with prerecorded sales having gone up in terms of units from 11 million in 1992 to 20.1 million in 1997 and in retail value of these sales, from US\$13.3 million in 1992 to US\$42.8 million in 1997. It has also a growing software market, with local sales in 1999 estimated at US\$50 million and a growth of 35%.

*The Case of Algeria:*

In Algeria, the National Office of Copyright (ONDA) under the Ministry of Culture and Tourism has been an effective stimulator of copyright protection and consequently of the copyright industry. Algeria has one of the very well organized societies of authors' rights in the Arab region.

*The Case of Jordan:*

In Jordan, it is experiencing a tremendous move towards better enforcement and enactment of IPR. Such activities are boosting the development of the software industry which has the full support of the government. Jordan has signed recently a free trade area with the US and has accepted to apply much stronger and better enforced IPR as a condition for signing the agreement with the US.

*The Case of Morocco:*

In Morocco, The National Copyright Administration (BMDA) under the Ministry of Information has been promoting copyright protection activities and the industry it protects.

*The Case of Sudan:*

In Sudan, which is part to a large number of international conventions and treaties in the field of intellectual property, the National Copyright Administration in the Ministry of Culture under the charge of the Registrar General, Office for the Protection of Intellectual Property (Copyright), has been promoting the progress of copyright protection and that of the cultural industry (Alikhan, 2000).

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