



## COPYRIGHT

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**COPYRIGHT** (*ḥaqq-e mo'allef*, a direct translation of the French *droit d'auteur*), the exclusive right to reproduce, publish, and sell the matter or form of a created work, for example, a novel or musical composition. In Persia this right is regulated by two laws dating from the last decade of the Pahlavi period and still in force: Qānūn-e ḥemāyat-e ḥoqūq-e mo'allefān (Copyright law) of 3 Āḍar 1348 Š./24 November 1969 and Qānūn-e tarjama wa taktīr-e kotob wa našrīyāt wa ātār-e šawtī (Law concerning the translation and reproduction of books, publications, and audio recordings) of 6 Dey 1352 Š./27 December 1973. When drawing up these bills Persian legislators relied on European models.

There is a distinction in the copyright law between “intellectual rights” (*ḥoqūq-e ma'nawī*) appertaining to a work and its creator (*padīd-āvaranda*), considered to be “unconfined by time or place and nontransferable” (Art. 4), and “material rights” (*ḥoqūq-e māddī*), which may be transferred to a second party for commercial exploitation (Art. 5). The first Persian copyright law was designed to protect all kinds of works: “scientific, technical, literary, and artistic” writings; musical compositions; audiovisual works produced for the stage, screen, or television; photographs; paintings; sculpture; architectural drawings; maps; and any other original creation resulting from individual or collective effort. The “material rights” to a work are, however, protected only after that work has been presented to the public (published, exhibited, performed, etc.) in Persia (Art. 22). The law thus excludes from protection works, even those by Persian nationals, that have been first published or performed abroad. Persia has not signed the Universal Copyright Convention (U.C.C.) or



any other international copyright agreement.

The period during which eligible works are protected varies somewhat. For written work it extends to thirty years after the death of the author (Art. 12); for photographs and films, as well as all works belonging to a corporate body or organization (*šakšīyat-e hoqūqī*; Art. 16), the period is thirty years from initial presentation to the public. Thirty years is also the period during which commissioned works (Art. 13) can be exploited by the patron; then the rights revert to the author or his heirs.

The Persian copyright law contains exceptions for certain government agencies that deal with printed materials or musical recordings, in order not to hamper their day-to-day operations. For example, the Ministry of education is authorized to print textbooks according to standing contracts (Art. 10); the Ministry of information (which controlled Persian radio and television at the time the law was passed) is authorized to continue broadcasting materials without having to pay royalties (Art. 9); and public libraries and nonprofit educational and research institutes are authorized to make copies, photomechanically or otherwise, of published works for their own use (Art. 8).

Infringements of the law are punishable by prison terms, ranging from six months to three years for misuse of works of original authorship (Art. 23) and from three months to one year for unauthorized translation (Art. 24). Such other offenses as making deliberate deletions and distortions in a text or removing the name of an author from his book are also punishable by prison terms. A plaintiff may sue for damages if the defendant is a corporate body, the amount to be determined by the court (Art. 28). Legal proceedings for infringement of copyright are initiated by lodging a complaint with the public prosecutor, at which time he may order copies of the work to be removed from sale and impounded for the duration of the trial (Art. 29).

The drafters of the copyright law envisaged the registration of works, their titles, and identifying emblems (*nešāna-ye viža*), not to be confused with commercial trademarks, for which there are special registration procedures) and charged the Ministry of culture and arts (Wezārat-e farhang o honar) with drawing up a directive to regulate the process and also with drafting detailed regulations governing photomechanical reproduction for libraries. The ministry never fulfilled these assignments, however. Its successor, the Ministry of culture and Islamic guidance (Wezārat-e farhang wa eršād-e eslāmī), has established the procedure for registration of copyrighted works (‘Ebādī, pp.



92-95). After a registration application has been filed with relevant documentation, a certificate of registration is issued. Registration of works is optional, however, and failure to register does not diminish the protection provided by law for eligible works. Published works may also be registered in the Persian national library by depositing a specified number of copies there.

After four years the Qānūn-e tarjama was drafted and ratified, chiefly in response to foreign pressures on the Persian government to end the practice of “piracy,” unauthorized reproduction of foreign textbooks and phonograph records; some of these reproductions were exported to neighboring countries. The law extends its protection to translations, which had been rather neglected in the first copyright law; they are defined as the property of the translator, and the period of protection is thirty years after his or her death. The translator or his heirs may transfer publication rights to the work to a second party for commercial exploitation, but the latter is obliged to credit the translator on the title page (Art. 1).

The question of photo-offset reproduction of books and duplication of recordings is also dealt with. Both are forbidden without the permission of the proprietors; books and publications may be reproduced neither in the original language (which does not restrict the freedom to translate them) nor in the original printed form (though resetting the text is permissible). Similar prohibitions apply to audio recordings or tapes for sale (recordings for private use are excepted), including material recorded from radio and television broadcasts (Art. 3). Recordings qualify for protection, however, only if they bear the standard international symbol (a capital P within a circle), in addition to the name and address of the manufacturer, the date of issue, and a trademark (Art. 4). Unauthorized reproduction of books and audio recordings, including works by foreign citizens or companies, is thus technically prohibited, but foreign nationals can benefit from the law only if Persian works are protected under similar circumstances by bilateral treaties (Art. 6). Infringements, which are defined as felonies, are punishable with prison sentences of three months to one year. Legal proceedings are initiated only after a complaint of infringement has been filed with the judicial authorities. If the charges are withdrawn, proceedings cease immediately. As under the first copyright law, the public prosecutor orders the disputed copies withdrawn from sale and impounded pending the outcome of the trial. Once again the court may award damages to the successful plaintiff.

In the Qānūn-e tarjama it is explicitly stated that its provisions do not limit the



scope of the first copyright law, but rather supplement it. In the early 1970s the government had been seriously considering accession to one of the international copyright conventions, most probably the U.C.C.; Western ambassadors had been repeatedly complaining about piracy to the shah, who had come to consider the unauthorized reprints of textbooks and recordings as a stain on the international image of Persia.

The story of the behind-the-scenes developments that finally prevented the government from carrying out its intention to join the U.C.C. in the last years before the Revolution of 1357 Š./1978 has not been made public. In recent years there have been hints and partial revelations, however; the best account so far has been provided by Čangīz Pahlavān (1991a, p. 90), who was closely associated with the Ministry of culture and arts at the time: “[Prime Minister Amīr-‘Abbās] Hoveydā was persistently pushing for accession, and he had nearly obtained the shah’s approval for it. The matter was referred to the Ministry of culture and arts, for this was their legal domain. There were many committee meetings, and I participated in a number of these. Personally I was opposed to accession at that time, and I am still opposed to the idea. To be fair and honest, I should add that the minister [Mehrdād Pahlbod] was also in practice against the idea, and he did nothing to smooth the way for the implementation of the prime minister’s intent. The matter was being pursued in the ministry at the experts’ level, and many people were consulted. Everyone . . . was against accession, and many different objections were raised to the proposal. And the upshot of the whole thing was that those in favor of accession did not have their way, or the matter was left up in the air.” While these debates were going on behind the closed doors of the ministry, there was also a campaign in the press against accession; many intellectuals voiced their opposition to the concept of international copyright. The daily newspapers *Rastākīz* and *Ayandagān* and the weekly *Ayandagān-e adabī* were especially vehement about the bleak prospects for Persian readers and the media if Persia acceded to the U.C.C.

The main arguments of opponents to accession fell into four categories. First, Persia was basically an importer of copyrighted materials; very few Persian books were translated into foreign languages. The country would thus end by paying, rather than receiving, royalties, a financial burden that would weaken the publishing community. Second, the prescribed U.C.C. procedure for obtaining translation or reproduction rights would entangle Persian translators and publishers in international red tape, with the result that some



would give up and shelve their projects. Third, Persian publishers were not adequately prepared to deal with their counterparts abroad and could ill afford to pay royalties in addition to their production costs. Finally, accession would benefit the larger publishers and those with better access to Western publishers, at the expense of those less well situated (see, e.g., Daryābandarī; Homāyūn; Pahlavān, 1991b; Saʿīdī Sirjānī).

In the years following the Revolution both copyright laws remained in effect and formed the basis for litigation in the courts, though most copyright disputes are settled out of court. No case of unauthorized reproduction of foreign books or tapes has yet been brought, for Persia has no copyright agreement with any Western country from which materials have been reproduced by its nationals.

The validity of copyright in Islamic jurisprudence is unclear. Ayatollah Ruhollah Khomeini (Rūḥ-Allāh Komeynī) is known to have issued a *fatwā* allowing a person who has purchased a book to copy or reproduce it as his property; in an additional *fatwā* he ruled that, when the interests of all Muslims are at stake in a case, the supreme jurist, or *walī(y)-e faqīh* (see [constitution of the islamic republic](#)) may intervene on behalf of the community. On the other hand, Ayatollah Ḥosayn-ʿAlī Montazerī, who was at one time considered the successor to Khomeini, has issued a *fatwā* recognizing copyright as one of the individual's intellectual rights (*ḥoqūq-e ʿoqalāʾīya*) that must be respected. The question has not been settled, and in 1371 Š./1992 further *fatwās* on the subject were being sought from eminent theologians.

The Persian government, however, officially supports authors and the arts. The Ministry of culture and Islamic guidance, which regulates all publishing activities in the country, requires publishers to sign a pledge accepting the provisions of the two copyright laws in order to obtain licenses. There is no prospect of Persian accession to the U.C.C., however, as the authorities are preoccupied with urgent domestic and international affairs. Some intellectuals are debating the matter of accession in scholarly journals, in a few instances claiming credit for having defeated Hoveydā's plan, but this debate is largely theoretical. The only problems demanding immediate attention are the increase in multiple Persian translations of single foreign works and unauthorized reproduction of Persian books abroad, especially in countries where large communities of Persian émigrés have settled.



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