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**COPYRIGHT EXCEPTIONS FOR TEACHING AND
RESEARCH PURPOSES: A COMPARATIVE STUDY
BETWEEN PALESTINE AND MALAYSIA**

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ABSTRACT

Copyright exceptions for teaching and research purposes have turned into a significant issue for achieving a balance between the copyright owner and copyright users. The regulation of this issue is reflected in the Copyright Acts 1911 and 1987 for Palestine and Malaysia, respectively. The Palestine Copyright Act 1911 dismisses teaching and research copyright exceptions in detail and has not been amended since 1911; signifying a huge setback in regulating this issue and the pressing need to improvise the Act in order to achieve a balance between the copyright owner and copyright users. The present study has looked into the teaching and research exceptions detailed in the Palestine Copyright Act 1911 with the aim of suggesting improvements in the Act. The comparative research approach was

used, along with a functional method. The findings revealed that the Malaysia Copyright Act 1987 offers several provisions in regulating the teaching and research exceptions based on a fair dealing rule, while the Palestine Copyright Act 1911 lacked provisions in regulating these exceptions despite its fair dealing principle. This points to the need for improvements in the Palestine Copyright Act 1911.

Keywords: Palestine Copyright Act 1911, Malaysia Copyright Act 1987, copyright exceptions, teaching exception, research exception, fair dealing.

INTRODUCTION

The primary aim of a copyright law is to encourage developments and advancements by disseminating cutting-edge information and culture to promote education, science, and culture for the good of society as a whole. A copyright law caters to the requirements for enabling entry, use, and contact of the copyright work by everyone under such cases without the need for additional permission or payment from the copyright owner (Roukana, 2017).

In 1886, the first draft of the Bern Convention for the Defence of Literary and Artist Rights stipulated that teaching or educational exemptions to copyright legislation have been part of any major intellectual property treaty (Berne Convention, 1979). The Bern Convention was amended a number of times over a period of 80 years, and the final draft was only produced in 1979. This exception was enacted by certain domestic statutes in the copyright Acts. In fact, technical transitions have increased in educational exceptions, particularly when copyright works are available on the internet and copyright exemptions can be easily deployed (Congleton & Yang, 2016).

Turning to this study, it outlines the similarities and differences on copyright exceptions for teaching (educational) and researching (private study) purposes in the Palestine Copyright Act 1911, Malaysia Copyright Act 1987, and several international copyright conventions (i.e., Bern Convention 1971, Trade-Related Aspects of Intellectual Property Rights (TRIPs) Convention 1994, World Intellectual Property Organisation (WIPO) Copyright Treaty (WCT) 1996, & WIPO Performances and Phonograms Treaty (WPPT) 1996)

so that the Palestine Copyright Act 1911 can be enhanced to suit the needs of the modern world. In addition, this study discusses the historical background of the copyright law in the contexts of Palestine and Malaysia. Next, provisions concerning exceptions in the Palestine Copyright Act 1911 and the Malaysia Copyright Act 1987 (Act 332) for teaching and research purposes are compared. The United States Copyright Act is highlighted as well for insights into the regulations that distinguished fair use issues.

METHODOLOGY

The doctrinal legal research methodology was employed in this study. A doctrinal study refers to a rigorously analytical study that is composed of fundamental studies aimed at determining a specific interpretation of the law, or a more comprehensive philosophical examination of the law in terms of both meaning and depth. The doctrinal research approach is a type of library-based study that identifies the “one-right answer” to a particular legal topic or issue (Ali et al., 2017). Hence, in the present study in-depth investigations were carried out to uncover specific pieces of information and to point out what the law has to say.

This type of research approach uses a comparative legal research technique. As it enriches the history of the community experience, the Comparative Legal Study (CLR) is a significant instrument in the legal research domain. Similarities and differences identified among different laws that control the same topic is referred to as a comparative perspective (Ali, 2020). Meanwhile, the functional method deployed in this study is typically applied at the micro-comparison level. The items of comparison are the provisions of copyright exceptions for teaching and research purposes in the following Acts and Conventions: Palestine Copyright Act 1911, Malaysia Copyright Act 1987, Bern convention 1971, TRIPs convention 1994, WCT 1996, and WPPT 1996.

The study data were gathered from primary and secondary resources. The primary data included international copyright conventions (Bern Convention, TRIPs Convention, WCT, & WPPT), Palestine Copyright Act 1911, Malaysia Copyright Act 1987, and copyright cases from both US and UK courts. The secondary resources comprised books, articles, master’s dissertations, Ph.D. theses, as well as governmental documents and reports.

COPYRIGHT LAW

A copyright refers to the literary and creative development of literary works, such as books, films, music, artistic works, architectural design, and copyright-related privileges that involve performing artists in their performances, phonograph manufacturers in their records, as well as programs produced by radio and television broadcasters (WIPO, 2016). To elaborate, a copyright is all about preserving original work of authorship, fixed in a tangible form or a medium of speech that can be directly or with the help of a computer or a system interpreted, copied or otherwise transmitted (Magalla, 2016).

A copyright is a type of intellectual property and is a form of property. It is, however, neither tangible in anything nor applied to anything tangible (e.g., unlike a property in a lease of land) (Paul, 2005). A copyright, in other words, denotes one's exclusive right to allow certain acts in relation to his or her original work of authorship (e.g., copying, printing, public appearance, & adaptation). At least initially, a copyright is generally held by the author of the novel. However, a copyright is often sold or assigned, in whole or in part, to a commercial publisher, a filmmaker, a recording studio or one who will profit from the work (Locke & Panella, 2001).

Copyright theory can be interpreted in multiple ways. The copyright intent is one point of dispute. Some people begin by examining policies through the prism of general ethical philosophies, such as utilitarianism; whilst others begin with current copyright laws and look for cogent justifications. Another opinion views modern copyright law as simply a result (and even an undesired product) of government systems, thus dismissing any ethical justification (Vaver, 2006).

Article 2 of the Bern Convention for the Protection of Literature and Artist Works stipulates that the term "literary and artistic works" refers to any creation in the literary, science or artistic sphere, regardless of the medium or type of speech, such as books, photographs, and other creations.

Referring to this clause, the copyright covers "any production in the literary, scientific, and creative domain, whatever the form or style of expression." Here, the expression "literary and creative works" refers to any original work of authorship, regardless of literary or

artistic high level of creation, for the purposes of copyright protection (WIPO, 2016).

Although the substantive requirements for copyright protection differ from one jurisdiction to another, one seems to be uniformly agreed upon - the criterion of “originality.” In essence, this provision applies to all literary, dramatic, theatre and artistic works (authorship works) (Kotigala. 2016).

International Conventions Related to Copyright Law

The first international agreement for the protection of copyright was signed and adopted on 9th September 1886 in Bern, Switzerland. This international agreement came about because of the need for a uniform scheme of copyright protection. The Bern Union was established by countries that adopted the Convention to ascertain that the rights of writers in all the Member States were recognised and protected (Barizah, 2016).

The Bern Convention has been revised several times since its inception, with the most recent revision made in 1971. The Bern Convention is comprised of three principles: the rule of national treatment, the rule of automatic immunity, and the rule of protection freedom (Bern Convention, 1971).

The Bern Convention is the oldest copyright agreement in the world. This convention is the most crucial text governing matters related to copyright. The Paris Convention, which covers industrial intellectual property rights such as trademarks and patents, has also been concluded. The importance of the Bern Convention was amplified when the US pulled out of the rival Universal Copyright Convention administered by the United Nations Educational Scientific and Cultural Organisation and joined the Bern Convention (Ross, 1989).

The Agreement on TRIPs is the second international copyright protection instrument. Annex IC to the “Final Act Embodying the Result of the Uruguay Round of Multilateral Trade Negotiations” refers to the TRIPs Deal that entered into force on 1st January 1995. Consequently, all World Trade Organisation (WTO) participants are bound by the TRIPs Deal, irrespective of their level of economic growth (TRIPs, 1995, Article 1).

In accordance with the TRIPs Treaty, WTO members, with the exception of moral rights clauses of the Bern Convention, must comply with the specific provisions of the Bern Convention and the Annex, irrespective of whether they are part of the Bern Convention (TRIPs Agreement, 1995, Articles 10-11).

The WCT is a special arrangement under the Bern Convention that deals with the protection of works and the rights of their authors in the modern world. If unbound by the Bern Convention, every Contracting Party must comply with the fundamental terms of the 1971 Act of the Bern Convention for the Preservation of Literature and Artistic Works 1886 (WCT, Article 1).

In fact, the WCT was created in 1996 and implemented in 2002. As for author protection, the Treaty provides, in addition to the rights stipulated in the Bern Convention, the right to publication, the right of sale, and a broader right to communication with the media (WCT Articles 1-4).

The WPPT refers to a treaty that regulates and deals with copyright matters. This treaty addresses the interests of two types of copyright owners in this modern age: performers (actors, singers, artists, etc.) and phonogram producers (individuals or legal bodies that take the initiative and are responsible for the fixation of sounds) (WPPT, Articles 1-7).

Exceptions in Copyright Law

As far back as 2500 years ago, organised societies based on rules or legislations acknowledged the need for exceptions based on social class, interactions, purposes of people, and circumstances surrounding the 'crime'. Although society has not done away with laws entirely, cultures have been hesitant for certain reasons to implement exceptions or defences to rules (Mendis, 2003).

Copyright exceptions come in a multitude of forms. Copyright exceptions are commonly applied in education, researches, newspapers, and criticisms. Teaching copyright exceptions refer to the use of copyright works in teaching and educational settings without the permission of the copyright owner, which is based on fair use and dealing regulations. In the classroom, for instance, teachers and

students have some rights to freely examine and execute copyrighted materials (UK intellectual property office, 2014). As for the exception in research purposes, there is no legal definition that explains its meaning and shortcomings. This issue, which has gained popularity, is related to allowing fair copying of literary works, sound recordings, movies, and broadcasts for non-commercial study and private studies without the approval of the copyright owners (Wahid & Mohamed, 2014).

The issue of copyright exceptions was discussed in famous cases of *Millar v Taylor (1769) 4 Burr. 2303, 98 ER 201* and *Alexander Donaldson and another v Thomas Beckett and others (1774) 2 Bro PC 129, 1 ER 837*. In *Millar v Taylor*, Mr Justice Wills argued that every land has its correct limit, scope, and boundaries, while the government has no knowledge of anything, such as the copyright that remains indefinite in the common law. In addition, the *perpetual* copyright can cause unpleasant effects on the public. The honourable judge cautioned that the unpleasant effects will put a halt to copyright issues, instead of promoting the growth and the dissemination of literature, or at least, attended to with considerable drawbacks.

The case of *Folsom v. Marsh, 9 F. Cas. 342 (C.C.D. Mass. 184)*) is credited with defining the fair use standard of the US copyright law. It has been generally accepted as the first “fair use” event in the US, despite its little bearing on the exemption for teaching and science. This scenario serves as a springboard for considering other activities of fair use, such as in learning and research domains.

The nature of copyright setbacks and exceptions has a variety of justifications. The first argument revolves around authorial desires and authorship continuity. The second recognises customer needs that later provides a shield for individual autonomy and ownership rights. The third promotes a wider range of public concerns, such as those that promote public access to information, non-profitable programs, and government functions. The fourth section deals with economic concerns, including promoting competitiveness and growth, exempting non-economically significant incidental uses, and fixing industry failures. A quarter is used for electoral purposes. The sixth addresses the need for long-term stability and adaptability (Samuelson, 2018).

The expansion of the world of copyright law was parallel with the introduction of the Bern Convention in 1886. In fact, it was this particular convention that made significant reforms to copyright laws and opened the doors to statutes on copyright exceptions (Mendis, 2003).

In light of copyright exceptions for research purposes, several institutions (e.g., libraries & universities) can provide access to works on the premises of copyright at electronic research and private study terminals (Ratnaria Wahid & Khadijah Mohamed, 2014). In fields of any discipline of study, students can enjoy better access to the content. Copying must be fair and rational, as it would not be acceptable to copy a whole book instead of purchasing a copy (UK Intellectual Property Office, 2014).

The Bern Convention in Article (10) 2 states that one has the choice to enact his or her copyright acts or in other international conventions the copyright exception for teaching purposes. The said Article, however, does not refer to any detail about this exception. Hence, individual countries or nations have the discretion to make copyright exceptions for teaching purposes. This leaves national laws or bilateral arrangements among the members of the Union in a position to decide on the matter (Wahid & Azmi, 2020).

The language of Article 10(2) of the Bern Convention is intended to be transparent and versatile in a way that permits national legislatures to take advantage of its versatility and in their particular circumstances, to apply the scope of a teaching exemption. A versatile interpretation of the term 'used' in Article 10(2) should be allowed a wide range of rights, including reproduction, adaptation, translation, distribution, communication, and making available to the public, as well as any right determined by domestic law. This exception can be applied in both public and private educational establishments for teaching purposes (Wahid, 2011).

Article 10(2) includes a broad spectrum of works under the teaching exemption that can be deployed. This encompasses written works, such as textbooks, journals, photos, and broadcasts, as well as sound and video recordings or creative works. Article 10(2) stipulates that such conditions be fulfilled, namely that they be "justified by reason" and "connected with fair practice," all of which are vague and demand further explanation.

Nonetheless, interpreting ‘teaching’ in accordance with Article 10(2) poses some risks because it limits the exceptions to structured educational procedures. Therefore, these international treaties allow for requirements that are couched in vague terms to include guidance and standards for Member States to create law applicable to their circumstances and contexts, but uncertain if these generous provisions are fully used by individual countries (Wahid, 2011).

Both the WCT in article (10) and the WPPT in article (16) depict that the states can put some exceptions for exclusive rights for authors in special cases, which do not conflict with the normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author/right-holders. This is related to the three-step test in the Bern conventions (Geiger et al., 2014). The Agreement on the TRIPs in article (13) confirms the issue of copyright exceptions with the three-step test. These conventions seem to share a similar flexibility that the Bern convention offers to the state parties.

To enable schools, colleges, and universities to use copyright records, the copyright law has been improved. New educational methods, such as Distance Learning, have overcome drawbacks on the use of copyright records. For a more widespread use of materials following educational licensing programs, exceptions related exclusively to educational institutions have been extended. Another amendment allows for small copying actions for instructional purposes as long as the usage is fair and appropriate. Therefore, teachers can execute certain activities, including viewing web pages or quotations on digital whiteboards without the need to seek extra approvals (UK Intellectual Property Office, 2014).

The copyright exceptions applied in the digital environment are similar to that applied in the conventional setting. The states parties in the WIPO Copyright treaty agreed on the statement regarding the digital forms of copyright. The agreed statements are as follows, “the reproduction right, as set out in Article 9 of the Bern Convention, and the exceptions permitted thereunder, fully apply in the digital environment, in particular to the use of works in digital form. It is understood that the storage of a protected work in digital form in an electronic medium constitutes a reproduction within the meaning of Article 9 of the Bern Convention” (WCT, 1996).

Copyright exceptions are crucial in copyright legislation because the latter strikes a compromise between the copyright owner’s rights and

users' genuine enjoyment of a work. In this digital age, copyright exceptions are becoming increasingly important. Everything in the digital world is a copy, thus might be susceptible to the control of the copyright owners. As a result, copyright exceptions are imminent to maintain the balance in favour of users in this digital age (Khong, 2021).

Recently, more parties from many countries and international organisations, particularly the WIPO (Oppenheim, 2020) are becoming concerned about copyright exception for teaching and research purposes. The WIPO has attempted to propose a special convention related to this matter. For instance, the African group drafted a WIPO treaty resolution that contained exceptions and restrictions for disabled persons, educational and academic institutions, libraries, and archives (Organization W.I.P, 2016). This ensures users have copyright exception related to teaching and research purposes.

Clear limitations and exceptions are eminently appropriate for lawmakers to introduce, in order to cope with certain types of predictable uses that legislators would readily expect. Special limitations and exceptions have two key advantages: first, they offer an acceptable level of predictability, and second, they enable prospective consumers to make investments or partake in privileged practices based on the limitations and exceptions. Open-ended, customisable limitations and exceptions, on the other hand, can be useful because legislators cannot anticipate all situations in which limitations and exceptions may be required.

In the case of the research use exception, no specific clause in international law expressly permits the free use of copyrighted works for research purposes. Although such an exception falls under the general rules that govern restrictions and prohibitions in national laws, such as Article 9(2) of the Bern Convention and Article 13 of the TRIPs Agreement, which include identical, slightly modified works. Article (10) of the WCT and Article (16) of the WPPT are all applied in the same manner due to the transparency and abstract specifications of the wording (Wahid & Mohamed, 2014).

Referring to these provisions, countries can allow copyright exceptions that meet their national interests, given that some requirements are met. This criterion is known as the three-step test – an international control process.

This three-step test is vague, ambiguous, and unlocked; in accordance with the three-step test analysis that allows for different meanings. A limited meaning offers adequate protection for copyright holders, while a wider meaning makes copyright holders more available and protected. As a result, the hypothetical presence of the three-step test facilitates countries in responding correctly to a certain degree of freedom and making the necessary exceptions to satisfy integral social and cultural needs (Sag, 2010).

The international copyright process has a crucial role to play in shaping the domestic law, that is by determining the regulation of copyright issues in domestic copyright Acts, especially copyright exceptions for education and research purposes. The importance of international treaty limitations and exceptions in this exercise is important in this respect. Limitations and exceptions are vital political and doctrinal strategies for developing countries to foster long-term development. It will be able to do this by giving people the basic tools they require so that they can pursue academic goals and invest in the global knowledge economy (Okediji, 2006).

COPYRIGHT LAW IN PALESTINE

Background

In Palestine, Article 12 of the Ottoman Copyright Law of 1910 was the first provision that states exceptions to copyright for educational purposes. This law was modelled after the German Copyright Law of 1901 and the incorporation of several principles of the Bern Conventions (Suthersanen & Gendreau, 2013).

The British Copyright Act of 1911, which was enacted in 1908 and took into account the provisions of the Bern Convention and its revision in Berlin, was a major reform. Any statutory protection against copyright infringement was made available, particularly for fair dealing. The educational exemption was one of six specific cases, where exceptions were introduced as a result of Section 2(1) (i)-(vi) of the Act (Kretschmer et al, 2010).

Next, the UK Copyright Act was applied in Palestine in 1924, and it was the second Act that regulated the copyright exception for learning

purposes. The Act 1911 was first published in English in 1934, and then in Arabic and Hebrew in 1936. This Act is still in effect in Palestine to date (Birnhack, 2011).

National laws that complement international treaties vary greatly based on the specific needs of each country, especially on the scope of the restrictions introduced for education. This occurs as national legislatures maintain a certain degree of discretion in the manner in which their international copyright responsibilities are interpreted and enforced (Wahid & Azmi, 2020).

Relevant Statutes on Copyright Law in Palestine

Apart from the Palestine Copyright Act 1911, other relevant statutes and treaties have been enacted to enhance copyright protection in Palestine. This Act was amended in 1924 by enacting the copyright law for 1924 (Act 15), which basically relates to the application of the British Copyright Act 1911 in the Palestinian territories. The amendments regulated mechanisms of customs and excises for imported copyright works in Palestine and amended the punishment for copyright infringements in Palestine; it reviewed the fines and values, as well as replaced the currency to be used as punishments with the Palestine currency (Palestine Copyright Act, 1924).

In 1981, Palestine joined the Arab copyright convention 1981. This convention regulated several issues in light of copyright protection, such as the duration of the copyright, exceptions for the copyright, moral and economic rights for authors, as well as legal protections for the copyright and copyright deposit. Nevertheless, Palestine did not join any other international convention on copyrights and neither enacted a new copyright law nor amended the Copyright Act 1911 (Abdullah, 2018).

Provisions Related to Copyright Exceptions in Teaching and Research Purposes in the Palestine Copyright Act 1911

Article (2) of the Palestine Copyright Act 1911 includes copyright exceptions that also refer to teaching and research exceptions. Article (2) in regulating teaching and research exceptions stipulates that the following acts shall not constitute an infringement of copyright, pointing out that it is “Any fair dealing with any work for private study, research, criticism, review, or newspaper summary”.

In Article (2), fair dealing refers to engaging in the three-step test, including on deciding if a large part of the original work has been taken, if the act may be for the purpose of private study, research, criticism, review or newspaper summary, and if it is fair or otherwise. Fair dealing jurisdictions have reviewed some considerations close to fair use in assessing the latter criterion. This includes the influence of the use of original work on the market, the volume, and the substantiality of the receipt, as well as the quality of work under the copyright; the alternatives to the receipt; and the intent of the secondary work (Schmidt, 2014).

The 1911 Act is limited in its application to fair dealing, which is related to fair use employed in the US Copyright Act, and even to some degree, to other fair dealing jurisdictions. However, fear exists that the exceptions are too limited, thus hampering potential artists from creating art and producing new demand (Birnhack, 2011).

The 1911 Act has copyright exceptions, which are the specific uses of artistic works in which the owner of the copyright does not require permission. The law goes one step further for certain exceptions, for example that the use of artistic work must be ‘fair,’ thus denoting ‘fair dealing’. In the US, ‘fair use’ is a more common notion than ‘fair dealing’. ‘Fair use’ refers to a number of purposes, such as critiquing, commenting, publishing, teaching, a scholarship or analysis, and the list goes on (Ward, 2018).

There is a profound distinction in the US fair use doctrine and fair dealing doctrine, contrary to common wisdom. Fair use in the US can theoretically extend to any purpose. The wording of section 107 of the US Copyright Act states that, “the fair use of a copyrighted work... for purposes such as criticism, comment, news reporting, teaching (including several copies for classroom use), education, or science is not a violation of copyright,” thus supporting this common wisdom (US Copyright Act, Article 107). The term “such as” emphasises the illustrative value of enumerated functions, which means that fair use can be applied to a variety of other uses. The Copyright Act of 1911, on the other hand, does not have the term “such as.” As a result, the logic continues, “dealings for other reasons are not protected by the exception, even though they would otherwise be fair” (Katz, 2021).

Although most copyright Acts in the world have been amended several times, the Palestine Copyright Act 1911 has not been amended since

1924. This has led to several arguments related to the need to review the Palestine Copyright Act 1911 to enable it to keep pace with the new developments in copyright law, similar to other countries across the world (Abdullah, 2018).

COPYRIGHT LAW IN MALAYSIA

Background

The Copyright Act 1987 (Act 332), which took effect in December 1, 1987, and repealed the older Copyright Act 1969, has been the new governing legislation for copyright law in Malaysia. Since then, the act has undergone numerous significant updates, including revisions in 1990, 1999, 2000, 2003, and 2012, as well as more recently in 2021.

In 1990, Malaysia joined the Bern Convention. The Copyright (Application to Other Countries) Regulations 1990 were enacted under the Bern Convention and went into effect in October 1, 1990; the same day when Malaysia ratified the convention. Malaysia is also a signatory of the TRIPs agreement and ratified both the WCT and WPPT treaties of 1996, all of which took effect in December 27, 2012 (Chen & Kimura, 2021).

Provisions Relating to Copyright Exceptions in Teaching and Research Purposes in the Malaysia Copyright Act 1987 (Act 332)

The Malaysia Copyright Act 1987 (Act 332) regulates issues related to copyright exceptions. Many uses are exempted from the control of copyright owners; one of them refers to the copyright exemption for educational and research purposes (Malaysia Copyright Act 1987, Act 332, Article (13), section 2, paragraph a). The Act stipulates that the right of control for the copyright owner excludes the right to control in “(a) the doing of any of the acts referred to in subsection (1) by way of fair dealing including for purposes of research, private study, criticism, review or reporting of news or current events”. Besides, paragraphs (f) and (g) add another exception related to the domain of teaching. Paragraph (f) states the exception on the inclusion of work in broadcast, performance, showing or playing to the public, as well as the collection of literary or musical works, sound recording or film if such inclusion is made by way of illustration for teaching purposes and is compatible with fair practice. Meanwhile, paragraph (g) stipulates the exception on the reproduction of work made in schools,

universities or educational institutions included in broadcast intended for such schools, universities or educational institutions.

The recent amendment made in the Malaysia Copyright Act 1987 is the inclusion of article (2)(a), which determines if an act constitutes a fair dealing and further states that “the factors to be considered fair use shall include: (a) the purpose and character of the dealing, including whether such dealing is of a commercial nature or is for non-profit educational purposes; (b) the nature of the copyright work; (c) the amount and substantiality of the portion used in relation to the copyright work as a whole; and (d) the effect of the dealing upon the potential market for or value of the copyright work.”

Malaysia transitioned from a simple fair dealing regime to a hybrid fair dealing and fair use system. The Copyright Act of 1987 was amended to include section 13(2A), which allowed for the update. Under section 13(2)(a) and (b) of the Copyright Act 1987, the clause required the weighing of four fair use factors in deciding if a particular conduct can amount to fair dealing. The four fair use considerations are crucial in deciding the conditions of acceptable behaviour in the context of fair dealing (Azmi, 2021).

The Malaysia Copyright Act 1987 has been criticised for its inability to reconcile the rights of the copyright holder and the recipient. There is the need to review the new amendment on fair dealing in Malaysia’s legislation, which will embed the four-factor test from the US fair use requirement in presenting guidance to the court in deciding the use of one’s work as fair use or conversely. Fair dealing in Malaysia is rigid and overly stringent in deciding if the use of the author’s work by the user would make the user responsible for infringement, although the use is for educational or non-profit purposes (Fikriah et al, 2013).

DISCUSSION

Comparison between the Palestine Copyright Act 1911 and International Copyright Treaties (ICT)

This section will compare the Palestine Copyright Act 1911 with the relevant International Copyright Treaties (ICT). Table I below summarises the comparison between the Palestine Copyright Act 1911 and the ICT in regulating teaching and research exceptions.

Table 1

Comparison between the Palestine Copyright Act 1911 and the ICT in Regulating Teaching and Research Exceptions

Treaties	Bern Convention	WIPO Copyright Convention	WIPO Performances and Phonograms Treaty	TRIPS Agreement	Palestine Copyright Act 1911
Article	10.2	10.1	16.1	13	2.1.1
Details of the provision	The states specialise or have the choice to enact in their copyright acts or in other international conventions, the copyright exception for teaching purposes.	Contracting Parties may, in their national legislation, provide for limitations of or exceptions to the rights granted to authors of literary and artistic works under this Treaty in certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author.	Contracting Parties may, in their national legislation, provide for the same kinds of limitations or exceptions with regard to the protection of performers and producers of phonograms as they provide for, in their national legislation, in their connection with the protection of copyright in literary and artistic works.	Members shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.	Following acts shall not constitute an infringement of copyright: Any fair dealings with any work for the purposes of private study, research, criticism, review, or newspaper summary.

International conventions for copyrights regulate copyright exceptions and place general rules that give the state parties the freedom to text exceptions for copyrights. Referring to Table 1, the Bern convention, the Copyright Convention for the WIPO, the WPPT, and the TRIPs convention stated in articles 10, 10, 16, 13, respectively, clearly show that the state can make exceptions to exclusive rights for creators under limited circumstances that do not interfere with the usual use of the work and do not unreasonably prejudice the author's/right-holder's valid interests. This has also been established by the Bern conventions called the three-step test.

Article (2) in the Palestine Copyright Act 1911 dismissed "teaching exception", but only referred to private study and research exceptions, whereby the term "teaching exception" is explicitly outlined in the Bern convention and offers the parties the freedom to enact it in their copyright acts. The Palestine Copyright Act 1911, however, dismissed the three-step test adopted in international copyright agreements.

This glaring omission in the Palestine Copyright Act 1911 for regulating the teaching and research exceptions dates back to the old Act in 1911, which was enacted before adopting the provisions in international treaties. On top of that, this Act has not been amended since it was enacted back in 1911. In this regard, the state of Palestine should join the international copyright conventions that regulate copyright laws. Furthermore, the state of Palestine should review its Copyright Act 1911 to keep pace with the international copyright systems and with the domestic Acts for copyright in different countries when regulating new copyright issues, especially copyright exceptions for teaching and research purposes.

Comparison between the Palestine Copyright Act 1911 and the Malaysia Copyright Act 1987 (Act 332)

Table 2

Comparison between the Palestine and Malaysia Copyright Acts in Regulating Teaching and Research Exceptions

Legislations	Palestine Copyright Act 1911	Malaysia Copyright Act 1987
Provisions	Article 2(1)(1)	Article 13 [2] a, f, g, Article 13 [2A]
Details of the provision	The following acts shall not constitute an infringement of copyright: Any fair dealings with any work for the purposes of private study, research, criticism, review, or newspaper summary.	Article 13 [2-a] reads “the right of control for copyright owner does not contain the right to control in “(a) the doing of any of the acts referred to in subsection (1) by way of fair dealing including for purposes of research, private study, criticism, review or the reporting of news or current events”. Article 13 [2-f] reads “the inclusion of a work in a broadcast, performance, showing, or playing to the public, collection of literary or musical works, sound recording or film, if such inclusion is made by way of illustration for teaching purposes and is compatible with fair practice”. Article 13(2)(g) states “the reproduction made in schools, universities or educational institutions of a work included in a broadcast intended for such schools, universities or educational institutions”. Article 13(2A) states “the factors to be considered fair use shall include: (a) the purpose and character of the dealing, including whether such dealing is of a commercial nature or is for non-profit educational purposes; (b) the nature of the copyright work; (c) the amount and substantiality of the portion used in relation to the copyright work as a whole; and (d) the effect of the dealing upon the potential market for or value of the copyright work”.

Table 2 shows that the Malaysia Copyright Act 1987 (Act 332) in Article 13(2)a is similar to Article (2) in the Palestine Copyright Act 1911, but paragraph (f) in Article 13(2) of the Malaysia Copyright Act 1987 and paragraph (g) were excluded in the Palestine Copyright Act 1911. The Malaysia Copyright Act 1987 added paragraph (2A) to determine if a dealing constitutes fair dealing or otherwise, and this provision is also not included in the Palestine Copyright Act 1911.

By comparing the two copyright Acts as presented in Table 2, it is evident that the Malaysia Copyright Act 1987 has more provisions than the Palestine Copyright Act 1911 in regulating the issue of copyright exceptions for teaching and research purposes. This is because in light of the fact that Malaysia is a member of international treaties for copyright, the amendments were made to the Malaysia Copyright Act 1987. In marked contrast, the Palestine Copyright Act 1911 has not been amended since it was adopted and Palestine is not a member of any international copyright treaty.

CONCLUSION

The issue of copyright exceptions for teaching and research purposes is necessary in order to achieve the balance between the needs of copyright holders and copyright users, and to continue to provide copyright protection for both these parties. In the past, countries were concerned with these exceptions, in which this matter was regulated by international copyright conventions and their respective domestic laws. Palestine was one of these countries, and the first copyright law that regulated teaching and research exceptions was the Ottoman Copyright Act 1910. However, the Britain Copyright Act 1911 was applied in Palestine in 1924, which is still effective to date. The Malaysia Copyright Act 1987 was compared with the Palestine Copyright Act 1911 in this study in order to assess the issue of copyright exceptions for teaching and research purposes. To carry out the comparison between the Malaysia Copyright Act 1987 and the Palestine Copyright Act 1911, this study has carried out a review of the history of copyright exceptions for teaching and research purposes, as well as the teaching and research exceptions in international copyright conventions.

The Malaysia Copyright Act 1987 has stipulated advanced regulations for teaching and research exceptions. It has allowed for the use of a

selection of the copyrighted work for illustration, which is in line with teaching and research purposes. The Act also allows for the reproduction made in schools, universities or educational institutions of a copyrighted work included in a broadcast. In contrast, the Palestinian Copyright Act 1911 lacks these regulations on teaching and research exceptions. In addition, the 1911 Act lacks the provision to decide whether a certain dealing is fair or otherwise. Hence, the 1911 Act should be improved to enhance copyright protection, as well as to strike a balance between the rights of copyright holders and copyright users. Such an improvement should also include participation in International Copyright Treaties, which explicitly state that fair dealing for teaching and research purposes denotes copyright exceptions, clarify the issue of fair dealing for any copyright work, as well as grant the copyright work in a digital environment the same protection and exceptions applicable to the traditional platforms.

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