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This report was prepared by Mrs. Polly Maier, in collaboration with Chemonics International Inc., prime contractor to the U.S. Agency for International Development for the AMIR Program in Jordan.

MEMORANDUM

TO: Farhat Y. Farhat
TSG AMIR Program

FROM: Polly A. Maier, Esq.
TSG Intellectual Property/Competition Law Consultant

RE: Draft Copyright Regulations for Copyright Protection Law for the Year 1992 (as amended by the Law Amending the Copyright Protection Law for the Year 1998 and the Draft Law Amending the Copyright Protection Law for the Year 1999)

DATE: January 9, 2000

Attached are draft copyright regulations required under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) and the Berne Convention for the Protection of Literary and Artistic Works.

Included are regulations governing the administration of *droits de suite* under Berne Convention Article 14*ter* and Article 29 of the Copyright Law.

Also included are regulations governing compulsory licenses, available to United Nations members which, like the Kingdom of Jordan, are regarded as developing countries. Specifically, these regulations give effect to applicable provisions in the Appendix to the Berne Convention. These regulations facilitate the administration of rights already established in the Copyright Law; they do not create any additional rights. Thus, the regulations do not cover matters related to licenses for broadcasting organizations (see Berne Appendix Article II(9)), reproduction of audio-visual works for systematic instructional activities (see Berne Appendix Article III(7)(b)), or licenses for previously distributed works (see Berne Appendix Article III(2)(b): Article 11 of the Copyright Law does not contemplate these rights.

It should be noted that the compulsory licensing provisions are only permitted as long as the Kingdom is considered a developing country, and makes the declarations required under the Berne Convention Appendix. The Kingdom recently deposited a notification, effective through October, 2004, related to the Berne Convention Appendix rights.

Finally, a compliance note relating to the Draft Law Amending the Copyright Protection Law For The Year 1999: Under that law, amended Article 11(D) refers to the right of the "author" to just compensation. However, Berne Convention Appendix Article IV(6)(a)(i) requires just compensation for the "owner of the right of translation or

of reproduction." Since the owner of these rights may or may not be the author, amended Article 11(D) of the Law is not fully compliant with the Berne Convention. Amended Article 11(D) should be amended to require that compensation be rendered to the appropriate rightholder(s).

Regulations Governing Applications for Licenses Under Article 11 of the Copyright Protection Law for the Year 1992 (as amended)

Regulation 1. Pre-Application Requirements

A. Prior to submitting an application for a license to translate or reproduce under Article 11 of the Law, the applicant must exercise all due diligence to locate the owner of the applicable right in the original work for which a license is sought.

B. Upon locating the applicable owner, the applicant shall request authorization to make and publish the translation, or to reproduce and publish the edition, as the case may be. An applicant who obtains the requested authorization may not submit an application for a license under Article 11 of the Law with respect to the original work for which authorization was obtained.

C. Simultaneously with the request made pursuant to subparagraph B, the applicant shall inform any national or international information center which may have been designated, in a notification deposited with the Director General of the World Intellectual Property Organization, by the government of the country in which the publisher of the original work is believed to have his principal place of business.

D. An applicant who is unable to locate the applicable owner shall, upon completing his application for license, follow the procedures set out in Regulation 2(B), below.

Regulation 2. Applications for License

A. An application for a license under Article 11 of the Law may be initiated by the submission to the Minister of the form provided by the Ministry for this purpose, completed and accompanied by the following:

1. An specimen of the original work that is the subject of the application, or an exact copy thereof;

2. The application fee required under the schedule set forth in _____, including any fees for services required under Regulation 11; and

3. Documentation, including the signed statement of the applicant, establishing either that

(a) the applicant has requested, and has been denied, authorization by the owner of the right to make and publish the translation or to reproduce and publish the edition, as the case may be, or that

(b) after due diligence on his part, the applicant was unable to locate the owner of the applicable right.

B. An applicant who was unable to locate the owner of the applicable right shall send, by registered airmail, copies of his application submitted to the Minister to the publisher whose name appears on the original work, and to any national or international information center which may have been designated, in a notification deposited with the Director General of the World Intellectual Property Organization, by the Government of the country in which the publisher is believed to have his principal place of business. The applicant shall also provide the Minister with dated documentation of the dispatch of the copies of the application.

Regulation 3. Completion of Applications
Upon receipt of an application for a license under Article 11 of the Law, the Minister shall promptly verify that the application is complete. If the Minister finds that the application is incomplete, he shall so notify the applicant, and invite the applicant to complete the application within ____ days of the notification. An application not completed within that time period shall be deemed to have been abandoned.

Regulation 4. Grounds for Denial
A. No translation license shall be granted under Article 11(A) of the Law if the Minister determines that the author of the original work has withdrawn from circulation all copies of his work.
B. No reproduction license shall be granted under Article 11(B) of the Law if the Minister determines that the author of the original work has withdrawn from circulation all copies of the edition for the reproduction and publication of which the license has been applied for.
C. A license to reproduce and publish a translation of a work shall not be granted under Article 11(B) of the Law in the following cases:

1. where the translation was not published by the owner of the right of translation or with his authorization, or
2. where the translation is not in Arabic.

Regulation 5. Waiting Period for Translation License
A. No translation license obtainable after three years pursuant to Article 11(A) of the Law shall be granted until a further period of six months has elapsed

1. from the date on which the applicant complies with the requirements mentioned in Regulations 2(A)(3) and 1(C), or
2. where the identity or the address of the owner of the right of translation is unknown, from the date on which the applicant sends, as provided for in Regulation 2(B), copies of his application submitted to the Minister.**B.** The Minister shall deny the application for license under Article 11(A) of the Law if, during the said period of six months, an Arabic translation is published by the owner of the right of translation, or with his authorization.

Regulation 6. Waiting Period for Reproduction License
A. No reproduction license obtainable after three years pursuant to Article 11(B) of the Law shall be granted until a further period of six months has elapsed

1. from the date on which the applicant complies with the requirements mentioned in Regulations 2(A)(3) and 1(C), or
2. where the identity or the address of the owner of the right of reproduction is unknown, from the date on which the applicant sends, as provided for in Regulation 2(B), copies of his application submitted to the Minister.

B. Where licenses are obtainable after other periods pursuant to Article 11(B) of the Law, and Regulation 2(B) is applicable, no license shall be granted until a period of three months has elapsed from the date of the dispatch of the copies of the application.
C. The Minister shall deny the application for license under Article 11(B) of the Law if, during the period of six or three months referred to in subparagraphs A and B, copies of the edition of the original work are distributed in the Kingdom of Jordan to the general public, or in connection with systematic instructional activities, by the owner of the right of reproduction or with his authorization, at a price reasonably related to that normally charged in the Kingdom of Jordan for comparable works.

Regulation 7. Special Requirements for Works Composed Mainly of Illustrations
For works which are composed mainly of illustrations, a license to make and publish a translation of the text and to reproduce and publish the illustrations may be granted only if all conditions on the grant of reproduction licenses under Article 11(B) of the Law are also fulfilled.

Regulation 8. Grant of License
Upon determining that the applicant has fulfilled all of the foregoing requirements, the Minister shall establish a licensing fee in accordance with Regulation 9, and shall issue a license under Article 11(A) or (B) of the Law, as appropriate, which complies with Regulation 10.

Regulation 9. Licensing Fee
The Minister shall set a licensing fee in consultation with the licensee and with the owner of the applicable right, if known, or otherwise the publisher whose name appears on the original work, if available. The licensing fee shall be consistent with standards of royalties normally operating on licenses freely negotiated between persons in the Kingdom of Jordan and the owner's home country.

Regulation 10. Required License Provisions
Every license granted under Article 11 of the Law shall
A. specify the licensing fees to be paid by the licensee to the owner of the right of translation or of reproduction, as the case may be, as well as a currency, schedule, and method of payment of those fees;
B. expressly provide that the license does not permit the export of copies, and that the license is valid only for publication of the translation or of the reproduction, as the case may be, within the territory of the Kingdom of Jordan. For purposes of this subparagraph, it shall not be considered to constitute an export where a Jordanian governmental or other public entity sends to another country copies of a translation published under license duly granted under Article 11(A) of the Law, if all of the following conditions are met:

1. the recipients are individuals who are Jordanian nationals, or organizations grouping such individuals;

2. the copies are to be used only for the purpose of teaching, scholarship or research;

3. the sending of the copies and their subsequent distribution to recipients is without any commercial purpose; and

4. the competent authority of country to which the copies are being sent has provided the Minister with a written agreement allowing the receipt, or distribution, or both, and the Minister has notified the Director General of the World Intellectual Property Organization of that agreement;

C. require the licensee to place, on all copies published under the license, a notice in Arabic stating that the copies are available for distribution only in the Kingdom of Jordan;

D. require the licensee to place the name of the author and the title of the work on all copies of translations and reproductions published under the license, and also to place the original title of the work on all copies of such translations; and**E.** specify the term of the license.

Regulation 11. Pre-Publication Requirements

A. Before publishing a work which has been translated or reproduced under a license granted under Article 11 of the Law, the licensee shall furnish the Minister with an exact copy of the translation or reproduction. The Minister shall, within ____ days, cause the original work to be compared with the translation or reproduction, as the case may be, in order to ensure a correct translation of the work, or an accurate reproduction of the particular edition.

B. If the Minister determines that the translation is correct, or that the reproduction is accurate, he shall so notify the licensee, who may then publish the translation or reproduction in accordance with the license.

C. If the Minister determines that the translation is not correct, or that the reproduction is inaccurate, he shall so notify the licensee, and invite the licensee to submit an amended version within ____ days.

D. The Minister may, at his discretion, contract for the comparison referenced in subparagraph A to be performed, for a fair market fee, by a qualified third party with no interest in the Minister's decision under this Regulation. All associated expenses shall be borne by the licensee.

Regulation 12. Termination of Licenses Granted under Article 11 of the Law

A. Any license granted under Article 11(A) of the Law shall terminate if an Arabic translation of the original work is published by the owner of the right of translation, or with his authorization, at a price reasonably related to that normally charged in the Kingdom of Jordan for comparable works, if such translation has substantially the same content as the translation published under the license.

B. Any license granted under Article 11(B) of the Law shall terminate if copies of an Arabic edition of the original work are distributed in the Kingdom of Jordan to the

general public or in connection with systematic instructional activities, by the owner of the right of reproduction, or with his authorization, at a price reasonably related to that normally charged in the Kingdom of Jordan for comparable works, if such edition has substantially the same content as the edition which was published under the license.

C. In the event that a license terminates under either of the foregoing subparagraphs, any copies already made before the termination may continue to be distributed until their stock is exhausted.

D. At any time during the license period, the Minister may, of his own volition or upon the request of an interested party, decide to terminate a license if he determines that the licensee obtained the license through the use of false representations, false documentation, or the like. The Minister shall promptly communicate his decision to licensee and to the owner of the applicable right, if known, or otherwise to the publisher whose name appears on the original work, if available. Any interested party may appeal the Minister's decision to _____ within ____ days of receiving the Minister's notice.

Regulations Governing Resale Royalties Under Article 29 of the Copyright Protection Law for the Year 1992 (as amended)

Regulation 1. Applicability of Resale Royalty Rights
The resale royalty right under Article 29 of the Law shall apply to works of authors who, at the time of the resale, are
A. Jordanian nationals, or persons domiciled in Jordan, or
B. foreign nationals of, or persons domiciled in, a country that is a party to the Berne Convention for the Protection of Literary and Artistic Works, and that has implemented a resale royalty rule pursuant to Article 14*ter* of that Convention.

Regulation 2. Term of Resale Royalty Right
The right to receive resale royalties under Article 29 of the Law shall subsist for a term equal to the copyright term, as determined by Articles 30-32 of the Law.

Regulation 3. Calculation of Resale Royalties
A. Pursuant to Article 29 of the Law, the author of original works of plastic arts and original musical or literary manuscripts, or his heirs, is entitled to a royalty of _____ per cent of the sale price, excluding sales tax, in the event of any commercial resale of his work.
B. Where a commercial resale involves an exchange of goods, including exchanges of works of art, resale royalties shall be calculated based on the fair market value of the goods exchanged.
C. Notwithstanding subparagraphs A and B, no resale royalties shall be owed in the event of a resale of a work if the sale price, excluding sales tax, does not exceed JD _____.

Regulation 4. Commercial Resale
For purposes of these regulations, "commercial resale" shall be understood to include any resale, including exchanges of works, which is made or arranged through auction, shop sale or any other commercial manner. "Commercial resale" includes sales to private individuals, as well as sales for commercial purposes. "Commercial resale" shall not be understood to include any private transaction in which no commercial seller or intermediary takes part.

Regulation 5. Responsibility for Payment of Resale Royalties
A. The seller shall have sole responsibility for payment of resale royalties under Article 29 of the Law.

B. A seller who completes any commercial resales of works covered under Article 29 of the Law shall forward a signed annual statement of those sales to [governmental agency]. The statement shall be due at the offices of [governmental agency] no later than April 1 of the year following the calendar year in which the sale took place.

Regulation 6.
Failure to comply with these Regulations shall result in a penalty of a fine in the amount of JD _____, plus the payment of any resale royalty due, together with interest.