

The Berne Convention and the Iranian Law: Negative Implications of the Differences in the Scope of Application

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This paper compares Article 3 of the Berne Convention for the Protection of Literary and Artistic Works, 1886 with the corresponding Iranian provision. The Convention has three criteria for granting protection, i.e. nationality, habitual residence and first publication of the work in the Berne Union countries; whereas the Iranian law has only one criterion, i.e. the first publication of the work in Iran. Further, according to the Convention, the performance of a dramatic, dramatico-musical, cinematographic or musical work, the public recitation of a literary work, the communication by wire or the broadcasting of literary or artistic works and the exhibition of a work of art shall not constitute publication. These exceptions and their origins in the Convention in conjunction with the Iranian criterion leads to a total or partial gap of protection for Iranian authors or artists taking their works for first publication in the Berne Union countries.

Keywords: Intellectual property rights, literary and artistic works, the Berne Convention, Iranian law

Iran is one of the exceptional countries in the world which despite its accession to the Paris Convention for the Protection of Industrial Property (the Paris Convention) in 1959 and ratification of the Stockholm revision of that Convention in 1999 as an active member¹, has not yet acceded to the Berne Convention for the Protection of Literary and Artistic Works, 1886 (the Berne Convention) which stands at the heart² of the international copyright system today.³ It is not a signatory to the WIPO Copyright Treaty, or a member to the World Trade Organization (WTO) as well and for this, it is compared to a war-torn country like Afghanistan.⁴ In fact, it is not *inter alia* a party to any multilateral instrument covering copyright protection.^{5,6} This may satisfy the conviction of legislators but hurts the overseas intellectual property rights of the country's nationals and those habitually residing in it. At the same time, allowing liberal use of foreign works hurts the respective rights of others including the nationals or habitual residents of the Berne Union member countries.

Iran joined the Convention establishing the World Intellectual Property Organization (WIPO) in 2001, however, this did not result in its accession to the Berne Convention. The Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement incorporates⁷ the Berne Convention and Members of

WTO (of which TRIPS forms a part) undertake to comply with Articles 1 to 21 of the Berne Convention⁸ which form 'most of Berne provisions'.⁹ Since Iran is not a WTO member, the protection of Iranian authors' literary and artistic works in other WTO member countries is at present in the same situation as it is in the Berne Union member countries. On the other hand if Iran, which has been an observer member of the WTO¹⁰ since mid 2005, became a full member of the WTO, the situation of the Iranian authors would change to one as if Iran had acceded to the Berne Convention.

According to Article 3 of the Berne Convention¹¹:

'(1) The protection of this Convention shall apply to:

(a) Authors who are nationals of one of the countries of the Union, for their works, whether published or not; (b) Authors who are not nationals of one of the countries of the Union, for their works first published in one of those countries, or simultaneously in a country outside the Union and in a country of the Union.

(2) Authors who are not nationals of one of the countries of the Union but who have their habitual residence in one of them shall, for the purposes of this Convention, be assimilated to nationals of that country.

(3) The expression 'published works' means works published with the consent of their authors, whatever

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may be the means of manufacture of the copies, provided that the availability of such copies has been such as to satisfy the reasonable requirements of the public, having regard to the nature of the work. The performance of a dramatic, dramatico-musical, cinematographic or musical work, the public recitation of a literary work, the communication by wire or the broadcasting of literary or artistic works, the exhibition of a work of art and the construction of a work of architecture shall not constitute publication.

(4) A work shall be considered as having been published simultaneously in several countries if it has been published in two or more countries within thirty days of its first publication.'

Therefore, for the Berne Convention, the first criterion to protect a work is the nationality (personal criterion¹²). Those having habitual residence in any of the Berne Union countries are also assimilated as nationals. The second is publication of the work in one of the countries member to the Berne Union (geographical criterion¹²).¹³ This broad scope accompanied by many other regulations lets the Berne Convention protect literary and artistic works with 'a more pro-competitive balance of public and private interests'.^{14,15} Notwithstanding, there are differences between the protection granted to nationals and habitual residents of the Berne Union on one hand and to others publishing their works for the first time in one of the countries of the Union, on the other hand. The Berne Union member countries may in especial circumstances restrict, within their territories, protection granted to works first published by nationals of non-members¹⁶ while the latter's unpublished works even if made and ready for publication, remain unprotected in the Berne Union. Besides, some of the apparently published works oddly¹⁷ are excluded from among them. Further, the geographical criterion, namely, the first publication criterion is mainly used for foreign works and the Convention by restricting the publication to 'the availability to satisfy the reasonable requirements of the public' has brought about a seriously difficult situation for authors who are neither a national nor a habitual resident of the Berne Union countries (hereinafter the others), in relation to their works first performed in the Union.

On the other side, to accord the protection, Iran's law has only one criterion, namely, publication of the work in Iran. This creates many differences between the protection offered by Iran and that offered by members of the Berne Union.

Nationality and Publication of the Work

Copyright protection in Iranian law shall not apply to authors who are nationals of Iran or are habitually residing in Iran if their works are not published in this country. On the other hand, the protection in Iranian law shall apply to authors whose works are published in Iran for the first time whether or not they are nationals or habitual residents of Iran. If a work is not published, it cannot be protected, although there may be disagreements with this opinion striving to prove the contrary. Geographical criterion dominates the Iranian law in case of protection of literary and artistic works and there is no discrimination in this connection between the Iranians and habitual residents of Iran and the others. The personal criterion is however, never applied. Any work already published abroad, according to the Iranian law interpretation, has lost the eligibility to be categorized as published in Iran even if it simultaneously is published in the country. Therefore, Iran for example, does not protect the huge bulk of theses written for acquisition of post graduate or doctoral degrees every year in this country, where half of the about 80 million population of which is aged less than 30 is mainly involved in study and research.

However, Iranian law is nationality neutral and if a work is first published in Iran, it deserves protection, irrespective of whether the author is Iranian, foreigner or stateless. This provision is almost the same as provided for in the Convention, with certain differences that shall be discussed later.

Differences between Works First Published (in Iran and the Berne Union)

Article 3(4) of the Convention relating to 'simultaneously published works' is a point of distinction between 'first published works' in Iran and 'first published works' in the Union. In Berne Convention terms, the 'country-of-origin' of a work can be the member state where that work is published, provided it represents the 'first' publication or the place where the publication occurred 'simultaneously' with (i.e. within 30 days of) the first publication. This is true even when the author is not a national of the country in question.¹⁸ In fact, the Berne Convention is partly 'based on the principle of the assimilation of foreigners to nationals'.¹⁹

In providing for protection of the simultaneously published works, the Convention is once again author-friendly, this time in favour of 'the others'.

This may well be to attract the latest works published elsewhere into the Berne Union countries. In contrast to Iran, which does not grant protection to even those works which have been published elsewhere a few minutes ago, the Berne Convention lets the works published in the Union within one month from their first²⁰ publication abroad to be deemed as fresh and protected. In this context, Iran has a protectionist view while the Convention has an expansionist one. Iran aims to make its nationals and even the foreigners, whether residing in Iran or not, publish their works first in this country; if they want their works to be protected in Iran. By requiring 'first publication', Iran not only disallows claiming protection for old and obsolete works, it also discourages its nationals or foreigners, from re-publishing their works in this country. For the Convention, it does not matter if within the month prior to its publication the work has been published in how many countries and for how many times. In fact, with regard to the conditions designed by the Berne convention for granting protection to foreign works, Iran has put authors, both Iranian and foreign in a dilemma, that is whether to choose the Iranian protection and, unless exceptionally resorting to simultaneous publication, lose protection in almost the rest of the world (the Berne Union countries) or acquire the protection in almost the whole world and lose protection in Iran.

Meaning of Published Works in Iran

Despite what is mentioned in the Convention, publication is not defined in the Iranian law and is therefore interpreted with reference to the general principles of law.²¹ As statutory law, case laws or religious jurisprudence (*Fiqh*) have not defined publication or published works, the customary meaning according to which something to be deemed published needs to only be distributed among people, may be considered. However, mere printing is not deemed as publication. Making a few copies and distributing them is also not deemed as publication. The number of distributed copies is to some extent important in Iran. As far as Iran's law is concerned, for a work to be deemed as published it is not required that the availability of the work is to the extent that satisfies the reasonable requirements of the public. In fact, in Iran publication does not necessarily coincide with publicizing the work. In this country, publication means distribution, just making it available to others. Those others may be of a quite selected nature such as departmental staff.

Authors Consent

In Iran, according to general principles of law, a work if distributed without the consent of its author is not deemed published. In the Berne Convention, the right of disclosure of the work is implicit. The author may disclose his work to the public if, when, and in the state he likes.²² The same is true in Iran. Besides, the means of publication does not matter in Iran. But, despite what it appears at first, this provision of the Convention has a negative side too. For instance, someone publishes the work of an author in one of the countries of the Union without his/her consent as it happened in the case *Hubbard v Vosper*.²³ Here, there can be two kinds of interpretation of the phrase 'works published with the consent of their authors':

(i) There would not be any protection for the work which is published without the consent of its author, whether for the infringer or for the author, because it is not a valid publication. But, this is just on paper; in practice, such an interpretation means that the distributed work enters the public domain without the consent of the author. The work is now available to the public and according to law 'not protected'.

(ii) In the other interpretation, there would be no protection in favour of the person who infringes the rights of the author by publishing his/her work without consent, but the work would be protected by law in favour of the author. In interpreting otherwise, the law in fact assists the infringer to prevent the author from deriving rights of his/her publication. In fact, this is the right interpretation, but unfortunately, the first interpretation is from inferred due to the expression of the law.

Reasonable Requirements of the Public

Published works and related criteria are governed by the Berne Convention. The TRIPS does not define the term 'publication', and hence the definition in the Berne Convention will be used to interpret the term in TRIPS as well. According to the Berne Convention, publication is to satisfy the reasonable requirements of the public, having regard to the nature of the work. But, it would be very difficult for a judge in a legal proceeding to determine whether in a certain case, the reasonable requirements of public are satisfied or not.²⁴ For instance, if only 100 copies of a book get published and distributed in the capital city of a country, can it be deemed that the reasonable requirements of public in the remote towns of that country have also been satisfied? It has been said that

‘a work is published if it is accessible to the extent that the general public would consider it published.’¹² But when would the general public be satisfied is a question that still persists.³ For instance, when would the general public consider a work published? With regard to different numbers of population in different countries, full ‘accessibility’ to the public as the main criterion would be a variable criterion. The public requirement in a country with a population of few million may be satisfied by a few hundred copies; but where the population is several million like India or China, the public will require tens of thousands of copies to be satisfied. This creates a serious difficulty for ‘the others’. If they want their work to be deemed as first published they would have to make their work available at least in one of the countries of the Union to the extent that it satisfies the reasonable requirement of the public. Surely, making a work available to this extent would prove costly. This is one of the costs ‘the others’ have to pay to acquire protection for their works in the Union.

There is still another point. Many works are not choices of general public, for example the public has nothing to do with a book on a very specialized legal subject. In such a case how can one expect production of copies in a quantity satisfying the general public? Such a book may not be in demand even among all lawyers or all students of law. Only a few in every million of population may require such a book. In fact the Convention has considered this problem by adding the phrase ‘having regard to the nature of the work’. Therefore, for instance, in a country with a 4 million population, distributing 20 copies of a book may be enough to be considered as publication. By referring to the ‘public’, the Convention considers not the whole Berne Union population but the population of each member country for a work to be published in that country. In confirming this opinion, it has been said that ‘the Berne Convention makes it clear that to qualify as a publication in a given country, sufficient copies of the work must be made available there to satisfy the local demand.’¹⁸ However, such a provision concerning public accessibility in the Berne Convention or in a corresponding national law cannot prohibit the censorship. Therefore it is not acceptable to say that ‘by giving the exclusive right to publish, to make copies of, to perform in public, or to broadcast a literary, dramatic, musical or artistic work, to the author of that work, the copyright system in market

economy countries, implementing both the spirit and the letter of the Berne Convention, seeks to ensure that the public is not denied the opportunity to read, hear or see such works as a result of the decision of some single controlling authority – no matter how benevolently motivated.’¹⁹

Some believe that publication does not certainly and always lead to satisfying the reasonable requirements of the public criterion and so it is presumed that the publication constitutes availability (or accessibility).²⁵ This is to some extent true, but if a work is fully available to the public it likely satisfies the public’s reasonable requirements.²⁴ This satisfies the provision contained in the first sentence of Article 3(3) of the Berne Convention. In this connection, there is no doubt that to be deemed as published, the work must become available to the public, therefore despite what has been stated by the Lord Denning M R²³, circulars sent to all the shareholders of a large company, although widely disseminated, should not be treated as published. There are three reasons for this opinion: firstly, the circular has not been consented to be published (to get available to the public); secondly, shareholders of a company cannot be deemed as public (according to the Berne Convention and not Iran’s law) and thirdly, the public (in the same approach) is not likely to have access to such a work.

Concentrating on the availability, particularly ‘full availability’, a new result is revealed. To consider works available in the cyberspace, one requires a suitable hardware equipped with an Internet connection of enough speed and required software. With concentration on availability, the said equipments all must be prepared by the person requiring the work and for the author it is just enough to make the work available. The author in this case, to satisfy the criterion of reasonable requirement of the public has to besides giving access to the work in the Internet, also prepare the said equipment for the public.

The Gap in Protection for Iranian Authors or Habitual Residents

What does not Constitute Publication

According to Article 3(3) of the Berne Convention ‘the performance of a dramatic, dramatico-musical, cinematographic or musical work, the public recitation of a literary work, the communication by wire or the broadcasting of literary or artistic works, the exhibition of a work of art and the construction of

a work of architecture shall not constitute publication.' This exclusion has been diluted for works of architecture by the Article 4(b) which states that 'the protection of this Convention shall apply, even if the conditions of Article 3 are not fulfilled, to: (b) authors of works of architecture erected in a country of the Union or of other artistic works incorporated in a building or other structure located in a country of the Union.' For 'the others' who bring their work, which happens to be one of the above numerated works, to the member countries of the Union, this provision is disadvantageous. These works may on account of not being first published in Iran, have already missed their protection in this country, and as a result, such works would be protected neither in Iran nor in the countries member to the Berne Union.

Fortunately, books and book like materials are not excluded by Article 3(3) of the Convention. This is the reason why the 1996 Diplomatic Conference on Certain Copyright and Neighboring Rights Questions, which resulted in the adoption of the WIPO Copyright Treaty, concluded that Berne's Article 3 definition of publication should also be interpreted to include electronic publishing over a computer network.²⁶ Therefore, it seems that corresponding performance, recitation, communication, broadcasting or exhibition of the works mentioned in second sentence of the Article 3(3) if saved and made available to the public on the Internet may provide the required ground for them to be deemed as published and amount to their protection. However, regarding the condition 'the availability of such copies such as to satisfy the reasonable requirements of the public', the authors of works published in this way would be unable to supply their works on a selective basis and demand higher prices as it is usual in these cases.

Works First Published

Suppose, the author is a national or a habitual resident of a country like Iran in which nationals or habitual residents work unless first published in that country is not protected by its laws. At the same time, there are so many authors who are nationals of Iran or are habitually residing in Iran and prepare their works for presenting them in international films festivals such as Cannes or the Academy award (Oscar). They do not publish their works in their own countries and the works are performed for the first time in the countries (Berne Union countries) where the festivals are held. Such a performance even if for the festival,

would be deemed in Iran as the first publication abroad, and the work would thus not qualify for Iranian protection any more due to not having been first published in Iran. Besides, they would not receive the protection in the Berne Convention countries due to non-satisfactory publication.

A Way in the Iran's law to Solution

Suppose the Iranian law protects the works made in Iran even if they are not published. If so, the works made in Iran by Iranian nationals or those having habitual residence in Iran would be protected by the Iranian law. If so, the works mentioned in Article 3(3) of the Convention if made in Iran would be protected by the Iranian law even if they are not protected by the provisions of the Convention. But it is not so easy to prove this derivation because Article 22 of the main Iranian Act for protection of intellectual property rights, namely the Act for Protection of Authors, Composers and Artists, 1970 (hereinafter PACA Act²⁷) does not allow such a derivation. According to this Act, economic rights of the author will receive protection of this Act if the work was printed or distributed or published or performed in Iran for the first time and has not already been printed or published or distributed and or performed in any other country. In this connection, considering that the above mentioned Act is about half a century old, it may not entirely true to say that 'barely 15 years ago, intellectual property protection was hardly an issue in Asia'.²⁸

Article 22

The word 'printed' in Article 22 is certainly uncommon usage because mere 'printing' of something cannot be deemed as publication. This can only be considered as an oversight by the Iranian Legislature and as a result cannot open the way to protection of the works printed although not first published, distributed or performed in Iran. This is also because it is common to use the term 'printing' instead of 'publishing' in Iran. For example, an author instead of saying 'I published a book' commonly says 'I printed a book'. If so, the word 'printing' in this article makes no sense. Among the five main categories of intellectual materials namely, books, sculptures, paintings, music and films; only books are printable which happen not to be among those excluded by the Article 3(3) of the Convention. Sculptures, paintings, music, films and the works similar to them are dealt with differently by the Convention.

Article 2

Another way to overcome the gap of protection for Iranian authors who have made their overseas published work in Iran or those who are not Iranian but have made their overseas published works in Iran is to refer to Article 2 of the PACA Act. Accordingly, this Act protects ‘every writing’, ‘written or recorded or published by every means and procedures’, ‘created in whatever procedure or means whether simple or composed of’ or only ‘created (produced)’.²⁹ These words in Article 2 may have been provided for one of the two or both following reasons:

- 1 To indicate that ideas until materialized are not protectable and
- 2 Materialized ideas are protected without any need for publication.

In fact, if there were no Article 22, the second reason was quite true, but in view of the contents of Article 22 in which the Legislature determines the scope of protection under the Act, this reason superfluous and the first reason prevails.

First Published: Definition

Both Iran’s law and the Convention insist on ‘first publication’, but there is a difference between them concerning the definition of ‘first published’. In Iran, even if a work is published in this country with a delay of one minute from its publication in another country, it would not be deemed as first published in Iran and would not be protectable. But the Convention is author friendly in a way that it deems other publications within one month from the first publication as the first publications and protectable. In case the time lag between the first publication and publication of the work in one of the countries of the Union is more than one month, that work would not be protectable in the countries of the Union as well. If a work first published in Iran later gets published in another country, such a work would not lose protection under the Iranian law. The same is in the case of protection under the Berne Convention.

As registration²⁵ of the work is not a requirement in Iran as in the case of Berne Convention³⁰, it would be difficult to determine the moment in which the publication happens. Surely the moment in which the work gets printed is not the moment of publication because publication may not necessarily coincide with the printing. Even the moment of starting the distribution cannot be deemed as the moment in

which the publication happens. Seemingly, to determine this moment, one must refer to the public; publication occurs the moment the public confirms the publication. For instance, a book may be distributed to many book sellers but since the public is not informed of its distribution, the ‘publication’ has not happened.

Habitual Residence

In case the author has his/her habitual residence in Iran but does not publish his/her work first in Iran, his/her work would not be protectable in Iran. On the contrary, the Berne Convention treats those having habitual residence in the countries of the Union with great respect. It protects not only their published and unpublished works, but also those of their works first published in countries of the Union or elsewhere. Further, it protects not only their works made in the member countries to the Union but also those made elsewhere. The Convention is without doubt, sympathetic to the authors making the Union countries their habitual residence. Habitual residence, however, has not been defined in the Convention.

Determining habitual residence in cases where different places are claimed is not easy. In case a person has two or more residences, without clarity on which one is the habitual, or in case both are habitual, which one prevails over the other³¹, are matters that would be decided by the court. These are not subject matter of this article. Only it seems that as a principle, when there is a doubt as to whether a person has or has had a habitual residence other than that one in his/her country of nationality, it must be presumed that the person does not have or has not had such a residence unless otherwise proved.

Conclusion

In fact, the Berne Convention provides priority to the ‘author’ in protection and the ‘work’ itself comes second, but in Iran’s law the ‘work’ is the main and only item for protection. Iran (apart from the Sao Tome and Principe, the copyright law³² for which is not available in English) is unique among the countries to have neither directly nor indirectly acceded to the Berne Convention.³³ It has not selected the nationality or habitual residence as criteria for according protection. Afghanistan is the only country which has adopted the same path.³⁴ Iran has adopted the geographical criterion and does not protect the works of its nationals or its habitual residents, in case

the work is not published first in this country. Afghanistan, Ethiopia³⁵ and Vanuatu³⁶ however, have softened their geographical criterion by providing that they protect the works which simultaneously after their first publication abroad, have been published in those countries. But Iran has not done so. Deploying the rigid geographical criterion without any softening has resulted in appearance of a gap in protection cover for Iranian authors. Iran through softening its regulations in the above mentioned manner and adopting personal criterion in its corresponding law as it has been adopted in the corresponding laws of Ethiopia, Iraq, Seychelles³⁷ and Vanuatu could bridge national side of this gap, but the international side of this gap only can be bridged by accession of Iran to the Berne Convention or the TRIPS Agreement.

Presently with regard to Article 3(3) of the Berne Convention, works of Iranian authors, who perform a dramatic, dramatico-musical, cinematographic or musical work, publicly recite a literary work, communicate by wire or broadcast literary or artistic works and exhibit a work of art first in the Berne Union countries, are neither protected in Iran and nor in the Berne Union countries. Seemingly, the Berne Convention adopted an intricate plan to make non-member countries to join it and considering the present number of its members, it has succeeded. The Convention, to persuade the other countries to join, entices authors by providing protection for some of their works, i.e. those first or simultaneously published in the Berne Union, while excluding their other works. This is attractive for amateur authors who wish to only publish their works in well developed members of the Berne Union, but does not satisfy the more experienced and professional authors. Having habitual residence in the Berne Union countries could satisfy the protection needs of this category and in this way the Convention's Article 3 encourages them to immigrate, resulting in brain-drain from non-member countries to members. This leaves no choice among the non-members but to join the Berne Union and provide protection for works of other Berne Union member countries.

At present, Iran is giving to the Berne country nationals or habitual residents a protection for their works first published (but not simultaneously published) in Iran without excluding any work. Among the similar countries, this overall protection is granted by all but Iraq³⁸ which only on reciprocity condition protects the foreigners' works which are

first published in that country. In practice, only a few Berne Union nationals bring their work for first publication to Iran but most of their already published works enter Iran and are used without any local protection. This is disastrous for authors who have first published their works outside Iran and provides an unfair windfall in this country.

In case Iran joins the Berne Union or the WTO, it ends the unfair exploitation of foreign works and gives protection to all works of the nationals and habitual residents of the Berne Union's or WTO member countries plus the works of outsiders first published in those countries. Due to abundant production of copyrighted works in the Berne member countries, and accession of all but a few countries to this Convention, Iran in this way will have to provide protection to all copyrighted works in the world. This is not preferred by all. It has been said that 'a major 'impetus' for the move toward higher standards of protection in developing countries came from developed world interest groups representing pharmaceutical, software, musical recording companies and other IPR-intensive firms. Many developing countries opposed such stronger standards because they feared this would foster monopolistic behaviour of multinational companies while promising little benefits to local entrepreneurs and consumers. Accordingly, one often finds a negative public attitude towards IPR reform in the developing world.'³⁹ It has also been said that this is in fact because developing countries are mainly importers rather than exporters as far as the intellectual property is concerned.⁴⁰

On the other hand, in case Iran directly or indirectly joins the Berne Convention, the Convention accords to Iranians and those who habitually residing in Iran, full protection to their eligible works. This may to a great extent, revert the present extraordinary rate of brain drain from Iran, one of the highest⁴¹ among the developing countries. It has been feared that increasing brain drain from this country could have damaging effects on its economy.⁴² Besides, Iran with about three million students, comprises a highly-educated population capable of producing exportable copyrighted works which desperately require international protection. Also, intellectual property originating in the developed member nations of the Berne Union does not easily travel to the countries which have not joined the Union. Therefore Iran if it does not join the Berne Union, would lack access to the updated and most sophisticated knowledge in the

world; hindering its development and progress. For example, 'international authors do not trust Iranian publishing companies, and this is one of the consequences of the violation of copyright laws in Iran.... Many foreign publishers do not sign agreements with Iranian publishing companies....'⁴³ On the other hand Iran, like other countries needs to protect some assets from international infringement. In fact, in this country indigenous people and traditional communities express the need to protect designs embodied in hand-woven or hand-made textiles, weaving and garments that are being copied and commercialized by non-indigenous persons.⁴⁴ Examples include: the saris of South Asia, the 'tie and dye' cloths in Nigeria and Mali, carpets in Egypt, Oman, Iran, etc.⁴⁵

By choosing to join the WTO, Iran is now on the right track. In case it succeeds, it would be a member to TRIPS and consequently a member to the Berne Convention.

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- 36 According to Sections 39-40 of the Copyright and Related Rights Act 2000 as commenced on 8 February 2011, Vanuatu protects works of its citizens and habitual residents whether published or not and whether published in or outside the Vanuatu. While excluding audiovisual works, it protects works which have first or simultaneously after first publication, been published (in case of sound recordings even if fixed) in that country.
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- 38 According to Article 49 of the Copyright Law no 3 of 1971 (as amended in 2004 by Coalition Provisional Authority Order Number 83 - CPA/ORD/ 29 April 2004/83), Iraq protects the published works of Iraqis whether first published within or outside Iraq; and on reciprocity condition protects the works of foreigners which have been first published in Iraq. It has adhered to the 'personal criterion' and protects the works of its nationals published elsewhere first. It has smartly subjected its protection of foreigners works first published in Iraq to reciprocity.
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