

INTELLECTUAL PROPERTY RIGHTS IN ISLAM: A PERSPECTIVE

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Abstract:

In this paper we seek to assess the stance of Islamic perspective with respect to Intellectual Property Rights. The significance of tackling this issue at this particular time is that there have been increasing calls in Western societies for the implementation of Sharia in their own western Territories. The paper aims to situate the argument within the course of criminal protection of shari'a protection of intellectual property Rights, so as to prove that intellectual Property Rights, are one aspect of Shari'a which do not conflict with the western principles of protection. The paper assesses the extent to which the Islamic law and its sophisticated tools have an impact on the protection of Intellectual Property. First it Presents the sharia's main sources, The Quran, Sunnah, Ijma and Qiyas. Then it presents the Islamic laws Supporting, protecting and enforcing the Intellectual property Rights. The arguments presented in this paper reveal that a Sharia based system is flexible and adoptable and that is this flexibility is to be used in order to face economic reality.

Key Words: Islam, Intellectual property Rights, Sharia, Quran, Sunnah, Ijma, Qiyas

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INTRODUCTION

Current developments in the global economy have brought about the ascendancy of intellectual property (IP). The brick-and-mortar economy is being replaced with that of ideas in which intellectual property (IP) has become one of the major currencies. In the new global economy, wealth is generated through creating and harnessing the value of knowledge¹. This is the concept of creative enterprise crystallized in the 'harvesting of ideas and innovation.' Throughout the history of human civilization, both material and intangible assets have always formed the constituent of wealth. Today, however, knowledge forms the greater part of the new wealth². Consequently, intellectual property rights, the results of the industry of innovation have continued to play a leading role in the wealth of nations. Intellectual property (IP) rights have continued to play a leading role in the development of most countries and regions of the world.

This article assesses the stance of Islamic Law, known as Shari'a³, concerning the protection and enforcement of intellectual property rights in Islam. Islam the second largest religion after Christianity is the monotheistic⁴ religion articulated by the Qur'an and by the teachings and normative example of Prophet Muhammad. Islam has 1.57 billion adherents, making up 23% of the world population and is considered one of the fastest growing religions in Europe and in other continents (BBC 2005). Based on the demographic study by the Pew Research Center⁵ Islam is the predominant religion in the Middle East, in northern Africa, and in some parts of Asia. Large communities of Muslims are also found in China, the Balkans, and Russia. According to the report other parts of the world which hosts large Muslim communities include the Western Europe where Islam is the second largest religion after Christianity. Nasr, (2002) points out that Islam is not only a religion; it is more than a civilization, a historical reality that spans over fourteen centuries of human history. He adds that Islam has played a significant role in the development of other civilizations from the very beginning.

Islam from the very beginning has encouraged all those who claimed to have acquired new forms of knowledge and at the same time has stressed its dissemination in a fair system (Qadir 1988 p.15).

¹ See generally William Cornish, *Intellectual Property Omnipresent Distracting Irrelevant?* Clarendon Law Lectures, Oxford University Press London; 2004 at page 45 where the learned author refers to IP as now a 'convenient genus'

² Dr. Kamil Idris 'Intellectual Property A Power Tool For Economic Growth' WIPO publication No 888 at page 55

³ Shari'a represents the body of rules derived from the Qur'an and the Sunnah (primary sources) and the Ijma, the Qiyas, and other supplementary sources. Shari'a is binding on Muslims. See Steven D. Jamar, *The Protection of Intellectual Property Under Islamic Law*,

⁴ Monotheism a Greek word is the belief in theology that only one deity exists.

⁵ The Pew Research Center is an American think tank organization based in Washington, D.C. that provides information on the issues, attitudes and trends shaping America and the world. It does so by conducting public opinion polling and social science research; by analyzing news coverage; and by holding forums and briefings.

Islam does not allow any violation against people's rights, whether material or intellectual. Therefore, it does not allow that the efforts of others be taken away from them or be used without their consent (Khan 2002). The Holy Quran (Al-Baqar 'and do not eat up your property among yourselves for vanities, nor use it as bait for the judges with intent that ye may eat up wrongfully and knowingly a little of (other) people's property' can be taken as a vantage point to conclude that Islam advocates the protection of Intellectual property. However Raslan (2004) contends that intellectual property rights were not directly regulated by Shari'a but he says that the principles of Shari'a can be construed to provide support for such protection.

No doubt Intellectual property is a very old concept but Khoury (2003, pp.153-154) points out that after the advent of the Islamic rule some of the rights pertaining to authorship were further advanced and some more rules based on Islamic laws were added to the already existing copyright system⁶. Islam thus gave a new shape to the intellectual property based on a just and a fair system. This was the sole reason that the authors in the Muslim countries enjoyed a good social standing and those who tried to plagiarized their work were harshly condemned. In the Islamic state, the Caliphs⁷ would buy books they considered important and make copies of them after getting due consent from the authors and paying an adequate compensation to the author (Khoury 2003).⁸ They would also hire authors to write books in a way similar to the modern concept of works made for hire. But Islamic contemporary scholars are split into two main groups. The first group, represented by a number of scholars, is against intellectual property rights⁹. They maintain that knowledge in Islam is a public domain, it can never be the property

⁶ Viktor [2005, p.166] in *Between God and the Sultan: A History of Islamic Law*, has also pointed out that many rules of law regarding the intellectual protection were based on ancient customs and after the advent of Islam these customs were 'Islamicized' because the old customs were enshrined into the revelation because they were either accepted by the Prophet or were supported by a Hadith.

⁷ The Caliph is an Arabic word means the head of state in a Caliphate and the title for the leader of the Islamic *Ummah*, an Islamic community ruled by the Shari'ah. The early leaders of the Muslim nation following Prophet Muhammad's (570–632) death were called "Khalifat Rasul Allah", the political successors to the messenger of God (referring to Muhammad). Some academics prefer to transliterate the term as *Khalīfah*.

⁸ Khoury in *Ancient and Islamic Sources of Intellectual Property Protection in the Middle East: A Focus on Trademarks* explains how in some cases the Islamic state had resorted to buying the entire production of a scholar and then make use of these productions for the public good, while leaving the scholars' moral rights intact.

⁹ See Hizb ut-Tahrir Circular, *Protection of Intellectual Property: Its Reality and Its Shar'i Rule*, <http://www.adduonline.com/articles/intelprop.htm> (visited Jan. 12, 2007) (This circular was originally available at Hizb-ut-Tahrir's website at <http://www.hizb-ut-tahrir.org/english/>, (January 1, 2001)). The circular takes the extreme viewpoint that intellectual property is a tool used and imposed by the West to monopolize and exploit the Muslim Countries. It argues that intellectual property is against Shari'a as long as the laws permit the owner to impose restrictions on the end user after selling the item containing the intellectual creation. It also claims that in Islam knowledge is to be freely available to all.

of an individual, nor can an individual prevent others from acquiring it, they maintain that intellectual property leads to the monopoly of some individuals (Usmani 2007). The other group defends IPR and argues that Muslims should abide by their contracts and should respect the laws and rules under IPR system (Raslan 2003).

INTELLECTUAL PROPERTY RIGHTS;

Intellectual property, very broadly means the legal rights which results from intellectual activity in the industrial, scientific, literary and artistic field. The laws of protecting intellectual property gives the individuals the right to protect his invention grant him the power to dispose of it and preventing others from using this invention without his permission. In simple language, this means that one man cannot come alone and take the science forward from where it is. He has to re-design and re-invent from scratch, rather than building on what is there. These rights are outlined in Article 27 of Universal Declaration of Human Rights, which provide for right to benefit from the protection of moral and material interests resulting from authorship of scientific, literary, or artistic productions. Intellectual property rights have been recognised as a growth enhancing factor for the global economies as a whole. According to World Intellectual Property Organisation (WIPO), Intellectual property refers to creations of mind inventions, literary, and artistic works and symbols, names and images used in commerce. Intellectual property is divided into two categories;

- a) Industrial property; includes patents for inventions, trademarks, industrial design and geographical indications. And
- b) Copy Rights; is a legal term describing rights given to creator for their literary and artistic works. It deals with printed publications, sounds and television broadcasting and even computerized systems for the storage and retrieval of information.

History of IPR

Sell and May (2006) in *Intellectual Property Rights: A Critical History* contends that intellectual property like marks were seen in olden civilizations. He argues that for more than 6000 years when animals were first domesticated, humans across the globe have marked objects either by cutting the animal ear or using a specific own mark¹⁰. Granstrand (2004) in his paper 'Innovation and Intellectual

¹⁰ Sell and May (2006 p.44) has talked about three forms of intellectual property mark. A family mark which was used by a small community to identify their property or belongings. The second visible sign was the adopted (trade) mark, which in times of mass illiteracy was the only way of identifying specific wares and

Property Rights' published in *The Handbook of Innovation* contends that the ancient cultures like Babylonia, Egypt, Greece, and the Roman Empires are not known to have had any patent-like institutions for technical inventions, but he argues that there are clear indications of other forms of IP in these cultures. Khoury (2003) argues that intellectual property rights, especially trademarks and copyrights, received some form of acknowledgment in old civilizations.

Granstraud (2004 p. 267) pointed out that the concept of intellectual property became more relevant and got wide currency only in the middle ages when different institutions were linked to intellectual property. He adds that in 1474 Venice¹¹ promulgated the first formal patent code. All innovations shown with a workable model received ten years of protection from imitation, subject to certain compulsory licensing provisions and in the same year Venice formulated a policy based on patent code to attract more skilled persons out of Venice for building infrastructure and to stimulate orderly technical progress. The patent laws of Venice according to Granstraud (2004)¹² signified the emergence of new era which is popularly known as the 'national patent' era, since patent systems were of national importance pertaining to a single city or a state.

Raslan (2004) argues that International calls for protecting intellectual property rights began only in the late 1800's¹³. Since 1883, international conventions provided substantive rules for protecting intellectual property rights on the national level and started to create an international legal framework. According to the data available on WIPO website, Tunisia was the first Muslim state to accede the Berne and Paris Conventions and was followed by Morocco, Lebanon, and Egypt.¹⁴ Raslan (2004) further highlights that

the compulsory mark that carried the authority of the state or ruler, usually to establish either legitimacy or confirm that taxes had been paid.

¹¹ The provincial capital of Veneto; built on 118 islands within a lagoon in the Gulf of Venice; has canals instead of streets; one of Italy's major ports and a famous tourist attraction. Venice has been known as the "La Dominante", "Serenissima", "Queen of the Adriatic", "City of Water", "City of Masks", "City of Bridges", "The Floating City", and "City of Canals". Luigi Barzini, writing in *The New York Times*, described it as "undoubtedly the most beautiful city built by man". Venice has also been described by the *Times Online* as being one of Europe's most romantic cities.

¹² Granstraud (2004 p. 268) has beautifully divided the history of IP into five eras. The first is Non-patent era which covers ancient cultures like Egypt and Greece. This era according to the author witnessed the emergence of cultural and industrial arts and some kind of symbols and secrecy to protect the art but no patent like institution were visible in this era. The second is Pre-patent era of Middle Ages which witnessed the emergence of secrecy, copyright and symbols as dominant IP. Third is National Patent era of late 15th to 18th century which witnessed local codifications of laws for patents. Fourth is Multinational patent era of late 19th to late 20th century which saw the international coordination of the patent system like Paris Convention 1833 and the fifth era according to Granstraud begins in the late 20th century and this era witnessed worldwide adoption of the patent system.

¹³ See BANKOLE SODIPO, PIRACY AND COUNTERFEITING: GATT TRIPS AND DEVELOPING COUNTRIES, 21–22 (Int'l Economic Development Law Series); MICHAEL BLAKENEY, TRADE RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS: A CONCISE GUIDE ON THE TRIPS AGREEMENT

¹⁴ Among the first to join international intellectual property conventions were: Tunisia (Paris 1884 and Berne 1887); Morocco (Paris 1917 and Berne 1917); Lebanon (Paris 1924 and Berne 1947); and Egypt (Paris 1951 and

each of these states subsequently introduced their own legislations pursuant to their international obligations. It is worth to mention here that that the Ottoman Empire, which was in control of vast parts of the MENA region, enacted the first copyright law in 1910 (Raslan 2004). Egypt belongs to the first group of Muslim states to draft intellectual property legislation¹⁵ because the adoption of the TRIPS Agreement as part of the WTO Agreements made it necessary for member states to either amend their existing intellectual property laws or enact new legislation. As Muslim countries struggled to achieve this, the debate began over the legality of intellectual property rights and the proposed legislative scheme of protection.¹⁶

ISLAMIC OVERVIEW

Islam respects both private and public ownership. It does not allow any violation against people's rights whether material or intellectual. Therefore it does not allow that the efforts of the others be taken away from them or be used without their consent. As Holy Quran clearly mentions "*And do not eat up your property among yourselves for vanities, nor use it as bait for the judges with intent that ye may eat up wrongfully and knowingly a little of (other) people's property.*" (Al-Baqarah: 188). "*Piracy is the worst type of theft and is prohibited by Islam,*" (General Director of the Islamic Dawa of Al-Azhar Sheikh Ibrahim Atta Allah)

To explore the stance of Islam on intellectual property it is imperative to understand the basic Islamic law the Shari'a. Shari'a does not refer to Islamic legal rules only, but as Feldman in *Why Sharī'ah?* [The New York Times 2008] contends that it encompasses a full set of associations that culminate with a timeless concept of justice and fairness and is best understood as a higher rule of law with a divine connection. Raslan (2004) rightly says that the Shari'a, or Islamic law has four proper sources, the basic sources include the Quran and the Sunna (traditions based on the hadith or sayings and actions of the prophet) and the secondary sources include Ijma (consensus on a point of law), and Qiyas (a species of strict analogical reasoning) (Jamar 1992).

Berne 1977). The new millennium witnessed the accession of many members of the Gulf Cooperation Council (GCC) such as; Qatar, joining Paris and Berne in 2000; Saudi Arabia acceding to Paris and Berne in 2004; and Yemen acceding to Paris in 2007. See World Intellectual Property Organization, *Contracting Parties*, http://www.wipo.int/treaties/en/SearchForm.jsp?search_what=C (containing complete accession details for WIPO administered treaties for each country).

¹⁵ In 1927 Egypt prepared a draft copyright law, which incorporated the principles of the Berne Convention

¹⁶ Besides the debate among scholars, online fatwa banks, such as Islamonline.com, received questions regarding the position of Islam (Shari'a rules) on copyright and making illegal copies of protected materials like books, CDs and computer programs. See Islamonline.com, *Fatwa Bank*, http://www.islamonline.net/servlet/Satellite?pagename=IslamOnline-English-Ask_Scholar/FatwaE/FatwaE&cid=1119503545794 (asking for fatwa about copyright in general in Islam) and http://www.islamonline.net/servlet/Satellite?pagename=IslamOnline-English-Ask_Scholar/FatwaE/FatwaE&cid=1119503543972 (asking for fatwa on copying protected computer programs and CD) (last visited Jan. 12, 2007).

1. Quran

The Qur'an Arabic word literally means "the recitation" is the main religious text of Islam. Quran is the most authoritative source of Islamic law. Carroll (2001) argues that Quran undoubtedly is the most central and highest source of Muslim law. According to him Quran is regarded as being of divine origin and as containing God's (Allah's) revelations before Prophet Muhammad.

2. Sunnah

Sunnah is an Arabic word that means habit or usual practice. Khoury (2004) maintains that the Sunnah is the collection of the recorded sayings (Hadiths¹⁷) and deeds of the Prophet Mohammad. According to Sahih Al-Bukhari¹⁸ the Sunna is the second most important source of Islamic law.

3. Ijma

Ijma is again an Arabic term referring ideally to the consensus of the scholars of Islam. Muslims regard Ijma' as the third fundamental source of Shari'a law, after the divine revelation of the Qur'an, the prophetic practice or Sunnah. Ijma let me put it briefly as the collective consensus on a point of law by religious scholars.

4. Qiyas

The fourth source, Qiyas is reasoning based on analogy, is resorted to only when there is 'nothing directly on point in the forgoing sources of Islamic law'. Qiyas is resorted to only where a point of departure is clearly established from the Quran, Sunnah or Ijma (Khoury 2003).

Islamic Law supporting, protecting, and enforcing IPR

Khoury [2003] contends that Islamic law provides a firm moral and conceptual basis for intellectual property protection. He adds that there are various legal concepts in Islam that directly justifies the protection of intellectual property protection. Let us explore some such concepts to validate my claim that yes Islam provides support to the modern day IPR system.

1. Personal rights

The Quran acknowledges the concept of personnel rights of the individuals. These rights apply in various spheres of life, including the accumulation of wealth and ownership but in a fair manner. No violation in this regard will be tolerated. Prophet was quoted in Sahi Al Bukhari as saying "Nobody has ever eaten a

¹⁷ The Hadiths are the words and teachings of the Prophet Mohammad that were passed down (and related) by recognized scholars from one generation to the other.

¹⁸ Sahih al-Bukhari is commonly referred to, is one of the six canonical hadith collections of Sunni Islam. These prophetic traditions or hadith were collected by the Persian Muslim scholar Muhammad ibn Ismail al-Bukhari (810–870 AD) (about 200 years after Prophet Muhammad died) and compiled during his lifetime. Sunni Muslims view this as their most trusted collection of hadith and it is considered the most authentic book after the Qur'an

better meal than that which one has earned by working with one's own hands'. In this regard it is safe to conclude that Islam recognizes the individual rights to function independently and claim the benefits thereof. So patents and copyrights can be viewed as recognized personnel rights in Islam.

2. Property Rights

Khoury [2003] argues that intellectual property is widely viewed as a type of property, so in order to understand the stance of Islam on IPR; it is better to understand the stand of Islamic law on the property first. He adds that Islam sees all things as the belongings of Allah and such things are granted to man through inheritance only. It is then clear that Islam embrace the right to private ownership. Beltrametti [2009] has made it clear that property is considered sacred in Islam and both private property and ownership are well recognized in the Islamic laws. This fact can be ascertained from this verse of Quran *'And do not eat up your property among yourselves for vanities, nor use it as bait for the judges with intent that ye may eat up wrongfully and knowingly a little of (other) people's property'* (Al-Baqqarah: 188). Even Prophet Mohammad himself acknowledged the respect for the private property in his last Farewell Sermon "Verily your blood, your property are as sacred and inviolable as the sacredness of this day of yours, in this month of yours, in this town of yours"

Beltrametti [2009] thus contends that intellectual property has a case under this heading because it allows a limited monopoly to come into existence only if creations are commercially valuable to society as a whole. He adds that when monopoly rights expire the previously protected intellectual property will enter the public domain. A further re-elaboration will lead to the commercialization of new inventions which in turn will qualify for intellectual property protection if the level of originality and novelty are complied with and this will overall stimulate innovation.

3. Money and Wealth in Islam

Islam encourages individual to accumulate wealth through legal ways. Illegal ways of accumulating wealth in Islam is strictly prohibited. It is pertinent to mention here that Prophet Mohammad was himself engaged in trade for some time.

4. Moral Rights

Beltrametti (2009) argues that Islamic laws insists that the sources of creating new forms of knowledge must be recognized properly and adds that Shari'a condemns the violation of uneven distribution of the benefits arising from the use of this new knowledge. The roots of such protection lie in the necessity of passing on trustworthy information: at the Prophet's time religious teachings and many Hadith were transmitted orally, and in order to ensure its exactness and authenticity these sayings needed to be attributed to the correct source. The recognition of the moral rights of attribution and integrity are an integral part of intellectual property rights today.

5. Copying, Counterfeiting And Theft

Islam strongly discourages copying, counterfeiting and theft. Qur'an can be read as to prohibit copying and counterfeiting: "Woe to those who use measure and measure, who when receiving take for themselves a full measure, but when measuring or weighting for others give less" (Al-Muṭaffifin 83:1)"Woe the fraudsters" In addition many Hadith encourage Muslims to stay in places where trade practices are fair and to leave places where the measures are not respected. A wide interpretation of these verses suggests a general prohibition of unjust commercial dealings and deceptive and unscrupulous commercial practices. One can clearly argue that copying or passing off on the efforts of others are encompassed, because the trade won't be fair if a true description of goods, quality and ideas is prevented. Finally the Qur'an expressly condemns theft: "as for the man who is a thief and the woman who is a thief cut off their hands in requital for what they have reaped and as a exemplary punishment of God" [Al-Mā'edaah 5;38] and the Prophet's Farewell Sermon reads "Live together but do not do wrong (..) for taking the property of a man is not permissible except by his finding it good". So it very clear now that Islam respects private ownership, creativity and the those who claim to have acquired new forms of knowledge by recognizing them, rewarding them and respecting them.

It is now safe to conclude that the basic principles of Islamic law extracted from primary sources encourage the legal protection of intellectual property. The principles of private and personal property and honesty in the business and importantly the fair distribution of the benefits arising out of such business makes Islamic law more valid from today's IPR.

Conclusion

Islam is a balanced religion which stands point in the middle .Its (economic) laws never take side on each extreme role. Although doctrines state that all properties belong to God, but Islam acknowledges the rights of human beings to enjoy the result of their hard work and creativity. Islam is protecting the individual ownership rights as well as guarding the benefits of the public interest. It is obvious that in predominantly Muslim countries religion plays a very important role almost in every sphere of life. Many Muslims seek to ensure that everything they do is consistent with Shari'a. Therefore it is crucial that any law which is to be effective complies with the principles of Islamic law. As the analysis above has shown, an accurate understanding of the principles of Shari'a can be construed to provide support for the protection of intellectual property law. Islamic law though does not explicitly address protection of intellectual property however the various Islamic legal principles discussed above can be taken as a vantage point to conclude that intellectual property has in fact been recognized and respected in Islam. After in-depth analysis of Islamic law one can safely contend that basic legal concepts and principles within Islam plainly justify and encourage intellectual property rights. The way Islam has set out the

guidelines for doing trade, has prohibited unfair competition, has recognized the importance of private property one can lead to the conclusion that Islam does not stand idle on issue pertaining to IPR and their protection.

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