



Relationship between Intellectual Property and Public Order

Andalus Hamid Abed*

University of Baghdad.

andalus@kecbu.uobaghdad.edu.iq

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Abstract:

Intellectual property is the product of human thought such as inventions, literature, industrial designs, trademarks, songs, symbols and names. Intellectual property rights are not different from other property rights. It enables the owner to benefit from his work in a variety of ways.

The law provides legal protection for humanity

Intellectual property may be exposed to the types of violations that affect these rights. Violations vary according to the nature of the rights you are attacking. The rights of authors may be attacked by selling, renting, or publishing in ways that are not authorized by the owner of the works.

Keywords: Intellectual property – public order – legal protection

introduction :

Intellectual property has become an independent reality with its legal entity and distinctive characteristics. The development and progress of human thought in the economic, commercial, scientific, artistic, and literary fields had an impact on the emergence of these immaterial rights, which are the product of the human mind. The protection of intellectual property has become an indispensable necessity. The existence of an integrated legal system guarantees protection for innovators and authors from imitation and attack on their intellectual property. This encourages researchers and inventors to continue their innovations. The mental and intellectual product is required to be innovative so that it comes out of the owner's mind in a way that touches reality to highlight the personality of its owner in order to be surrounded by legal protection. Based on the foregoing, we are discussing the issue of intellectual property rights and the extent of its compatibility with the public system.

* Corresponding author



THE FIRST TOPIC

Definition of Intellectual Property

(The Intellectual property has witnessed a great importance especially in the era of technological development and rapid civil and human communication . This interest which has grown to care the creativity and creatives, and for keeping their rights and their result of intellectual products by protecting this property from all kinds and forms of infringement (violating) whether it was a Forgery or imitation or piracy for keeping the Continuity of this intellectual product).¹

Intellectual property represents the economic wealth of the current era. It is the capital of companies, especially in the field of information technology.¹ Intellectual property is the ownership and its meaning is the containment of something and the ability to benefit the owner.² Preferably, definitions have varied among the jurists. Some of them believe that (the individual's competence is something that prevents others from using it, and its owner can know about it from the outset, except for a legal impediment³ Al-Sanhouri believes that the truth is always right. It may be materialized to perceive the moral right which is perceived by the thought and represents the product of the mind. It responds to non-material things, which is known as literary, artistic and industrial things in addition to commercial property rights.⁴

(The Algerian legislator has followed the example of other comparative legislations to protect these rights by establishing a complete legal system To regulate these rights as well as to accede to international treaties and conventions related to intellectual property rights).⁵

Iraqi legislator defined intangible money as an immaterial thing such as the rights of the author, inventor and artist. The Egyptian legislator also defined intellectual property as the rights that are related to an immaterial thing regulated by special laws. Several legislations have focused on intellectual property and agreements to give legislative protection to the legal term (related rights). They include the rights of artists, producers of phonograms, and broadcasting organizations. Iraqi Copyright Law No. 3 of 1971 in Article 49, provides protection for neighboring rights in the Literary and Artistic Property Law No. 7 of 1999.

Intellectual property is divided into two basic groups; the literary and artistic property rights, which are related to copyright, and the industrial property rights in the field of inventions, trademarks, industrial designs and models and geographical source data.⁵Intellectual property refers to the creative works of thought which are inventions, literary and artistic works, symbols, names, images, models and industrial designs. The author has the right to include literary and artistic works such as novels, poems, plays, films, musicals, drawings, paintings, photographs, statues and engineering designs. Rights related to copyright include the rights of performers related to their performances, producers of sound recordings related to their recordings, and broadcasting organizations related to radio and television programs.

Copyright is a legal term that describes the rights of creators in their literary and artistic works. Authorship is a work that requires creativity and innovation as it is a mental and intellectual product. Copyright works include books, music, oil paintings, sculptures, films, computer programs, databases, advertisements, maps, and technical drawings. According to the Egyptian Intellectual Property Rights Protection Law No. 82 of 2002, the patent is an exclusive right granted in any invention. In general, a patent gives its holder the right to decide whether



they use the invention or not. In exchange, the patent owner makes available to the public technical information about the invention in the published patent document. Consistent with the Trademarks and Commercial Data Law No. 31 of 1957 amended by Order 80 of 2004, a trademark is a sign that distinguishes the goods or services of a company from the goods or services of other companies. The origin of the brand dates back to ancient times when artisans used to place their signatures or 'marks' on their products.

Two treaties have been signed to establish the international basis for the intellectual property system; Paris Convention for the Protection of Industrial Property, the Berne Convention 1886 for the Protection of Literary and Artistic Works of 1883, the Global Copyright Convention in Paris 1971 amending the Berne Convention, the International Organization for the Protection of Intellectual Property in Geneva 1996, and the Budapest Convention in 2001.⁶ The TRIPS agreement also aimed to protect the rights of intellectual property owners and prevent others from using their production without a prior license. He has the right to hold permission to lease his original work or copy it commercially, or to prevent that.⁷ The TRIPS Agreement combined the provisions of international agreements in all matters related to intellectual property into one document. Those provisions were dispersed in different agreements. It is imposed on all member states of the World Trade Organization to apply its provisions. The World Trade Organization (WTO) oversees the implementation of conventions and treaties in the field of intellectual property. In addition, the World Intellectual Property Organization (WIPO) aims to implement conventions and treaties in the field of intellectual property.⁸

The United States Courts have ruled that any workbook must have a distinct title consisting of words that shall be allocated to him. So, it is easy to access without the need to examine the pages of the work. The English jurisprudence believed that it is difficult to say that the title of the work does not include innovation, because choosing words or sentences for the title of a work requires a genuine intellectual effort made by the author, and removing it from protection leads to the benefit of others without the author's knowledge. The English judiciary decide to protect the title of the work through a lawsuit for plagiarism.⁹ Additionally, the Egyptian Intellectual Property Rights Protection Law No. 82 of 2002 defines every classified work as every creative literary, artistic or scientific work of whatever type, method of expression, importance or purpose of its classification.

THE SECOND TOPIC :

Main Characteristics of Intellectual Property

The theory of duplication is the most appropriate theories for the right of intellectual property because this theory is consistent with the nature of this right. So, the theory of duplication indicates the existence of two rights; the moral right and the financial right. Regarding the characteristics of a moral right, it is distinguished by its inability to act. The moral right of the author, artist or creator, is linked to his personality even after he has disposed of his financial right. His name and address remain attached to his product, and any agreement to the contrary is deemed null. Likewise, the moral right is not subject to seizure, as it is not permissible to seize it by creditors, unlike the financial right. After the work has been published, it is removed from dealing as one of the human rights. This is recognized in the Universal Declaration of Human Rights of 1948 like security and integrity of the body and freedom of thought, conscience and religion.¹⁰ In addition, the moral right is distinguished by its inability to prescribe. The statute of limitations does not apply to his right, because it is permanent and not



Relationship between Intellectual Property and Public Order

temporary, as it is a personal right. The literary right is not transferable to the heirs, but it is related to the work. The heirs have the right to defend the work to preserve the author's literary reputation after his death, to preserve his integrity, and to respect his author.¹¹

The financial right is a negotiable one, as it can be disposed of and waived. It is transferred by inheritance and wills such as ownership of a real estate and movable property, and all legal actions are subject to it. This property is subject to legal controls and its ownership after a certain period has passed into the public domain.¹² A financial right entitles its owner to exploit the work, and no one else has the right to exploit it except after obtaining permission or a license from its owner. It is considered as one of the moral rights which is temporary in the sense that legal protection. It continues throughout the life of the author that lasts 50 years after his death, according to the Iraqi Copyright Protection Law and the French Law of 1957. Regarding the TRIPS Agreement issued by the World Trade Organization in 1964, it dealt with the protection of the rights of authors of literary and artistic works, such as books, musical compositions, drawings, sculptures, computer programs, and films, through copyright for a period of at least fifty years after the death of the author, as well as the rights related to them (related rights).

Jurisprudence is concerned with determining the legal nature of an intellectual property right. There are many theories, some of them believe that they are property and personal rights, while others believe that these rights are of a commercial nature.¹³ These trends have been criticized by most jurists who have to believe in the duality of intellectual property rights. With regard to the content of the property right theory, it is based on the fact that the intellectual property right is a tangible right of a person over a certain thing from the powers of use, exploitation and disposition. Its owner can sell it, assign it, use it or exploit it by renting it like electronic programs. The owner of the intellectual property must register his ownership with the authorities specified by the special laws.¹⁴ This theory has been criticized for its contradiction with the traditional concept of property right. It is a permanent right that is not limited to a period like an intellectual right, whose protection ceases with the passage of a certain period.

Personal right theory is endorsed by some proponents of the copyright unit. This theory states that the financial and moral rights are not independent of each other and that they are two sides of one right. Supporters of this theory favored the literary aspect of copyright over the financial (material) aspect. German philosopher Immanuel Kant is the first one who believes in the commercial nature of the intellectual property right. The French legalist, Georges Ripert, is also adopted this trend, which focuses on the economic return and its criterion, adding the commercial character to the intellectual property rights. This is achieved through gaining customers and trading with the non-material money owed by the right holder, such as innovation, invention, and the artistic, literary and scientific innovations embodied in the intellectual work. However, this theory was not adopted in its content the modern laws.¹⁵

According to the theory of dualism, and the insufficiency of the tripartite division of rights, it was adopted by the French philosopher Michel Picard who believes that rights are divided into kind, personal and obligations. Al-Senhui believes that the doctrine of ambivalence is the doctrine that suits this legal adaptation of rights.¹⁶ According to this theory, the owner of the literary right, who is represented by a set of characteristics represented by his rights over the intellectual product, has the right of paternity over his work.¹⁷ The financial right is the other element of intellectual property. The intellectual owner presents his product to the public, and he benefits from the material that will accrue to him because this right is permissible to deal and dispose of in various legal acts by sale or rent.¹⁸ Most of the laws were adopted with the content



of this theory, such as the Iraqi Copyright Law No. 3 of 1971 and the Jordanian Law No. 22 of 1992.

THE THIRD TOPIC

Public Order of Intellectual Property

Public order is a specific rule that is adapted by the public economy or methods of government.¹⁹ Public order is the safety valve that protects the principles and supreme interests of the state. It is flexible and subject to the prevailing development in the laws of different countries in terms of political, economic and social aspects. Despite the difficulty of defining the guidelines for the idea of public order, the jurisprudence tried to set general controls by means of which this idea could be defined.

However, legal jurisprudence tried to lay down general controls through which this idea could be defined, as it is believed that the public order is a set of rules related to the origin of the foundations of the social or political system of a country at a specific time.²⁰

Professor Abdel-Baqi al-Bakri believes that public order is the set of political, social, economic or moral interests and foundations that cause the disruption of the entity of society to fracture and collapse.²¹ Dr. Hassan defined public order as a group of basic interests for the set of foundations upon which the group is built. Its entity is not conceivable. Yet, its entity will remain intact without stability in many.²² Dr. Hassan Thanoun defined public order as general ideas that are confined to narrow limits.²³

Despite the multiplicity of definitions of the public system, it is a relative idea that is influenced by time and place. Therefore, Iraqi and Egyptian legislator did not identify the public order. Rather, the Iraqi legislator in Article 130 of the Iraqi Civil Law No. 40 of 1951 was satisfied with mentioning some issues that are considered public order, such as issues of eligibility, family relations, property rights, the rights derived from them, and the scope of obligations and agreement. The general system has several characteristics. It is characterized by a relativistic, flexible, sophisticated idea as it is characterized by generality.²⁴ The public order represents a set of general rules aimed at preserving the supreme interests of society. In addition to the complementary and interpreted rules that can be violated or agreed to exclude, these rules have an imperative character that may not be violated or agreed to exclude.²⁵

The widening of the circle of individual freedom and the growing principle of the power of the will in legal actions will lead to the expulsion of the state from much interference in economic activity and social life. The role of the law is to prevent collisions between rights and protect individual freedoms, so that the purpose of the law is focused on achieving the general interest of society. Therefore, the circle of public order expands and the scope of state intervention in public life is increased.

It should be noted that the correct jurisprudential opinion supports the theory of dual intellectual property rights.²⁶ It is similar to the position of the Iraqi legislator in the Copyright Protection Law No. 3 of 1971. The most important characteristic of the public order is the imperative characteristic of the legal system in society represented by the state. In addition, it is characterized by generality. Accordingly, the characteristics of the public system and its legal nature are not compatible or identical with the financial right of the intellectual property right. As for the moral right (the second aspect) of intellectual property, it represents the part that is closely related to the personality of the creator or innovator, and the link between intellectual creativity and the human personality until this relationship is likened to sonship.²⁷



The moral right is related to the author's personality and character. He enjoys the right to respect his name, which is a permanent, inalienable and imprescriptible one.²⁸ Since the moral right is linked to the personality of the intellectual right holder, it is undoubtedly a human right that the state seeks to protect from violations, breaches or attacks. The Charter of the United Nations affirmed in Article 5) that there is an express obligation to protect human rights. This commitment extends to the Universal Declaration of Human Rights in 1948 as the official interpretation of the charter by the international organization unanimously and by the overwhelming majority. It can be considered as binding, and its violation is a violation of the Charter and international custom because the rules of human rights included in the Charter and the International Covenants of Rights in 1966. Jurisprudence also describes rules as an imperial one.²⁹ Accordingly, what is related to the moral right (the second part) of the intellectual property right is considered an Emirati rule. Every rule set forth by the legislator to regulate this right represents his will to preserve the basic interests in society politically, economically and socially. This means that he included them in the group of rules relating to public order, and any agreement to violate is absolutely null and void.

Intellectual property may be exposed to the types of violations that affect these rights. Violations vary according to the nature of the rights you are attacking. The rights of authors such as artistic and literary works may be stolen by selling, renting, or publishing in ways that are not authorized by the owner of the works. The rights to trademarks, industrial designs, and inventions are under attack by illegally imitating or pirating them. All previous violations result in several economic damages that lead to dangerous consequences and negatively affect intellectual property rights holders, societies and states in general. They are based on the foregoing, the moral right, in contrast to the material right. They have eternal protection that does not expire with the passage of time. It is transferred to others through a will or inheritance.³⁰

(the importance of intellectual property as the reason of technological, industrial, commercial development that the world witness, in addition to numerous international and regional organizations and conventions that have adopted the intellectual property protection in its large concept).³¹

THE FORITH TOPIC

Intellectual property in Islamic jurisprudence

The protection of intellectual rights is a legal duty that stems from belief in the Almighty God, the feeling of trust and responsibility in preserving the rights of people, and the non-infringement of their money, and it leads to the realization of a large number of interests for society, unlike the loss of rights and not protecting them. The abstention of scholars, thinkers and producers from intellectual and scientific production.

The infringement of intellectual rights is considered in Islam as theft, fraud, and an assault on people's money, rights, and competencies unlawfully, and these are all great and serious crimes that affect societies and individuals.

And that the mental product of a person can only appear in the form of a product embodied mostly in a workbook, and this product is the basis for the development and progress of societies



Relationship between Intellectual Property and Public Order

and is the basis for comparison between societies and people alike, and this is evidence of God Almighty saying: ((Are those who know and those who do not know equal) .³¹

Islam prohibits infringement of copyright by translating a book into languages other than the language in which the work was written without obtaining the author's consent, as it violates the right of others.³²

That there is a difference between innovation and ownership of the book, so whoever buys a book owns it while still owning the copyright of the author's innovation right, so reproduction of books or tapes is considered an infringement of copyright.³³

And that the buyer of intellectual works cannot become the owner of them after purchasing them and he does not have the right to dispose of them and re-publish and print them because this is considered an assault on a right of a personal nature because the ideas and opinions written in the book are a reflection of the author's ideas, personality and are linked to his being, and this is what the majority of Muslim jurists recognized It is not permissible to dispose of it except with the permission of the owner of the idea and literary production.

And that the Muslim does not take anything of his own from others except after the approval of the literary and intellectual work owner, so the author's mind is a treasury for the knowledge that he owns and he has the right to prevent others from disposing of it without his permission.³⁴

The majority opinion in Islamic jurisprudence is that the rights of authorship and translation are funds whose benefits can be obtained in accordance with what God Almighty has decided in terms of the purposes and legal evidence, because the purpose of them is to achieve interests that benefit the Muslim individual and society, if these rights are used in a permissible and correct manner that does not contradict an intention or a text Legally.

Professor Abdullah Al-Tayeb's opinion is based on the words of God Almighty:

((And whoever is rich let him not be dispensed with; and whoever is poor, let him eat with kindness)).³⁵

The author and the creator is taken in return for his creations and books, and this is a kind of utilization of his intellectual and intellectual production rights.³⁶

This saying does not mean that knowledge and knowledge are considered a way of trade or industry, for every person has the right to obtain the results of his labor and effort, especially if the mental effort requires an exceptional effort to provide knowledge and knowledge and access the financial reward.³⁷

The scientific production is the property of the author as it is, and the author has the authority to dispose of his literary and intellectual works in a manner consistent with the provisions of Islamic law by selling, or assigning it, and other legitimate acts

The author should not exploit the people's need for his literary and intellectual works and not intend to multiply the price of his books and literary works. Rather, the principle of balance between the benefit of authorship and the author's financial right in his work must be observed.³⁸

The opinions of Muslim jurists differed about the extent to which the author or translator could benefit financially from literary and intellectual works. This trend has prohibited the use of this type of rights because the author may prevent his intellectual work from spreading and spreading if it does not obtain material benefit, and not publishing his intellectual and literary production unless he obtains financial benefit from it is a concealment of knowledge, and thus depriving Muslims of it, and while publishing the production The ideology is a duty for every Muslim.³⁹



Relationship between Intellectual Property and Public Order

This evidence is derived from the Holy Qur'an (For those who conceal what we have revealed from evidences and guidance from a distance from what we have revealed to people in the book. Those are cursed by God, and those who curse them)⁴⁰ On the other hand, another opinion is in favor of the idea of using intellectual property rights, and each of them has evidence and support.

We must say that the Muslim jurists have agreed that innovation should be attributed to the one who produced it in recognition of his moral right, because the human intellectual effort is a scientific trust and Islam has prevented the theft and impersonation of literary and intellectual texts, in order to preserve the personal entity of the Muslim.⁴¹

Most of the Muslim jurists have permitted the sale of benefits, for innovation is a mental image and abstract meanings derived from the human mind, and it is not possible to infer it sensibly until after adding it to its source which is embodied in a work, and the owner of the intellectual and literary production can benefit from the material return of his intellectual productions.⁴²

For example, the translator exerts an effort in translating from one language to another according to certain styles and formulas, and draws their meanings to be a reflection and effect of his mental faculties, which are based on skill and ability to understand the characteristics and methods of the foreign language. In this way, it is a reflection of the translator's personality, and it is at the same time an effort exerted and the right to benefit from its product, which is the fruit of his mental effort, and it is not permissible for others to infringe on his rights provided that they are compatible with the system and public morals and consistent with the teachings of Islam, so it is necessary to address the developments of society and its changes according to the rules of bringing interest Preventing corruption and creating a drive and an incentive for it to present the best useful ideas of human minds. Moreover, the customs emphasized the necessity of respecting this type of benefits and considering them as a resource for the author enabling him to use them in a way that achieves the interest and for him to society, and this is what is required by measurement and the logic of sound mind.

Conclusion:

1- Public order is a set of Emirati rules that are represented by everything related to the higher political, economic interests of society. Public order is a flexible and changeable idea that is subject to the prevailing development in the laws of different countries in terms of political, economic and social aspects.

2- The most important characteristic of the public order is the imperial character of the legal system in society represented by the state. Furthermore, it is characterized by a general nature of the characteristics of the public system. Its legal nature are not compatible and do not coincide with the financial right of the intellectual property right. As for the moral right from intellectual property, it represents the part that is attached to the personality of the creator or innovator, emphasizing the very close link between intellectual creativity and human personality.

The Preserving public safety is achieved by subjecting the products to legal accountability and preventing their abuse. It is a mental product which is an order that aims to protect the moral and financial rights and means.

3-It is not permissible to monopolize science and knowledge, and that the owner of the innovation owns a right derived from the return of this product to the person of the author - the



translator - which is only a reflection of his feelings and internal feelings that his mental thoughts emerge in a material way, embodied in most cases in the work, and this right is safeguarded by virtue of Islamic law

Recommendations: -

1 - The necessity to educate scientific institutions includes students and researchers, to highlight the importance of copyright and the inability to infringe on its rights as an intellectual product.

2- The importance of protecting intellectual property rights, and scientific research is a fundamental pillar of progress in societies. We also intend to adopt the principles advocated by international conventions and to make laws keep pace with development and progress.

3- Taking care of scientists and researchers is essential because they are renewable experiences and energies in a way that enables them to perform their tasks with high efficiency.

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Relationship between Intellectual Property and Public Order

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Relationship between Intellectual Property and Public Order

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Relationship between Intellectual Property and Public Order

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