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أبحاث باللغة الانكليزية

1-The Emergence of Intellectual Property (IP) and its Importance in Islamic Jurisprudence to the Modern Era



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ظهور الملكية الفكرية وأهميتها في الفقه الإسلامي والعصر الحديث

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Abstract:

Islamic jurisprudence did not ignore the definition of intellectual property; this article sheds light on the perspective of Islamic jurisprudence that established controls for the protection of intellectual property rights, the recognition of these rights, and the requirements of the curriculum. First is the need to adhere to the intellectual approach of the former Islamic scholars. Second is when examining the so-called new facts and events, one must bear in mind that the Islamic Shari'a in its broad outlines and general meanings accommodates all new events and events until the Day of Resurrection. Based on these Shari'a rules, the jurists agree that the products of the author or the

research or invention may be used, and that it is protected. This explains the subsequent step, which the writer called for (the legal adaptation of the origin of the authorship's right to intellectual production). Therefore, this study of the Islamic jurisprudence is a reflection of the fact that Islamic jurisprudence is comprehensive and comprehensible to all modern issues, including the intellectual property. It has a position, a treatment and a view, although it is not under the same term.

Keywords: Intellectual Property (IP), Islamic Jurisprudence, Human Rights, Author Rights, Copyrights, Patent Rights, *ijmā'*/consensus, analogy/*al-qiyās*, *ijtihād*/classical jurisprudence efforts, Classical Muslim Jurists, Modern Muslim scholars, holly Qur'ānic verse.

ملخص:

لم يتجاهل الفقه الإسلامي تعريف الملكية الفكرية، وهذا المقال يسلط الضوء على منظور الفقه الإسلامي لناحية وضع ضوابط لحماية حقوق الملكية الفكرية، والاعتراف بهذه الحقوق، ومتطلبات المنهج البحث العلمي. أولاً ضرورة التمسك بالمنهج الفكري لعلماء المسلمين السابقين، وثانياً، عند فحص ما يسمى بالحقائق والأحداث الجديدة، يجب أن يؤخذ بعين الاعتبار أن الشريعة الإسلامية في خطوطها العريضة ومعانيها العامة تتسع لجميع الأحداث الجديدة حتى يوم القيامة. وانطلاقاً من هذه القواعد الشرعية اتفق الفقهاء على جواز استخدام منتوجات المؤلف أو البحث أو الاختراع، وأنها محمية. وهذا ما يفسر الخطوة اللاحقة التي دعا إليها الكاتب ونعني التكيف القانوني لأصل حق المؤلف في الإنتاج الفكري. لذلك فإن دراسة الفقه الإسلامي لهذه الضوابط والحقوق هي انعكاس لحقيقة أن الفقه الإسلامي شامل ومفهوم لجميع القضايا الحديثة، بما في ذلك الملكية الفكرية التي لها مكان، وعلاج ووجهة نظر، على الرغم من أنها ليست تحت نفس المسمى أو المصطلح.

الكلمات المفتاحية: الملكية الفكرية، الفقه الإسلامي، حقوق الإنسان، حقوق التأليف والنشر، حقوق براءات الاختراع، الإجماع، القياس، الاجتهاد، جهود الفقهاء والفقه الكلاسيكي، آراء علماء المسلمين في العصر الحديث، آيات القرآن الكريم.

لَا تَحْسَبَنَّ الَّذِينَ يَفْرَحُونَ بِمَا أَتَوْا وَيُحِبُّونَ أَنْ يُحْمَدُوا بِمَا لَمْ يَفْعَلُوا فَلَا تَحْسَبَنَّهُمْ بِمَفَازَةٍ مِنَ الْعَذَابِ
وَلَهُمْ عَذَابٌ أَلِيمٌ (سورة المائدة 3: آية رقم 188)

Think not that those who rejoice in what they have done (or brought about), and love to be praised for what they have not done, think not you that they are rescued from the torment, and for them is a painful torment. Q. 3: 188.

I. INTRODUCTION

Interest in subject of intellectual property (IP) copyright and its importance in Islamic jurisprudence throughout history to the modern era has grown recently compared with earlier periods. Several studies have discussed Islam's position on intellectual property; these studies argue that Islam, rather

than being against the protection of IP, supports IP in various ways.¹ Historically, the relationship between Islamic law and intellectual property and copyright shows more confluence than conflict.²

First, the classical jurists, including chief schools of Islamic jurisprudence figures, did not explicitly address the emergence of a patent in Islamic jurisprudence, based on a search of legal provisions related to moral rights including the patent, with the exception of what was discussed in works of al-Qurāfī (d. 684/1286) in his al-Furūq.³ This is due to several reasons. First, these rights were unknown in the past centuries and did not have a presence in life as of today. Second, these rights have remained as a literary honor or scientific or artistic reputation or the result of intellectual effort and moral abstract for a long time. Third, there was no scientific and technical creati-

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Bashar Malkawi (2013). "The Alliance Between Islamic Law and Intellectual Property: Structure and Practice," *University of St. Thomas Law Journal*, vol. 10, Issue 3; pp. 183-206; Amir H. Khouri (2003). "Ancient and Islamic Sources of Intellectual Property in the Middle East: A Focus on Trademarks," 43 (2) *IDEA: The Journal of Law and Technology*, Frank Pierce Law Center, pp. 151-206; Muhammad Amanullah (2006). "Author's Copyright: An Islamic Perspective," *The Journal of World Intellectual Property*, Vol 9 Issue 3, pp. 301-315; Ida Madieha bt. Abdul Ghani Azmi (2004). "The Philosophy of Intellectual Property Rights over Ideas in Cyberspace: A Comparative Analysis between the Western Jurisprudence and the Shari'ah," *Arab Law Quarterly*, vol. 19, issue 1, pp. 191-208; Qais Ali Mahafzah, Basem M. Melhem and Hitham A. Haloosh (2009). "The Perspective of Moral and Financial Rights of Intellectual Property in Islam," *Arab Law Quarterly*, Vol. 23, No. 4 pp. 457-468

2 - Bashar Malkawi (2013). "The Alliance Between Islamic Law and Intellectual Property: Structure and Practice," *University of St. Thomas Law Journal*, vol. 10, Issue 3, p. 648; Amir H. Khouri (2003). "Ancient and Islamic Sources of Intellectual Property in the Middle East: A Focus on Trademarks," 43 (2) *IDEA: The Journal of Law and Technology*, Frank Pierce Law Center, pp. 151-153.

3 - al-Qurāfī, Abu al-'Abbās Shihāb al-Dīn (1998). *al-Furūq* Beirut: Dār al-Kutub al-'Ilmiyya, vol 3: 456. al-Qurāfī's limited his discussion on the jurisprudence, it has been is known that the moral rights of a broader and more comprehensive *ijtihād* in the religious sphere only.

ity of any financial value during this period. The emergence of these rights came in the modern era because of the evolution of scientific and industrial progress. These rights have become an international concept, including the United Nations and international treaties which proceeded to protect those rights. Contemporary scientists discuss issues related to these rights.

Second, the emergence of patent law, such as industrial property rights, was neither defined nor known in ancient classical legislation or legal literature.⁴ Its first appearance came because of technological and economic development,⁵ as new economic interests required legislation and regulation, especially laws on industrial property rights.⁶

The first law on the protection of inventions was in the Republic of Venice in 1474,⁷ followed by the 1623 Statute of Monopolies legislation in Great Britain during the reign of James I, which included concessions for ownership monopoly of innovations.⁸ Using this early legislation as models, industrial property legislation in its modern form began at the end of the eighteenth century, with US law in 1790 and French law in 1791.⁹ Several international conventions were then held, including the Paris Convention in 1883, which concerned the protection of industrial property in all its aspects, including the patent.¹⁰

In Arab countries that were subject to Ottoman rule, Ottoman law applied on the protection of inventions. The first law in this regard was initiated in 1879. When this law was repealed in Arab countries as they broke away from the Ottoman dynasty after the First World War, these countries put in

4 – Please see the al-Zarqā', Muḥtafā Aḥmad (1967). *al-Madkhal al-Fiqhī al-Ām*, Damascus: Dār al-Fikir, 2:22; Zuḥaylī, Wahbah, Muṣṭafā *Ḥaq al-Ibdā' wal-Ibtikār: al-Mu'āmalāt al-Māliyya al-Mu'āṣirah* Damascus: Dār al-Fikir, p. 581; al-Darīnī, Muḥammad Faṭḥī (1994). *Buḥūth Muqārana fi al-Fiqh al-Islāmi wa-Uṣūlih: Ḥaq al-Ibtikār* Beirut: Mu'asassat al-Risālah, p. 5.

5 – al-Zarqā', Muḥtafā Aḥmad (1967). *al-Madkhal al-Fiqhī al-Ām*, vol. 3: 22; Abu Ghazālah; Ṭalāl (2001). *Kalimāt wa-Abḥāth-Intellectual Property Dictionary*, Amman: Abu Ghazālah Edition, p. 19.

6 – Abu Ghazālah; Ṭalāl (2001). *Kalimāt wa-Abḥāth-Intellectual Property Dictionary*, p. 19.

7 – al-Nāhī, Ṣalāḥ al-Dīn 'Abd al-Laṭīf (1983). *al-Wajīz fī al-Mulkiyya al-Šinā'iyya wal-Tijāriyya* Amman: Dār al-Furqān, p. 62

8 – Abu Ghazālah; Ṭalāl (2001). *Kalimāt wa-Abḥāth-Intellectual Property Dictionary*, p. 19

9 – al-Nāhī, Ṣalāḥ al-Dīn 'Abd al-Laṭīf (1983). *al-Wajīz fī al-Mulkiyya al-Šinā'iyya wal-Tijāriyya*, p. 62.

10 – al-Šadah, 'Abd al-Mun'im Faraj (1978). *Uṣūl al-Qānūn* Beirut: Dār al-Naḥḍah, p. 363.

place their own special legislation.¹¹ For example, Iraq initiated a law in 1935 to protect patent rights for industrial designs; the law was amended in 1950 and replaced by patent law of 1970. In Jordan, laws concerning invention privileges and fees began in 1953.¹² In Egypt, a special intellectual property law was enacted in 1939, followed in 1949 by a law specifically for patents and industrial designs.¹³ These early efforts helped to popularize other laws on industrial property, including patent laws, during the increasing innovation and invention movement.¹⁴

II. REALITY OF THE COPYRIGHT AND THE SHARĪ'A'S INTEREST IN IT

Ibn Khaldūn (d. 808/1406), in his Muqaddima/Introduction, "Faṣl fī al-Ma-qāṣid al-lati yanbaghī l'timādahā fī al-Ta'lif", listed seven purposes of copyright:¹⁵

1. To devise science subject matter hereof and the division of its chapters, and keep track of its issues or derive its issues and to allow scholars to search the material. The scholar should be keen to deliver his/her findings/results to others for the benefit of later generations or interested individuals. In the case of the uṣūl/origin of jurisprudence, al-Shāfi'ī (d. 204/820) discussed in his work al-Risāla first the verbal evidence al-Adilah al-Shar'īyya al-lafziyyah (legislative) and summarized it, then the Ḥanafī jurists and derived from the issue of analogy/al-qiyās and relied upon it, and thus jurists after them benefited from that method from that point forward.

2. To provide a more understandable or alternative approach or methodology for classical jurists' works, so as to enlighten others who might have found earlier interpretations difficult to understand. It is a reasonable and necessary process to reflect on classical works.

3. To provide needed commentary upon ambiguous discussion in the popular works of earlier scholars. Later scholars who provide this commentary dedicate their intellectual efforts to providing clear proof and reflection in order to avoid any further doubt or misinterpretation. They are keen to deliv-

11 - al-Nāhī, Ṣalāḥ al-Dīn 'Abd al-Laṭīf (1983). *al-Wajīz fī al-Mulkiyya al-Ṣinā'iyya wal-Tijāriyya*, pp. 13-14

12 -Ibid, p. 23.

13 - al-Sharqāwī, Maḥmūd Samīr, *al-Qānūn al-Tijārī*, Beirut L Dār al-Nahḍa, pp. 510-111.

14 - al-Nāhī, Ṣalāḥ al-Dīn 'Abd al-Laṭīf (1983). *al-Wajīz fī al-Mulkiyya al-Ṣinā'iyya wal-Tijāriyya*, p. 62.

15 - Ibn Khaldūn, 'Abd al-Raḥmān (2007). *al-Muqadimma*, (chapter 35), Beirut: DÉR al-Fikir, pp. 581-582.

er to their successors manuscript clarification of the original works, abridgments, or commentaries.

4. To update subjects and works with material or information essential for the current time and beyond. The role of the present scholars is to provide what is lacking in older works, given new needs and discoveries.¹⁶

5. To arrange or organize older works to make each issue in each chapter or section more accessible. A good example of this is the work al-Mudawinna of Saḥnūn, Abū al-Sa'īd 'Abd al-Sallām al-Tūkhī (d. 240/854),¹⁷ and Ibn al-Qāssim, 'Abd al-Raḥmān al-'Atqī (d. 191/806), who reflected upon the work of Mālik ibn Anas (d. 179/795).¹⁸ Many works of classical jurisprudence were not organized and were scattered in different sections. For example, Ibn Abū Zayd al-Qirawānī's (d. 386/996), work Mukhtaṣar al-Mudawanah remained a reliable source for later Mālikī's jurist and others as a substitute for al-Mudawanah.¹⁹

6. To collect and organize scientific matters dispersed in the chapters of works from other sciences, in a manner appropriate for and related to the needs of interested scholars. From the field of rhetoric, 'Abd al-Qādir al-Jurjānī (d. 471/1078),²⁰ and Abū Ya'qūb Yūsuf al-Sakākī (d. 626/1229),²¹ worked on very different aspects of grammar, and al-Jāḥiẓ, Abū 'Uthmān 'Umrū (d. 255/868), collected many issues from their works in his work al-Bayān wal-Tabyīn,²² alerting other scholars to this science as

16 - Ibn Khaldūn, 'Abd al-Raḥmān (1967). *Kitāb al-Tārik: Kitāb al-Barr wa-Diwān al-Mubtada'fi Ayām al-'Arab wal-'Ajam wal-Barber*, Beirut: Maktabat al-Madrasah, vol. 4: 1227-1228; Ibn Khaldūn, 'Abd al-Raḥmān (1998). *al-Muqadamma*, Beirut: Dār al-Fikir, p. 432.

17 - Mālik ibn Anas (1905). *al-Mudawanna, Riwayat Saḥnūn* Beirut: Dār Ṣādir, reprint in Maṭba'at al-Sa'āda.

18 - See Ibn Rushd, Abu al-Walīd (1986). *al-Muqadamāt l-Bayān mā Iqtaḍathu al-Mudawwanah min al-Aḥkām* Beirut: Dār al-Fikir.

19 - al-Shīrāzī, *Ṭabaqāt al-Fuqahā'*, Cairo: Maktabat al-Thaqāfah, p. 150; Ibn al-Nadīm, *al-Fihrist* Beirut: Dār al-Kutub al-'Almiyya, p. 341; Ḥājji Khalīfah (1994). *Kashf al-Zunūn 'an-Asāmī al-Kutub wa'l-Funūn*. Baghdad: Maktabat al-Mutanabbī, vol. 5: 367; 'Iyād, Abū al-Faḍl al-Yaḥṣubī (1983). *Tarīb al-Madārik wa-Taqrīb al-Masālik li-Ma'rifat A'lām Madhhab Mālik*, ed. Aḥmad Bakīr Maḥmūd. Beirut: Dār Maktabat al-Ḥayāt, vol. 4: 492-479; Ibn 'Ashūr, Muḥammad al-Fāḍil (1970). *A'lām al-Fikr al-Is-lāmī fī-Tārikh al-Maghrib al-'Arabī*. Tunis: Maṭba'at al-Najāh, p. 49.

20 - al-Jurjānī, 'Abd al-Qādir (d. 471/1078). *Asrār al-Balāghah fī 'Ilm al-'Arabiyya* ed. Muḥammad al-Iskandarānī, D. M. Mas'ūd Beirut: Dār al-Kitāb al-'Arabī, 1996.

21 - al-Sakākī, Abū Ya'qūb Yūsuf ib Abū Baker (d. 626/1229). *Muftāḥ al-'Ilūm* ed. Na'im Zarzūr Beirut: Dār al-Kutub al-'Ilmiyya, 1993.

22 - al-Jāḥiẓ, Abū 'Uthmān 'Umrū (d. 255/868). *al-Bayān wal-Tabyīn*, ed. Khalīl al-

well as affecting other sciences. Later scholars focused their research in this specific field, which became the origin of the field of rhetoric, in which Arabic scholars advanced and excelled.

7. To summarize, combine, and make concise repeated or redundant works, as long as it does not impede the intention of the original author.

Ibn Khaldūn concluded these purposes of copyright in the chapter:

These purposes should be adopted for authorship and observance; other than that it is not needed, and an error from the serious to be its behavior in the eyes of the wise, such as impersonation of the above to other combinations that attributes to himself with some changing the content or from its origin form and words, or giving priority to the latter over the classical, or delete what is needed in the art, or what does not need it, or switches between right and wrong, or comes with something lacks benefit. This is the case of ignorance and distortion.²³

The right of authorship is a moral right or the rights of innovation, and the intellectual property of the authors and editors was not organized in accordance with legislative body in the Arab and Muslim world until recently. Therefore, the provisions in the literary property are issued based on the rules of justice, although the United Nations issued the Universal Declaration of Human Rights on December 10, 1948, and stipulated in the twenty-seventh article that everyone has the right to protection of the moral and material interests resulting from any scientific, literary or artistic endeavor. The Treaty on the International Bern to protect copyright concluded in 1886, and then was amended several times, most recently in Stockholm in 1967. The body UNESCO organized an international agreement on copyright in Geneva on September 6, 1952.²⁴

In short, copyright means that the author is given the right to keep the fruits of intellectual effort, the proportion of one's effort, and the retention of the financial benefit that can be obtained from publication and circulation.

III. JURISPRUDENTIAL PROVISIONS PERTAINING TO INTELLECTUAL PROPERTY RIGHT

The issue of intellectual property right emerged as a result of scientific development, where a debate occurred among modern scholars whether

Shiekh Abu Dhabi: Dār al-Kutub al-Waṭaniyya, 2014.

23 - Ibn Khaldūn, 'Abd al-Raḥmān (2007). *al-Muqadimma*, p. 582.

24 - See Khalīl 'Imād al-Dīn, "Mulāḥazāt Ḥawl Ḥaqq al-Nashir wal-Ta'lif," in the work of Fathī al-Dirīnī (1981). *Ḥaqq al-Ibtikār fī al-Fiqh al-Islāmī al-Muqāran* Beirut: Mu'asassat al-Risāla, p. 162

any particular Qur'ānic verse, Sunna, or *ijmā'*/consensus or sort of *ijtihād*/classical jurisprudence efforts regarding this issue took place. There are two views on this.

The first view is not to be regarded as copyright, and few contemporary scholars favor that approach, such as Sheikh Ṭaqī al-Dīn Nabhanī in his work *Muqadamat al-Distūr al-Islāmī*, focusing on a lack of financial return.²⁵ They relied on the following:

A. The consideration of this right could lead to limiting the work of scientific authors from printing and trading only in exchange for financial reward, and this is considered concealment of knowledge, which is forbidden by the Shari'a, as the Qur'ānic verse reads:

Verily, those who conceal the clear proofs, evidences and the guidance, which We have sent down, after We have made it clear for the people in the Book, they are the ones cursed by Allah and cursed by the cursers. Q. 2: 159.

From the above verse, these scholars derived their position in reflecting upon the concealed knowledge, but to prevent people from benefiting from the author's findings, including reading and written commentary by scholars in the field and publication. Nevertheless, one who reserves the right to print does not prevent anyone from reading the book nor his studies nor education, so does not prevent sale and trade, but it prevents that which is marked by the other without permission, to earn the profit; it is not that of concealment of knowledge.²⁶

B. The knowledge is an act pleasing to Allah and obedience, not as trade, or industry, and an act of worship may not get a financial reward in performance, and therefore the world must act in this knowledge taken for the instruction free of charge, and the nation should cover the living expensive of these scholars from the house treasury/*bayt al-māl*.²⁷

These scholars responded to this approach by saying this act in not Islamic, since the later generation of jurists permitted the acceptance of wages of the act of worshipping such as the ritual obligation and the teaching of the holy Qur'ān.²⁸

25- Ibid, p. 162.

26 - Muḥammad Taqī al-Dīn al-'Uthmānī (2013). *Buḥūth fī Qaḍāyā Fiqhiya Mu'āṣirah* Damascus: Dār al-Qalam, vol. 1: 125.

27 - Shabir Muḥammad 'Uthmān (2001). *al-Mu'āmalāt al-Māliyah al-Mu'āṣirah fī al-Fiqh al-Islāmī* Amman: Dār al-Nafā'is, p. 61.

28 - Ibid, p. 65.

C. To keep the printing rights will narrow the spread of the book publication, though if each one had the right to print and publish the book, it will spread more widely, and with broader and more comprehensive benefits.

And these scholars in favor of this approach responded to this by saying that this guide is reversed if we look at from the other side; if the innovators are denied their right, which signifies their material desires for their innovations, they may fail to make efforts for the sake of new inventions when they see that their previous invention does not generate much profit.²⁹

The intent of the adoption of these rights is to encourage invention and creativity, in order to know who is making an effort and will benefit from it, and would be protected from those who are trying to take the fruit of their innovations and thinking, and exploitation by rivals.³⁰

The second view is regarded as right of copyright, such as a group of contemporary scholars, including Sheikh Muṣṭafā al-Zarqā, and Muḥammed ‘Uthman Shabīr, Muḥammed Fatḥī al-Dirīnī, and Muḥammed Sa‘īd al-Buṭṭī, Wahba Zuḥaylī, and Muḥammed Ṭaqī ‘Uthmān, and a group of Indian sub-continent scholars, such as: Sheikh Fatḥ Muḥammed al-Lukūnī, and Sheikh Mufti Muḥammed Kifāyatullah, and Sheikh Niẓāmuddīn, and Sheikh Abdul Raḥīm al-Lājaburī. Also, other scholars adopt a similar view of the right of copyright, such as Imād al-Dīn Khalīl, Wahab Ghāwī, and Abdul Ḥamīd Ṭahmāz and others.³¹

The above scholars quoted their evidence from the following: According to the opinion of majority of jurists (i.e., Mālikīs, Shāfi‘īs and Ḥanbalīs),³² any benefits of funds, such as of moral things, and it is no doubt that the production of gold represents human benefits, may be legally deemed to be a material netting.³³ It is not called money unless it encompasses the benefits,

29 - Muḥammad Taqī al-Dīn al-‘Uthmānī (2013). *Buḥūth fī Qaḍāyā Fiqhiya Mu‘āṣirah*, p. 125.

30 - al-Zarqā, Muṣṭafā Aḥmad (1967). *al-Madkhal al-Fiqhī al-‘Ām*, vol. 3: 21

31 - Wahbī Zuḥaylī (2002). *al-Mu‘āmalāt al-Māliyya al-Mu‘āṣirah: Buḥūth, Fatāwī wa-Ḥulūl* Damascus: Dār al-Fikr al-Mu‘āṣir, p. 62; al-Zarqā, Muṣṭafā Aḥmad (1967). *al-Madkhal al-Fiqhī al-‘Ām*, vol. 3: 21; al-Darīnī, Muḥammad Fatḥī (1994). *Buḥūth Muqārana fī al-Fiqh al-Islāmi wa-Uṣūlih: Ḥaq al-Ibtikār*, vol. 2: 29; Būṭī Muḥammad Sa‘īd (1994). *Qaḍāyā Fiqhiyya Mu‘āṣirah* mascus: maktabat al-Fārābī, p. 86; Muḥammad Taqī al-Dīn al-‘Uthmānī (2013). *Buḥūth fī Qaḍāyā Fiqhiya Mu‘āṣirah*, p. 123.

32 - al-Shāṭibī, Abū Ishāq Ibrāhīm (2003). *al-Muwāfaqat fī Uṣūl al-Sharī‘ah*, Beirut: Dār al-Kutub al-‘Almiyyah, vol. 2: 151; Sharbīnī Muhammad Khattīb, *Mughnī al-Muhtāj*, vol. 2: 286; al-Dasūqī, Muḥammad ibn Aḥmad (1980). *Ḥāshiyat al-Dasūqī ‘alā Sharḥ al-Kabīr*, Beirut: n.p., vol. 3:442.

33 - Shabir Muḥammad ‘Uthmān (2001). *al-Mu‘āmalāt al-Māliyah al-Mu‘āṣirah fī al-*

without alternative to it. Therefore, it is not adequate to sell it without it, since the Shari'a in the approval of the lease ruled that the benefit exists in itself, in return for payment, as of the payment in return for the sales contract.³⁴

a. It is the majority of scholars' opinions that the benefits should be a sum of money because it fits with the custom of people and their transactions, and because the benefits are intended objects, not soul's selves, either house, land or reward. Since this sum of money is of no benefit nor harm in itself, but it is required in order to get the intended, for example the house where you live, the land you cultivate, and the dress you wore. Thus, the benefits are found in a wide range of the people's custom in their markets and financial transactions, the buildings constructed for the people to live in, as well as hotels and shops in the markets, vehicles, the establishment of railways, and ships. These are intended to exploit the replacement of its benefits, and because the Islamic legislations authorized within marriage to be beneficial dowry, as if the male's home is habitable, for example, it is true that it is known that the origin of the dowry is a sum of money to have as the Qur'ānic verse in term of census the taboo of women, which reads:

Also (forbidden are) women already married, except those (captives and slaves) whom your right hands possess. Thus has Allah ordained for you. All others are lawful, provided you seek (them in marriage) with Mahr (bridal money given by the husband to his wife at the time of marriage) from your property, desiring chastity, not committing illegal sexual intercourse, so with those of whom you have enjoyed sexual relations, give them their Mahr as prescribed; but if after a Mahr is prescribed, you agree mutually (to give more), there is no sin on you. Surely, Allah is Ever All-Knowing, All-Wise. Q. 4: 24.

Thus, the benefit is money.

b. That the general custom was to be regarded as copyright-authored and creativity. Compensation endorsed the author, and awarded it. It is not properly subject to exchange and lawful gain for several awarded him compensation and gained taboo. It is well known that the general custom is originally from the uṣūl of the al-adilah/evidence if it does not contradict with the legitimate text or out of the general uṣl in the Islamic Shari'a. According to Wahbi Zuḥaylī, there is no doubt that copyright has become recognized in the laws and customs, and that the printing or photocopying without official

Fiqh al-Islāmī, p. 62.

34 - Zanjānī, Shihāb al-Dīn Maḥmūd ibn Aḥmad (1987). *Takhrij al-Furū' al-āla al-Uṣūl* ed. Muḥammad Adīb Ṣāliḥ Beirut: Mu'asassat al-Risālah, p. 111.

permission is injustice of the copyright and an act of aggression on the right of the author, and the person who does that usually escapes responsibility, and does not dare to confess of his/her unlawful act. It is suggested that the violators of the copyright committed injustice and subject to compensate the author. Moreover, Muslims are obligated and responsible to look after people's rights, under the auspices of the rights and the fulfillment of the Covenant.³⁵

According to al-Dirinī, the innovation right is an established custom, where he says: "the right of innovation originating in custom and al-maṣlaḥa al-mursalah/consideration of public interest relating to the private right firstly, and secondly the general right, because the adoption of the legislator right, but be a virtue, and the rule is derived from the sources of legislation from which custom and interest derived from."³⁶

Moreover, this is the issue of copyright of contemporary applied issues on the origin of the custom. The custom is one of the essential things in the financial or fiscal measure for long that this people relationship desirable and its beneficiary, or for people are not engaged in before. So – no doubt – this is a renewed through the ages and different places. Many of the things – such as copyright – were not legislated in the ancient time or even known, but some of the classical literatures found have proven experience or scientific discovery those benefits in the field of medicine, industry, and agriculture. People funded it and paid for it, and sometimes we see the benefit is trivial and of no value, and in other places rise to the rank of pride and preciousness. Moreover, public and private practice in the financial definition are the same; and this al-Bukhārī indicated in his work *Kashf al-Asrār*, that people could be funded in whole or part. This is because the custom of finance is from the custom which refers to the application of general provisions.³⁷ Mental creativity is the origin of the physical means such as cars, airplanes, computers, machines, radios and other things that have financial status, which must be regarded as financial status.³⁸

35 - Zuḥaylī, Wahbah Muṣṭafā *Ḥaq al-Ibdā' wal-Ibtikār: al-Mu'āmalāt al-Māliyya al-Mu'āṣirah*, p. 191.

36 - al-Darīnī, Muḥammad Fathī (1994). *Buḥūth Muqārana fi al-Fiqh al-Islāmī wa-Uṣūlih: Ḥaq al-Ibtikār*, vol. 2: 29.

37 - Aḥmed Fahmī Abū Sunnah (1992). *al-'Arf wal-'Ādah fi Ra'y al-Fuqahā'*, n.p.: n.p., p. 181.

38 - Shabir Muḥammad 'Uthmān (2001). *al-Mu'āmalāt al-Māliyah al-Mu'āṣirah fi al-Fiqh al-Islāmī*, p. 64; Muḥammad Rawās Qal'h Jī (2010). *al-Mu'āmalāt al-Māliyah al-Mu'āṣirah fi 'Āw' al-Fiqh wal-Sharīḥ* Amman: Dār al-Nafā'is, p. 130.

IV. THE PATENT RIGHT

The invention and authorship are both mental creativity, thus, their provisions were as one. The patent has been defined as an official grant supported by the special administrative authority competent to those who requested it via formal and certain objective conditions. The patent included description of the invention, and was awarded to the beneficiaries and their successors for a certain period offering protection from lawsuit and fraud. This right is a license to exploit the invention covered by a patent issued unless otherwise ruled by a court.³⁹

First, the inventor is granted the right to exploit his/her invention, and the exploitation is extended to the heirs after his/her death, and then the right drops. Moreover, it comes into a public wealth phase, and this period in many Arab and Muslim countries, such as the Iraqi patent law, is fifteen years starting from the date of the patent application. Second, the inventor has the right for a patent to be attributed to him/her issued on behalf of the their employer.⁴⁰

In terms of the inventor's right in the Sharī'a (Islamic law), this right is one of the special rights of their respective owners and becomes the right of the patent in the contemporary custom of a financial value. Moreover, this right is one of the rights protected legally, but their owners hold the right to dispose of, and this right must not be assaulted. This right might be derived from the rule of *al-maṣāliḥ al-mursalah/public interest*, and the core of this interest is the protection of this right in order to encourage invention and creativity. In order to educate people/inventors who dedicated his mental energy in making such patent his best in the invention that in that regard to monopoly, and would be protected from those who are trying to take the fruit of this innovation and his thinking, and became subject for completions to exploit.⁴¹ *al-Zarqā'*, in his *al-Madkhal al-Fiqhī al-Ām*, indicated that it is more likely to call this type (innovation rights), because the name (literary rights) is narrowly incompatible with many members of this type, such as the competence of trademarks, innovative industrial tools and commercial craft titles, which is not related to literature and intellectual production. In terms of the right to innovation, includes literary rights, such as the author's right

39 - Muḥammad Rawās Qal'h Jī (2010). *al-Mu'āmalāt al-Māliyah al-Mu'āṣirah fī Ōaw' al-Fiqh wal-Sharī'h*, p. 131; Shabir Muḥammad 'Uthmān (2001). *al-Mu'āmalāt al-Māliyah al-Mu'āṣirah fī al-Fiqh al-Islāmī*, p. 67.

40 - Shabir Muḥammad 'Uthmān (2001). *al-Mu'āmalāt al-Māliyah al-Mu'āṣirah fī al-Fiqh al-Islāmī*, p. 68.

41 - Ibid, p. 69.

to exploit his/her book, the journalist in the privilege of his newspaper, the artist in his artistic effect of the fine arts, and the industrial and commercial rights that they now call industrial property, the inventor of the machine, a commercial title achieved fame etc.⁴²

The scholars who defined the literary property as intellectual, commercial, industrial, intellectual, including al-Sanhūrī in his *al-Wasīf fī Sharḥ al-Qānūn al-Madani*,⁴³ al-Zuhailī in his *Ḥuqūq al-Insān fī al-Islam*,⁴⁴ Shanqīṭī, in his *Dirāsah Shar‘iyyah li Aham al-‘Uqūd al-Māliyyah al-Mustahdathah*,⁴⁵ Qurah Dāghī, in his work *Buḥūth fī fiqh al-Mu‘amalāt al-Māliyyah al-Mu‘āṣirah*,⁴⁶ and Ṣāliḥ ibn ‘Abdullah, in his *al-Jāmi‘ fī Fiqh al-Nawāzil*.⁴⁷ The human right is in the scientific, literary, artistic, technical and commercial production to benefit from its fruits and its material and moral effects, freedom to dispose of it, to relinquish it and to invest it, such as the author’s right to authorship, the translator in translation, the publisher of copyright, and the inventor of the drawings and maps, and the inventor in the invention, and access to it, and gave the States the right to register, and obtain a patent, or a special certificate. The common denominator among all these rights is that they are intellectual rights, they are the product of mind and innovation, and therefore they are called: Considerable Intellectual Property first.

And who defines it as the right to scientific production, he said: The right of production, the right to creativity, the right to innovation, the intellectual right, the right to scientific production, the moral right, the artistic right, the moral right and the right to invention are all similar or identical in definition and governance. And the term (the right of scientific production) combines all of this. The right of scientific production is defined as: the appropriation of the efficiency of the financial or moral benefit resulting from his specialized ability in the event of his life and his successor after him.⁴⁸

The nature of the intellectual property, or innovation rights, as of the above

42 - al-Zarqā’, Muṭṭafā Aḥmad (1967). *al-Madkhal al-Fiqhī al-‘Ām*, vol. 3: 21-22.

43 - al-Sanhūrī, ‘Abd al-Razāq Aḥmad (1981). *al-Wasīf fī Sharḥ al-Qānūn al-Madani*, Cairo: Dār al-Nahḍah, vol. 8: 276;

44 - al-Zuhailī, Muḥammad (1997). *Ḥuqūq al-Insān fī al-Islam* Damascus: Dār Ibn Kathīr, p. 317.

45 - Shanqīṭī, Muḥammad Muṣṭafā (2001). *Dirāsah Shar‘iyyah li Aham al-‘Uqūd al-Māliyyah al-Mustahdathah* Madina: Maktabat al-‘Ulūm wal-Ḥikam, vol. 2: 739.

46 - Dāghī, Muḥyī al-Dīn ‘Alī (2001). *Buḥūth fī fiqh al-Mu‘amalāt al-Māliyyah al-Mu‘āṣirah* Beirut: Dār al-Bashā’ir al-Islamiyya, p. 398.

47 - Ḥumīd, Ṣāliḥ ibn ‘Abdullah (2014). *al-Jāmi‘ fī Fiqh al-Nawāzil* Riyad: Maktabit al-‘Ubikān, vol. 1: 65.

48 - Ibid, pp. 65-68.

mentioned rights have emerged in these late ages due to the development of modern civil societies, economic and cultural life. They have been recognized by modern laws and modern systems as legitimate legal authorities for persons on intangible material objects, classified by some jurists as an independent type of Financial rights, because of their characteristics, distinguish them from rights in kind and personal, because their place is immaterial.⁴⁹

The issue of the term in general can only be understood within the framework of the civilizational system, to which it ends, and it is of the utmost importance in our Islamic civilizations, but it is one of its most precise questions.⁵⁰ If one ask: Why? The answer is: The Muslim jurists did not decide the jurisprudential issues on the basis of general theories and the consequent statement of the issues that branch out in line with the modern laws prevailing in this era, where they were interested in the fatwa (a learned legal opinion produced by a mufti/ jurisconsult) and classification of questions and particles and branches, so it is not wrong to say that the Muslim jurists they knew that stealing the efforts of others was felony, and that respect for reason and science was in an interesting place without discussing these issues under the title of copyright protection – as we know it today.

Therefore, we do not doubt that certain partial facts that occurred during the era of the Prophet Muḥammad and he had a statement or warning or guidance related to the protection of these rights directly or indirectly (like the concepts related to this right which we dealt with immediately). Perhaps this is part of the understanding of the general rule that Islam is valid and comprehensive for all transactions at all times and places. The truth of those who say: "I am never wrong if I confirm that any new topic on contemporary human life has in one way or another an origin in the book or Sunnah or the facts of the righteous ancestor".⁵¹ Thus, we conclude that the right of the individual to authorship and innovation, which is dealt with in modern positive jurisprudence under the banner of the right of individual property, is legally protected on the basis of the concepts already dealt with and on the basis

49 - al-Sanhūrī, 'Abd al-Razāq Aḥmad (1981). *al-Wasīl fī Sharḥ al-Qānūn al-Madani*, vol. 8: 276; al-Darīnī, Muḥammad Fathī (1994). *Buḥūth Muqārana fī al-Fiqh al-Islāmi wa-Uṣūlih: Ḥaq al-Ibtikār*, vol. 2: 40-41; 'Abādī 'Abd al-Salam Dawūd (1974). *Al-Mulkiyyah fī al-Sharī'a al-Islamiyya: Ṭabī'atuhā Waḥdātuhā wa Quyūdihā: Dirāsah Muqāranaḥ bil-Qawānīn al-Waḍ'iyah* Amman: Maktabat al-Aqṣā, vol. 1: 196-197; Ṣadah, 'Abd al-Mun'im Faraj (1974). *al-Ḥuqūq al-'Ayniyah al-Aṣliyya: Dirāsah Muqāranaḥ fī al-Qānūn al-Libnānī wal-Qānūn al-Maṣrī* Beirut: Dār al-Naḥḍah, pp. 5-6.

50 - Dhahnī 'Abd al-Salām (1949). *al-Ḥiyal al-Maḥḍūr minḥā wal-Mashrū'* Cairo: Maṭba'at Maṣr, p.9.

51 - Muḥsin 'Abd al-Ḥamīd (1985). *Tajdīd al-Fikr al-Islāmī* Cairo: Dār al-Ṣaḥwa.

of the sources of legislation such as the consideration of interest.⁵² Suffice it to say that the protection of this right is tantamount to bringing interest to the author and paying the spoiler of an aggressor to this interest, which is required by law.

From the perspective of justice, the innovator or the author has made a great effort in the preparation of the work or innovator, and therefore is the most entitled to it, whether the material aspect is the material benefit desired by the work, or the moral aspect is the proportion of work to him, then to his/her heirs. Accordingly, the right to imitate the inventor or to reprint or copy the copyright is an attack on intellectual property and theft of wrongdoing. It arranges the right of compensation for the infringed author and the destruction or confiscation of printed copies. This protection is part of Shari'a law in the sphere of protection of personal rights, since these rights are considered a benefit which, in the view of the majority of non-Hanafi scholars, is money,⁵³ if things and objects are intended for their own benefit and not for their own purposes, as indicated by 'Izz al-Din ibn 'Abd al-Sallam (d. 660/1262).⁵⁴ Even the late Hanafi's scholars have clearly stated the benefits of unlawful arbitrariness ensuring in three things: money is established as waqf (endowment), the orphan's money, and the money intended for exploitation. They also stated that the benefits are money provided to guarantee by contracts so apply by unlawful arbitrariness. There is no doubt that the author when he published his book means two things, the dissemination of science, and the author investment.⁵⁵

V. PROTECTION OF INTELLECTUAL PROPERTY IN ISLAM

Considering the means taken by the countries of the world in general, and European and North American in particular, toward the protection of intellectual rights, and the convening of the global conferences and conventions, and regulations and laws, have all the countries of the world achieved the

52 - Wahbi Zuḥailī (1997). *al-Fiqh al-Islāmī wa Adilatuhu* Damascus: Dār al-Fikir, vol. 4: 2861.

53 - Ibn Qudāma al-Maqdisī, Muwafaq al-Dīn 'Abdullah ibn Aḥmad (d. 620/1223). *al-Mughnī* ed. Muḥammad Sharaf al-Dīn Khaṭāb, al-Sayyid Muḥammad al-Sayyid, Sayyid Ibrāhīm Ṣādiq Cairo: Dār al-Ḥadīth, 1996, vol. 5: 266, 420; al-Shāfi'i Muḥammad Idrīs (d. 204/820). *al-Umm* with *Mukhtaṣar al-Muznī* ed. Maḥmūd Muṭrajī Beirut: Dār al-Kutub al-Ilmiyyah, 2013, vol. 8: 216-233; al-Dardīr, Abū al-Barakāt Aḥmad ibn Muḥammad (d. 1786/1200). *al-Sharḥ al-Ṣaghīr 'ilā Aqrab al-Masālik 'ilā Madhhab al-Imām Mālik* Cairo: Maṭba'at 'Issā al-Bābī al-Ḥalabī, 1998,

54 - Wahbi Zuḥailī (1997). *al-Fiqh al-Islāmī wa Adilatuhu*, vol. 4: 2862.

55 - Aynī, Badr al-Dīn Maḥmūd ibn Aḥmad (d. 855/1451). *al-Bināyah fī Sharḥ al-Hidāuah*, ed. Muḥammad 'Umar al-Rāmfūrī, Beirut: Dār al-Fikir, 1990, vol. 10: 291.

desired protection of these types of intellectual property?

Those who observe what is happening in the world markets, in some publishing houses, and in industries and shops notice the rampant assault on intellectual rights, material greed, false arguments and falsehoods through literary, intellectual, and scientific thefts of many scientific, commercial and scientific works. This includes the imitation of goods, trademarks, and logos. These counterfeits are often not discovered until after a time, or after a length of reflection and realization, because of the great similarity – or sometimes the apparent perfect match – between the original product and the imitated product in terms of form, mark, or name.

In the area of authorship and publication, there are complete reproductions of many works of original authors, with false attribution, and through them – sometimes – imitators receive promotions and scientific certificates. In addition are commercial editions of many works, without reference to their original owners, or the publishing houses competent to publish them. These are robberies, thefts contradictory to scientific and academic integrity, working to eliminate intellectual, literary, and artistic production. Countries of the world have sought the greatest possible protection of intellectual rights, imposed sanctions and regulations governing them, attributed works to their owners, protected them from greedy attacks and robberies, but still failed, or at least failed to reach the intended level of intellectual, moral and artistic protection of these rights.⁵⁶

As for the tolerant Islamic law/Shari'a, it has taken an important educational view of this field, linking the issue to faith in God Almighty, the punishment of others, honesty and the awakening of the living Muslim conscience. The report of the punishment of the other is a deterrent, and the fraudulent statement and cheating are contrary to religion and ethics and honesty, as found in many of the directives of Islamic law and orders. The Qur'ānic verse reads:

O you who believe! Betray not Allah and His Messenger, nor betray knowingly your Amānāt (things entrusted to you, and all the duties which Allah

56 - al-Kasānī, 'Alā' al-Dīn ibn Mas'ūd (d. 587/1191). *Badā'i' al-Ṣanā'i' fī Tartīb al-Sharā'i'* Beirut: Dār al-Kutub al-Ilmiyya, 1968, vol. 5: 197-198; Ibn 'Ābdīn, Muḥammad Āmin ibn 'Umar (d. 1252/1836). *Radd al-Muḥtār 'ilā al-Durr al-Mukḥḥar* knowns as "Ḥāshiyat Ibn 'Ābdīn", ed. Muḥammad Ṣubḥī Ḥallāq, 'Āmir Ḥusain Beirut: Dār Iḥyā' al-Turāth, 1998, vol. 4: 71; Ibn Qudāma al-Maqdisī, Muwafaq al-Dīn 'Abdullah ibn Aḥmad (d. 620/1223). *al-Mughnī* ed. Muḥammad Sharaf al-Dīn Khaṭāb, al-Sayyid Muḥammad al-Sayyid, Sayyid Ibrāhīm Ṣādiq Cairo: Dār al-Ḥadīth, 1996, vol. 4: 157

has ordained for you). Q. 8: 27

According to the Prophetic tradition:

The Messenger of Allah said: He who takes up arms against us is none of us; and he who **cheats** us is none of us.⁵⁷

Human rights are part of the Islamic religion. They are based on the belief in God Almighty, fear of the punishment and discontent of his punishment, and the readiness for the hereafter, where the just reward and the punishment of separation among the servants are not yet reached by human systems and man-made laws. Therefore, the first foundation that must be relied upon in the case of the protection of intellectual property, literary and artistic rights (and rights in general) is to link them to the basis of faith in God Almighty, and on the hereafter.

And the Book (one's Record) will be placed (in the right hand for a believer in the Oneness of Allah, and in the left hand for a disbeliever in the Oneness of Allah), and you will see the Mujrimūn (criminals, polytheists, sinners, etc.), fearful of that which is (recorded) therein. They will say: "Woe to us! What sort of Book is this that leaves neither a small thing nor a big thing, but has recorded it with numbers!" And they will find all that they did, placed before them, and your Lord treats no one with injustice. Q. 18: 49.

In the awakening of conscience and sense of responsibility and honesty in the hearts of worshipers, there is no doubt that those who believe in God Almighty and the Last Day, and who have true faith, know that the basis of the protection of the rights of worshipers in Islam stems from faith in God Almighty, piety and honesty, and will respond to the calls of faith and beware of assault. The second important foundation for the protection of intellectual property is the assertion that violating intellectual rights and wasting them on their owners is considered to be a taboo in Islam, because it is included in the aspect of cheating, deceit, deception, fraud, lying and theft, harming others, and all forbidden things in Islam, and some are numbered among the fatal sins.⁵⁸

57 - Ibn Hajar al-Haythamī, Aḥmad ibn Muḥammad (d. 974/1566). *al-Zawāājir 'an Iqtirāf al-Kabā'ir* Beirut: Dār al-Ma'rifah, 1988, vol. 1: 193; Ibn Rushd, Muḥammad ibn Aḥmad (d. 520/1122). *al-Muqadimāt al-Mumahidāt* ed. Muḥamad Muḥjī Beirut: Dār al-Gharab al-Islāmī, 1998, vol. 2: 569; Zayla'ī, Fakhr al-Dīn 'Uṭjmān ibn 'Alī (d. 1343). *Tabyīn al-Ḥaqā'iq Sharḥ Kanz al-Daqā'iq* Beirut: Dār al-Ma'rifah, 1990, vol. 4: 272.
58 - Ibn Qudāma al-Maqdisī, Muwafaq al-Dīn 'Abdullah ibn Aḥmad (d. 620/1223). *al-Mughnī*, vol. 6: 203, 223; Ibn Hajar al-Haythamī, Aḥmad ibn Muḥammad (d. 974/1566). *Al-Zawāājir 'an Iqtirāf al-Kabā'ir*, p. 320.

The Islamic Declaration of Human Rights has taken into consideration this progress of civilization. The world's countries and customs are currently working on the protection of intellectual property in recognition of the efforts of scientists, inventors, innovators, thinkers, planners, and innovators, without violating the right of all mankind to benefit from the fruits of science in various fields.⁵⁹ Therefore, the Declaration has provided for the legitimate ruling on intellectual property, and specifically charged the Islamic countries with protection and care, and that it bears the burden of responsibility in implementing this in various jurisdictions: judicial, executive and legislative.⁶⁰ Article 16 of the Declaration includes the following:

Everyone has the right to benefit from the fruits of his scientific, literary, artistic or technical production and has the right to the protection of his moral and financial interests, provided that such production is not contrary to the provisions of the law.⁶¹

Money is respectable in the view of Islam, as a condition for the protection of intellectual property: it is not be prohibited, as are destructive books, images of spirits, and so on, which in the view of Islam have no value and deserve no consideration.⁶² This is originally taken from the definition of money in the terminology of jurists, as they stated that it has a material value among the people, and may be used legitimately in case of capacity and selection.

In Islamic law/Shari'a, it is permissible to use benefits and rights that have value among the people, but Shari'a considers as nonexistence/hadar invalid value and prohibits using it in the case of capacity and choice, such as wine, pork, dead meat, and forbidden entertainment. Intellectual property is linked to the thought that is the essence of human life, which is linked to the behavior of all human beings, and is linked to the mind, which is one of the five necessities; the rules of legitimacy require the preservation of rights to their owners, but it is one of the high legitimate purposes, namely, religion, self, money, presentation, and mind. Scientists are allowed to exercise this

59 Khadijah al-Nibrāwi (2006). *Mawsū'at Ḥuqūq al-Insān fi al-Islām* Cairo: Dār al-Salām, p. 45; Muḥammad 'Amārah (2005). *Al-Islām wa Ḥuqūq al-Insān: Ōarūrāt lā Ḥuqūq* Cairo: Dār al-Salām, p. 63; see also Ann Elizabeth Mayer (1991). *Islam and Human Rights. Tradition and Politics* Boulder, Colorado: Westview Press, p. 27.

60 Midḥat al-Disi (2015). *Mawsū'at al-Mulkiyya al-Fikriyya fi-Maṣṣaf*

61 al-Zuḥaili, Muḥammad (1997). *Ḥuqūq al-Insān fi al-Islam* Damascus: Dār Ibn Kathiir, p. 318.

62 Ibid, pp. 317-318; Ṣāliḥ Aḥmad Ghazālī (1996). *Ḥukum Mumārasat al-Taṣwīr fi al-Shari'a al-Islāmiyyah: Dirāsah Muqāranah* Riyad: Dār al-Waṭan, pp. 165, 347; Ḥabash Muḥammad (1987). *Aḥkām al-Taṣwīr fi al-Fiqh al-Islāmī* Damascus: Dār al-Khair, pp. 629-634.

right – the right of intellectual property – based on these rules, and the preservation of these rights to their owners.⁶³

Muslims have known since ancient times the origins of the principle of the preservation of intellectual rights and protection, although this term was not known as it is in the modern time. Scholars have stated the scientific integrity in the field of science, and attributed it to its origin (i.e., authors), through documenting the texts by attribution, and this is reflected in the great heritage of Islam in the books of the Sunnan and their impact, subject to the science of criticism and praise/‘ilm al-jarḥ wal ta’dīl in terms accepted and in response to the attribution documented in its precise standards codified in modern science. Those who are familiar with the Islamic classical literature, especially, can testify to the hardship classical scholars went through in their works, exposed to suffering, so that if they cited a quotation from a text that was suspected of being offensive, defamatory, of a spell, or distortion, they rendered the text as is, noted by saying: as I found it, which is corrected, for example, his right correctness, etc.⁶⁴

The scholars of Islam also stipulated the methods of endurance and performance in the narration of the Ḥadīth/report, events news, literary forms that communicate a sunna of the Prophet Muḥammad, and the conditions of narration of the ḥadīth. They also demonstrated the falsehood and deceit, especially in the field of science, and transmission, and attributed it to its original place and source, which was known as the “piracy of books,” with a warning about this conduct and the practice of the theft of information and books, and impersonation, and the disclosure of the horrors and ugliness. All this indicates the attention of scholars of Islam to this matter, and the intensity of their warnings.⁶⁵

Muslims know the system as follows: the perpetuation (deposit), meaning putting a deposit copy of the work in public libraries or archives, to retain a

63 al-Shāṭibī, Abū Ishāq Ibrāhīm (2003). *al-Muwāfaqt fī Uṣūl al-Sharī‘ah*, vol. 2: 5; Shanqīṭī, Muḥammad Muṣṭafā (2001). *Dirāsah Shar‘iyyah li Aham al-‘Uqūd al-Māliyyah al-Mustahdathah*, vol. 2: 740-741.

64 Ḥumīd, ṣālīḥ ibn ‘Abdullah (2014). *al-Jāmi‘ fī Fiqh al-Nawāzil*, vol. 2: 128.

65 *Ibid*, vol. 2: 128-131; Ibn Qayyim al-Jawāziyya (d. 751/1350). *A‘lām al-Muwaqī‘in ‘an Rabb al-‘Ālamīn* ed. Muḥammad Muḥyī al-Dīn ‘Abd al-Majīd Beirut: Dār al-Kutub al-‘Ilmiyya, 1996, vol. 3: 344; Yāqūt al-Ḥamawī ibn ‘Abdullah (d. 626/1229). *Mu‘jam al-Udabā’*: *Irshād al-Arīb ‘ilā Ma‘rifat al-Adīb* ed. Iḥsān ‘Abbās Beirut: Dār al-Gharb al-Islāmī, 1993, vol. 7: 74-75, 191-192, 264-265; al-Dhahabī, Shams al-Dīn Muḥammad ibn Aḥmad (d. 749/1348). *Siyar A‘lām al-Nubalā’* ed. Shu‘ib al-Arnā‘ūṭ Beirut: Mu‘asassat al-Risālah, 2001, vol. 9:509.

set thereof, or to retain it as proof of the proportion of the work to its author, and to publish the work or publication date.⁶⁶ The largest center for book perpetuation and deposit in Islam at the time, Dār al-‘Ilm/house of knowledge in Baghdad, was built by the Buaihi Minister, Sābūr ibn Ardashīr in Baghdad in 382/992.⁶⁷ It was a wonderful monument, with a great reputation, visited by scholars, scientists, writers, and poets from all of the Islamic regions, to benefits from its contents.⁶⁸

Human rights in Islam are legitimate principles and the basic pillars upon which society is based. They are not only constitutional rights no intellectual products, but are a product of intellect that represent a stage in the evolution of the human mind.⁶⁹ They are not just natural rights, as expressed by the experts of positive law. In the view of Islam, religious duties are protected by legislative and executive guarantees, not commandments called states to respect and recognize without a guarantor.⁷⁰ They are linked to faith in God Almighty, and piety, obligated to be observed by the individual and society in all scope and limits of responsibility, through which a society is raised up. Maintenance is a performance of a legitimate duty, and negligence is a failure to perform this duty.⁷¹

66 Ḥumīd, Ṣālīḥ ibn ‘Abdullah (2014). *al-Jāmi‘ fī Fiqh al-Nawāzil*, vol. 2: 132.

67 Yāqūt al-Ḥamawī, Abū ‘Abdullah Shihāb al-Dīn (d. 626/1229). *Mu‘jam al-Udabā’*: *Irshād al-Arīb ‘ilā Ma‘rifat al-Adīb*, ed. Iḥsān ‘Abbās Beirut: Dār al-Gharb al-Islāmī, 1993, vol. 6: 1838, vol. 7: 2377; Ibn Khalikān, Abū al-‘Abbās Shams al-Dīn (d. 680/1282). *Wafiyāt al-A‘yān wa Anbā’ Abnā’ al-Zamān* Ed. Iḥsān ‘Abbās, Beirut: Dār Sadir, 1977, vol. 2: 354; Dhahabī, Shams al-Dīn Abū ‘Abd Allāh Muḥammad ibn ‘Uthmān (d. 748/1348). *Siyar Ailām al-Nubalā’*, ed. Shu‘ayb al-Arnā‘ūṭ and Ḥusayn al-Asad. Beirut: Mu‘assasat al-Risālah, 1985, vol. 17: 387; Ibn Kathīr, Ismā‘īl ibn ‘Umar (d. 774/1373). *al-Bidāyah wa’l-Nihāyah*, Beirut: Maktabat al-Ma‘ārif, 1977; vol. 11: 312; Muḥammad Kurd ‘Alī (1983). *Khiṭaṭ al-Shām* Damascus: Maktabat al-Nūrī, vol. 6: 185; Zaydān Jirjī (1992). *Tārīkh Ādāb al-Lughah al-‘Arabiyyah* Beirut: Dār Maktabat al-Ḥayāh, vol. 2: 640.

68 Ḥamādah, Muḥammad Māhir (1978). *al-Maktabāt fī al-Islām: Nash’atahā wa Taṭawiruhā wa Maṣā’iruhā* Beirut: Mu‘assasat al-Risālah, p. 130; Shanqīṭī, Muḥammad Muṣṭafā (2001). *Dirāsah Shar‘iyyah li Aham al-‘Uqūd al-Māliyyah al-Mustahdathah*, vol. 2: 740-741

69 Khadijah al-Nibrāwī (2006). *Mawsū‘at Ḥuqūq al-Insān fī al-Islām* Cairo: Dār al-Salām, pp. 505-509.

70 And indeed We have honored the Children of Adam, and We have carried them on land and sea, and have provided them with al-Ṭaiyibāt (lawful good things), and have preferred them above many of those whom We have created with a marked preference. Q. 16: 70.

71 Tuwājirī, ‘Abd al-‘Azīz ibn ‘Uthmān (2001). *Ḥuqūq al-Insān fī al-Ta’ālim al-Islāmiyya* Rabat: al-Munazamah al-Islāmiyya lil-Tarbiyya wal-‘Ulūm wal-Thaqāfa, pp. 8-9;

While Shari'a/Islamic law calls for the general benefit and the dissemination of science, and the prohibition of concealment, that does not justify the abuse of the rights of people, but supports the general utility of individuals to create the rules and assets that achieve the interest and prevent damage, the most important recognition of these rights, and the organization of its publication, and benefits from provisions consistent with the nature and conditions of dealing with them.⁷² In short, this is the view of Islamic law on intellectual property, its position on protecting it, and the means it has focused on in this area, to maximize the protection of people's rights and property.

VI. ISLAMIC LEGITIMATE EVIDENCE THAT INTELLECTUAL PROPERTY MUST BE PROTECTED

In addition to these public means of Islamic law and the important aspects of protecting the rights and property of their owners, there is particular evidence of the protection of property and rights in general, and the intellectual property right, as discussed previously, of the ownership rights of their owners. This requires protection from abuse in the view of Islam, as the Qur'anic verse reads:

And eat up not one another's property unjustly (in any illegal way e.g. stealing, robbing, deceiving, etc.), nor give bribery to the rulers (judges before presenting your cases) that you may knowingly eat up a part of the property of others sinfully. Q. 2: 188.

O you who believe! Eat not up your property among yourselves unjustly except it be a trade amongst you, by mutual consent. And do not kill yourselves (nor kill one another). Surely, Allah is Most Merciful to you. Q. 4: 29.

In these two verses God Almighty forbade his servants to eat each other's money with falsehoods and tricks, which indicates that the rights and property of the people are preserved in Islam: it is not permissible to attack them, nor take them except in the right conduct.⁷³

In addition to the Qur'anic verses, many authentic Prophetic traditions indicate the sanctity and protection of Muslims' wealth, property, and money; it is not permissible to attack or eat from goods of another unlawfully. The author and producer are responsible for everything in his book or in 72 Fu'ad 'Abd al-Mun'im (2001). *Huquq al-Mulkiyya Bayna al-Shari'a al-Islamiyyah wa al-Qanun al-Waḍ'i* I Riyadh: Markaz al-Dirāsāt wal-Buḥuth, vol. 2:882; Zagrid Hunke (1963). *Shams al-'Arab Taṣṭa' 'ilā al-Gharb* tr. Fārūq Bayḍūn, Kamāl al-Dasūqī Beirut: Dār ṣadir, pp. 372-373.

73 Ibn Kathir, Ismā'il ibn 'Umar (d. 774/1373). *Tafsir al-Qur'ān al-'Azim* Beirut: Dār al-Ma'rifah, 1980, vol. 1: 525, vol. 2: 268.

scientific, commercial, and industrial production, both religious and secular, and in return has protection from attack. Consider the prohibition in Islam of theft and rape, and the return of money to the owner, and punishment of the thief by whipping, and of the tyrant by rebuking. This is all evidence of the absolute protection of property in Islam, in all its forms; such is the saying of the Almighty:

Cut off (from the wrist joint) the (right) hand of the thief, male or female, as a recompense for that which they committed, a punishment by way of example from Allah. And Allah is All-Powerful, All-Wise. Q. 5: 38.

The rules stipulated by the scholars in this regard include the following:

(A) "No one shall take the money of anyone without a legitimate reason".⁷⁴

(B) "No one shall act in the property of another without his permission".⁷⁵

A person who has previously invented, authored, or produced scientific knowledge has already been granted permission, and he who has previously been permitted to do so is entitled to dispose of it, use it, and take it out to the market in order to earn profits. All this shows that Islam recognizes intellectual property and protects it from aggression, and that whoever attacks it is a guarantor to its owner.⁷⁶

These religious texts and the directives of the Lord had a great impact on the life of the first generation of Muslims.⁷⁷ They competed in science and traveled from one place to another in search of discussion or information. The scientific and intellectual movement flourished in Muslim lands.⁷⁸ They offered scientific and useful quotations of the civilizations of the former nations; translated the sciences of the Romans and Persians and others; were part of the emergence of the role of science and libraries on the borders of

74 'Alī Ḥaidar (1990). *Durrar al-Ḥukām: Shaḥ majalat al-Aḥkām* tr. Fahmī al-Ḥusainī Beieur: Dār al-Nahḍah, vol. 1: 98

75 Ibid, vol. 1: 96.

76 'Abd al-Ḥamīd Ṭahmāz (1983). *Ḥaqq al-Ta'lif within "Ḥaqq al-Ibtikār fi al-Fiqh al-Is-lāmī al-Muqāran,"* Beirut: Mu'asassat al-Risālah, p. 170.

77 Le Bon, Gustave (1884). *La Civilisation des Arabes* Paris: Firmin-Didot; translated into Arabic by 'Ādil Zu'iter, 1969. *Ḥaḍārat al-'Arab*, Cairo: Maṭba'at 'Issā al-Ḥalībī, p. 153.

78 Nādyah Ḥusnī Ṣaqir (1991). *al-'Ilm wa Manāhij al-Baḥth fi al-Ḥaḍārah al-Islāmiyya* Cairo: Maktabat al-Nahḍah al-Maṣriyyah, p. 13; Khaḍir Aḥmad 'Aṭā'allah (1989). *Bayt al-Ḥikmah fi 'Aṣr al-'Abbāsiyyin* Cairo: Dār al-Fikir al-'Arabī, p. 29; al-Ṣafadī, Ṣalāḥ al-Dīn Khalīl ibn Ayybak (d. 764/1363). *al-Wāfi bi-l Wafiyāt*, Beirut: Dār Iḥyā' al-Turāth al-'Arabī, 2000, vol. 4: 336, and vol. 19: 367; Will Durant (1885-1981). *Qīṣat al-Ḥaḍārah*, tr. Muḥammad Badrān, Cairo: Lujant al-Ta'lif wal-Tarjama, 1985, vol. 14: 40.

Islam and the Levant, Iraq, and Egypt; and encouraged Caliphs in science and research and writing, discovery and invention. Muslims have won the lead in scientific fields such as the Grand Mosque, the Prophet's Mosque, the Umayyad Mosque in Damascus, science, astronomy, geography, medicine, and industry.⁷⁹ This was at a time when Europe was in the ages of ignorance and darkness, which it did not share except after its contact with Muslims in Andalusia and quoting from their scientific heritage and cultural activism.⁸⁰ And these are all fixed things, recorded history of Muslims with pride and glory.⁸¹ They took advantage of what the heights they reached and excelled in intellectual, scientific, and industrial fields, and in invention and innovation, until the country became infidels. Today the Muslim nation is one of the richest countries in the world, given the industrial development and scientific progress it has achieved.⁸²

In this regard, one must realize the great difference between the directives of Islam in this aspect, the Muslim's keenness to seek knowledge, his call for freedom of thought and to benefit from the sciences of other nations and their heritage, and linking this to scientific honesty and accuracy in the fields of news, translation, and science. When the early Muslims transferred the heritage of the Persians and the scientific Romans, translating it into Arabic, orientalist transferred the heritage of the Muslims and their sciences to foreign languages with distortion.⁸³

79 Ibn Kathīr, Ismā'īl ibn 'Umar (d. 774/1373). *al-Bidāyah wa'l-Nihāyah*, Beirut: Maktabat al-Ma'ārif, 1977; vol. 13: 186. Sa'īd Aḥmad Ḥasan (1984). *Anwā' al-Maktabāt fi al-Ālamayn al-'Arabī wal-Islāmī* Amman: Dār al-Furqān, p. 18-78; Ribḥī Muṣṭafā 'Alyān (1999). *Al-Maktabāt fi al-Ḥaḍarah al-'Arabiyya al-Islāmiyya* Amman: Dār al-Ṣafā', p. 161

80 Zagrid Hunke (1963). *Shams al-'Arab Taṣṭa' lā al-Gharb* tr. Fārūq Bayḍūn, Kamāl al-Dasūqī Beirut: Dār Ṣadir, pp. 528-541; Le Bon, Gustave (1884). *Ḥaḍarat al-'Arab*, tr. 'Ādil Zu'iter Cairo: Maṭba'at 'Issā al-Ḥalībī, 1969, pp. 568-569; Badawī, 'Abd al-Raḥmān (1979). *Dawr al-'Arab fi Takwīn al-Urūbi* Beirut: Dār al-Qalam, pp. 83-84; Abbās Maḥmūd al-'Aqād (2002). *Athar al-'Arab fi al-Ḥaḍarah al-Urūbiyyah* Cairo: Dār al-Naḥḍah, pp. 98-99; Jawdat Hilāl, Muḥammad M. Ṣubḥ (1962). *Qurṭubah fi al-Tārikh al-Islāmī* Cairo: Dār al-Qalam, p. 105; Donald Hill (2004). *Islamic Science and Engineering*, pp. 85-86; Rushdi Rāshid (2005). *Mawsū'at Tārikh al-'Ulūm al-'Arabiyya*, vol. 1: 170-171, and vol. 1: 260-266.

81 Ṭūqān, Qadrī Ḥāfiẓ (1980). *'Ulamā' al-'Arab wa mā A'tūhu lil-Ḥaḍarah* Riyad: manshūrāt al-Fākhiriyah

82 Zahrānī, 'Alī ibn 'Abd al-Ḥamīd (1996). *Al-Ḥayāh al-'Ilmiyyah fi Ṣiqilyah al-Islāmiyyah*: 221-484/826-1091 Makka: Jāmi'at Umm al-Qurā, pp. 502-561; Muḥammad Qutub (1988). *Wāqī'nā al-Mu'āshir*, Cairo: Dār al-Shurūq, p. 173-178; Ṭūqān, Qadrī Ḥāfiẓ (1960). *Maqām al-'Aqil 'and al-'Arab* Cairo: Dār al-Ma'ārif.

83 al-Sufyānī, 'Abid ibn Muḥammad (1988). *Al-Mustashriqūn w-man Tāba'ahum wa*

VII. CONCLUSION

This discussion was a brief reference to the role of the intellectual and scientific renaissance in development and civilization in the eras of our time. It is clear that Islam has endeavored to achieve the moral existence of Muslims at the highest levels, and in every age, because it recognizes that intellectual and literary innovations are the way to elevate human life culturally, materially and morally. We saw how scientific theories complement each other, in order to achieve progress and advancement in various scientific, social, economic, and commercial fields.⁸⁴

The modern era has seen the reluctance of some Islamic countries to encourage science and innovation; the progress of infidel countries in scientific, industrial, commercial, and technical production; the monopoly of industrial, commercial, and technological activities; and the impact of intellectual property rights in the field of economy and development, and leading to the great wealth of many countries, institutions, companies, and individuals.

In the field of authorship, the role of printing and publishing has increased. Modern printing and imaging machines have led to thousands of books, magazines, and other publications, generating huge profits. The value of a book is estimated by its readership and the benefits they gain from it, so publishers consider the material and financial value of the cost of printing and output. Publishing the book becomes a tool for capturing financial value. Publishing houses compete for many books, and print dozens of editions, and demand is still underway.

Many publishing houses, and sometimes even individuals, have been able to make a big financial profit by printing, publishing, and selling books, regardless of whether they realize the scientific or utilitarian value of the published book. In the commercial and industrial fields (trade name, licenses, and innovations) during this era of global commercial and industrial renaissance, and due to the increase in the volume and magnitude of trade, an emphasis on trade names and brands has led to the industry being controlled by only a few companies. The products and industries, to a large number of countries of the world, in contrast, the variety of products of one sex, according to descriptions and specifications, and these descriptions are known as the product, the more the consumer believes that the goods

Mawqufuhum min Thabāt al-Shari'a wa Shumūlihā: Dirāsah wa Taṭbiqah Maktabat al-Manārah, pp. 22-25.

84 al-Darini, Muḥammad Faṭḥi (1981). Ḥaqq al-Ibtikār fi al-Fiqh al-Islāmi al-Muqāran Beirut: Mu'asassat al-Risālah, p. 13.

before him produced by A company known for its reputation and quality in the market, bought it once the company was heard, or the presence of its trademark on the face of the goods.

Some consumers go to the shops and markets looking for the brand names they want, based on reputation and industrial quality, and will pay large amounts, even though the market of alternatives is cheaper is able to meet their needs. This has a clear and tangible impact on the prosperity of the economy of many international companies and different countries. There is high demand for the purchase of products from Japan, for example, while many of counterfeit goods, or goods issued by other companies or countries, do not know have the same reputation and do not receive a fair chance of purchase. On the other hand, commercial products which are famous for their quality are high in price, yet are in demand, which has an effect on the increasing wealth of the countries exporting these products and goods. However, alternative commodities are much lower in price, yet they are not popular in the markets or with consumers.

All these things have led many manufacturers to exploit the names of well-known people to promote their products in the name of those well-known companies. The markets are full of goods and counterfeit products, forcing many countries and governments to impose laws and regulations for trade names, governments, registration of patents, and preventing merchants from using registered names and trademarks.

No one denies the role of intellectual property and its impact on the economic renaissance experienced by the whole world, and one simple example can prove this. Computers, software, mobile devices, and accessories whet appetite of consumers, with competition from traders and international companies for issuance of the new. Consumers will pay high prices for the newest model, as companies encourage consumers to buy and replace and to consume new products from the markets.

Many countries have realized this pioneering effect of intellectual products and innovations. They have signed agreements and contracts with international companies for manufacture or assembly, such as electrical products that have been assembled or manufactured in China or Taiwan but were originally brands of Japanese or American companies, for example. Reasons for this include that these companies may not have been encouraged to produce in the country of origin, or the country may impose high taxes, or mandated to limit production, or the costs of production, tools, and materials

in the country cost more than the profits of its own.

All this requires states to strive to protect the intellectual rights of their owners from tampering, theft, and fraud; to encourage them to produce and manufacture at home; and to grant them the necessary privileges and facilities, because the protection of the intellectual rights of their owners encourages research, investigation, innovation, invention, and production, and revitalizes scientists and thinkers to publish the results of their studies, efforts, and discoveries, leading to the progress of nations in the field of science, in contrast to the abandonment of these rights and lack of care and conservation, which leaves negative effects in the minds of scientists, thinkers, and researchers, and paralyzes the scientific and intellectual movement of society.

The most important purposes of the recognition of these rights and recognition of the law, are to offer protection from abusers and aggression; to give attribution to owners; and to encourage invention and creativity and scientific activity, protecting innovators from exploitation. This undoubtedly has a great and clear impact on the promotion of innovation and invention, the development of scientific progress, and the activity of companies and industrial, commercial, scientific, creative, and scientific institutions in increasing production in various fields, and competition in these fields, thus enriching the Islamic economy.⁸⁵

It is necessary to focus on the impact of religious and moral concerns, awakening the human conscience and a sense of responsibility and honesty towards the money and rights of others, and that preserving them is above all religion and sacrifice and obedience to God Almighty, and that compromise and encroachment in Islam is fraud, Stealing and eating people's money and their rights in vain, God said:

O you who believe! Eat not up your property among yourselves unjustly except it be a trade amongst you, by mutual consent. And do not kill yourselves (nor kill one another). Surely, Allah is Most Merciful to you. Q. 4:29.

Islamic and all countries should encourage intellectual property of all kinds, and provide their owners with the incentives and discretion necessary for protection and preservation. This will lead to the rise of scientific, industrial, and commercial fields in Muslim countries, reaching the point of being able to dispense with the products of the West and Islam's enemies, who rely on

85 al-Zarqā', Muṭṭafā Aḥmad (1999). al-Madkhal 'lā Nazāriyat al-Itizām al-Āmmah fi al-Fiqh al-Fiqhī, Damascus: Dār al-al-Qalam, p. 21.