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Intellectual Property Rights for Innovations on the Internet: The Islamic Law Requisites

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Abstract

Intellectual property (IP) protection has attracted diverse views among Islamic law researchers, leading to its eventual acceptance on the premise of indirect legal authority by most Muslim scholars. This paper explores the preconditions that any innovation on the internet must meet to enjoy IP protection under Islamic law. It provides working tools for Muslims on the principles to be observed in seeking IP protection for any of their innovations. It also urges governments of Muslim countries which have hitherto refused to accord legal protection to IP on religious grounds to change their position.

Keywords

intellectual property (IP) – internet innovations – protection – Islamic law – preconditions

1 Introduction

A unique, proud claim that Sharia (Islamic law) makes is that it provides a comprehensive legal regulation of all world affairs;¹ all conceivable reasonable rights are embedded in it. Therefore, to Muslims, in order for a person to

¹ Quran 6:38: 'We have neglected nothing in the Book'.

claim any entitlement as their right, it must be recognised under Sharia law, as no right can be accorded to a servant of Allah except through it.² Besides, Islamic law not only grants and regulates rights but also protects them from being encroached upon; there is no benefit in a right that cannot be adequately guaranteed.³ The acquisition of property by individuals (male or female) is one such right that is recognised under Islamic law.⁴ However, only lawful (*ḥalāl*) means of acquiring property are allowed; unlawful (*ḥarām*) means are prohibited. To this end, the inviolability of individual property is assured.⁵

Much as the means of acquiring property significantly determines the appropriate protection to be accorded it in Islamic law, the nature of the subject or item of the property acquired is also highly relevant. Thus, the kind of property acquired is a significant factor to be considered in assessing the possible legal protection available for assets. The consequential use to put such property into is the easiest means to make such an assessment. No distinction is made regarding various classes of property that can be acquired. Therefore, like any other class of property, intellectual property enjoys protection under Islamic law not only if the means of its acquisition is *ḥalāl* but also if, by its nature, it is of a kind whose use would not promote what is prohibited under Islamic law. Based on this, any intellectual innovation on the internet would not lose its deserving entitlement to IP protection by that reason alone, but can be denied protection if it fails to satisfy those requirements.

The major purpose of this article is to elucidate on the Islamic law parameters for any innovation to be accorded IP protection, with specific focus on internet innovations. This is because any innovation developed by or for the use of Muslims must accord with the form permitted by Islamic law.⁶ The article approaches this subject by examining the Islamic legal concepts of property and its classifications, with a focus on the place of IP as a 'property' in Islamic law. Sources of Islamic law and its principles are explored on the basis that IP is recognised in Islamic law in some quarters but rejected in others. The article concludes by contending that even though innovations on the internet deserve

2 H.M. al-Shahrānī, *Ḥuqūq al-Ikhtirā' wa Ta'līf fī l-Fiqh al-Islāmī* [Rights of Innovations and Authorship in Islamic Jurisprudence] (Dar Tayyibah: Riyadh, 1425/2005), p. 41 (our translation).

3 *Ibid.*

4 In support of this, Quran 4:32 states: 'For men there is reward for what they have earned and for women there is reward for what they have earned'.

5 On this, see Quran 2:188 and 4:29.

6 This is so because Allah declares in Quran 33:36 thus: 'It is not for a believer, man or woman, when Allah and His Messenger have decreed a matter that they should have any option in their decision. And whoever disobeys Allah and His Messenger, he has indeed strayed into a plain error'.

IP protection in Islamic law, certain standards must always be observed as the preconditions for such protection.

1.1 *Conceptual Clarifications: Meaning of 'Innovations on the Internet'*

As stated above, the primary focus of this article is on 'innovations on the internet'. In this section, we conceptualise and clarify what is meant by this term. In the ordinary sense of the word, 'internet' is understood as 'a means of connecting a computer to any other computer anywhere in the world via dedicated routers and servers'.⁷ When it is used with the definite article 'the', as done in this article (i.e. 'the internet'), it generally connotes 'a global computer network providing a variety of information and communication facilities, consisting of interconnected networks using standardized communication protocols'.⁸

'Innovation' means 'a new method, idea or product, etc'.⁹ From the business perspective, Stephenson views innovation as 'renewal that changes the rules of the games, that uncovers opportunities and that capitalizes on new possibilities'.¹⁰ It would be understood that 'innovation' is any new thing that is currently introduced.¹¹ More significantly, for any such new idea, method, or product to truly qualify as an 'innovation', it must 'be replicable at an economical cost and must satisfy a specific need'.¹²

Accordingly, 'innovations on the internet' refers to any new idea, method, or product introduced to satisfy specific needs, and which is available on the internet for access by those that have the need for it, whether they pay for it or not. In essence, in this article, any computer-based or computer-generated product that can be accessed or explored through the internet falls within the meaning of 'innovations on the internet'. In this regard, 'innovations on the internet' includes all forms of creative and newly introduced apps, software, 'soft products', videos, audio, and reading or teaching materials that are accessible

7 *Business Dictionary*, online at <http://www.businessdictionary.com/definition/internet.html>, accessed on 15 May 2018.

8 *English Oxford Living Dictionary*, online at <https://en.oxforddictionaries.com/definition/internet>, accessed on 15 May 2018.

9 *Ibid.*, at <https://en.oxforddictionaries.com/definition/innovation>, accessed on 15 May 2018; *Cambridge Dictionary*, online at <http://dictionary.cambridge.org/dictionary/english/innovation>, accessed on 15 May 2018.

10 O.C.C. Stephenson, 'The true meaning of innovation', *IVEY Business Journal*, March/April 2011, at <http://iveybusinessjournal.com/publication/the-true-meaning-of-innovation/>, accessed on 15 May 2018.

11 *Dictionary.com*, at <http://www.dictionary.com/browse/innovation>, accessed on 15 May 2018.

12 *Business Dictionary*, *supra* note 7, at <http://www.businessdictionary.com/definition/innovation.html>, accessed on 15 May 2018.