



Intellectual Property Legal Analysis, Ontological and Why Intellectual Property

¹M. Mandegaran and ²M. Shahabi

¹*Department of Law, Islamic Azad University, Isfahan Branch, Isfahan, Iran*

²*Department of Law, Faculty of Administrative and Economics, University of Isfahan, Isfahan, Iran*

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Corresponding Author:

M. Shahabi

Department of Law, Faculty of Administrative and Economics University of Isfahan, Isfahan, Iran

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Abstract: In this study intellectual property legal analysis, ontological and why intellectual property has been investigated. Aggression toward other human beings of their work, prohibits and in defense of his product comes from. The result will be 2 humans, sometimes resulting in physical and tangible object and sometimes non-physical and non-physical object that is of human thought and creativity originated. Like the works of authors and inventors, artists, etc., to create caused mental, intellectual property rights called.

INTRODUCTION

In relation to intellectual property rights, at some point in history, any rules and regulations that impact not only the protests were the work of other thought, disapproval and reproach was that person. For example, if someone else's intellectual work was over they blame him.

In the past, the researcher and creator of intellectual work, special privileges and exclusive on others, not to his intellectual works and that as a matter of law have never been considered (Shahindezh, 1958) and it does not seem that the term intellectual property, so that, in relation to the material and spiritual gone to work, in terms of literary and artistic works have also been used. Legislation in relation to intellectual property rights in Iran with passage of the law on 9 March 1304 has started registration of trade marks (Iqbal Shining).

Iran's industrial and commercial signs, rules and the government in 1337 to "contract of industrial property and international trade and agriculture Paris" passed in 1883, had joined and even for goodwill law was instituted there was a need to for all creators of intellectual works protection act should be developed. In addition, Article 33 of the constitution, confirm that the governments have a duty, the bill needed to prepare and submit to the Parliament. Until 1334 Shamsi in artist's copyrights, any action by the government were not performed. The 22 members of the National Assembly because it supports the rights of owners of intellectual works, the plan includes 9 articles and 2 notes were prepared and submitted. The proposed scheme was delivered to the cultural commission but remains defenseless (Mshyryan, 1920).

In relation to the application of intellectual property rights in Iranian Law also should be noted that Article 11 of the law on movable and immovable property and other

forms defined for it are ignored. In Articles 12-22 of the civil code as well as the best example of titles and definitions of immovable and movable property, mentioned, speaking of intellectual property rights as yours is. But in Articles 328 and 321 of the civil code on waste and causality can be noted that, spendthrift interests of intellectual property that are the responsibility of the property of the material is wasted. owner seeks compensation cope. Also among the general regulations in relation to civil liability, tort law, enacted in 1339 fits its intellectual property rights. Wherever, special rules in relation to intellectual property rights is not sufficient to support this it can be referred to general regulations of civil liability (Drahos, 1996). More than a century that efforts to expand protection of intellectual property rights, within the framework of the World Intellectual Property Organization (WIPO carried out). These efforts have led to agreements and conventions and treaties which form the protective rules to support intellectual property rights have developed.

Due to the development of science and technology, it seems not all-inclusive definition of intellectual property rights because if the definition is done with time, this definition may be unable to respond to all cases of intellectual property rights. In any case, the fact that different legal systems in relation to intellectual property rights, do not provide the same definitions to review these rights, each system must be considered. Therefore, that every country for this branch of knowledge of their rights, privileges and certain monopolies has predicted that other countries are quite different. The most important factors in the formation and expansion of intellectual property rights, a major role has its theoretical foundations that includes philosophical foundations of law and legal principles in it. To be able to know more and have a deeper understanding of intellectual rights should its theoretical foundations which form the foundation of these rights we evaluated. Especially, in Iranian law that the law is influenced by the importance of the subject doubles (Hekmatnia, 1967). In the present study intellectual property legal analysis, ontological and 5 are considered intellectual property.

Statement of the problem: Many concerns and worries us in this direction will lead to explanations of the legal nature of intellectual property rights and its comprehensive review, discuss and study the basics of it. Because that man should at all times, respect the other effect than to refrain from invasion. The permanent right to moral right but on the other hand, the financial and material that the author because of his intellectual work, its owner, the temporary rights. These cases, the perception of ownership rights to the name for the author, the problem facing the (Hekmatnia, 1967). In addition,

intellectual property and give effect to the rights recognized in Iran, regardless of jurisprudence in relation to these rights would be impossible. In addition to this case to understand the basics of intellectual property rights, the nature of these rights must also be identified. This study attempts to be studied and examined the issues mentioned.

MATERIALS AND METHODS

In the present study, the library method is used. This means that all information and material, through resources such as books, thesis and articles and literary works of the past which are available in libraries, collected and then check them has been paid.

The economic and moral rights, intellectual property rights: Usually all the intellectual property rights to the researcher considers 2 categories: the economic and moral rights or moral rights or material. In this section these 2 sets of rights are examined.

Economic and material intellectual property rights: Of course this issue and for the protection of intellectual effects are different in different countries. In addition, intellectual property rights such as inheritance rights, the Mortgagor, the granting of licenses and so on. Such as intellectual property rights its object is located, the extent and scope of the economic rights specifies (Hekmatnia, 1962a, b).

Intellectual property rights in that it can be the subject of other rights, literary and industry is split the following economic rights and economic rights ownership of industrial literary property is examined.

Economic rights of literary property: Intellectual property rights and economic rights of the majority of literary forms. These rights may be separate and independent from moral rights or are applied to them. These rights and temporary and transferable to others in the legal system of intellectual property is important and has many manifestations.

The right to supply and implemented: Law on protection of rights of researchers, composers and artists, materials supply and run to the right point and it knows that the originator of the property can be transferred to another. According to this right, some intellectual work can be carried out for example, music and drama and some can be presented like this the law provides for the authors of the text (Hekmatnia, 1967).

The right to use rewards and prizes: According to, Article 13 of the law protecting the rights of researchers,

composers and artists, all bonuses and prizes and points in a contest, awarded to works protected by this law, the effect will be only belonging to the researcher. So, even if the creator of a work, assign all their rights to another, again, he will remain eligible for the prize and will not be transferred.

RESULTS AND DISCUSSION

Copyright and reproduction: In most countries, copyright and reproduction has been accepted and affirmed as a major economic benefit for the publisher of the work will be followed and publisher allows the originator to take advantage of the benefits of publishing the work (Hekmatnia and Rocket, 1965).

According to copyright and reproduction, transmission of handwritten original and other works the copyright holder to do not buy because the buyer only the owner entrusted his property and reproduce copyright material and is not, unless the contract this right is also granted to him (Safa'I, 1931).

The adoption, tabloid and turned: Adapted right, tabloid and turns from the right to the integrity of the work is devoted to producing intellectual work. The economic rights of this is to be the creator can give others permission to change his work and receive pay equal to the change. Of course, this change is prohibited without the researcher's permission (Hekmatnia, 1967).

The right translator: People can not do without the permission of the researcher his work translating them. For translations can be a great source of income for people (Safa'I, 1931). Hence, paragraph 5 of Article 5 of the support researchers, composers and artists including legal translation knows that is transferable to other. For Kant is not a mere figure of speech that can not support the text content (Safa'I, 1931).

The law protection of researchers, composers and artists the translation of a work by the permission of the originator of the work needs. Among the economic rights and the right to translation of material benefits to producers would be in effect.

Economic rights of industrial property: Economic, industrial property rights it should be noted that the rights in the present age has a very important role and full color. These rights can be explored from two directions. First the positive direction in which case the originator of intellectual work to their work and the benefits of it and his right to the property and is considered his property. The second of which is negative for owner can prevent others from exploiting his work and the work to prevent attacks on others (Hekmatnia, 1967).

Exclusive right to sell: TRIPs Agreement as detailed in paragraph 1 of Article 28 referred to the right. As a result, invention or product. Either the process is carried out.

The right to prevent imports: Article 26 of the TRIPs Agreement come as such a right in. According to, the right to the economic interests of producers import the product makes the work be damaged. So, the author thought should prevent the importation of goods. The rules in this regard remain silent and the right not to talk to the (same).

Exclusive rights to build: TRIPs Agreement in Article 26 and paragraph 1 of Article 28 referred to the right.

Moral rights, intellectual property rights: The moral rights in the patent is a very small role. This right under Article 3 agree on a Paris to come. According to, the study, the inventor of the patent right in its name as a result of his invention. There is an important role and moral rights in the property's literary unlike industrial property rights that it is very light (Hekmatnia, 1961).

Right to work: The purpose of this right is that the researcher can have access to your work or a copy of it. Of course, this access or copying should not cause harm to the holder. It is envisaged in the law of some countries including Germany.

Disclosing the effect: According to this right, no one can to expose the effects of its intellectual authors of the text and the researcher of a work force that is superior to the time, place and manner of disclosure decides his work.

In some countries laws, disclosing the effect of the economic rights to first publication have linked. The first publication with the transfer of economic rights the right to disclose to the originator there will be no effect. Disclosing the effect is even more extensive in France and Germany after the publication of the first economic delegation continues (Sterling, 1998).

The first publication to another form of explicit or implicit delegation the delegation does not imply the disclosure of the effect. As a result, there is no reason for granting it the right to remain (Hekmatnia, 1967).

Integrity effect: Integrity work is a moral and spiritual truth. The right of no one, not allowed without the permission and consent of the originator opus change, however, this change is minimal (Safa'I, 1931). Article 19 of the law to protect the rights of researchers, composers and artists provides: "Any changes or distortions in the works protected by this law and its publication without the author's permission is prohibited". In England this right as "right against offensive behavior" is known (Hekmatnia, 1967).

The name and title of the researcher: Article 18 of the law to protect the rights of researchers, composers and artists, in this regard is as follows: “transferee, publisher and those authorized to use under this law, cite or quote from a work for commercial purposes should sign as a featured artist name, work, mobile work, the copy, print or reproduce method common with inserts, unless otherwise agreed to be the originator. According to, this right, the researcher may want to work as its own name and be issued with or without a name or a nickname called for the publication of the (same).

The right to deviate: This right is recognized in France and Germany. However, Iranian law does not exist. The Berne convention is the right compromise did not mention (Sterling, 1998). According to, deviate right or extradition, the author can not deviate from its decision to demand the extradition of his work, even after the publication of the work. But because the contract is between her publisher have suffered losses arising from your violation of pay (Hekmatnia, 1967).

Ontological analysis of 5 intellectual property: For analysis of cognitive and intellectual property why should the two issues be addressed. The first subject matter of intellectual property and the nature of the relationship between intellectual researchers of the text with intellectual phenomenon.

The nature of intellectual property in this part of the study of other aspects of nature we seek intellectual rights. In relation to the probabilistic nature of these rights is that they are mentioned. The first possibility is said to be the subject of intellectual rights is subjective it is in terms of ontology is absolutely correct but it does not appear legally correct. Because it is subjective has no legal effect and if you lose your consciousness there will be another matter. However, intellectual property rights issues, not related to the individual’s consciousness.

The second possibility is said to be in the nature of intellectual rights, it is abstract and intangible. It is also not have a place in the legal system because the only difference between intellectual subject, specifies the property of another.

The third possibility is stated that the nature of intellectual rights, is totally credit and intellectual rights in relation to this credit, subsists. That is dependent on something else, is not. So, in the legal system as being proposed and the same rules it is associated. It seems that the possibility of 2 other possibility is stronger.

CONCLUSION

This study presents a philosophical analysis of intellectual property, ontological and intellectual property were grazing. What is certain is that intellectual property rights have long existed. Although, these rights have

changed in many years but has roots in antiquity of these rights should be searched assists. Through these principles and theories can pay to prove the legitimacy of intellectual rights. This study could be the beginning of a way to design the intellectual property rights system based on Islamic Sharia Law.

Efforts that have been made in order to prove the legitimacy of intellectual rights are often far from the reality of today’s society (Jafarzadeh, 1965). The most likely is that the nature of intellectual property rights is a matter which credit validity in terms of the reputation of being one thing is immaterial (Hekmatnia, 1967). The following results were obtained: issue of intellectual property ownership and other matters in respect of which there is a difference of reasons, credibility and legitimacy of intellectual property can be deduced. Acceptance of intellectual property rights affect on the economics and ethics.

REFERENCES

- Drahos, P., 1996 . A Philosophy of Intellectual Property. Dartmouth College, Hanover, New Hampshire,.
- Hekmatnia, D., 1961. Intellectual property with an emphasis on the theoretical foundations of Islamic jurisprudence. Ph.D Thesis, Tarbiat Modarres University, Tehran, Iran.
- Hekmatnia, D., 1962a. Popular Vote (Credit Fundamentals Territory). 1st Edn., Islamic Culture and Thought Research Center, Tehran, Iran,.
- Hekmatnia, D., 1962b. Theory of the ownership and use of intellectual property. J. Intellectual Property, 46: 151-182.
- Hekmatnia, D., 1967. Principles of Intellectual Property. 2nd Edn., International Institute of Islamic Thought, Herndon, Virginia, USA.,.
- Hekmatnia, M. and D.U. Rocket, 1965. Role of the theoretical basis for understanding and designing the intellectual property system. J. Law Jurisprudence, 8: 89-104.
- Jafarzadeh, M., 1965. Jurisprudence legitimacy of intellectual rights. J. Theol. Law, 19: 61-96.
- Mshyryan, D., 1920. Copyright natural rights. Ph.D Thesis, Faculty of Law, University of Tehran, Tehran, Iran.
- Safa’I, H., 1931. Literary and artistic property and reviewing the law protecting the rights of authors, composers and artists. Master Thesis, University of Tehran, Tehran, Iran.
- Shahindezh, P., 1958. Comparative study, the author’s moral rights. Imam Sadiq Univ. Coll. Hum. Sci., 10: 157-183.
- Sterling, J.A.L., 1998. World Copyright Law. Sweet & Maxwell, London, England, UK., ISBN: 9780421582903, Pages: 1084.