

ISLAMIC CONSIDERATIONS IN RECOGNIZING AND PRICING INTELLECTUAL ASSETS

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Abstract

Intellectual property right (IPR), intellectual capital (IC), intellectual assets (IA) and the similar terminology are becoming more fashionable and gaining more importance and attraction as knowledge-based economy (KBE) takes over the traditional economy gradually. Although the field ages about one century¹, it still is not well-organized, hence is a very demanding discourse. The discipline is still immature and "there is still a great deal of room for experimentation" (IF AC 1998,18). Recognition and pricing of IA and IC are two important areas among the various sub-fields of the areas of IPR and KBE. Reporting in the intellectual capital and developing intellectual capital measures and reporting practices remain one of the key challenges for the accounting profession (IF AC 1998,18).

As the latest and more complete divine religion and the formal guidance of God to His creatures Islam prescribes solutions to all human problems including to the serious problems we face in recognizing and pricing IA and IC. The dynamic nature of Islamic jurisprudence is responsive to the problems which appear in congruence with social and technological changes. This research delves in the Islamic literature pertaining to "recognizing, and pricing intellectual assets". The aim is to investigate how Islam, based on the Islamic logic, legitimizes "intellectual rights" and how Islamic considerations are taken into account in recognizing and valuing IA and IC. The bases of Islamic reasoning in this case are: the Verse: "fulfill your promise"², the famous citation from the Holy Prophet Mohammad (P.B.U.H.): "people are predominant over their properties"³, "common law"⁴ and the "tradition of the wise"⁵, as the fifth proof⁶. The results, it is hoped, will enhance the completion of the discipline and eventually will boost development, particularly in Muslim countries.

Key terms: Intellectual assets, Knowledge-based economy, Islam, Entrepreneurship and SMEs, Development.

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Introduction

Since the very old times attention of the scholars and scientists was attracted to the effect of knowledge on power and capability. However, since the last decade of the twentieth century knowledge, knowledge-based economy and their effects on development through the production of intellectual assets⁹ (IA) have earned a special status in the scientific arena and media. Entrepreneurs as well as small and medium enterprises (SMEs), as the actors of the scene of knowledge-based economy, have had an extraordinary effect on development and by producing intellectual capital have been considered as the engines of development.

However, they are not free-minded of some hindering difficulties with regard to their intellectual assets. To name a few, there are some problems with regulation, protection, valuing, pricing and transferring these intellectual properties. Resolving these problems and removing these difficulties will accelerate the pace of economic development. Every economy should take actions and should provide solutions and remedies.

As the latest and more complete divine religion and formal guidance of God to His creatures, Islam provides solutions to all human problems. The dynamic nature of Islamic jurisprudence makes Islam capable to resolve all human problems which appear in congruence with social and technological changes. This study aims to investigate how Islamic considerations are taken into account in recognizing and valuing IA and intellectual capital (IC). The results, it is hoped, will enhance the enrichment and completion of the discipline which in turn will reduce brain drain, encourage entrepreneurs and will support small and medium enterprises (SMEs), inventions, innovations and new ideas; and eventually will boost economic, social, political and cultural development of societies.

The next section introduces intellectual assets and the related terminologies such as: knowledge-based economy (KBE), intellectual wealth (IW), intellectual ownership (IO), intellectual property (IP), intellectual assets (IA) commonly used in the literature. Later on the role of knowledge and knowledge-based economy on development will be analyzed briefly. Then we will survey the Islamic literature (the opinions of different sects of Islam) and will evaluate the degree of importance given to the research topic in Islam. Lastly, after summarizing the results, we will make a conclusion and based on that some suggestions.

Intellectual Outputs

It is necessary to define intellectual outputs and the related technologies first. However, to be brief and make the long story short, only some citations from the literature are brought here¹⁰. In the balance sheet terms, intellectual assets are those knowledge-based items, which the company owns; which will produce a future stream of benefit for the company (SMAC 1998 in IFAC 1998, 4). "This can include technology, management

and consulting processes as well as extending to potential intellectual property" (IFAC 1998,4).

"Intellectual property (IP) assets are collections of intellectual property: patents, trademarks, copyright works, industrial designs, geographical indications, trade secrets and other types of intellectual property- that along with human capital have economic value because of their ability to enhance the value and return from products and technologies"(WIPO 2002, 3). "Intellectual property, very broadly, means the legal rights which results from intellectual activity in the industrial, scientific, literary and artistic fields" (WIPO 2001,3). "Intellectual property is legally defined and assigns property rights to such things as patents, trademarks, and copyrights. These assets are the only form of intellectual capital that is regularly recognized for accounting purposes. However, accounting convention based upon historical costs often understate their value" (IFAC 1998,3). "Intellectual capital can be thought of as the total stock of capital or knowledge-based equity that the company possesses. As such, intellectual capital can be both the end result of a knowledge transformation process or the knowledge itself that transformed into intellectual property or intellectual asset so f the firm" (IFAC 1998,3). "Intellectual capital encompasses booth the inventory of knowledge-based assets as well as the capacity to acquire and assimilate new learning rapidly. It is often invisible, intangible, or difficult to detect or quantify" (Rose 2000,4).

Let us confine ourselves to these quotations from the literature which introduces the technology used in this paper.

The Role of Knowledge-Based Economy and Intellectual Property on Development

"Knowledge is power" is said 980 years before by Ferdousi¹¹, the Iranian most famous scholar and poet. However, its real meaning was never before well understood as in the new millennium.

Different schools of economic thought have stated different factors as the basis of and/or the engine for economic development. Some of these doctrines are summarized in the following table:

Economic School	Important Factor in Development	Activity Which Gains the Factor
Mercantilists	Gold and silver	Trade
Physiocrats	Land and Land Owner	Agriculture
Classics	Labor, Capital, Raw Material and Entrepreneurship	Industry
Marginalists	Profit	Production
Marxists	Technology	Industrialization
German-Austria Classics	Creative Innovation	Production
Chicago School	Uncertainty, Risk and Human Resources	Production

Source: Ahmadpoor Daryani (2000, 21)

The most recent and the dominant doctrines of our era focus on entrepreneurship, small and medium size enterprises (SMEs) and knowledge as the most influential factors in development.

Knowledge is viewed as a very primary competitive factor in business today (IF AC 1998,1) because of the intellectual properties it produces. Enterprises must capitalize on hidden knowledge, intangible assets¹² and social capital (Morello 2001, 1).

IP assets have economic value¹³ and stimulate economic growth¹⁴. In the companies around the world the creation, identification and application of intellectual capital represents the one truly sustainable source of competitive advantage (Morello 2001,1).

At the macro-economic level intangible assets, including human capital and IP, are often the most valuable elements in national and regional economies (WIPO 2002, 2). "IP is the core competency for wealth creation" (Coughline¹⁵ in WIPO 2002,2).

Intellectual property has always been an integral part of general economic, social and cultural development (WIPO 2001, 163) and as a political tool for enhancing national competitiveness, increasing opportunities for technology exchange, augmenting revenues, exports, corporate valuation, avoiding brain drain, and motivating employees(W IPO 2002 ,9,7).

Having introduced the recent literature on intellectual outputs, the commonly used related terminologies, and the effects of knowledge and knowledge-based economy on development, the next section is devoted to researching the Islamic literature on intellectual asset recognition and pricing.

Islamic Literature on Intellectual Asset Recognition and Pricing

Recognizing intellectual outputs as assets or properties and pricing them is very significant, and meanwhile a very difficult task. However, after recognition and before pricing they should be valued. "IP valuation is essential for business planning and joint ventures, and is important for licensing, acquisitions, mergers, investments, loans, etc. as a key element to determine the monetary worth of an IP portfolio" WIPO 2002 (d), 7).

As the latest and more complete divine religion and formal guidance of God to His creatures, Islam prescribes solutions to all human problems including to the serious problems we face in recognizing and valuing IA and IC. The dynamic nature of Islamic jurisprudence is responsive to the social and technological changes.

There exists a very rich literature in both (1) "the importance of knowledge KBE and their effect on power and capability" and (2) "the recognition of blossoms and outputs of knowledge as intellectual properties". Just as an example of the given importance to knowledge, suffice it to quote from Ferdousi - the Iranian famous scholar and poet - who

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said 980 years before: "*Knowledge is power*" and refer to the highly insisted commandments for Muslims to gain knowledge¹⁶.

There, also, exists a very rich literature in the **recognition of intellectual properties** and respecting **intellectual rights**. Before entering to the literature, it is first, necessary to clarify the opinions of clergies on three important terms: "**property**"¹⁷, "**ownership**"¹⁸ and "**right**"¹⁹.

Property: Literally, "property is whatever which can be owned" (Ibn Manzoor 1985, 636). Initially gold and silver and later on any objective thing which is reserveable and can be owned was called property (Toreyhi 1985, 475). Some have perceived "property" as obvious as needless of definition (Jouharil 1984,p 1821) However, in technical meaning of "property" there is a diversity of opinions and beliefs among the different Sects²⁰ of Islam.

Hanafites believe that "property" is "the thing itself"²¹ on which one can do a transactions or munificence. They recognize two criteria for properties: (1) "Property is a material thing with external existence that preserving and guarding of it is possible; and (2) the thing should have 'proprietary worth'²²" (Feraj Hossein 1992, 34). Considering these two criteria, "benefits"²³ and "rights"²⁴ are excluded from the definition of "property".

Shafeites perceive "**common law**"²⁵ as the basis of and a criterion for the "proprietary worth" of things; hence they authorize the absoluteness of "property" to "standing properties"²⁶ and "benefits". "Nothing may be perceived as a "property" unless has an exchange value and its waste causes compensation ("Siyoothi 1998, 221).

Hanbaliyyeh perceive a thing as a "property" with regard to its benefits rather than its objectivity²⁷, origins²⁸ and location.

Imamiyyeh clergies lean on common law in the meaning of property, and common law perceives whatever which has exchange value and which brings something in exchange as a property. And there is no reason to confine it to "standing properties" only (Khoyie 1992,302 and Khomeini, 1995,20).

Hakeem (Ayatullah) perceives the "proprietary worth" as "a convention of the wise"²⁹ stemmed from people's intention and will (19980, 325). Briefly speaking, property is whatever - standing property, benefits and rights – to which something bestowed in exchange.

Ownership: An "estate" is whatever belonged and specific to someone. "Ownership" is to gain power and ability to a property. The wise accept a property with regard to its real or conventional benefits and pay cash/non-cash in exchange. Ownership is the conversance and domination of someone to something valuable (actually or potentially)

(Shafa'ie 2004). In its general meaning "ownership" is synonymous to sovereignty³⁰ (right) and it includes the ownership of intellectual properties, too.

Malikies' (*Malikiyyahs'*) and *Shafaites'* definition of property do not encompass the ownership of claims and ownership of literary and art works. They argue:

1. An estate is the law sentence on "substance" and "benefits" [of a property] which authorizes its owner to enjoy it or use it in exchanges (Ghorafi and Siyoothi 1983,250 in Jaa'fari Langroodi 1995,94).
2. Ownership is the legal right of men to enjoy the substance or benefits [of a property] or use them in exchanges to other substance or benefits (Jaa'fari Langroodi 1995,94). The relation of properties and estate is such that some properties are not estates (fishes in the sea before catching them) and some estates are not properties(such as a grain or a torn out balloon).

Right

Before valuation or pricing intellectual properties' right, a research on the "right" is necessary in order to discover whether "rights" are "properties"- hence can be valued and priced - or not. Therefore very briefly we define "right"; then, we refer to its "types".

- Right, in general, means a conventional sovereignty of a person to a person, a property or a thing. In this definition "right" is perceived as synonymous to "estate".
- Right, specifically, is a special ability to perform an act - on a substance, a contract or a person - such as "demarcation (leveling) right"³¹, "right to withdraw"³² and "retaliation (retribution) right"³³. According to this definition, "right" is different from "estate" (Mohaghghigh Damad 1994, 55). If a right is one of the intentionally transferable rights, it can be used in an exchange to a property (Ansari 1975, 21). Therefore rights such as "demarcation right" have "proprietary worth", since they enter in "reconciliations"³⁴.

Fayyoomi³⁵, like Hanafites' clergies, perceive a transaction the exchange of an asset to a property. Without any doubt, the definition of "property" encompasses the output of human work (Khoyie 1992, 303) and intellectual properties' right, such as patents and copyrights are not but the benefits and financial rights of human deeds.

Intellectual Rights and the Opinions of Contemporary Clergies

For the first time Kant³⁶, the German philosopher, talked about "copyright" (as an intellectual right) in the 18th Century. Some scholars do not perceive intellectual rights, such as copyright, to be legal based on this reasoning that something may be perceived a "property" by common law but not by the "divine law"³⁷. This is not an acceptable reasoning because property is among the connotation without a divine reality; rather, a

notion within the realm of "common law". The "common law" judges whether a specific thing is a property or not; the "divine law" only issues the pertaining decree. Examples are: "needlessness", "poverty", "alimony", vice (wickedness)," barren land", "rehabilitation of barren land", "weighable", "neighbor" and "tribes".

The Verse from the Holy Quran "fulfill your promise"³⁸ (5: 1) holds true for copyrights and patents. If adaptation of an invention or a copyright or imitating others' literary and art works is a usurpation, it is not permissible without the authorization of the owners of those rights. However, there is no reason to declare as unlawful the essence of adaptation and imitation of others' initiations" (Safi Golpayeganin Imami 1993,207-209).

"The benefits of intellectual outputs may not be permanent; rather it should be set for some specific period of time. For this reason, we should negate the adjective of "possession" (ownership) from copyright and patent; because possession is a permanent enjoyment right, whereas a copyright or a patent are temporary enjoyment rights (*Sahib ul Waseet* in Sadeghi Moghaddam 1989, 248).

In the contrary, other clergies have corroborated intellectual rights and perceived them as lawful. Montazery (Aytollah) holds that copyright is "a right of the wise"³⁹ and must be observed (Montazari in Imami 1993, 208-209).

Makarem Shiraizi (Aytollah) perceives copyright and patents as a divine and legal rights, to which respect must be paid (must be hold in esteem). He states "Intellectual ownerships are not less [important] than "bare ownership"⁴⁰ and the Islamic State must take the responsibility of protecting it. The reason is that we get subjects from the common law and the decrees from the "divine law". Violating others' rights is forbidden and illegal. This is taken from Islam. But the subject "infringing and transgressing other people's right" is taken from the common law. Today, all the wise acknowledge it as a right and its divesting as an injustice. Likewise, Islam states no one should trespass in the property of others without the consent of its owner. This decree also is taken from Islam. However, the subject - the types of ownership- is taken from common law (imami 1993,210).

Fazil Lankarani (Ayatullah) has used "the wise' tradition"⁴¹ to prove the legality of intellectual rights such as copyright (imami 1993). Mar'ashi Shooshtari (Ayatullah) holds that: "copyright did not exist in the old societies because the authors of the books did not consider their own profit. When the books became traded as commodities, the authors gained the right to benefit from their works at first. It does not seem logical that others make big monies from their works while the authors themselves suffer from poverty. As a result, authors have gained right to enjoy the material benefits of their books and make the enjoyment of others subject to their own consent" (Mar'ashi 1994, 238-239).

The citation from the Holy Prophet Mohammad (P.B.U.H). People are predominant over their properties" does not mean that the buyer of a book may reprint it without the

permission of its author and/or publisher; otherwise anarchy comes into usage, which is unacceptable by the wisdom and Shari'ah. Therefore, as we see, "private law" is transformable. It is quite possible for some affairs which were not private laws at one time become private laws later (Mar'ashi 1994, 238-239). French lawyers discussing about movable properties introduce intellectual properties as "judgmentally movable properties"⁴² (Jaa'fari Langroodi 1995, 122).

Hosseini Roohani (Ayatullah) believes that: Any author is the owner of his⁴³ authored works, which is his intellect's output and has the right to prevent others to ouster (to usurp) because according to religious as well as common laws people are predominant over their properties (Hosseini Roohani 1990, 93-97). Others may transcribe a copy for their personal use, but may not make, say, one thousand copies and sell them (Mothahhari 1990, 122 and 134).

In Malikiyyeh jurisprudence the criterion for "proprietary worth" includes standing properties, benefits and rights. Since the essence of right is appropriation, an ownership causing right becomes such as a property. Since the copyright also is appropriated, it falls in the realm of "real right"⁴⁴ (Addarini 1979,33-37).

In Hanafites' jurisprudence, "rights" are not segregated (abstract) from properties. Their existence is not on their own behalves; rather is latitudinal (transversal) and is the outcome of substance and benefit. Therefore, all of the Sects of Islam hold that an intellectual work, same as a physical works, is the source of benefit (Addarini in Ayati 1997, 69).

In Islamic laws, ownership not only includes the ownership of substance, rather the ownership of benefit, enjoyment and the sovereign (such as the right of heir to reject the will in excess of one-third of estate).

Conclusion

Knowledge-based economy serves as a flower pot in which entrepreneurship and SMEs grow. Their inventions, innovations, new ideas and intellectual outputs must be regarded as valuable assets, must be held in esteem and must be protected. This recognition, respect and protection reduces brain drain and accelerates the pace of economic, social, political and cultural development of societies. Every economy should take actions and should provide solutions and remedies.

The dynamic nature of Islamic jurisprudence takes very significant actions to recognize intellectual outputs and assets and takes the responsibility of protecting the resultant rights. Islam holds that property is everything "appropriateable" done which has some exchange value. In the same way we perceive "standing properties" as assets; intellectual outputs, which are the results of their developers' intellects, also have "proprietary

worth" and respected before the common law. The developers must own the material benefits of their outputs.

Intellectual property rights were not discussed traditionally in Islam. However, the dynamic nature of Islamic jurisprudence is responsive to the problems which appear in congruence with social and technological changes. Based on reasons such as "fulfill your promise" the legitimacy of any covenant (which is not prohibited in the religion) can be proved.

A routine deed within "the wise' tradition" to ease their daily lives can be as a religious reason if approved by the Shari'ah. The lack of a negation counts as an approval.

The wise' common law regards such rights as properties. There is no definition in Shari'ah for the proprietary worth of things. Rather, the proprietary worth of things is among the "wisdom conventions"⁴⁵.

Whoever produces an intellectual output becomes its owner and may prevent others to take possession of it. Because, based on the Holy Prophet's citation "people are predominant over their properties' and the judgment of common law people are dominant over to their properties.

Therefore, the rights of those who develop intellectual outputs, including material or intellectual right, have the nature of property and can be valued in money terms and have intellectual value. It is necessary to protect the material as well as the intellectual rights of the developers. The developers deserve to enjoy the benefits of the material and non-material rights of their outputs. Valuing intellectual asset is a prerequisite to pricing them and recognizing them is a prerequisite to valuing.

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Footnotes:

¹ - Since the invention of printing machine which resulted in the mass production of printed material and brought about copyright (an intellectual asset) discourse.

² - *لو فورا بالمعروف (معهده)* 1.

³ - *فانفس مدخلون على انوالهم*.

⁴ - *العرف*.

⁵ - *سيرة الخلفائه*.

⁶ - The other four proofs are: Quran (القرآن), The Character Sketch of the Holy Prophet Mohammad (الصفة), Consensus (الإجماع) and Wisdom (الحكمة) or Deduction (القياس).

⁷ - In Ferdousi's own word: "Whoever is knowledgeable is powerful."

⁸ - Ferdousi was a very famous Iranian scholar and poet of the 4th Century (A.H. corresponding to the 11th Century A.D.).

⁹ - Intellectual property (IP) and intellectual assets (IA) assets will be defined in the next section.

¹⁰ Interested researchers may refer to the extensive and very rich literature for more details.

¹¹ - The exact translation of Ferdousi's expression is: "Whoever is knowledgeable is powerful".

¹² - Intangible assets range from human capital and know-how to ideas, strategies, business plans, brands, design and other intangible fruits of a company's creative and innovative talents (UNCTAD / WIPO 2004, 141).

¹³ - WIPO (2002 (b), 5) gives seven reasons why do IP assets have economic value WIPO.

¹⁴ - WIPO (2002 (a), 3) explains how IP assets stimulate economic growth in several ways.

¹⁵ - William Coughline is the President of Ford Global Technologies, Intellectual Property Counsel for Ford Motor Company.

¹⁶ - To quote from the literature (some citations from the Holy Prophet Mohammad^(P.B.U.H.)):

- Seek the knowledge from cradle to grave (*اطلبوا العلم من المهد الى اللحد*).
- Seeking knowledge is a duty to any *Muslim* (a Muslim man) and any *Muslimat* (a Muslim woman) (*طلب العلم فريضة على كل مسلم ومسلمة*).
- Seek knowledge even you have to go to China (the most remote place of the Prophet's era) (*اطلبوا العلم ولو بالسين*).

¹⁷ - *العلم*

¹⁸ - *مالكيته*

¹⁹ - *الحق*

²⁰ - There are four leading sects in Orthodox Islam (the Mohammedan religion) and another leading sect called *Imamiyyeh*, the followers of Imam Ali Ibn Abi Talib. The four sects are: *Hanafites*, the followers of Aboo Hanifa; *Malikiyyeh*, the followers of Malik Ibn Anass; *Shafaites*, the followers of Mohammad Ibn Idrees; *Hanbaliyyeh* or *Hanabilah*, the followers of Ahmad Ibn Hanbal.

²¹ - *الحسن*

22 - ماله
23 - المذاهب
24 - الحقوق
25 - العرف
26 - الاعيان
27 - عينيه
28 - المصادر
29 - اعتبارى العقلانيه (Wisdom incorporeal)
30 - لسلطه

31 - حق التحبير
32 - حق الخبر
33 - حق التصاص
34 - نصلح

³⁵ - The author of *Misbah ul Moneer*.

³⁶ - Emanuel Kant.

37 - تشريعه
38 - لوقوا بالعود (مانده: ا)
39 - حقوق العقلانيه
40 - ملكيته العين (ownership of substance)

41 - سيرة العقلا ("The wise' tradition", "Character sketch of the wise")

42 - مال المنقول حكمى (Incorporeal moveable properties)

⁴³ - Non-sexist language uses his/her to refer to both gents. However, following God's tradition in Quran, we prefer to use "his" whenever the two gents are meant.

Actual right - حق العيني ⁴⁴

⁴⁵ - اعتبارى العقلانيه (Wisdom incorporeal)