

Islam and Intellectual Property

Intellectual property is a new issue that has no precedent in the writings of the earlier jurists. However, this does not mean that Islam has no position on the issue. The sources of legislation and the general maxims of the Shari`ah always provide Muslim jurists with solid ground and guidelines to establish their fatwa.

In its fifth session, the **International Islamic Fiqh Academy** affiliated to the OIC, held in Kuwait, in Jumamada Al-Ula 1: 6, 1409 A.H. / December 10 – 15, 1988 A.C., reached the following resolution:

Having reviewed the papers presented by the members and experts concerning “Incorporeal rights” and after having listened to discussions on the subject, the academy makes the following resolution:

First: Trade name, corporate name, trademark, literary production, invention or discovery, are rights belonging to their holders and have, according to contemporary conventions, an acknowledged financial value. Such rights are recognized by the Shari`ah, and thus, they should not be violated.

Second: It is permissible to dispose of a trade name, a corporate name, or a trademark for a price, as long as there is no fraud, swindling or forgery, since it has become a financial right.

Third: Copyrights and patent rights are protected by the Shari`ah; their holders are (fully) entitled to dispose of them, and they should not be violated.

Moreover, professor **Dr. `Abdul-Karim Zaydan** says in his book *Nazharat Fi Al-Shari`ah [Reviews on the Shari`ah]* said that:

The preponderant opinion, according to the majority of jurists, is that useful things constitute property, and are considered so due to the arguments they provided and according to what is mentioned in the authentic hadith reported by Imam [Al-Bukhari](#) in his *sahih* from Sahl ibn Sa`d Al-Sa`id that the Prophet (peace and blessings be upon him) said to a man, “**How much of the Qur’an do you know (by heart)?**” The man replied, “I know such and such surah, [naming the *surahs*]. The Prophet (peace and blessings be upon him) then said, “**Go, I let you marry her for what you know of the [Quran](#) (as her *mahr*).**”

Imam Al-Bukhari classified this hadith under the title of “A section on joining in marriage for the Qur’an (teaching Qur’anic verses) and for no *mahr* (mandatory gift to a bride from her groom)“. Moreover, Ibn Hajar, commenting on the explanation made by Al-Bukhari, said: “It means (joining in marriage) for teaching the Qur’an as a financial *mahr*“. Then, he quoted this hadith as evidence of the permissibility of making useful things as a *mahr*, even if it is teaching the Qur’an. This prophetic hadith, along with other proofs, is quoted by the Shafi`i, Zahiri and Zaydi scholars as evidence to their claim that useful things have financial value. This was also reported as one of two opinions from Imam Ahmad ibn Hanbal, who cited as proof the above-quoted hadith of the Prophet (peace and blessings be upon him).

Moreover, since teaching the Qur’an or one of its surahs is a permissible and useful thing, it was permissible to offer teaching it as a *mahr*, just like teaching a (proposed to) woman grammar or fiqh. Moreover, those who deemed it permissible to teach the Qur’an as *mahr* for the wife declared it permissible to also teach her a specific profession, fiqh, language, grammar or the like, of *shar`i* or permissible sciences, as a *mahr*.

Furthermore, it has become a convention to regard intellectual production, including writing and compilation, as useful things that have financial value, and in turn the author has a financial right as well as an incorporeal right to his work; the incorporeal right is embodied in attributing the work to him and in his exclusive right to publish and distribute it, while the financial right is represented in the capability of exchanging such intellectual product for money. Here, convention is a valid source of legislation as long as it does not contradict a *shar`i* text or a principle of the Shari`ah, knowing that in the present context, neither *shar`i* texts nor Islamic principles are violated. Rather, the financial right of the author in his work could be compared to the financial reward a teacher receives for delivering educational and scientific lectures, since the only difference is that a teacher teaches and lectures orally, while an author puts it (produced material) in a printed book that circulates among people. Hence, the author is more entitled to a financial reward than a teacher.

Thus, it has become clear that the author's right is a utility, and in turn it is considered as money, knowing that money is exchangeable. This is confirmed by the fact that people deal in it and consider it among the financial rights. So, an author can make a contract with a publisher on printing his work and agree with him about the way it should be printed, the number of printed copies, and the amount of the reward (price) he deserves. It is also permissible for the ruler to set regulatory rules for such a right and ways to protect it, knowing that this in no way contradicts Islamic Shari`ah.