

**JUSTIFIABILITY OF THE PROTECTION OF  
INTELLECTUAL PROPERTY RIGHT UNDER  
CONVENTIONAL AND ISLAMIC LAWS**

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**ABSTRACT**

The concept of intellectual property is one whose recognition and legality is not unanimously agreed upon under the conventional law and Islamic law respectively. The justification for the protection of intellectual property has been debated by scholars, both under the conventional law and the Shari'ah. This research work examines the justifiability of the protection of intellectual property rights considering the arguments proffered for or against the subject through an examination into the concept of intellectual property rights under the conventional and Islamic laws, as well as the system of their protection, and finally the justifiability of this protection. The work applied the doctrinal legal methodology by conducting a content analysis of both primary and secondary legal sources of both the Islamic and conventional laws. The work finds that the need for the protection of intellectual property rights is stronger than the argument against it. Both the conventional and Islamic laws hinge the justification on human rights, public good and sustainable development. The work recommends that to address the concerns of the opponents, protection of intellectual property should focus integrate both the personal interest of the owner of intellectual property and public interest.

**Keywords:** Intellectual Property, Intellectual Property Rights, *Maqasid al-Shari'ah*, IPR, Property rights in Shari'ah

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## 1. Introduction

Due to the boundless creativity of humans and the unceasing development of technology in human endeavours, intellectual property law has become a cornerstone in the legal annals of all developing and developed countries. As humans continue to expand in creative thinking and outputs, the need to commercially benefit from those outputs become stronger. However, the legality and protection of intellectual property rights has raised controversies and divergences among scholars in the field of the law of property generally under both the Conventional law and Islamic legal systems.

There have been several writings on this debate. Following the trend of her work, Oyewumi elaborately discusses the justification for the protection of intellectual property by stating the importance of the protection of intellectual property. Hillary and Clifford<sup>1</sup> discuss the justification though not as detailed and emphasised as Oyewumi. Waziri<sup>2</sup> also write similar to this, with the only difference of laying emphasis on the Nigerian business environment and how Nigerian entrepreneurs can develop their businesses with trademark and the adequate knowledge of the concept and its legal frame work, viz, the Nigerian Trademark Act.

Contrariwise, Boldrin and Levine<sup>3</sup> disapprove any justification for protection of intellectual property rights. Though they acknowledge the benefits of intellectual property protection, they still argue strongly that its disadvantages override the benefits, especially on a nation's economy. They also maintain the stand that most of the benefits of the protection of intellectual property are specific to the owner of the intellectual property, like the right of exclusive ownership. Other scholars follow this line of thought. For instance, Long<sup>4</sup> argues against the justification from the perspective of history, libertarians' view,

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<sup>1</sup> Pearson H. and Miller C., *Commercial Exploitation of Intellectual Property* 1<sup>st</sup> ed., (Blackstone Press Ltd, London 1990).

<sup>2</sup> Waziri K. M., 'Intellectual Property and Counterfeiting in Nigeria: The Impending Economic and Social Conundrum' (2011) 4 *Journal of Politics and Law*, 196.

<sup>3</sup> Boldrin M. and Levine D., 'A Critical Review of Against Intellectual Monopoly' (1981-1984) *The Review of Austrian Economy*, 24.

<sup>4</sup> Long R. T 'The Libertarian Case Against Intellectual Property Rights'. Available at <https://www.freenation.org/a/f3111.html> accessed on 3 August 2025.

ethics, economy, and so on. Other scholars like Martin<sup>5</sup> refuse to even recognise that the protection of intellectual property could be any beneficial like Boldrin and Levine recognise, he is all about its negative effects.

Interestingly, similar discussions occur among Islamic law scholars. There is disagreement on the justification of the protection of intellectual property under the shari'ah. While scholars like Jamar,<sup>6</sup> Fitzgerald and Gilchrist,<sup>7</sup> Fauziah et al,<sup>8</sup> Naser and Muhaisen<sup>9</sup> Khan<sup>10</sup> and Brindley<sup>11</sup> support the protection of intellectual property in shari'ah, others like Elmajub<sup>12</sup> quite disagree. But another trend of debate that ensues among the proponents regarding the compatibility of the modern intellectual property law with Shari'ah.

Therefore, this work seeks to consider the justifiability of the protection of intellectual properties from the views of its proponents and opponents, under both the conventional and Islamic laws. The aim of this study, therefore, is to discuss how justifiable is the protection of intellectual property is, and in the course of doing this, the work will examine the legality of intellectual property under Islamic law.

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<sup>5</sup> Martin B., 'Against Intellectual Property' (1995) *Science, Technology and Society University of Wollongong, Australia*, 45.

<sup>6</sup> Steven D. J., 'The Protection of Intellectual Property Law under Islamic Law'. (1992) *University Law Review*, 179.

<sup>7</sup> Fitzgerald B. and Gilchrist J., *An Islamic Perspective on the Theories of Intellectual Property* (Springer International Publishing, Switzerland, 2015).

<sup>8</sup> Fauziah R., Muhammad T. S. and Ismail O. 'Intellectual Property: An Asset for the Awqaf' (2015) *International Journal of Real Estates Studies*, 91.

<sup>9</sup> Naser M. A. and Muhaisen W. H. 'Share'a: Intellectual Theft or Intellectual Infringement?' (2009) 4 *Journal of International Commercial Law and Technology*, 71.

<sup>10</sup> Khan J. I., Lone N. A and Sheikh F. A. 'Intellectual Property Rights in Islam: A Perspective' (2013) *International Journal of Research in Social Sciences*, 153.

<sup>11</sup> Brindley T. J. 'Conflicting Values in International Intellectual Property Standards for Pharmaceuticals: Western Framework vs. Islamic Traditions in the Middle East'. (Thesis, George Town University, 2014).

<sup>12</sup> Elmajub E.A., 'Protection of Intellectual Property in Shariah and the Development of the Libyan Intellectual Property System, (Ph. D Thesis, Queensland University of Technology, 2014).

## 2. Protection of Intellectual Property under Conventional Law

The systematic classification of intellectual property has come into vogue fairly recently.<sup>13</sup> Basically, there are majorly four recognised intellectual property rights under the conventional law, to wit: copyright; trademarks; patents; and industrial designs,<sup>14</sup> while there are subsidiary classifications such as trade secrets, confidential information, the action of passing off and unfair competition.<sup>15</sup> Legislations regulating intellectual property rights vary from country to country, though some common law countries share some similarities in their laws.

### 2.1 Intellectual Property as a Legal Concept

Intellectual properties are intangible property rights associated with creative effort or commercial reputation and good will.<sup>16</sup> While the likes of copyright, patents and industrial designs relate to creative efforts, others like trademark, passing off, unfair competition, trade secrets and confidential information fall under commercial reputation and goodwill.<sup>17</sup> The law of intellectual property deters third parties that have no interest in the property from taking unfair advantage of the creative work or commercial reputation of another, and provides remedies to the owner where this happens.<sup>18</sup> According to the Convention establishing the World Intellectual Property Organisation,<sup>19</sup> intellectual property shall include all rights resulting from inventions in all fields of human endeavour and all other intellectual activities in the industrial, scientific, literary or artistic fields.<sup>20</sup>

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<sup>13</sup> Marette P, *Intellectual Property* (1<sup>st</sup> ed, Sweet & Maxwell, London 1996).

<sup>14</sup> Babafemi F. O, *Intellectual Property: The Law of Copyright, Trademarks, Patents, and Industrial Designs in Nigeria*, (1<sup>st</sup>ed, Justinian Books Ltd, Ibadan 2006), 4-5.

<sup>15</sup> Oyewumi A. O, *Nigerian Law of Intellectual Property* (1<sup>st</sup>ed, University of Lagos Press and Bookshop Ltd, Lagos 2015).

<sup>16</sup> Brainbridge D. I, *Intellectual Property* (7<sup>th</sup> ed, Pearson Longman, London 2009).

<sup>17</sup> Oyewumi, *Nigerian Law of Intellectual Property*, 5.

<sup>18</sup> Oyewumi, *Nigerian Law of Intellectual Property*, 5.

<sup>19</sup> The Convention Establishing the World Intellectual Property Organisation (WIPO) OF 1967. Available at <<https://www.wipo.int/treaties/en/protection/rome>>. Accessed on 5 June 2019.

<sup>20</sup> Article 2 (viii) of the WIPO Convention. This is however subject to the caveat that these rights are protected only in the manner, and to the extent *provided* under national laws.

Most forms of intellectual property are akin to ‘choses in action’: rights that are enforced only by legal action, as opposed to possessory rights<sup>21</sup> in the case of real property. Intellectual property law therefore encompasses the body of rules and regulations governing the creation, acquisition and protection of these rights, as well as the adjudication over allegations of their infringement.<sup>22</sup>

### 3. Justification for the Protection of Intellectual Property under Conventional Law

Quite a number of writers in this field agree that there is a necessity for the protection of intellectual property owing to the tremendous positive impacts its protection has on the private owner of an intellectual property, the public users of his product and even on the economy of the nation at large.<sup>23</sup> The opponents to the protection of intellectual property assert that there is no need for the protection of intellectual property, while some argue for a partial or limited protection.<sup>24</sup> The status of intellectual property rights is an issue that has long divided property law scholars and writers. Thomas Jefferson<sup>25</sup> is one of the strongest opponents of the protection of intellectual property rights. Though his position in this respect is friendlier than the likes of Benjamin Tucker, a scholar in the twentieth century and Tom Palmer, a present century scholar, who rejected intellectual property rights altogether, not to even mention their protection.<sup>26</sup> To them, the protection of intellectual property rights confer undeserved monopoly

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<sup>21</sup> Chanell J. described a chose in action in *Torkington v. Magee* [2003] All E.R. 247 as a known legal expression used to describe all personal rights which can only be enforced by action, and not by taking physical possession.

<sup>22</sup> Intellectual Property Protection. Available at <<https://www.upcounsel.com/intellectual-property-protection>> accessed on 15 May 2025.

<sup>23</sup> Delong J and Palmer T. ‘Debate: Intellectual Property Must Be Protected’. Available at <[www.google.com/amp/s/reason.com/2018/09/29/proposition-intellectual-property-%3famp](http://www.google.com/amp/s/reason.com/2018/09/29/proposition-intellectual-property-%3famp)> accessed on 5-7-2025.

<sup>24</sup> Oyewunmi A. O ‘Towards a Human-Rights Compliant Intellectual Property Regime in Nigeria’, (2012) 2(2) *Ahmadu Bello University Human Rights Review*, 125.

<sup>25</sup> Delong and Palmer, ‘Debate: Intellectual Property Must Be Protected’, 4.

<sup>26</sup> Long R. T ‘The Libertarian Case Against Intellectual Property Rights’. Available at <https://www.freenation.org/a/f3111.html> accessed on 3 August 2025.

privilege to its claimant, whereas the proponents claim that it is an individual's rightful claim to the benefit of the product of their labour.<sup>27</sup>

The most plausible position in this case considering the world we live in at the moment, is to protect intellectual property rights, and this is justified by understanding the status of intellectual property from the perspective of certain theories - the economic theory or the utilitarian theory, the natural right (labour) theory, reward incentive theory, and development theory. These theories serve as the yardstick for the protection of intellectual property.

*i. The Economic Theory or the Utilitarian Theory:* This theory posits that if everyone were to be allowed to use the results of innovative and creative activities freely, creators of intellectual works may be unable to recoup their investment due to the activities of free riders, not to talk of benefiting from it.<sup>28</sup> These free riders are at better positions to offer customers identical works or products at cheaper prices thereby undercutting the original creators of intellectual works at the market place.

*ii. The Natural Right (Labour) Theory:* This originated from the Lockean justification on the conferment of property right on persons who labour upon resources to make finished goods out of them.<sup>29</sup> Given that many resources cannot be enjoyed in their natural state, there is a need for individuals to convert these resources into private properties by exerting labour upon them, thereby adding value to them. Therefore, the state owes a duty to respect, protect and enforce the natural rights of these persons who had exerted extra labour on these resources.<sup>30</sup> Thus property rights in intellectual works are justified on the basis that people have a right to enjoy the fruits of their labour.<sup>31</sup>

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<sup>27</sup> Long R. T 'The Libertarian Case Against Intellectual Property Rights'. Available at <https://www.freenation.org/a/f3111.html> accessed on 3 August 2025.

<sup>28</sup> Torremans P and Holyoak, J, *Intellectual Property Law* (4<sup>th</sup> ed, Oxford University Press, Oxford 2005), 18.

<sup>29</sup> William L and Richard P, 'An Economic Analysis of Copyright Law' (1989) 18 *Journal of Legal Studies*, 265.

<sup>30</sup> John Locke, 'Second Treatise of Government' (3<sup>rd</sup> ed. Peter Laslett, 1963), 138-140 cited in Hughes J, 'The philosophy of intellectual property' (1988) 77 *Geo Law Journal*, 297.

<sup>31</sup> Baird, D. G., 'Common Law Intellectual Property and the Legacy of International News Service v. Associated Press' [1983] 50 *U.Chi.L.Rev* 411 at 413.

*iii. Reward Incentive Theory:* This is based on the underlying belief that the society has a moral obligation to compensate and reward inventors and creators of intellectual works.<sup>32</sup> It is slightly similar to the labour theory.

*iv. Development Theory:* An emerging trend in intellectual property theoretical framework is the viewing of intellectual property protection as a means to desirable end of socio-economic and technological development. This was mentioned, especially in relation to developing countries in the TRIPS agreement.<sup>33</sup>

### **1. Intellectual Property as Being Equivalent to Real Property**

One of the lines of argument to justify the protection of intellectual property is equating it to real property. The proponents of justification wondered why an intellectual product should enjoy any lesser protection than a house or a car, or an ownership interest obtained in any other property. This is the basis of the argument of the proponents of intellectual property rights and their protection.<sup>34</sup> Surely in this contemporary time, increased production of intellectual property is one of the signs of a nation's development.<sup>35</sup>

One of the arguments of the opponents is that the recognition and protection of intellectual property right only leads to monopoly of products which they argue is not favourable to any nation's economy.<sup>36</sup> They contend that exclusive right of an owner of intellectual property to exclude others from the use of their intellectual product except with

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<sup>32</sup> Torresman, *Intellectual Property Law*, 21.

<sup>33</sup> Annex 1C of the Marrakesh Agreement establishing the World Trade Organisation, signed in Marrakesh, Morocco on 5<sup>th</sup> April, 1994.

<sup>34</sup> Scatcher N 'What are the Arguments of those in Favour of Intellectual Property? Against Piracy?' available at <[www.google.com/amp/s/amp.reddit.com/r/askphilosophy/comments/2ji06t/what\\_are\\_the\\_arguments\\_in\\_favor\\_of\\_intellectual/](http://www.google.com/amp/s/amp.reddit.com/r/askphilosophy/comments/2ji06t/what_are_the_arguments_in_favor_of_intellectual/)> accessed on 12-7-2019.

<sup>35</sup> Gunten A. V., *Intellectual Property is Common Property* (Zurich: Bunch & Netz, 2015), chapter 1 <https://onlinebooks.buchundnetz.com/intellectualpropertyiscommonproperty/chapter/1-the-classical-justifications-for-intellectual-property-rights/> accessed on 27 November 2025..

<sup>36</sup> M. Boldrin and D. Levine 'A Critical Review of Against Intellectual Monopoly', (2002) 24 *The Review of Austrian Economy*, 81-84.

their consent is a recipe for monopoly.<sup>37</sup> An exclusive right involves the right of an owner of intellectual property to use his ideas without the worry of competition for a specific period of time.<sup>38</sup> They opine that a monopolistic market, which surely prevents competition, is only favourable to the producers and unfavourable to the members of the public.<sup>39</sup>

But the proponents of intellectual property rights protection have argued that monopoly of intellectual properties is no more than the ordinary ownership of a horse or a piece of land.<sup>40</sup> If claiming and exercising ownership right over intellectual property could be termed as monopolising the property, then so is the ordinary act of owning any type of real or tangible property. They argue that the copyright in a book, or the patent in an invention, and so on are not monopoly<sup>41</sup> as the author or a patentee does not have an absolute control over his property because of the time limitation and even limitation of the extent of this. The intellectual property right only gives him certain rights to use and benefit from his creation, just like an owner of a car or house benefit from what he owns too.<sup>42</sup> Taking the argument further, Stallmann had posited that the term ‘monopoly’ should not even have been used in the first instance since it is normal that inventors and authors, in line with the utilitarian and the labour and reward incentive theories, deserves the fruit of their labour on whatever intellectual work they produced and this is going to be achieved by a legal framework geared towards

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<sup>37</sup> Nataniel N. ‘Copyright in a Democratic Civil Society’ (1996) *Yale Law Journal*, 283 at 106.

<sup>38</sup> Gliściński, K., ‘Intellectual property rights as private rights: Implications of the theory of internally limited rights and incentive theory for reconstructing the normative content of rights in intangible goods’ (2025) 28(2) *The Journal of World Intellectual Property*, pp.516-551; Lamping, M., ‘Exclusive Rights for a Purpose’. In: Godt, C., Lamping, M. (eds), *A Critical Mind. MPI Studies on Intellectual Property and Competition Law*, vol 30 (Springer, Berlin, Heidelberg, 2023). [https://doi.org/10.1007/978-3-662-65974-8\\_10](https://doi.org/10.1007/978-3-662-65974-8_10). See Also for instance, Article 1, section 8, clause 8 of the United States Constitution.

<sup>39</sup> Nataniel N. ‘Copyright in a Democratic Civil Society’ (1996) *Yale Law Journal*, 283 at 106.

<sup>40</sup> Scatcher, ‘What are the Arguments of those in Favour of Intellectual Property? Against Piracy?’

<sup>41</sup> Marez V. S., ‘11 Arguments Against So Called Intellectual Property’ <https://keimform.de/2008/11-arguments-against-so-called-intellectual-property/> accessed on 27 November 2025.

<sup>42</sup> Scatcher, ‘What are the Arguments of those in Favour of Intellectual Property? Against Piracy?’

protecting their private rights.<sup>43</sup> The reason behind the legal protection is to generate new creative works in the society, to promote the progress of ‘science and useful arts.’, and to protect businesses as well, in agreement with the development theory.<sup>44</sup>

Intellectual property rights, therefore, allow the IP owner to make profit out of his intellectual creation. The protection, thus, facilitates income, not only to the creator of the property, but to some other people involved in the production of the property. For example, the publishers of books, producers of music, movies, broadcasting corporations, patented inventions, and so on all earn incomes from the intellectual endeavours of some people and in the absence of the creation of related intellectual property they all will have no job and no income. This shows that the economic importance of intellectual property is not only restricted to the owner of the property but a team of other people who depend on the availability and continuous availability of the property in the market,<sup>45</sup> thus improving the economy of a state.

## 2. Economic Basis: Money as a Disincentive for Creativity

There are many economic arguments against intellectual property rights, one of which is the discovery that financial rewards are often not a good motivation for creativity.<sup>46</sup> Looking at the form of income distribution caused by intellectual property right, patents for instance

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<sup>43</sup> Stephan Kinsella, ‘The Case Against Intellectual Property’ (2013) 15 *The Journal of Libertarian Studies*, 1325-1357.

<sup>44</sup> Edosomwan, Aifuwa. “Protecting Intellectual Property Rights in Nigeria: A Review of the Activities of the Nigerian Copyright Commission” (2019) 58 *World Patent Information*, 101908. Accessed 27 November 2025. <https://doi.org/10.1016/j.wpi.2019.101908>; Kimberly M. Bonner, ‘Intellectual Property Rights: Copyright Framework and Exclusive Rights, Copyright Protection and the Public Domain, Copyright Ownership’ <https://education.stateuniversity.com/pages/2100/Intellectual-Property-Rights.html> accessed on 27 November 2025.

<sup>45</sup> Though the continuity is a limited one, only till the time its protection will expire. For instance, the copyright on a literary work expires fifty years after the death of the author. Though, this may not necessarily put an immediate stop to the economic benefits accruable from the property.

<sup>46</sup> Maretz V. S ‘11 Arguments Against So Called Intellectual Property’ <https://keimform.de/2008/11-arguments-against-so-called-intellectual-property/> accessed on 27 November 2025. That the recognition of reward can have a counterproductive effect. For instance, young children who are rewarded for their drawings are less likely to draw on their own than children who draw just for the fun of it.

only usually benefits large companies because small companies cannot afford the legal overhead.<sup>47</sup> The argument on this is that financial incentive is not only limited to just financial benefit to the owner, but also to serve as an incentive to create and continue to create.<sup>48</sup> So is this saying that authors will not be motivated and inspired to write unless they are given copyright protection, or that inventors will not be inspired to come up with new ideas and products apt? Going by the enormous unfair exploitation of poor countries by the wealthy ones built into the current world trade system, it is considered normal that ideas produced in rich countries would be made available at an unnecessary and unjustified high cost to the poor nations. Surely there is no better indication that intellectual property is primarily of values to those who are already powerful and wealthy.<sup>49</sup>

The proponents have counter argued this by insisting that there is no stronger motivation than assuring an intellectual property creator of being compensated monetarily for the property he had so created.<sup>50</sup> Economic right and benefit are the greatest incentives motivating continuous production of intellectual products<sup>51</sup> as it is not in the nature of man not to accept recognition and compensation for a work well done and beneficial to others. Financial compensation is therefore, the strongest incentive to encourage an intellectual property creator already in the market to increase his production, and also to boost the morale of intending creators because of the promised monetary benefit that awaits them.

#### **4. The Concept of Intellectual Property under Islamic Law**

A proper consideration of most of the classical definitions of property under shari'ah by classical scholars will reveal that the discourse on the

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<sup>47</sup> Martin B., 'Against Intellectual Property' (1995) *Science, Technology and Society University of Wollongong, Australia*, 47

<sup>48</sup> Roderick T. Long, 'The Libertarian Case Against Intellectual Property' (1995) III (I) *Formulations*, pp.10-13.

<sup>49</sup> Bagdikian B *The Media Monopoly* (4<sup>th</sup> ed Beacon Press Boston, 1993)

<sup>50</sup> Kalanje C. 'Leveraging Intellectual Property: Beyond the 'Right to Exclude' available at <[www.wipo.int/sme/en/documents/leveraging-ip-fulltext.html](http://www.wipo.int/sme/en/documents/leveraging-ip-fulltext.html)> accessed on 4 August 2019.

<sup>51</sup> Bashar H. M., 'The Alliance Between Islamic Law and Intellectual Property: Structure and Practice', (2013) 10 *University of St. Thomas Law Journal*, 630.

concept of intellectual property is not alien to Islamic law of property.<sup>52</sup> Although, it might appear that intellectual property rights are not expressly regulated by the Qur'an and Sunnah, there are number of evidences from the textual sources of Islamic law that point to its existence, hence, its regulation.

#### 4.1 Is Intellectual Property a 'Property' under the Islamic Law?

The basis of the discourse on the justifiability of intellectual property under the Islamic Law is the debate about whether intellectual property could be regarded as a property particularly from the perspective of whether it is a *manfa'ah*. *Manfa'ah* can be translated in English to mean usufruct, benefit or profit.<sup>53</sup> In traditional Islamic commercial transactions, many jurists use the term to refer only to the benefits derived from material things<sup>54</sup> through their use, which are visible although some related it with all contingent things associated with tangible assets that could not exist without them and the yields resulting from them, such as residence in a house, fruit from a tree, and milk from an animal.<sup>55</sup> Similarly, in the *Majallah* and *al-Hidāyah*, it is defined as the benefits derived from or that correspond the use of an *'ayn* (tangible asset) such as living in a house, receiving services, and the like.<sup>56</sup> Some notable jurists like Al-Nawawī, Al-Subkī, and Al-Ba'li attempted to distinguish *manfa'ah* (benefit), which is considered intangible, from *ghallah* (yield) which is tangible. For instance, they considered the produce from the land, wool and milk from sheep, and fruits from trees as *ghallah*, not *manfa'ah*. But according to Sharbīnī and Ibn Ḥajar Al Haytamī, the two terms are synonymous.<sup>57</sup>

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<sup>52</sup> Muhammad Y. A., Muhammad S. and Hassan A.S. 'Basis of Intellectual Property Protection in Islam and its Legal Effect' (2016) 6(9) *International Journal of Humanities and Social Science*, 90-96.

<sup>53</sup> Ismail, 'Money and Wealth: An Islamic Perspective' <https://archive.siasat.com/news/money-and-wealth-islamic-perspective-866885/> accessed on 7 November 2025.

<sup>54</sup> Hibbatullah K., 'Intellectual Property under the Nigerian Law and Islamic Law' (Dissertation, University of Ilorin, 2018), 78.

<sup>55</sup> Khaff, A.A., 'Al-Mana'afe' (1950) *Majallat Al Qanun wal Iqtisad*, p. 27.

<sup>56</sup> The *Majallah*, *Majallah-al-Ahkam-Al-Adaliyah* (Karkhana Tijrat e Kutub, Karachi, 2010), p. 100; Marghīnānī, S.H., *The Hidaya: Commentary on the Islamic Laws*, vol. 3 (Dar-ul-Isha'at, Karachi, 2005), p. 201.

<sup>57</sup> Qalyūbī, S., *Hashiyat al-Qalyūbī 'ala Sharh Jalal al-Din al-Muhalla' ala Minhaj al-Talibin*, vol. 3, (Dar al-Fikr, Beirut, 1998), p. 173.

The expansive usage of the term seems to be preferred in contemporary commercial transactions. While explaining it in the context of sales law, Wahbah al-Zuhaylī, stated that ‘the usufructuary right (*manfa‘ah*) of a thing signifies the right to enjoy anything for the lifespan of the party entitled to the benefit of the usufruct. Therefore, *Manfa‘ah* is generally regarded as forming part of goods’.<sup>58</sup>

This direction was adopted by the AAOIFI when it describes usufruct (*manfa‘ah*) as “a legally enforceable limited right related to an asset, including the two property interests: *usus* (use), which means the right to use or enjoy such asset, and *fructus* (fruit), which means the right to derive profit or benefit from the asset, but does not involve the risks and rewards related to ownership”.<sup>59</sup> Similarly, according to the International Shari‘ah Research Academy for Finance (ISRA), the benefit could be in a tangible or intangible form, e.g. the milk of a cow, the fruits from a tree, or the rent from a house.<sup>60</sup> The use of the term could also be extended to “the ways or means through which such benefits or profits are sought in order to achieve a beneficial goal”.<sup>61</sup>

Most of the *madhhabs* recognise intellectual property as a specie of property except the Hanafiyyah. To the Hanafiyyah, physicality (*Qabdul Haqqi*) a primary feature of a property<sup>62</sup>, and because intellectual property is not capable of physical possession, it has failed one of the primary criteria laid down by the school. On the other hand, the Maliki, Shafi‘i and Hanbali schools all agree that the proper criterion for a property should be *manfa‘a* (the usefulness of a property) instead of the criterion of physical possession of the Hanafi school.<sup>63</sup>

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<sup>58</sup> Al-Zuhaylī, W., *Al Fiqh ul Islami wa Adillatuhu*, vol. 4, (Darul Fikr, Damascus, 1984), p. 40.

<sup>59</sup> AAOIFI, ‘Financial Accounting Standard 32: Ijarah’, (2020) <https://aaoifi.com/newly-issued-standards/?lang=en> (accessed 25 February 2021).

<sup>60</sup> ISRA, *ISRA Compendium for Islamic Financial Terms (Arabic–English)* (International Shari‘ah Research Academy for Islamic Finance, Kuala Lumpur, 2010).

<sup>61</sup> Ullah, M. R., Saba, I. & Riaz, A. ‘An exploratory study of *manfa‘ah* (usufruct) in ijārah accounting from the Shari‘ah Perspective (2023) 15 (4) *ISRA International Journal of Islamic Finance*, S. 4 - 24.

<sup>62</sup> Muhammad W., ‘Al- Mal: The Concept of Property in Islamic Legal Thought’ (1999) 14 *Arab Law Quarterly* 361 at 363.

<sup>63</sup> Steven D. J., ‘The Protection of Intellectual Property Under Islamic Law’ (1992) 21 *Capital University Law Review* 1079, 1084. This is especially related to the definition of the Hambali school on property: that property is anything that is useful or usable.

These schools accept both tangibles and intangibles as properties as long as they are useful and have value, irrespective of their capability of being physically possessed.<sup>64</sup> Therefore, the implication of this is that intellectual property, though not a tangible property, is accorded the same protection as a real property for it is an extension of the latter.

Therefore, notwithstanding the agelong debates surrounding the recognition of *manfa'ah* as a form of property is not unanimously agreed upon. As it was made obvious from the definition of property by the Hanafi school, usufruct was not recognised as a property because intangible properties are seen not to be marketable properties, but other schools including Maliki, Shafi'i and Hanbali schools, as the *jumhur* are of the view that usufructs are valuable property by themselves and are protected just like any tangible property.<sup>65</sup>

## **5. Justification of the Protection of Intellectual Property under Islamic Law**

Some Muslim scholars contend that intellectual property rights are not directly regulated by Shari'ah, and so they are not valid.<sup>66</sup> Among those who oppose the validity of intellectual property rights are the Hanafi, Mufti Shafi whose opinion was recorded by Mufti Taqi Usmani and Abd al- Rahman Al- Sabuni.<sup>67</sup> Of all the arguments against intellectual property under the Shari'ah, the strongest is that neither the Quran nor the Sunnah of the Prophet (SAW) expressly treat intangible properties as subject matter of private ownership, so suggesting that the definition of property is only limited to tangible properties, and does not extend to intangible ones.<sup>68</sup> The opponents hold therefore that idea of intellectual property is only a concept imposed by the west which

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<sup>64</sup> Hassan Z. *An Introduction to the Law of Property in Malaysia* (1<sup>st</sup> ed, Random Publications, New Delhi 2013), 12.

<sup>65</sup> Muhammad Y. A., Muhammad S. and Hassan A.S. 'Basis of Intellectual Property Protection in Islam and its Legal Effect', 91.

<sup>66</sup> Raslan A. R. 'Shari'a and the protection of Intellectual Property: The Example of Egypt, (2007) 47 *The Intellectual Property Law Review*, 510.

<sup>67</sup> Abd al- Rahman al-Sabuni, *Al- Madkhal li- Dirasat al- Tashri al- Islaami* (Wazarat al-Shu'un al-Diniyah, Qatar, 1400 H), 263.

<sup>68</sup> Khoury A. H 'Ancient and Islamic Sources of Intellectual Property Protection in the Middle East: A Focus on Trademark' (2003) *The Journal Law and Technology*, p. 172. Khoury explains that this is in fact the view adopted by the Hanafi school and that the Shafi and Maliki schools do not have any objection to the ownership and possession of intangible goods, and even the Hanafi school views that the possession of intangibles is somehow linked to tangible items.

would be of no benefit to the Muslim community.<sup>69</sup> To the holders of this view therefore, what is not even recognised to exist in the first place requires no legal protection and so the protection of intellectual property rights is not a considerable concept. This argument is based on opinions of Imam Abu Hanifah.

Secondly, intellectual property has been equated to *riba* which is prohibited by Shari'ah. The underlying rationale behind this prohibition is that wealth should be through effort in the form of labour and interest involves making a lot of wealth without exertion.<sup>70</sup> Wealth made from licensing fees of intellectual property rights can potentially amount to a subset of interest by the owner and licensor of the intellectual property. In this aspect also, Mufti Taqi Usmani<sup>71</sup>, though a proponent of protection of intellectual property supports the opponents. He states that the primary sources of Shari'ah and the juristic views of Muslim scholars have not supported the protection of intangible object. The late Mufti of Pakistan, Sheikh Muhammad Shafi'i issued a *fatwa* stating that authorship and inventions are acceptable as means of income but he disapproved the permissibility to exclude others from using them, that is, the exercise of exclusive ownership.<sup>72</sup> This is an illustration of partial support that is given to protection of intellectual property.

They further argued that even if the knowledge that birthed the intellectual products being sought to be protected were to be regarded as a property, the one who was bestowed the knowledge is just its mere custodian, for the knowledge originates from and belongs to God, and so, is a commonwealth of all.<sup>73</sup> Consequently, it is inappropriate for a person to arrogate exclusive proprietary authority of the knowledge to

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<sup>69</sup> Milani A and Ahmadi A 'The Legitimacy of Intellectual Property Rights, the Lights of Islamic Law (Sunni and Shia Fiqh)' (2018) *Sri Lanka Journal of Arabic and Islamic Studies*, 6.

<sup>70</sup> Beltrametti S 'The Legality of Intellectual Property Rights under Islamic Law' <[www.digitalislam.eu/article.do?articleId=2729](http://www.digitalislam.eu/article.do?articleId=2729)> accessed on 27 November 2025.

<sup>71</sup> Taqi U. M., 'Copyright in Islam' <https://muftitaqiusmani.com/en/copyright-in-islam/> accessed on 07 November 2025.

<sup>72</sup> Alireza Milani, 'The Legitimacy of Intellectual Property Rights in the Light of Islamic Law (Sunni and Shia Fiqh), 2017 7 (3) *World Journal of Islamic History and Civilization*, 37-46.

<sup>73</sup> Raslan A. R. 'Shari'a and the protection of Intellectual Property: The Example of Egypt, (2007) 47 *The Intellectual Property Law Review*, 510.

himself.<sup>74</sup> It is argued, therefore, that protection of intellectual property leads to a monopoly<sup>75</sup> and concealment of knowledge,<sup>76</sup> both of which they contended were prohibited by Allah<sup>77</sup> and his messenger.<sup>78</sup> This position is premised on the assertion that the Islamic culture emphasises collectiveness with a string of community values which negates the individualistic rights conferred in the case of intellectual property rights.<sup>79</sup> However, these opponents of intellectual property rights protection under the shari'ah are the minority.<sup>80</sup>

Indefiniteness is one of the things prohibited in Islamic commercial law. The closest term in Arabic to qualify indefiniteness is *Gharar* which also means uncertainty.<sup>81</sup> This concept prohibits any uncertain and speculative transaction. Transacting parties must have full knowledge of the subject matter of their transaction. The prophet (SAW) was reported to have said that "It is forbidden to sell the fruit

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<sup>74</sup> Brindley T. J. 'Conflicting Values in International Intellectual Property Standards for Pharmaceuticals: Western Framework Vs. Islamic Traditions in the Middle East'. (Thesis, George Town University, 2014).

<sup>75</sup> David P. *The Development of Intellectual Property Regime in Arabian Gulf States: Infidels at the Gates* (Routledge- Cavendish, New York 2009), 27.

<sup>76</sup> Samia Maqbool Niazi, 'The Justification of Intellectual Property Rights in Islamic Law' (2016) 4 (11) *Global Journal of Arts, Humanities and Social Sciences*, pp.62-75.

<sup>77</sup> Surah Baqarah verse 42, where Allah says 'And do not mix up the truth with the falsehood, nor hide the truth while you know it.' It must, however be mentioned that according to the tafsirs of Qurtubi adopted *Ma'ariful Quran*, this verse does not address the prohibition of profiting from worldly knowledge. Rather, it is a code of ethics for scholars (Ulama) warning them against refusing to advise people truthfully even when their disobedience to Allah is apparent. See also the explanation of the meaning of the verse in the tafsir book, *Tafheemul Quran*.

<sup>78</sup> A pointer to this argument could be seen in the explanation of Hadith 3658 in *Sunan Abi Dawud* [Whoever is asked about knowledge that he possesses and then conceals it will be bridled on the Day of Resurrection with a bridle of fire.] on the official website of Durar As-Saniyyah <https://dorar.net/hadith/sharh/115280> accessed on 7 November 2025. The hadith was graded Hasan Sahih by Al-Albani in *Sahih Abi Dawud*.

<sup>79</sup> Bashar H. Malkawi, 'Intellectual Property Protection from a Sharia Perspective' (2013) *Southern Cross University Law Review*, 120.

<sup>80</sup> Brindley, Tim, *Conflicting Values in International Intellectual Property Standards for Pharmaceuticals: Western Frameworks vs. Islamic Traditions in the Middle East* (Faculty of the School of Continuing Studies and of the Graduate School of Arts and Sciences, Georgetown University, 2014), p.20.

<sup>81</sup> Beltrametti S 'The Legality of Intellectual Property Rights under Islamic Law' <[www.digitallslam.eu/article.do?articleId=2729](http://www.digitallslam.eu/article.do?articleId=2729)> accessed on 27 November 2025.

on the tree before it is ripe, because the buyer does not know if all the fruit will ripen or what its weight will be.”<sup>82</sup> However, certain contemporary commercial practices involving transactions over intangible properties like technological innovations and trade secrets are found to lack the clarity legislated by Islamic law. In this context, therefore, the nature, scope and utility of the intellectual property being licensed may be ambiguous to either or both parties, which in the category of the *gharar*, that is, uncertainty or indefiniteness that is prohibited under Islamic law of transactions.

The proponents assert that even if the textual sources (*nusus*) do not directly mention intellectual property, the principles of shari’ah can be construed, by *ijtihad* to provide support for its recognition and protection. Through the extension of the application of the general principles of property law, intellectual property itself would be seen as a form of property.<sup>83</sup> Besides, the references to property in the Quran are broad and flexible, not legal or formal. Therefore, from the manner the concept of wealth is used in the Quran, it is hardly distinguishable if it refers to movable or immovable property, tangible or intangible.<sup>84</sup>

The legal default (*al-asl*) of any commercial transactions under the Islamic law is its validity (*al-Ashlu fi al-‘Uqūd al-Ṣiḥḥa*) until clear textual evidence prohibits it. Thus, that the Quran and the Sunnah do not expressly regulate the protection of intellectual property is essentially why it should be considered permissible. The legality of such matters cannot be riveted to only the textual sources (*nusus*) as legal rulings are extracted from other sources such as the *ijma’* (the consensus of Muslim scholars), *qiyas* (analogical deduction) among others.<sup>85</sup> But

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<sup>82</sup> *Sahih Muslim*, ‘Kitab Al- Buyu’ (The Book of Transactions)’ No. 10. Available at [www.iium.edu.my/deed/hadith/muslim/010\\_smt.html](http://www.iium.edu.my/deed/hadith/muslim/010_smt.html). Accessed on 21 August 2019.

<sup>83</sup> Alireza Milani, ‘The Legitimacy of Intellectual Property Rights in the Light of Islamic Law (Sunni and Shia Fiqh), 2017 7 (3) *World Journal of Islamic History and Civilization*, 37-46.

<sup>84</sup> Ismail, ‘Money and Wealth: An Islamic Perspective’ <https://archive.siasat.com/news/money-and-wealth-islamic-perspective-866885/> accessed on 7 November 2025.

<sup>85</sup> Da’wah Institute of Nigeria, *Shari’ah Intelligence: An Introduction to Usul al-Fiqh and Maqasid al-Shari’ah* (Islamic Education Trust, Minna 2019), 29; Liman, S. H. and Elesin, A.M.J., *Introduction to Basic Principles of Shari’ah* (Ahmadu Bello University Press, Zaria 2019), 27.

even then, evidence abound in the textual authorities about the protection of intellectual property.

The Quran recognises an array of rights which are derivable from property, most importantly, the right to the ownership or possession of a property and the right to accumulate wealth from such property.<sup>86</sup> One of the properties through which a person could derive and enjoy wealth is the intellectual property. A provision alluding to the legality of enjoyment of intellectual property rights under the Islamic law is where Allah explicitly gives preference to those who know against those who do not know.<sup>87</sup> Allah asked rhetorically in this verse: ‘Are those who know equal with those who do not know?’ Looking at the direction taken by various exegetes, it is clear that Allah places those who utilise their intellectual ability on the same high pedestal with ardent worshippers. According to the anecdote in *Tafsir Jalalayn*, ‘...in other words, they are not equal, just as the person of knowledge is not equal to the ignorant one. Only people of pith, possessors of intellect, remember...’<sup>88</sup>

Another provision in the same vein is that of Surah Nisa verse 29 where Allah says: “O you who believe! Do not devour your property among yourselves falsely, except it be trading by your mutual consent...” In *Tafheemul Quran*, it was explained that: “‘trade’ signifies the mutual transfer of benefits (*manfa’ah*) between the parties concerned, such as that underlying the transactions in which one provides whatever satisfies the need of another person and is paid in return.”<sup>89</sup> Similarly, the author of *Ma’ariful Quran* while explaining the meaning of this verse stated from *Tafsir al-Mazhari* that trade encompasses dealings related with services, labour and tenancy.<sup>90</sup>

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<sup>86</sup> Dolgun, M. H., Property Rights According to the Quran and Sunnah and Their Economic Implications for Contemporary Societies (2016) 8 (1) *ISRA International Journal of Islamic Finance*, 95.

<sup>87</sup> Surah Zumar (39) verse 9

<sup>88</sup> *Tafsir Jalalayn*, Surah Zumar (30): 9 <https://quranhadits.com/quran-en/39-az-zumar/verse-9/> accessed on 3 November 2025.

<sup>89</sup> *Tafheemul Quran*, <https://equranlibrary.com/tafseer/tafheemulquranen/1/1> accessed on 5 November 2025.

<sup>90</sup> Mufti Muhammad Shafi’ Deobandi, *Ma’ariful Quran*, <http://equranlibrary.com/tafseer/maarifulquranenglish/1/1> accessed on 5 November 2025.

Validating the recognition of intellectual property, the Prophet identified beneficial knowledge as one of the activities for which a person would perpetually enjoy from the fruits of his labours even after death.<sup>91</sup> So, if a deceased person could enjoy the usufruct of the knowledge he worked with while alive, why could he not enjoy that usufruct during his lifetime? Abu Hurayrah narrated a hadith that also comes close to the foregoing. The Prophet said:

“If anyone acquires knowledge that should be sought seeking the Face of Allah, but he acquires it only to get some worldly advantage, he will not experience the ‘*arf*, i.e. the fragrance, of Paradise.”<sup>92</sup>

In his explanation of this narration, Ibn Baaz established that what the Prophet prohibited here is seeking knowledge solely for the sake of worldly benefit. Once the intention has been rectified, he emphasised that the knowledge seeker has the right to enjoy any worldly benefit that comes to him as a result of that knowledge – such as salaries, wages, or other earnings. It will be lawful for him.<sup>93</sup> Ibn Baaz clearly justifies the protection of intellectual property and his position aligns with the stance of the majority of the madhhabs.

Furthermore, the protection of property (*hifz al-māl*) and the protection of intellect (*hifz al-‘aql*) are two foremost agendas among the *maqasid al-shari’ah* (objectives of Islamic law).<sup>94</sup> The combined implication of these two objectives of shari’ah also exceptionally support the legality of intellectual property. The first, protection of property validates intellectual property as a form of property, as it talks about the

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<sup>91</sup> *Riyad as-Salihin*, Hadith No. 1383

<sup>92</sup> *Sunan Abi Dawud*, Hadith No. 3664; *Sunan Ibn Majah*, Hadith No. 252. Graded Sahih by Albani.

<sup>93</sup> Ibn Baaz, ‘*Ma sihhatu Hadith: Man Ta’allamu ‘ilman mimma yabtaghi bihi wajha Llahi*’ [What is the soundness of the hadith: Whoever seeks a knowledge that should be sought for Allah’s sake...] <https://binbaz.org.sa/fatwas/17232/%D9%85%D8%A7-%D8%B5%D8%AD%D8%A9-%D8%AD%D8%AF%D9%8A%D8%AB-%D9%85%D9%86-%D8%AA%D8%B9%D9%84%D9%85-%D8%B9%D9%84%D9%85%D8%A7-%D9%85%D9%85%D8%A7-%D9%8A%D8%A8%D8%AA%D8%BA%D9%89-%D8%A8%D9%87-%D9%88%D8%AC%D9%87-%D8%A7%D9%84%D9%84%D9%87> accessed on 5 November 2025.

<sup>94</sup> Da’wah Institute of Nigeria, *Shari’ah Intelligence: An Introduction to Usul al-Fiqh and Maqasid al-Shari’ah* (Islamic Education Trust, Minna 2019), 259.

protection of property in general, intellectual property inclusive. The second one, the protection of the intellect is also validating it as it directly applies to intellectual property for it is a product of an intellectual work, thus its protection constitutes one of the objectives of shari'ah.<sup>95</sup> A proper consideration of both objectives support the assertion that Shari'ah that supports 'economic gain through labour'.<sup>96</sup> The labour of an individual which results in the expression of written, technical, or graphical terms are respected in Islam and to be seen just like the common physical labour for both involve the exertion of efforts to put something in place.<sup>97</sup> And as a reply to the last argument of the opponents of intellectual property right, the restrictions created by intellectual property law is to protect mostly the economic right of the creator and prevent commercial exploitation of his property by others.<sup>98</sup>

This position, apart from being taken by majority of the madhhabs, is also favoured by many contemporary jurists of Shari'ah including many from the Hanafiyyah school such as including Mufti Taqi Usmani, Mawlana al- Shaykh Fath Muhammad al-Lakhnawi; 'Allamah Shaykh al- Mufti Muhammad Kifayat Allah; Allamah Shaykh Nizam al Din, Mufti of the Dar al 'Ulum at Deoband; and al Shaykh Mufti 'Abd Rahman al- Lajpuri, Yusuf Musa,<sup>99</sup> among others.<sup>100</sup> In fact, a fatwa of the Council of the Islamic Fiqh Academy declared intellectual property rights legal.<sup>101</sup>

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<sup>95</sup> Raslan A. R. 'Shari'a and the protection of Intellectual Property: The Example of Egypt, (2007) 47 *The Intellectual Property Law Review*, 497.

<sup>96</sup> Price, D., & AlDebasi, A., *The Development of Intellectual Property Regimes in the Arabian Gulf States: Infidels at the Gates*, 1st ed. (London: Routledge, 2009), 27.

<sup>97</sup> Price, D., & AlDebasi, A., *The Development of Intellectual Property Regimes in the Arabian Gulf States*, 27-28.

<sup>98</sup> Cummings J, Askani H & Mustapha A., *Islam and Modern Economic Change*. (Syracuse University Press, 1980), 69.

<sup>99</sup> See Musa, Y., *al- Amwal wa Nazariyyat al-'Aqd*, 2<sup>nd</sup> Ed. (Cairo: Dar al-Kitab al-Arabi, 1954), 162 where the author relied upon by the Federal Shariat Court citing him as an authority who upheld the validity of intellectual property rights.

<sup>100</sup> Taqi U. M., 'Copyright in Islam' <https://muftitaqiusmani.com/en/copyright-in-islam/> accessed on 07 November 2025. See also 'Intellectual Property and Copyright in Islam' <https://www.ilmgate.org/intellectual-property-and-copyright/> and <https://muftitaqiusmani.com/en/copyright-in-islam/> accessed on 07 November 2025.

<sup>101</sup> Resolution No 43 (5/5) of the Resolution and Recommendations of the Council of the Islamic Fiqh Academy 1985-2000 (1<sup>st</sup> Ed., Islamic Research and Training Institute, 1421AH/2000) 89.

The proponents even supported their argument with historical facts. Right from the *Jahiliyyah* Arab period, poetry was a highly respected and prestigious engagement and poets relish in this fact as well. No doubt, intellectual property is a very old concept, and even upon the advent of the Islamic rule some of the rights pertaining to authorship were further advanced.<sup>102</sup> Islam thus gave a new shape to the intellectual property based on a just and a fair system. Even as at then, there was the recognition of poets' moral and economic rights such that the infringement of their rights was not taken lightly and attracted serious punishment.

Knowledge is a subject that is held in high esteem in Islam, hence its acquisition and transmission is a compulsion upon every believer.<sup>103</sup> The subject is one that has to do with exercise of knowledge, an author who writes a book, a poet who writes a poetry, an inventor who creates a new device, or even an entrepreneur who designs his trademark all engage in activities requiring the application of knowledge which eventually is not only for their personal use but for public consumption. So, from this point, intellectual property right holders can be seen as impacting and transmitting knowledge unto others for their benefit.<sup>104</sup> Flowing from this point is also the fact that as a property that requires the exertion of labour, intellectual labour in this case, and as an incentive for the reward of labour, intellectual property owners are ordinarily entitled to the rights and benefits that may accrue from their creation; essentially moral and economic rights. As resolved in the Quran that every man and woman shall benefit from whatever they earned.<sup>105</sup>

They have also posited that an attempt made at widening the scope and meaning of property in Islamic law should include and accommodate

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<sup>102</sup> Khan J. I and Lone N. A 'Intellectual Property in Islam: A Perspective' (2013) *International Journal of Research in Social Sciences*, 3. He pointed out that many rules of law regarding the intellectual protection were based on ancient customs and after the advent of Islam these customs were Islamised because the old customs were enshrined into the revelation because they were either accepted by the Prophet or were supported by a Hadith.

<sup>103</sup> Surah Baqarah verse 32, 133, 255, Surah *Al Imran* 7, 18-19, and a plethora of other verses and the Sunnah of the Prophet on the relevance of knowledge.

<sup>104</sup> As their property will go a long way in benefitting the members of the concerned public through the intellectual property to which they can validly claim ownership.

<sup>105</sup> Surah al-Nisa verse 32.

intellectual property as well.<sup>106</sup> Considering the meaning of property given by most schools of Islamic jurisprudence except for the Hanafi, intellectual property can easily be accommodated. Overall, a thing is treated as a property when it is valuable, desirable, useful, benefitting, capable of being owned, and most importantly legitimate.<sup>107</sup> All of these characteristics constitute confers complete ownership (*al-milkiyyah tamm*) upon the holder of the property.<sup>108</sup> So, the supporters of intellectual property rights stand on this fact that intellectual properties meet all these features and requirements of a valid property in the aspect of shari'ah.<sup>109</sup>

## **6. Commonalities in the Justification for the Protection of Intellectual Property under the Conventional Laws and Shari'ah**

In the first instance, the concept of intellectual property under the conventional laws and Islamic law is not actually systematically the same. The classification of intellectual property rights under conventional law is not the same as that of shari'ah for there is relatively no classification under the Islamic law. Islamic law would rather consider the legitimacy of any of these so classified rights.<sup>110</sup> Copyright is the most popular under the Islamic law as literary works, especially poetries are part of the traditions of the early Arabs.<sup>111</sup> Books written on different subjects are also common engagement

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<sup>106</sup> Samia Maqbool Niazi, 'The Justification of Intellectual Property Rights in Islamic Law' (2016) 4 (11) *Global Journal of Arts, Humanities and Social Sciences*, p.65.

<sup>107</sup> Hassan, Z., 'Islamic Law of Property in Malaysia', 22. These are the popular features which anything referred to as a property must possess as far as shari'ah is concerned. Legitimacy is however the hallmark of all because a property that is not permissible or that is prohibited by Islam will cease to be one in the eye of shari'ah. So, in the light of these, things like alcohol, gambling places, breweries, and many other prohibited things do not qualify as property. See also Alaro A. A., 'An Appraisal of Women's Proprietary Rights Under Islamic Law of Transactions (*Fiqh Al Mu'amalaat*)' (2015) 13 *University of Maiduguri Law Journal*, 71.

<sup>108</sup> Alaro A. A., 'An Appraisal of Women's Proprietary Rights Under Islamic Law of Transactions (*Fiqh al-Mu'amalaat*)', 70.

<sup>109</sup> Samia Maqbool Niazi, 'The Justification of Intellectual Property Rights in Islamic Law' (2016) 4 (11) *Global Journal of Arts, Humanities and Social Sciences*, pp.62-75.

<sup>110</sup> Taqi U. M., 'Copyright in Islam' <https://muftitaqiusmani.com/en/copyright-in-islam/> accessed on 07 November 2025.

<sup>111</sup> Taqi U. M., 'Intellectual Property and Copyright in Islam' <https://www.ilmgate.org/intellectual-property-and-copyright/> and <https://muftitaqiusmani.com/en/copyright-in-islam/> accessed on 07 November 2025.

among the people.<sup>112</sup> Thus, many classical literary critics like al-Jurjani,<sup>113</sup> and Ibn Rashiq<sup>114</sup> have singled out chapters in their books to elaborate and discuss the consequences of stealing of poetic verses from others.<sup>115</sup> Similarly, under the conventional law system as well, copyright, among all the other rights has the widest scope.<sup>116</sup> This, however, does not suggest that patents and the others are not recognised and acknowledged, as long as they do not contradict any shari'ah rule. Even though, discussions about patents and trademarks are contemporary, the rules applicable to copyrights are applicable to them using the principles of interpretation under the Islamic jurisprudence (*Usul al-Fiqh*) particularly through the application of general terms (*alfaz 'ammah*) and qiyas (*juristic analogy*). These are two of the most important interpretive tools devised by jurists of *Usul al-Fiqh* to extend existing rulings to new circumstances as they arise. When general terms (*alfaz ammah*) appear in texts, jurists will interpret them as applying to every instance falling under the linguistic scope of the word by inclusion of all similar instances. Since copyright is an instance of making a person benefit from the usufruct of his intellectual service, every such effort will be accommodated therein. Qiyas is the process of extending a legal ruling from an original case (*aṣl*) established in the texts to a new case (*far'*) because the effective cause (*'illah*) is shared. Therefore, since copyright, which is a benefit derived from corporeal right, has acquired the ruling of legality, other forms of intellectual property conferring the same or similar benefit on the owner will be given the same ruling of legality.

The systems of the intellectual property right protection under both systems are quite so similar. Under the conventional law, intellectual property rights are protected mostly by the grant of some rights which will be exclusive only to the owners of an intellectual property. Under the Islamic law, however, some acts irregular to the rights of the property owner, be it tangible or intangible, are seen as an infringement

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<sup>112</sup> Malkawi A. H 'Intellectual Property from A Shariah Perspective' (2013) 16 *Southern Cross University Law Review*, 87.

<sup>113</sup> Abdul Qahir al-Jurjani, *Asrar al-Balaghah fi Ilm al-Bayan* (Beirut: Dar al-Kutub al-Ilmiyyah, 2001), p.190.

<sup>114</sup> Ibn Rashiq al-Qayrawani, *Al-'Umdah fi maḥāsin al-shi'r wa-ādābihi wa-naqdih* (al-Makatabah al-Tijariyyah al-Kubra, 1963).

<sup>115</sup> Makhdum, *Ahkam al-Kutub fi al-Fiqhi al-Islami* (Dar Kunuz Ishbiliya, 2011), 549.

<sup>116</sup> Oyewumi, *Nigerian Law of Intellectual Property*, 11.

to the property of another, and that is frowned at.<sup>117</sup> This is why the consent of the real owner of a property is compulsory to obtain before anything relating to the property can be done.<sup>118</sup>

The commonalities in the justification of the protection of intellectual property under both conventional law and Islamic law lie in the advantages of intellectual property. The proponents of the protection of intellectual properties in both legal systems emphasise the necessity for the protection of these rights because of the invaluable importance that comes with it and the dire consequences that will follow the lack of their protection. Both legal systems protect considered the right of a property owner, which cannot be taken wrongly from him without his approval. Also, his right to derive whatever lawful benefit from what he owns cannot be infringed. Both laws acknowledge and protect the owner's moral and economic rights to be recognised for his ownership right over his property, and his right to benefit from his ingenuity.

## **7. Conclusion**

Property rights and their protection are sacred across legal systems including the Islamic and Conventional laws because every system of law recognises a person's natural rights to work legitimately and enjoy the fruits of the labour. Due to continuous dynamism of human behaviour, the nature of what used to be considered as work has been changing. It has evolved from the physical efforts that characterise the agricultural and industrial eras to the era of knowledge-based and idea-based economy. Several persons now earn primarily through conceptualisation of invention – mind work. Therefore, the need to protect the individual's right to property has also witnessed a shift in debate. The debates in both the Islamic and Conventional laws reflect a clear divide between the traditionalists and the conventionalists. The intensity of the disagreements appears to be on the same scale across both legal systems. Interestingly, both points are premised on the same pedestal – economic development. The traditionalists insisted the intellectual input and/or usufruct of a tangible product ought to be commons and its restriction through the protection of intellectual property could stifle technological development and encourage monopoly. The conventionalists argue, however that the protection of

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<sup>117</sup> Malkawi, A. H., 'Intellectual Property from A Shariah Perspective', 89.

<sup>118</sup> Malkawi, A. H., 'Intellectual Property Rights in Islam: A Perspective', 157.

the intellectual property right is consistent with the recognition of the economic and moral rights of the owner of an idea. Working contrary to this would discourage development of innovative ideas. This study thus examined the arguments of both the proponents and opponents of the protection of intellectual property with a view to analysing the strengths of the arguments on either side and to determine whether the arguments in support under either law could be used to reinforce the other. Examining the concept of intellectual property rights under the conventional law and Islamic law, this work concludes that the protection of intellectual property rights is absolutely justified. Apparently, the protection of intellectual property rights is already widely recognised across many jurisdictions, including Muslim countries.