

**JUSTIFICATIONS FOR COPYRIGHT AS A PROPRIETARY
INTEREST UNDER ISLAMIC LAW: A *MASLAHAH*
MURSALAH APPROACH**

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ABSTRACT

Copyright is a specie of intellectual property rights having recognition and protection under the Shari'ah has been subjected to jurisprudential debates among scholars. This is due to the fact that it was not explicitly recognised by the classical principles of the law but rather developed out of analogical deductions canvassed by the classical and contemporary Muslim jurists. The paper explores the recognition afforded to copyright in Islamic law based on the doctrine of Property exceptionalism, permissible intangible property and at later its justification based on *Maslahah Mursalah i.e* Unrestricted public interest. The aim of this is to provide a strong foundation for the recognition of the proprietary right that exist in copyright protection. In doing this, the study employs doctrinal legal analysis supported by the conceptual approach draw inference from the classical texts, the juristic opinion of the Muslim scholars, *fatwas* canvassed by various Islamic bodies, relevant International legal instruments such as the Bernes Convention, and the United Nations Declaration of Human Rights, to substantiate the assertion that copyright protection is aligned to the principles of Islamic law. The study finds out that the concept of *Maslahah Mursalah* is an alternative approach in substantiating a more balanced framework for copyright protection by recognising the variety of interests involved; protecting and incentivising the intellectual effort of the author and allowing access to authored works for the benefit of the society as a whole. It further finds out copyright protection serves as a means of knowledge dissemination and not its concealment which is

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considered as a key objective of Islamic law in affording the greatest benefit for the common good of the people which is the crux of *maslahah mursalah*. To substantiate a robust framework for the recognition of proprietary interest of copyright, the paper recommends further research on the capability of copyright to be subject matter of contractual transactions and dispositions in Islamic law.

Keywords: Intellectual Property, Copyright, Property, *Maslahah Mursalah*, Islamic law

1.0 Introduction

Current developments in the global economy brought about the ascendancy of the concept of Intellectual property and the brick and mortar economy is being replaced with ideas in which Intellectual property has become one of the major currencies in the new global economy where wealth is created through creating and harnessing the value of knowledge.¹ Throughout the history of human civilization, tangible and intangible assets have always formed the constituent of wealth and today knowledge forms part of the new wealth that lead to the evolution of the Intellectual property rights concept and its recognition globally.

Intellectual property broadly means the legal rights which results from intellectual activity in the scientific, literary and artistic field. Thus the Intellectual property rights from the International regime perspective affords the individual the right to protect his creativity/ invention by granting him the power to dispose of it and prevent others from using it without his permission.

Intellectual property rights have been categorized into four (4) distinct rights: Trademarks, Patents, Copyrights and Trade Secrets. Trademarks serve as a source of quality identifiers and encourage investments in products marketed under an identifying mark. Patents serve to encourage and reward innovation by providing inventors with a limited term right to exclude others from making or using their novel invention. Copyright serve to encourage literary and artistic expressions by providing a limited right to prevent others from copying

¹ Cornish Williams, *Intellectual Property Omnipresent, Distracting Irrelevant?* Clarenton Law Lectures, Oxford University Press, London (2005) p. 4.

the artistic or literary expressions of an idea in a tangible form. While Trade secrets differ in nature and form than the other Intellectual property rights in that they protect valuable ideas that an owner wishes to maintain in secrecy.²

Copyright constitute a bundle of rights that are available to its holder. It consists of moral rights, financial/proprietary rights and protective rights. While moral and protective rights have been recognized to exist for the copyright holder time immemorial because of the recognition given to an author of his right to attribution and paternity, right of integrity, right of withdrawal among others. Proprietary rights have not garnered such recognition and therefore had been subjective to jurisprudential debates by the Muslim scholars specifically as to how to fit it within Islamic law as it exists within the current International framework.

Historical antecedents have clearly established special recognition was given to creativity and innovation of ideas, this indicates the appreciation of Islamic civilization to intellectual labour through different eras, it justifies copyright based on the scope of ownership, labour, encouraging productivity and discouraging free riding. Thus for an efficient copyright regime to operate within the tenets of Islamic law, it will not be sufficient to consider just the benefits based on incentive rhetoric but rather incorporate a holistic approach towards its potentials to serve public interest or benefit. Thus the paper aims to provide a strong foundation for the recognition of the proprietary rights accruable by a copyrights holder base on the doctrine of evolving concept of property exceptionalism, permissible intangible property and *Maslahah Mursalah*.

1.1 Justifications for Copyright as a Form of Property under Islamic Law

The general concept of 'property' within the context of Islamic jurisprudence as '*mal*' which refers to the 'res' or subject matter of legal transactions which can exist; tangible goods (*ayn*) debt (*dayn*) and, usufruct or benefit (*manfa'ah*). Literally, *mal* has been defined as

² Robert P et al, *Intellectual Property in the New Technological Age*, (2023) pp. 24-27 Available at <https://ssrn.com/abstract=4507044>

anything that man can own.³ From a modern perspective, it is regarded as anything that has commercial value, whether corporeal, usufruct or any kind of right that can be exchanged and which is customarily regarded as property of commercial value. It consist of both movables and immovable, specific objects and their usufruct (or income which they produce), which is capable of being owned or possessed by man, and what is owed to him i.e choses in action.⁴

While attempting to provide a comprehensive definition of what property entails in Islamic law, the schools of jurisprudence (*Madhahib*) have advanced differing opinions of what is considered as property. The major opinion canvassed by Maliki, Shafi'i and Hambali schools adopted an expansive concept of property by recognising both tangible and intangible assets upholding the opinion that usufruct (*manfa'ah*) is considered as property.⁵ By implication, rent, services and even intellectual works will fall under this category of property. Hanafi school however restricted *mal* to anything that is tangible, naturally desired by man,⁶ capable of being stored for use at the time of need⁷ and having financial value.⁸ To this school, usufructs and rights are not property but are considered as ownership rights that gives limited enjoyment rights to the owner.⁹ Although later Hanafi jurists like Al Kasani recognised usufruct as property.¹⁰

The concept of *haqq* is an abstract concept that did not enjoy the traditional character afforded to property such as physicality and enjoyment.¹¹ However modern conceptions developed to consider it as

³ Muhammad, Shettima & Hassan, Basis of Intellectual Property Protection in Islam and Its Legal Effects, International Journal of Humanities and Social Science, Vol 6, No 9, (2016), p.91.

⁴ James Norman Anderson, Islamic Law, International Encyclopaedia of Comparative Law, Vol VI, ed. Frederick H. Lawson, (Tubigen: Mohr,1976) pp.103-104.

⁵ Ibid

⁶ Yusuf Al-Qardawi, *Fiqh al-Zakat* (2002) p. 66.

⁷ Muḥammad Amin Ibn 'Umar Ibn 'Abd 'Aziz Ibn 'Abidin, *Radd al-Muḥtar 'Ala al-Durr al-Mukhtar* (Beirut: Dar al-Fikr, 1992), Vol 4, p.510.

⁸ Mustafa Al-Zarqa', *Al-Madkhal li Dirasah Islamiyyah Muqaranah* (1984), p. 127.

⁹ Ibid

¹⁰ Ala' al-Din Abu Bakr Ibn Mas'ud Ibn Aḥmad al-Kasani, *Bada'i' al-Ṣana'i' fi Tartib al-Shara'i'* (Beirut: Dar al-Kutub al-'Ilmiyyah, 1986), Vol 7, p.385.

¹¹ Rabiah Adawiah Ali, Re-Defining Property and Property Rights in Islamic Law of Contract, *Jurnal Syariah*, 11:2, (2003), p.52.

a recognised form of property. This represents a kind of merger between the idea of right and property to be attached in a single embodiment construed to develop what is termed as financial/ property rights (*huquq maliyyah*). These property rights are bundle of rights that are attached to tangible, intangible things or even the benefits flowing from them exemplified in ownership right (*haqq al milkiyyah*) and usufructuary right (*manfa'at*) which are considered as property characterised with abstractness but with the attributes of physicality, acquirability, exclusivity and transferability.¹² This broader conception allowed for the accommodation of Intellectual property rights as recognised form of property within the paradigm of Islamic legal scholarship.

Copyright as it exists within the International framework is conceived as a western legal concept which is perceived by many of the Muslim scholars as not being adaptive to the rules of Islamic Law. Although the moral rights of attribution and paternity has been recognised to be available to an author prior to the coming of Islam, the proprietary aspect of its recognition having economic value attributed to it has not garnered such attention. Hence, its adoption within the Shari'ah enclave required more than just establishing its compatibility on the notion of ownership over ideas, but a practical approach is needed to discover how the sources and objectives of the Shari'ah fits copyright as it is perceived within the International framework.¹³

The jurisprudential arguments on the recognition and permissibility of intangible property as property requires theological and historical analysis of property concepts within Islamic law. While prevailing theories of intellectual property have clearly exhibited dichotomies regarding its recognition within the context of Islamic law based on the distinctions of the utilitarian arguments and the jurisprudential reasoning of the major schools of Islamic jurisprudence (*Madhahib*). On one hand, a faction within the Islamic literature has argued that intellectual property has not been directly justified within the normative or textual sources.¹⁴ Another extreme view within the

¹² Ibid, p.53.

¹³ Kawthar Bayoumi, Arrief Salleh Rosman, *Framing an Islamic Vision of Intellectual Property: Maqasid -Based Approach UMRAN-International Journal of Islamic & Civilization Studies* 5(3). p 25.

¹⁴Abdulrahman Ala Abdulkarim, *Intellectual Property Rights in the Kingdom of Saudi Arabia in Light of Sharia and the TRIPS Agreement* (Apr. 6, 2017) 82 (S.J.D).

Islamic legal scholarship contends that intellectual property is unaligned with Islamic teachings regarding it as a concept imposed by western ideologies.¹⁵

1.1.1 Foundations of Copyright from Classical Literature

Copyright as a form intellectual property having recognition and protection under the Shari'ah has been subjected to jurisprudential debates among scholars as it was not evidentially provided by the classical principles of the law. The contemporary jurists who accept its recognition used their analogical deductions to recognise intellectual creations as legitimate form of wealth that is clearly supported by the idea of an individual's right to his creative work on one hand. And on the other protecting the interest of the society justifying it based on *Maslahah Mursalah*. The justification for recognizing copyright as property under Islamic law was subjected to divergent opinion by Muslim scholars as it was not regulated by detailed and precise rules of Shari'ah. From the classical jurisprudential point of view which majority of the scholars including Maliki Shafi'i and Hambali schools opined, the proper criterion for considering the characteristics which property possess is the benefit derived from the usufruct(*Manfa'ah*) and the objectivity of such recognition lies in the fact whether the idea of ownership (*Milkiyya*), right (*Haqq*) and financial value can be attributed to what will be construed as property which makes copyright inclusive.¹⁶

While in the opinion of some of the scholars, for example Mufti Muhammad shafe'e who issued a fatwa concerning the status of authorship and inventions opined that they are not considered as an acceptable source of income, but rather an abstract right that does not allow the author to exclude others from its enjoyment.¹⁷ According to him, being abstract rights, they are not subjective to the protection of

Dissertation, Pennsylvania State University) (on file with the Georgia State University Law Review) (stating that "Sharia does not speak explicitly about protecting and enforcing intellectual property rights") p128.

¹⁵ Bashar H. Malkawi, Intellectual Property from a Sharia Perspective, 16 S. *CROSS U. L. REV.* 87, 92–109 (2013) p.92.

¹⁶ Ibid p.93.

¹⁷ Ezeiddin El Mahjub, Protection of Intellectual Property in Islamic Shari'a and the Development of the Libyan Intellectual Property System, A Doctoral Thesis, Queensland University of Technology, (2014), p. 95

Shari'ah. Other extreme opponents of its legal status reject it totally as they regarded copyright as a means of knowledge concealment which violates the fundamental objectives of the Shari'ah.¹⁸ But those with more lenient approach towards copyright attribute its status to that of absolute (protective) right which confers on its holder exclusive right of protection (moral right) without any financial inclinations or value.¹⁹ These jurists majorly substantiated their opinion based on the arguments canvassed by the Hanafi jurisprudence which did not recognise usufructuary rights (*Manfa'at*) to fit well within the constructive meaning of tangible property. In the classical opinion of this school, ideas and expressions are intangibles and thus cannot be regarded as property because it lacks the fundamental requirement of it capable of being controlled or owned.²⁰

However later Hanafi jurists shared multifaceted opinions concerning the recognition afforded to copyright as compatible to property under Islamic law. Al Kurdi took an extreme view of the incompatibility of copyright to Islamic law substantiating his arguments on the substantive provisions of property law failing to adopt the feasibility of aligning the provisions to suit current needs.²¹ Muhammad al Sunbuli, afforded copyright partial recognition, acknowledging the permissibility given to an author to financially benefit for his works by accruing royalties in transactions and accepting monetary compensations in lieu of use by others. He further argued that the author is exclusively granted the right to accept royalties or licencing fee, but he is refrained from selling or transferring his copyright to third parties for example a publisher.²² While Usmani considered complete compatibility of copyright with Islamic law, he advanced a detailed analysis of the fitting it within the Hanafi schools' perspective of property, acknowledging also that it does not lead to monopolisation which by implication means concealment of knowledge.²³

¹⁸ Ibid

¹⁹ Julie Lowe, Hanafi Approaches to Copyright, *Islamic Law and Society*, 30, (2023), p.256.

²⁰ Muhammad Wohidul Islam, *Al-Mal: The Concept of Property in Islamic Legal Thought*, *Arab Law Quarterly*, BRILL, Vol. 14, No. 4 (1999), pp.364-365. Available at <http://www.jstor.org/stable/3382152>

²¹ Ibid (n 19), p.256.

²² Ibid 257

²³ Ibid

On the other hand, while agreeing with classical opinion for copyrights' recognition based on rights and benefits, the proponents of copyright opined that acquiring benefits for the work of the mind is acceptable and receiving compensation in lieu of creative work is also valid.²⁴ Contemporary authors such as al Durayni opined that copyright as a specie of intellectual property is a right or a benefit that entitle its holder to protection.²⁵ Similarly, ibn Urfah a Maliki scholar posits that ideas or inventions expressed in a tangible medium i.e a newspaper or a book can have very significant value and can therefore be subjective to protection in Islamic law.²⁶ Further to this, al Zuhayli considered intangibles capable of being subject matter in contractual transactions and dispositions and dealing with it in an illegal way can be considered as an infringement of the author's right.²⁷ Other contemporary scholars such as Shaykh Salih al Husayyin and Sheikh Abdul'aziz bn Baz recognised the rights of the copyright holder as the legitimate owner and any infringement of such right is considered as theft and deception.²⁸ Therefore copyright as a recognised specie of intellectual property within the intangible property enclave has monetary value and the fact that it entitled its holder to legal protection the violation of which is punishable is enough to serve as strong justification for its proprietary interest.²⁹

Although Muslim jurists have advanced different opinion on what constitute property, their major point of centrality is concerning what it entails within the principles of Islamic law that is concerned with rights and obligations as subject matter of ownership. This creates the dichotomy on the perceptive status of copyright that exist within the concept of property (*Mal*) and ownership under the principles of the Shari'ah.³⁰ Most of the jurists considered ownership in copyright to be

²⁴ El Mahjub, (n 17), p. 65.

²⁵ Fathi Al Durayni, *Al Haq al Ibtikar fi al Fiqh al Islami*, Mu'assasah Al Risala, Beirut, p. 42.

²⁶ Mohd Izzat Arif & Hisham Hanapi, The Concept of Intellectual Property as Al Mal: An Islamic Perspective, *International Journal of Education of Best Practices*, (2017), p. 106.

²⁷ Wahbah al Zuhayli, *Al Fiqh al Islam wa Adillatuhu*, Dar al Fikr. Damascus, Vol. 4.p.

²⁸ Jamal Zarabozo, The Copyright Issue, Available at <https://muslimmatters.org>. Accessed 06/10/2025

²⁹ Malkawi, *Sharia Perspective*, (n 15) p.94.

³⁰ Tabrez Y. Ebrahim, *Intellectual Property Through Non-Western Lens: Patents in Islamic Law*, Georgia State University Law Review Vol 37, Issue 3 (2021) p. 802

a moral right regarded absolute and exclusive to the original holder. But in a more concise view adopted by contemporary Muslim jurists, intangibles are recognised as property or object of property rights which sets the foundation for the evolution of property exceptionalism that tilts towards permitting intangible intellectual property in the modern context.³¹

1.1.2 Property Exceptionalism

Property Exceptionalism is a novel descriptive theory construed and developed by a Tabrez Ibrahim, a contemporary author on Intellectual property rights while trying to integrate Intellectual property within the historical paradigms of the concept of property in Islamic law. He analysed the doctrinal and theological gaps of the extant classical provisions of the law and connect them with Intellectual property rights in order to provide justiciable foundation for the recognition of these Intellectual property rights as intangibles with distinctive features adaptive to Islamic principles.³² Therefore it is considered as an analytical concept that was developed to provide for the unique legal as well as moral perspective afforded to the concept of property rights in Islamic law which initially nurtured itself in the work of al Ghazali's *Al Mustasfa*, and al Shatibi's *Al Muwafaqat* among others. This laid the foundation for the jurisprudential groundwork on the recognition afforded to property in Islamic law and the sanctity it upheld.

The dynamics which intellectual property underwent before its inclusiveness as a mechanism to recognise it as a form of property that is consistent with Islamic law underwent so much criticisms and scrutiny.³³ Historically, Islamic laws' perception with regards to intellectual property has largely been characterized by what is termed 'mutual exclusion.'³⁴(*Al Tanafi al mutabadal*) inferred within the precepts of Usul al Fiqh as the reciprocal incompatibility of two things to coexist. Therefore, the first contact of the Muslim jurists with Intellectual property created the perception of its falling outside the scope of permissible property recognised under Islamic law due its characterized intangibility affording it a rather objectionable status

³¹ Ibid

³²Ibid p.801

³³ Ibid

³⁴Ibid

outside property law, thereby reflecting the doctrine of what evolved as 'Property Exceptionalism'.³⁵

Most of the Muslim scholars who distanced copyright from Islamic property did so based on doctrinal and theological grounds. They created doctrinal hedges that separated intellectual property from property law because of monopolization prohibitions relying on the textual sources of Islamic law as earlier referenced to be the position of a Hanafi Jurist Ahmad al Kurdi.³⁶ They argued that Intellectual property centred on the legal rights of a creator/author, its being excluded due to its intangible nature. Another opinion expressed by al Salejee in a scholarly fatwa issued where he upholds the view that copyright is incompatible with the Hanafi schools' view of recognising ownership in intangible rights but incapable of being considered as objects of financial transactions.³⁷ This pre-informs a rhetorical vision of copyright that helps to justify or at least rationalize the concerns that it is generally incommensurate with the intrinsic values of property (*Mal*) in Islamic law.³⁸ They further corroborated the segregation of copyright as a specie of Intellectual property from property law because of monopolization prohibitions, prohibition of knowledge concealment and obtaining market leverage that does not correspond to the value of labour which effects greatly on the concept of social justice.³⁹

It is worthy of note that as the doctrine of property exceptionalism evolved from these perceived inconsistencies which specified that early Islamic culture has protected copyright notionally regulating the moral perspective of the copyright but not recognising the proprietary interest. From another perspective, the concept of property

³⁵ Ezeiddin Mustapha Elmahjub, *An Islamic Perspective on the Theories of Intellectual Property* (2015) p.56.

³⁶ Al Kurdi's Fatwa 1979 cited in Lowe (n 19) p.256

³⁷ Ibid p.257

³⁸ Alireza Milani, *The Legitimacy of Intellectual Property Rights the Light of Islamic Law (Sunni and Shia Fiqh)* WORLD J. ISLAMIC HIST. & CIVILIZATION 37 (2017) 39 – 41 (providing reasoning that the concept of intellectual property within Islamic law is integral to and can be extracted from property law principles, while summarizing objections to intellectual property within Islamic law based on literature.

³⁹ Rehana Anjum, *An Introduction to Intellectual Property Rights in Islamic Law* (2019) 8–13 (unpublished manuscript), Available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3397868 [<https://perma.cc/RL8D-KWCF>]

exceptionalism introduced distinct principles adopted by the Schools of thought (*Madhahib*) to the forefront. Thus the debate for the application of this doctrine arose either due to the desire to apply explicit references from the primary sources to substantiate the concept of copyright. Or it can be due to a classical resistance towards adopting Western concepts that are perceived alien to Islamic principles. Indeed, the unique norms and principles of Islamic law suggest that intangibles fit uncomfortably in an Islamic law vision of property law that has traditionally been predicated on physical possession and tangibility.⁴⁰ Such considerations give rise to significant normative questions regarding how Islamic law conceptualize, justify and recognise copyright as a concept and provide regulative principles within an Islamic legal system.

1.1.3 The Evolution of Permissible Intangible Property

The aspirations of Islamic law towards the adoption and assimilation of copyright as a form of intellectual property into the property law regimes of Islamic law has been faced with so much limitations. Contemporary Muslim scholars such as Usmani, al Zuhayli, al Zarqa' and various *Fatwa* bodies such as the Islamic *Fiqh* Academy and the Al Azhar Scholars and Fatwa Committee in their resolutions have given requisite recognition to copyright base on commercial reasons, labour theories and the usufructuary characteristics. The most important foundation that established the realization for the incorporation of copyright as a specie of Intellectual property into the Islamic law realm is the recognition accorded to intangible property which is associated with the strong arguments canvassed by the Muslim jurists to support the validity of copyright and other associated rights under the precepts of Islamic law. The dimensional approach used towards the incorporation of intellectual property and by extension copyright within Islamic law, has been on the belief that intangible property with commercial value should be considered property *Mal* and whatever is treated by mankind as property and a thing of value should be construed as property.⁴¹ Hence, the spirit of incorporating intellectual property has lent itself to logical principle based on the

⁴⁰ Malkawi, (n 15) p.93.

⁴¹ Samia Maqbool Niazi, The Justification of Intellectual Property Rights in Islamic Law, *GLOB. J. ARTS HUMANS. & SOC. SCIS* (Dec. 2016) p.62.

benefit derived from, the commercial value to be yielded, and not the corporeality of the object in question.

Although skeptics of the permissibility of copyright in Islamic law have argued that its commercial benefit as a form of Intellectual property is disproportionate to the intrinsic value for labour. They also contended that the fair exercise of private control of intangible wealth will not justify copyright as a form of property in Islamic law. Contemporary writers on the other hand have justified copyright as property under Islamic law based on its purpose of governing transmission of knowledge and the advancement of a flourishing society.⁴² Other scholars have corroborated that anything that has not been expressly prohibited will be implied as allowed by the law. Thus copyright will be inferred as property as it has not been prohibited but can be recognized as a species of property by the labour theory of appropriation which entitles an individual to claim ownership of a thing when he exerts the effort to harness it from its natural source.⁴³ It is on the basis of this principle that they allow for recognizing copyright as permissible property by the *Madhahib* including Hanafi school at a later stage.

The acceptance of usufruct as property by the early Muslim jurists provides justification for recognition of intangible property that leads to developing a positive normative framework of copyright in Islamic law.⁴⁴ Although the thematic recognition for abstract rights in property was not present in the classical era of Islamic jurisprudence because it majorly focused on corporeal rights. It has been the view of the traditionalist Hanafi scholars that they do not consider benefits arising from chattels i e usufruct to have value independent of the corpus of the property.⁴⁵ This has been argued from the perspective that benefits accrued from a property will be considered as inseparable from the object of property itself which presupposes the view that they cannot exist on their own and their use or benefit will be immaterial. However, a parallel opinion construed as the majority view recognised ownership in property to lie in one person and the benefit or usufruct to lie in another. This can be exemplified in transactions such as lease (*Ijarah*),

⁴² Elmahjub, *Islamic Perspective* (n 36) p.56.

⁴³ Malkawi, (n 15) pp.93-94.

⁴⁴ Said Bouheraoua et al., Shariah Issues in Intangible Assets, 23 *SHARIAH J.* 287, (2015) pp. 291–292.

⁴⁵ Niazi, (n 42) p. 62.

endowments (*Waqf*), Wills (*Wasiyyah*), gifts of a life time (*Al Umra*) where the owner of a property to transfer its usufruct to a third party while retaining ownership in the property exclusively. In this instance, the ownership of the corpus vests with the owner and the right to receive benefit or to use the object vests with the person assigned the right. Modern scholars have laid emphasis to value, derived benefit, treatment accorded to copyright based on custom and usage and its capability to meet future requirements as the new and expansive views of property. In addition to this, internationally recognized Shari'ah advisory bodies such as the, Islamic *Fiqh* Academy of the Organisation of Islamic Cooperation (IFA-OIC), and the International Islamic Institution for the advanced study of Islamic jurisprudence and the Auditing and Accounting Organisation for Islamic Financial Institutions (AAOIFI) have adopted the view that intangible assets are considered as property being a source of wealth, inherently beneficial, compensable and having value that entitles it to legal protection the violation of which are punishable.⁴⁶

Similarly, the modernist view of property which emphasized the usufructs of intangibles to be part of the property led to the adaptation of copyright to be recognised as property. This perspective focuses mainly on the uses, consequences and benefits of knowledge dissemination and the discussion on the usufruct paradigm in modern Islamic law scholarship. It challenged the traditional view of property in the classical Islamic law which focuses on the object of the property rather than the benefit.⁴⁷ This approach further recognizes the proprietary value of the property rights that exist in copyright.

⁴⁶ Islamic Fiqh Acad., *Resolution No. 43 (5/5): Concerning Incorporeal Rights*, in Resolutions and Recommendations of the Council of the Islamic Fiqh Academy 1985–2000, at 89, 89 (2000) [hereinafter *Resolution No. 43 (5/5)*] (“The Council of the Islamic *Fiqh* Academy, holding its Fifth session, in Kuwait-City (State of Kuwait), from 1st to 6th Jumada al-Oula 1409 H (10 to 15 December 1988); *Having reviewed* the papers presented by the Members and experts concerning ‘Incorporeal rights’ and *after having listened* to the discussions on the subject; RESOLVES First: Business name, corporate name, trade mark, literary production, invention or discovery, are rights belonging to their holders and have, in contemporary times, financial value which can be traded.

⁴⁷ Anjum, (n 40) p.16.

1.2 Justifications for Copyright Protection Base on *Maslahah Mursalah* (Unrestricted Public Interest)

Maslahah is the cornerstone of Islamic philosophy that creates a nexus between adherence to religious texts in different fields of Islamic knowledge and relating them to the evolving needs of the society. It specifically relates to Islamic theology and principles of Islamic jurisprudence in striking a balance between rules of Islamic law and the concept of benefit.⁴⁸ Thus it serves as a normative tool in generating legal rulings where the law is silent on particularly novel situations where there is no textual guidance with a view to address contemporary matters in a way that is consistent with the intent of the law..⁴⁹ Thus the concept greatly affects legal rulings and reasoning which can rightly be conceived to serve as a theological foundation expressed under the principles of Islamic jurisprudence (*Usul al Fiqh*) that provides the methodology of deriving legal rulings and serves as a juristic tool for scholars in evolving new laws.⁵⁰ Hence it recognised the adoption of the core moral values of Islamic law with the aim of providing a dynamic and comprehensive legal system.

Maslahah Mursalah connotes consideration of unrestricted public interest. It is an Arabic term that describes it as one of the distinctive sources of Islamic law. *Maslahah* means ‘interest or benefit.’ The term *Mursalah* literally means ‘unrestricted or absolute.’ *Maslaha mursalah* is considered one of the most important sources of Islamic law which is referred to concerning issues where no explicit injunction could be found either in the textual sources i.e the Qur’an and Sunnah or by way of analogical deduction *Qiyas* to address matters that are considered new and provided it aligns with the objectives of the law and does not contradict an established ruling provided by the textual sources. This gives the general implication that the law in its entirety gives foundational support for its recognition. Technically, it means the consideration of public interest in articulating Shari’ah-based rulings.⁵¹ Therefore, any action or legislation that brings benefit to the community or is established within the context of the law to protect and preserve the interest and welfare of the community is among the prime

⁴⁸Muhammad Hashim Kamali, *Maqasid al Shari’ah; The Objectives of Islamic law*, Journal of Islamic Studies 38:2, p. 193.

⁴⁹ Ibid.

⁵⁰ Bayoumi and Rosman (n 13) p.26.

⁵¹ Abu Hamid al-Ghazali, *Al-Mustasfa*, (al-Jami’a al-Islamiyya) vol. 2 p .329.

objectives of the Shari'ah. It is a source of law designed to operate as a normative framework to ensure that law and policymaking majorly promote public interest.

The legal basis for the recognition of *maslahah mursalah* has garnered support from both the Qur'an and Sunnah of the Prophet (SAW) even though it is not explicitly addressed and recognised in the Holy Qur'an as a source of Islamic law. Within the textual provisions of the Holy Qur'an, several verses are indicative of the hallmark objective of the law to be based on the principle of upholding and promoting benefit and the prevention of harm that serves the fundamental objectives of the Shari'ah. Therefore sending of the Prophet (SAW) as mercy to the whole of mankind is considered as one of the principles which the law established.⁵² Other verses have implied the consideration of human welfare towards the pursuit of what is good and avoidance of harm.⁵³ Thus the principle of promotion of the welfare of the society (*jalb al maslahah*) and the prevention of harm (*darr al mafsadah*) are the core values of the idealisation of *maslahah mursalah* in deducing legal rulings.

From the Sunnah perspective, even though no explicit *ahadith* have been reported from the Prophet (SAW) upholding the use of *maslahah*. The hadith reported by Abu Hurairah "there shall neither be harm nor reciprocation of harm."⁵⁴ It has been argued by scholars like Al Tufi to encompass *maslahah* in its entirety. He maintained this hadith to be a decisive *nass* for the justification of *maslahah*.⁵⁵ In another hadith, the Prophet (SAW) is reported to have said 'God loves to see that his concessions (*Rukhas*) are observed, just as He loves to see His strict laws *Aza'im* are observed.'⁵⁶ This reiterates the notion that Shari'ah does not intend to enforce unnecessary difficulty in the enforcement of its rulings but rather encourages a person to avail himself of the flexibility and concessions granted by the Law giver and utilize them in the pursuit of what is *maslahah*. Contextually, the concept of *maslahah* does not apply *stricto sensu* to Prophetic rulings, because any

⁵² Q21:107

⁵³ Q2:185, Q5:2

⁵⁴ Ibn Majah Sunan Hadith no 2340

⁵⁵ Nazly Hanum Lubis, *Al Tufi's Concept of Maslahah: A Study in Islamic Legal Theory*, M A Thesis, Institute of Islamic Studies McGill University, (1995), p.45

⁵⁶ Muhammad Hashim Kamali, *Principles of Islamic Jurisprudence*, Islamic Text Society, 3rd Ed, (1991), p. 237.

ruling given by the Prophet (SAW) in favour of a *maslahah* becomes part of the primary source of the law and no longer a *maslahah mursalah*.⁵⁷

It is clear that *maslahah*, synonymous to *istislah*, is the concept which is concerned majorly with social interest. It has been utilized in the decision-making process since the early developmental period of Islamic law.⁵⁸ The advocates of *maslahah* have always relied on the legal opinions (*fatwas*) of the Companions of the Prophet (SAW) as justification of the validity of *maslahah* as the basis for legal judgements and the foundation for evolving new rulings. This assertion is based upon the fact that after the death of the Prophet (SAW), the Companions issued *fatwas* that were not based on the known legal decisions prescribed by the Prophet (SAW), neither in their derivation nor in the rationale behind them.⁵⁹ Therefore it is right to state that the concept of *maslahah* is clearly discernible from the practices of the companions of the Prophet SAW, the *Tabi'in* and later *mujtahidin* who engaged in *Ijtihad* to deduce rulings based on their legal reasoning in pursuance of *maslahah* despite the unavailability of textual authority to validate it. Caliph Abubakar for example, collected and compiled the scattered records of the Holy Qur'an into a single volume, nominated Caliph Umar to succeed him; and waged war against those who refused to pay the zakat.⁶⁰ Caliph Umar suspended the execution of prescribed punishment for theft in the year of famine and approved the execution of a group of criminals for the murder of one person. These were decisions taken despite the clear provisions of the Qur'an on the punishment for theft which is amputation of the hand and the law of *qisas*-retaliation. These decisions were taken based on the rationale that lives of people will be exposed to aggression if persons who commit murder were exempted from the law. Thus it becomes a matter of public interest to apply *qisas* to persons who participated in committing the murder of a single person.⁶¹

Further to this, Caliph Uthman standardized the text of the Qur'an and destroyed all the variant versions. He also validated the right of a

⁵⁷ Ibid

⁵⁸ Abdulmalik Oricha Ali, *Maslaha Al Mursalah; The Concept, Sources, History and Benefits as a Source of Islamic law*. p.5.

⁵⁹ Kamali Principles (n 57), p. 237.

⁶⁰ Ibid

⁶¹ Ibid

divorced woman whose reason for being divorced is to disinherit her.⁶² The fourth Caliph, Ali held craftsmen and traders liable for the loss of goods placed in their custody. This he does based on *maslahah* in order to safeguard people's property placed under the care of others.⁶³ Therefore to sum it up, it is a clear fact that cannot be denied that the Companions of the Prophet (SAW) have unanimously endorsed the usage of *Maslahah Mursalah* in their various decisions majorly to safeguard public interest and rationalise same within the context of serving the fundamental objectives of the law as encapsulated within the Qur'an and Sunnah. These among others are some of the instances where the application of *maslahah* is clearly evidenced during the era of the Companions of the Prophet Muhammad (SAW) and beyond.

The various schools of jurisprudence have incorporated *Maslahah Mursalah* either directly or indirectly as a source of law. It goes without saying that Hanafi school adopt *Maslahah Mursalah* idealising it to be similar to juristic preference (*Istihsan*) extending the scope of its application as a legal principle under the concept of *Qiyas*.⁶⁴ Maliki school maintained *Maslahah Mursalah* as the foundation for legislation making in the absence of textual authorities. They extensively used the legal device of *Maslahah* in their legal reasoning and considered it as an independent source of law.⁶⁵ Hambali school claimed *Maslahah* to be the foundation of Islamic law and generally upheld the rationale behind all legal rulings to be based on it.⁶⁶ Although, Shafi'i school at the initial stage rejected *Maslahah* believing that all legal rulings must be derived from the primary sources.⁶⁷ Subsequent scholars Shafi'i school such as al Juwayni and Ibn Abdussalam relate *Maslahah Mursalah* to *Qiyas* arguing that only public interest that is supported by textual authorities are recognised as valid. Therefore, only textually regulated interests will be considered as valid by establishing a connection between *Maslahah* and the primary sources of the law. In

⁶² Ibid

⁶³ Ibid

⁶⁴ Luqman Zakariyah, *Al Maslahah Mursalah* as a Source of Islamic Law and its Relevance to Political Dispensation, *KWASU Journal of Religious Studies*, Vol I, No 2, (2017), p.57.

⁶⁵ Lubis (n 56) p. 46.

⁶⁶ Ibid

⁶⁷ Muhammad b. Idris al-Shafi'i, *Al-Umm*, (Cairo: Matba'at al-Kubra al-Amiriyyah), Vol. II, p. 307.

their opinion human reason cannot recognise what is *Maslahah* and what is not.⁶⁸

Maslahah Mursalah is considered a key non-textual source in the process of seeking solutions for modern social and legal challenges. Copyright as a specie of intellectual property rights within the international framework is no exception. It is clear that recognising the proprietary rights of copyright is a novel situation for which no specific rules of Shari'ah are found. Thus, the doctrine of public interest *Maslahah Mursalah* provided a significant bearing to determine whether the existing mechanism for copyright recognition is compatible with the principles of Shari'ah, or whether the objective weighing of the benefits of the mechanism against its expected harmful effects be applied.⁶⁹

Contemporary scholars have also made various contributions concerning justifications for the recognition of copyright as a specie of Intellectual property rights based on *Maslahah Mursalah*. Widely renowned Muslim scholar al-Zuhayli issued a *fatwa* in 1977 in favour of 'Islamic protection' for copyright which was explicitly based on the notion of *Maslahah Mursalah*. He succinctly stated

Copyright, which enters under a new legal concept, the intellectual right, is protected under the Shari'ah [and] the basis for such protection would be *Istislah or Maslahah Mursalah*. This is because any work that brings prevailed interest or obviates damage and evil is legitimate under Shari'ah.⁷⁰

Also based on *Maslahah Mursalah*, but on a broader scale, the International Islamic *Fiqh* Academy (one of the most highly regarded Islamic institutions in modern times) issued a *fatwa* in 1988 regarding recognition for Intellectual property rights and dealing with them in general:

⁶⁸ Izz al-Din Abd al-Aziz b. Abd al-Salam al-Sulami, *Qawa'id al ahkam fi Masalih al Anam*, (Cairo: Matba'at al-Istiqamah.), Vol. II, p. 160.

⁶⁹ Heba Raslan, Shari'a and the Protection of Intellectual Property; The Example of Egypt Intellectual Property Law Review, (2007) p. 528.

⁷⁰ Wahbah al-Zuhayli, *Haq al-Ta'alif wa al-Nashr wa al-Tawzi'*, al-Risalah Foundation, (1977) p.188.

First: Business name, corporate name, trade mark, literary production, invention or discovery, are rights belonging to their holders and have, in contemporary times, financial value which can be traded. These rights are recognized by Shari'ah and should not be infringed.

Second: It is permitted to sell a business name, corporate name, trademark for a price in the absence of any fraud, swindling or forgery since it has become a financial right.

Third: Copyrights and patent rights are protected by Shari'ah. Their holders are entitled to freely dispose of them. These rights should not be violated.⁷¹

In 2000, the al-Azhar *Fatwa* committee also issued a legal opinion to the same effect.⁷²

Nevertheless, the extent to which *Maslahah Mursalah* can be used to regulate copyright is yet to be determined. This is because Muslim scholars have stipulated certain criteria that must be met to invoke the doctrine of *Maslahah Mursalah*. These criteria are based on the Islamic philosophy that strongly emphasise the superiority of public interest concerns rather than individual benefits for the author. This is why some have argued that the prevailing public interest from a Shari'ah perspective lies in the unrestricted use of intellectual creations.⁷³ This perceptive idea can be construed as untrue and flawed. Copyright protection confers on an author certain rights for him to exclusively benefit from his effort. The rationale for this is not to restrict or deny public access to authored works but rather create a balance between the limited exclusive rights given to an author to control access to his work. Hence, what the protection is aimed at is benefitting the public through free access to authored works while at the same time recognising the effort of the author and incentivising it to safeguard his interest. Thus the concept of *Maslahah Mursalah* is invoked to set the equilibrium of simultaneously recognising the rights of the author in order to sustain

⁷¹ International Islamic Fiqh Academy, *Resolution No 43 (5/5) 1988 Regarding Incorporeal Rights*, available online at: <<http://zulkiflihasan.files.wordpress.com/2009/12/majma-fiqh.pdf>>.

⁷² Al-Azhar *Fatwa* Committee in a number of opinions issued on April 20, 2000 and August 16 2001 cited in Raslan (n 71) p.530.

⁷³ Raslan (n 71) p.530.

intellectual creations by balancing individual rights to protect his work and allowing public access to the works as the collective welfare of the society

1.3 Copyright: Balancing the Paradox of Knowledge Concealment and its Dissemination

Knowledge (*Ilm*) in Islamic law is considered a divine trust (*amanah*) meant to benefit humans for the realisation of their welfare (*maslahah*) which must be utilised according to divine guidance. It is considered to be a sacred covenant with Allah (SWT) where it has been prescribed to include not just moral responsibility and reason, but also applies to the acquisition and application of knowledge for the benefit of the society.⁷⁴ Scholars like Al Ghazali and Ibn Qayyim al Jawziyyah expressed the opinion that knowledge is considered as a communal trust (*amanah mushtarakah*) which entails the fiduciary right of the person learned to preserve, teach, and apply the knowledge for the collective good of the public. This showcased that the duty of dissemination of knowledge as a trust impacts the notion that it is the duty of those who have been given knowledge to disseminate same to avoid societal disintegration Therefore concealment of knowledge or its misuse is regarded as a moral and legal breach of this trust.

There is the widely held belief that copyright protection is an unnecessary obstacle towards knowledge dissemination which can affect intellectual development. Contrary to this opinion, it has been considered as a balance between the need for authors to get economic gains for their intellectual creativity and the right of the public to access written works.⁷⁵ Contextually, it has been one of the principal concerns of Islam as a religion the emphasis placed on knowledge- (*ilm*) and its diffusion. The value of knowledge most of which is imputed to represent invaluable intellectual capital hangs only on its effective dissemination both present and futuristic input without which the efforts of the author will be considered worthless.⁷⁶ Simply put, dissemination is best described as the delivering and receiving of an information, the engagement of an individual in a process or the transfer of a process or a product either for the purpose of awareness,

⁷⁴ Q33:72, Sunan Abi Dawud, Hadith No 3641.

⁷⁵ Raslan (n71) p.528

⁷⁶ Muriel O, Oliver Serrat, *Disseminating Knowledge Products*, Knowledge Solutions (2009;43) p.203.

understanding or for an action. Thus knowledge dissemination becomes effective with the adaptation of all three for the proper utilization of its goal.⁷⁷

Access to knowledge is crucial to social and human development in any society.⁷⁸ The concept of access to knowledge is broadly classified to include the idea of access to education and learning opportunities, and also extends to information in general, literature, art, inventions, data as well as any kind of expression of the human mind.⁷⁹

The central issue therefore is how a strong and effective copyright regime works towards protecting the copyright holder on one hand, and the public interest in accessing knowledge on the other can be balanced to provide for overall benefit of both the holder and the public without one impinging upon the rights of the other. As clarified earlier, the protection of the rights of the author, the copyright holder and the promotion of public interest in access to knowledge have been legally justified under Art 27 para 2 of the Universal Declaration of Human Rights (UNDHR) where it provides that everyone has the right to the protection of the moral and material interests resulting from any scientific, literary and artistic production of which he is an author.⁸⁰

The modern concept of copyright is based on property rights over ideas or forms of expression that give the right holder time-limited monopolies.⁸¹ These monopolies are embodied in the form of exclusive rights over the subject matter (which could be thought of as knowledge) to exclude others from using the intellectual products without permission or monetary compensation. According to some opponents of copyright, this might contradict the Islamic prohibition of concealment of knowledge.⁸² Objections to this perspective may be

⁷⁷ Ibid p.204.

⁷⁸United Nations Education for all (EFA), available at <http://www.un.org/en/global/issues/briefingpapers/efa/index.shtml>.

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ David Price, *The Dynamics of Intellectual Property Protection in the Arab Gulf States*, International Review of Business Research Papers (2007, 3(1)) p.27.

⁸² Ida Madieha Azmi, Abdul Ghani, Basis for the Recognition of Intellectual Property in Light of the Shari'ah, *International Review of Industrial Property*, (1996) Vol 27, p.143 opines that 'there are prophetic Hadith allowing a person to be selective of the recipient of information; therefore, a person has the right to control the disclosure and

due to the fear that copyright may lead to concealment of knowledge as Ibn Rushd, a Maliki jurist expounds that the right of those in want of knowledge is greater, and therefore, it is the duty of those with knowledge to disseminate their ideas to others.⁸³ Thus, there is an ethical burden placed on those who have acquired knowledge to share it which will go a long way in enhancing the intellectual capability of the human mind and the advancement of the society

On the other hand, the scholars who tried to strike a balance between the protective rights and the economic gains of copyright highlight the positive contributions of the author and the need for the incentivisation as a mechanism for encouraging authorship and dissemination of authored works. This formed the basis of the opinion of contemporary writers like Al Durayni who argues that an author should be rewarded for his effort in dissemination of knowledge through publication, a duty which he canvassed by the Muslim scholars as (*Fardh Kifayah*) individual obligation for the one who acquires it to also disseminate it.⁸⁴ In addition to this, it will be in the best of public interest that creative ideas are rewarded so that it can serve as an incentive for further creativity. There are various mechanisms within the copyright that operate to prevent concealment of knowledge. For instance:

- i. Copyright protects only the form of expression and not the underlying idea.⁸⁵ This means that a person can use any discovered idea without any restrictions. For example, if an author created software program, a third party could use the idea (knowledge) underlying the program to develop his or her own version;
- ii. Where there is an overriding public interest in the dissemination of copyrightable work, the law tends to neutralise the exclusive rights of the owner, and grant users the right to use the subject matter without permission. This is known in copyright as ‘exceptions and limitations’,

the audience of his work. In this respect, it is submitted that it is not the privatisation of ideas that leads to their monopolisation, but only the exclusive control of them’

⁸³ Ibn Rushd, *Fasl al Maqal fi ma Bayna al Shari'ah wa al Hikmah min al Ittisal wa Yalih Dhayl Fasl al Maqal*, Matba'at al Adab, p.44

⁸⁴ Al-Durayni, (n 26), p.37.

⁸⁵ Anne Fitzgerald and Brian Fitzgerald, *Intellectual Property in Principle* (Lawbook, Sydney, 2004) p.84.

such as use for educational purposes, reporting news, parody and satires, and fair use;⁸⁶

iii. Exclusive rights over the copyright subject matter are not permanent. Generally, after the elapse of Fifty (50) to Seventy (70) years after the death of the author depending on the nature of the work after which the subject matter enters into the public domain and can be freely used and exploited.⁸⁷

It will be wrong to conclude that copyright leads to the concealment of knowledge in context, it contains mechanisms that allow for knowledge to be disseminated in exchange for compensation to the rights holder for a limited period. Furthermore, in a wide range of circumstances, knowledge embodied within a copyright can be disseminated without the consent of the rights holder and without any compensation.⁸⁸ Most importantly, the property rights embodied within a copyright protection does not in any way refer to the information contained in the idea, but rather to the exclusive rights to control the use of the ideas in certain ways. Hence, the incentivisation of the ideas will not lead to their monopolisation but only the exclusive control over their medium of expression.⁸⁹

It is widely accepted that any individual who uses his intellect to write, develop a software program or invent a machine should be entitled to benefit financially from his creation. And to do so, a certain degree of protection is required, to be able to prevent others from making use of the intellectual item in a way that prejudices the legitimate interests of the creator.⁹⁰ However, this protection does not necessarily prevent others from accessing the relevant intellectual creation. Accordingly, the prohibition against the concealment of knowledge in Shari'ah should not involve the prohibition of transactions involving

⁸⁶ Ibid.

⁸⁷ Art 7 of *Berne Convention for the Protection of Literary and Artistic Works* (1886), Section 19, Copyright Act 2022.

⁸⁸ Ida Madieha Azmi Abdul Ghani, *Intellectual Property Laws and Islam in Malaysia* (PhD Thesis Submitted to the Intellectual Property Law Unit of the Centre of Commercial Law Studies, Queen Mary and Westfield College, London, 1996) p.79.

⁸⁹ Ibid p.80.

⁹⁰ El Mahjub *Islamic Perspective* (n 36) p. 72

knowledge⁹¹ as it is possible to both disseminate knowledge and accrue monetary benefit for it simultaneously.⁹²

In the context of copyright, scholars suggest that an Islamic approach to copyright might be not to restrict the duplication of original materials, based on the premise that ‘the most widespread dissemination of knowledge is for the good of all.’⁹³

In this sense, *Maslahah Mursalah* is seen as double-edged sword that can be used to determine copyright recognition. In this context, Steven Jamar has rightly expressed concern that: If the public interest is drawn too broadly and too powerfully, it can be abused to construe recognition accorded to copyright either base on preferential recognition of private property ownership, incentivising of ideas and creations, commercialization, free and fair distribution in the society. Therefore, to obtain a balanced notion of copyright without one aspect impinging upon the other, the polarization of maximal exclusive rights as envisaged by western concept of copyright is placed with limitations of scope and the exclusivity of the rights of the author. This is to prevent excesses in private property ownership and recognizing societal benefit as paramount.

1.4 Conclusion

It has been unanimously acknowledged that writing is one of the main forms of dissemination of knowledge where it is acknowledged to be the important means by which past and future antecedents are being preserved for the benefit of man. Copyright is borne out of concern to safeguard the authenticity of written works and at the same time confer on the author proper recognition for his endeavour both morally and financially. This serves to provide a counterbalance of the scope of the author’s right to control his work and align same with its availability or accessibility to the public for their benefit. This reorientation of control and access constitute the foundation of copyright within the context of Islamic law. Therefore, to learn and disseminate has always been the cornerstone of Islamic scholarship which must be preserved.

⁹¹ Azmi, (n 90) p.82.

⁹² Price (n 83) p. 28

⁹³ El Mahjub *Islamic Perspective* (n 36) p.73.

A comprehensive study of copyright within the precepts of Islamic law did not only provide justifications for its recognition under the law but rather enhances the placement of the concept within its paradigm. Therefore, the paper attempts to analyse the justification and parameters for the recognition of copyright within the Islamic law purview by specifically recognising the proprietary/ economic justifications afforded to it. This is based on the evolutionary concept of property exceptionalism, and the recognition of permissible intangible property. It considered how these principles of the law effect as a normative framework for copyright protection in Islamic law.

From the *Maslahah Mursalah* perspective, justifications for copyright were based on the notion of creating a balance between the individual authors' right on one hand and the societal benefits on the other. Thereof, incentivising an author's effort will in no way lead to knowledge concealment but rather its dissemination. It enunciated that access to knowledge is a means of its dissemination. In essence this will go a long way to serve public interest and enhance societal growth and development which is among the fundamental objectives of which Shari'ah promotes.

Conclusively, it can rightly be canvassed that the recognition afforded to copyright in Islamic law scholarship based on *Maslahah Mursalah* is well grounded. This showcased the dynamic nature of Islamic law that accommodates copyright protection while safeguarding public interest.

1.5 Findings

The paper identified the Shari'ah perspective on the theoretical notions of ownership over ideas and expressions spanning the classical principles of the law to the period of exclusion to the recognized permissibility of intangibles to its acceptability based on the justified public benefit/interest criterion as the framework for copyright under the principles of Shari'ah.

Secondly, the article justified proprietary rights of copyright holder to exist in the recognition accorded to private ownership over ideas and expressions created as a result of productive efforts (*amal*) that give value to resources held in common (knowledge in this case.) This is by recognising the labour exerted by the author and rewarding him for his efforts.

Thirdly, the idea of Islamic law to strike a balance between private property ownership right of the copyright holder, free and fair dealings and public benefit serves as the best model to get a friendly copyright regime that will protect the interest of the copyright holder. Therefore, *Maslahah Mursalah* is seen as the best tool in providing the balance for recognising authors' rights, and the preservation of public interest to ensure societal growth and development

The paper currently identified the approach of *Maslahah mursalah* to have encouraged knowledge dissemination, which the proprietary rights accruable to a holder as envisioned by current copyright regime will go a long way in encouraging literary and creative ideas. By extension, this will add up to the intellectual capabilities of the human mind, enhancing societal growth and development through proliferation of knowledge and access to it.

1.6 Recommendations

The discussion of copyright notion based on the doctrine of *Maslahah Mursalah* may not be exhaustive. To further substantiate a strong framework for copyright in Islamic law, it is recommended that an analysis of the theories of distributive justice and social justice can be invoked to support redistribution of opportunities to authors and creators. Empowering them will go a long way in enhancing the theoretical underpinnings of copyright system.

The paper analyses an aspect of proprietary interest that exist in private ownership of copyright and its placement within the classical interpretations of property law under the Shari'ah. More researches can be conducted on the permissibility of copyright in respect of access to knowledge and educational materials as a fundamental objective of the Shari'ah for preservation of intellect (*hifdh al aql*). Also further research on copyright infringement will go a long way in substantiating protection of wealth (*hifdh al mal*) which will also provide a strong justification for the proprietary interest of copyright protection.

Another intrinsic area that will further open a domain for copyright incentivisation is further research on the capability of the justified proprietary rights to be considered as subject matter of contractual transactions and dispositions in Islamic law. This will further provide additional justification for recognising copyright's financial value.