

THE CHALLENGES AND PERSPECTIVES OF THE COMPLICATED RELATIONSHIP BETWEEN SHARI`AH AND INTELLECTUAL PROPERTY RIGHTS

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In the era of the technological revolution, copyright protection is extremely complex in Islamic countries due to the leverage of Shari`ah. Therefore, the religious ascendancy of Shari`ah may lead to a weaker protection of copyrighted contents, related to a different perception of property; in fact, from the Islamic point of view, all properties belong to Allah (s.w.t.). Concerns about IP protection stem from the fact that Muslims are not persuaded that Shari`ah prohibits IP violations, nor expressly recognises a need for the protection of creative works. This research proposal will seek to outline the perspectives of compatibility between Shari`ah and the global harmonisation of IPRs through the TRIPS Agreement, focusing on Saudi Arabia's stance. Finally, this paper will give clear advice with the aim of reducing piracy rate in Islamic countries, examining the possibility of a virtuous influence between Muslim and European strategy to strengthen the protection of IPRs.

INTRODUCTION

Today, knowledge forms the greater part of the new wealth¹ and the main way to offer it adequate protection and to incentivise innovation is through the traditional categories of intellectual property (IP). Even if IP's origins can be traced back to the Statute of Anne² and the Statute of Monopolies,³ enacted centuries ago, the problem of protecting human creativity is still a current issue for its constant balance with other values. Examples include the

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freedom of speech with respect to new creations, the disclosure of breakthroughs for the advancement of society and all the new concerns related to the inexorable advent of the Internet, which – among other things – has made the dissemination of creative works easier than ever before. The illegal copying and subsequent illegal usage of copyrighted content had become a multi-million-dollar issue already at the end of the second millennium,⁴ and to date no efficient countermeasures have been adopted yet.

Creative industries are strategic for the economic development: studies show that they can grow faster than other productive sectors.⁵ Needless to say, people who work in these industries and spend lot of time and energy using their intellect – for instance – to produce a movie, write a software program or come up with an invention should be entitled to benefit financially from their works, otherwise, without any expectation of financial reward, nobody (or only few people) would be motivated to create something.⁶

This is the major outcome of the economic incentive theory that, for a limited period of time, grants the authors' or inventors' exclusive right to exploit their creations as they discretionary wish:⁷ they can distribute them, either for free or for a monetary fee, or keep them secret from others. In order to do so, every legal system needs to grant exclusive rights in such a way that creators can be rewarded for their innovative results without forestalling competition at the same time.

To this purpose, since 1948 authors can benefit from an international protection outlined in Article 27 of Universal Declaration of Human Rights (UDHR),⁸ which accommodates the right to benefit from the protection of the moral and material interests resulting from the authorship of scientific, literary, or artistic productions. The wide recognition of intellectual property rights in international and national legal sources is strictly connected to their assessment as key growth enhancing factor for global economies. In this sense, according to World Intellectual Property Organization (WIPO), intellectual property refers to creations of mind such as inventions, literary and artistic works, and symbols, names and images used in commerce,⁹ covering every

possible type of human intellectual effort.

On the other hand, some authors¹⁰ deny copyright protection insisting that copyright policy impedes the spreading of scientific development and limits academia. It is true that pay-reviews could be a limit for academics living in developing countries and working for universities which cannot afford them, but they should take into consideration that there is an important difference in the creativity's function between academia and other creative fields such as music, movies and company logos: even if their shared purpose is to incentivise innovation, the former mainly aims to enhance global development while the latter focuses on maximising economic interests. That is why we assisted to the diffusion of social movements demanding the free dissemination of knowledge, such as the Access to Knowledge Movement (A2K), whose objective is to shift the debate paradigm from "*more intellectual property is better*" to "*sometimes less is more*".¹¹ Nevertheless, for the sake of brevity, this controversial debate will not be further discussed, referring instead to already-existing studies.¹²

First, this article will examine, from an external viewpoint, the existing approach to the protection of intellectual properties within the legal framework of Islamic countries. This will be accomplished through a brief analysis of the Islamic legal tradition, which is composed of several fundamental sources.

Secondly, this work will seek to outline the perspectives of compatibility between *Shari'ah* and the global harmonisation of IP through the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) and the other international conventions, focusing on Saudi Arabia's stance.

Thirdly, given that, according to the majority of Islamic legal scholarship, *Shari'ah* generally prohibits IPRs piracy (even if the Islamic legal framework does not make explicit provisions in this respect and, in any case, such proscription is not well enforced), this study will conclude by offering a set of policy recommendations that can effectively help in minimising IPRs piracy in Muslim countries. This goal will be reached by taking into account the religiosity rate and verifying if the solution implemented by European Countries could be applied in order

to enforce the IPRs protection.

HOW *SHARIAH* CAN BOOST IPRS PROTECTION AND ENFORCEMENT

The first step to understand if and how creations of the mind – and mostly their authors – could receive legitimate protection in Islamic countries requires at least a synthetic analysis of their traditional legal framework. In this regard, it is necessary to understand the main characteristics of *Shari'ah*, a set of timeless religious principles which form part of the Islamic culture¹³ and have a significant influence on the legal framework.¹⁴ *Shari'ah* means “the path¹⁵ to the source of water” and it is considered as the eternal law in the Islamic legal tradition.¹⁶ *Shari'ah* is divided into two parts:

- (1) The revealed one: the Quran¹⁷ (the holy book) and the *Sunnah*¹⁸ (habits and saying of the the Prophet Muhammad (*s.a.w.*)).
- (2) The non-revealed one: the *Ijma* (consensus of Muslim scholars on a point of law) and the *Qiyas* (a species of strict analogical reasoning).

Apart from these fundamental sources, an important relevance can be attributed to the jurisprudence – as in European countries, which is called *usul-al-fiqh*.¹⁹

With respect to the influence of doctrine, allegedly, about 90 per cent of Muslim people in the world are Sunnites, and Sunni Islam is essentially divided into four orthodox schools of law, each having its own, highly developed doctrine:²⁰

- (1) The Maliki school, which requires a strict application of the *Sunnah* of the the Prophet Muhammad (*s.a.w.*) and minimises the role of opinion.
- (2) The Hanafi scholars, who rely on reason and opinion, using analogy and equity as sources of law.
- (3) The Shafi'i school, which has tried to reconcile the Maliki and Hanafi principles.
- (4) The Hanbali school, well-known for its strict adherence

to the text of the Quran and the *Sunnah*. Analogy is recognised as a source of Hanbali law.²¹

These schools appeared in the first and second centuries of Islam: born as a result of geographical separation, over the next few centuries each of them became characterised by its proper reasoning and took on the name of its leading scholars.

From the above-mentioned four schools only the Hanafi School does not recognise intellectual property since its scholars accept only tangible assets that can be expressed by one of the five senses. In fact, this school considers IP works public for the good of all (for the general benefit of all humankind).²² Following this theory, the payment of an author for his work could be considered by the Muslim community as *riba al-fadl*, a forbidden condition in which a person acquires an unlawful excessive profit without exerting efforts over extended period of time and – given the illegality of this conduct – is obliged to give it back (unjust enrichment).²³ In this context, Sheikh Muhammed Shafe'e issued a legal opinion (*fatwa*) recognising the possibility of getting profits from inventions or authorships, but it is not allowed to exclude others from using them, since at the current state of *Shari'ah* there are no explicit provisions that recognise temporary monopolies for authors.²⁴

However, the other three schools (Maliki, Shafi'i and Hanbali) recognise IP agreeing on the criterion of usefulness (*manfa'a*) rather than tangibility.²⁵ Considering that there are no express provisions in the basic texts of *Shari'ah* that limit ownership exclusively to tangible assets, property could be anything that is useful and of value. The term property can be interpreted to accommodate new realities by affording protection to original works.²⁶ Following this direction, intellectual property can allow a limited monopoly to come into existence, but only if creations are commercially valuable and useful to society.²⁷ In addition, the three schools cited above recognise the division between use and ownership, which could enhance the IP licensing for intangible assets thus allowing the use of IP works without losing the property.

Moreover, it may be argued that intellectual property

categories were already part of the Islamic culture from its early stage, where many authors earned their living through their works: caliphs hired authors to write books in return for payments²⁸ and Emirs paid poets who praised them.²⁹ More generally, indigent authors dedicated their creations to caliphs or wealthy persons in the hope of earning a monetary gift or reward. Thus, it appears that copyright protection is a recognised concept dating back to pre-Islamic civilisations considering that poets who plagiarised other authors' works to attempt on their reputation were severely sanctioned and cast from cultural society.³⁰

Nowadays, in order to understand where intellectual property rights can find support within the religious sources, the attempt done by *Shari'ah* to classify all possible human acts in five categories, as listed below, can be considered for this purpose: (1) obligatory; (2) recommended; (3) neutral; (4) objectionable; and (5) forbidden.

Everything is permitted unless expressly prohibited by Allah (*s.w.t.*). Since there are no provisions in the *Shari'ah* against IP protection, nor sources which classify IP under one of the cited five categories, we could say, adopting a systematic interpretation, that Islamic countries admit intellectual property. From this point of view, *Shari'ah* could be construed to provide support for IP protection. Even in classical Islamic literature the term copyright or IP is never explicitly discussed and there are no explicit sanctions that punish copyright infringements.³¹ Some indicators compassing a kind of protection of intellectual works can be found going more thoroughly in the analysis of the Quran and the *Sunnah*.

In this regard, the Prophet Muhammad (*s.a.w.*) stated: "*A Muslim who achieves something before other Muslim who has not achieved is entitled to that*". He is also reported to have said "*Who revives dead land, it is for him*".³² As Milani and Ahmadi hold,³³ these saying of the Prophet Muhammad (*s.a.w.*) indicate that land is the end product of a person's labor, and that person who exerts effort in developing these things should benefit from the results of their labor. Furthermore, the Quran also states that the pursuit of

profit is not inferior, but an honorable matter. It provides explicitly that “*There is no fault in you that you should seek bounty (honest profit) from your Lord,*”³⁴ agreeing on a proportionate reward for the time spent and for the intellectual effort.

There are also two Islamic juridical verdicts (*fatwa*) against IP infringements, issued by two grand Muslim clerks (Sistani, 2009 and Bin Baz, 1995), which they forbid digital piracy.³⁵ In addition, the 1988 Kuwait meeting of the Council for Islamic Jurisprudence ruled that “*nobody has the right to violate intellectual property claims*”,³⁶ finally issuing a formal declaration that recognises IPRs officially. Besides the religious provisions, Islamic countries³⁷ enacted IP laws in conformity with international standards, especially the ones provided by the WTO on Trade Related aspects on Intellectual Property rights (TRIPS). The first Muslim country to ratify the IP regulation was Egypt in 1939 through the enactment of the Trademark Law, n° 47 of 1939, which granted a ten-year protection to trademark holders from the date of application.³⁸ The copyright protection of literary and artistic works was recognised for the first time by the Law, n° 354 of 1954.

Despite the presence of rules providing for an express recognition of the value of intellectual property – viewed as a *species* of the wider *genus* of physical property in Islam culture – and for the prohibition of IP infringements, considered as plagiarism (traditionally regarded as *haram*), these illegal conducts do not receive (reasonably) the same punishment provided for the violation of tangible properties in case of theft, which is the cutting off the hand.³⁹ Instead, in case of copyright infringements, the legitimate author can only ask compensation. In this term, a thief and a web pirate are punished in a different manner even if both steal something belonging to others. It is one factor which contributes to the common misconception of the harm caused by piracy, which is still a complicate issue also in the European Union.

So, if IPRs have been somehow formally recognized, why are there so many violations especially in Arabic countries? For instance, in 2017⁴⁰ the piracy rate for software in the Middle East and Africa reached the 56%, as opposed to the overall global piracy rate of 44%.

It is true that the digital era has fostered the illegal dissemination of copyrighted works, but it would be interesting to understand the reasons under the higher piracy rates in Arabic countries.

Even if the Muslim world grants copyright protection through multiple regulations there are still relevant problems of enforcement most probably due to the lack of social awareness of the unlawfulness of IP infringements. It should be remembered that IP would also have positive trends on foreign investments: for example, Saudi Arabia, the most compliant State for IP provisions, received 28 billion, as opposed to Qatar which received “only” 5.5 billion.⁴¹ The next paragraphs will focus on elaborating some suggestions on how, through an evolutionary interpretation of the traditional principles of Islamic law, IPRs can effectively be recognised by the public and safeguarded by the States.⁴²

THE DEVELOPMENT OF THE INTERNATIONAL LEGAL FRAMEWORK ON IP AND THE POSITION OF MUSLIM COUNTRIES

As mentioned before, IP is a concept that is not unknown in the Muslim world, but the collective nature of the Muslim culture complicates the process of introduction of this legal category in a society with unquestionably strong and deeply-rooted collective values. Since the legal, social and cultural life of the Islamic society is influenced and outlined by *Shari'ah*, it might be interesting to examine the compatibility between *Shari'ah* and the global harmonisation of international standards and to understand what the main contact points among them are.

First, it is necessary to discuss the protection of Islamic intellectual property: in fact, in Islamic countries, the concept of IP is perceived as something that is not in compliance to what is established by *Shari'ah*. As it will be soon shown here, even if it is not a Western concept, IP is actually perceived by the Muslim population as culturally based on the values and interests of Western countries and, therefore, as inadequate and inappropriate for the social and cultural context of Islamic countries.⁴³

It should be mentioned how, for some Islamic scholars,

Shari'ah recognises IPRs, though not directly, when the traditional interpretative criterion of the *Maslaha Mursala*⁴⁴ is employed. In fact, the *Maslaha Mursala*, a secondary source of the *Shari'ah*, encompasses various external themes and questions, justifying them in the light of a pursuit of the public interest; the same interpretative process has been employed in the case of intellectual property rights. Nevertheless, the concept of *Maslaha Mursala* as explained above cannot be considered suitable to justify the current international IP system within *Shari'ah*. In fact, the international IP system was not conceived to safeguard the interests of developing countries or those of Muslim countries.

As a matter of fact, the standards of intellectual property have been agreed at an international level, which did not create many opportunities for Muslim countries to participate to the definition process. Nevertheless, many people believe that these rules are the outcome of an external will.⁴⁵ In regard to this topic, it is interesting to understand the role that Muslim countries⁴⁶ played in the process of creation and conclusion of the main international agreements, such as the Paris Convention, the Berne Convention and the TRIPS Agreement. As a matter of fact, looking at the past, the Islamic world was always represented as the cornerstone of scientific and technological progress.⁴⁷ However, despite the recognition of some forms of protection of literary and artistic works, the protection of intellectual property did not raise interest as a juridical institution until the introduction of the Ottoman Trademark Law (1871)⁴⁸ and the Patent Law (1879), in relationship with the Ottoman Copyright Law in 1910.⁴⁹

As mentioned before, Egypt is a good example in this respect, since it is a leading country in the protection of intellectual property. The Egyptian laws Trademark Law no. 57/1939, Patent Law no. 132/1949 and Copyright Law no. 354/1954 represent the starting point for many legislations in giving protection to IP in Arabic countries. The Egyptian legislation protecting IP has been strongly influenced by the international scene, in particular by the Berne Convention, the Paris Convention and the legislation of the European continent.⁵⁰

Basically, industrialised countries have used multilateral forums in the attempt to raise the standards of protection and implementation of IP to levels that were similar to the ones of national laws; developing countries – and particularly Muslim countries – have not taken into account the appropriate level of protection to support their development, both in terms of industrial and technological competence, and of innovational ability, during the process of adaptation to international conventions and other agreements concerning IP.⁵¹

During the last 20 years, Muslim countries have adopted the international standards of IP protection, but they did not monitor the effects that these rules and standards caused at the local level. Indeed, the international system of intellectual protection is formed by different agreements regarding copyright, patents and trademarks.⁵²

In order to follow our analysis, it can be useful to summarise the main agreements signed by the international community:

- (1) The Paris Convention (1883), for the protection of the industrial property, aiming at regulating patents, industrial projects and trademarks as institutes;⁵³
- (2) The Berne Convention (1886), concerning the safeguard of literary and artistic works, aiming at regulating the protection of literary and artistic works, the ones deriving from them, cinematographic and architectural masterpieces;⁵⁴
- (3) The Agreement about the aspects of intellectual property rights concerning the trade, namely TRIPS Agreement (1994);⁵⁵
- (4) Several bilateral agreements (FTAs) stipulated by European Union⁵⁶ and United States.⁵⁷ The aim was to establish agreements of free exchange (FTAs) including regulations in the field of intellectual property, to improve the protection's terms, imposed in the TRIPS, namely TRIPS-plus.

Therefore, it is evident that Muslim countries have not

contributed to the process of definition and creation of the international standards regarding the protection of IP, since they were missing at the signing of both the Paris and Berne Conventions. Only one Islamic-majority country participated in the Paris Convention: Tunisia,⁵⁸ which at the time was a French colony and became part of the Convention on March 20, 1884.

Nevertheless, the majority of Muslim countries have signed the main agreements on intellectual property: 26⁵⁹ out of 30 Muslim countries signed the Berne Convention; 28⁶⁰ out of 30 signed the Paris Convention. The year 1995 represents a milestone for the protection of intellectual property at international level: after 8 long years of negotiations—characterised by a strong contrast between developed and developing countries, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) of the World Trade Organization (WTO) came to life, together with other international agreements.⁶¹

The TRIPS Agreement⁶² represents a turning point in the creation of international regulations for the protection and respect of IPRs. It has been adopted as part of a single-undertaking approach, meaning that it is applied to all the members of the Organization and its provisions are integrated in the mechanism for the resolution of disputes established by the WTO.⁶³ This conference has a significant relevance because for the first time all the aspects regarding intellectual property⁶⁴ were included in a multilateral agreement, in order to avoid that an inadequate protection of IPRs became an obstacle to international trade.⁶⁵

This is the only agreement within the WTO framework that does not only impose obligations of “*non facere*”, but also defines positive conducts States must respect in their own internal rules.⁶⁶ All WTO Member States⁶⁷ have to satisfy all of the minimal standards included in the TRIPS at the national level with the possibility of raising them. One of the main novelties of the agreement concerns the enforcement procedure of IP right included in Part III of the Agreement (Articles 41-61 of the TRIPS Agreement). Indeed, the TRIPS Agreement is the only international convention that sets out general principles describing the

enforcement of intellectual property rights in detail⁶⁸ Moreover, in order to facilitate the adaptation of developing countries (including Muslim countries), the Agreement established some transition periods, contrary to the WTO agreements which became law on the 1st of January 1995.⁶⁹

Several criticisms⁷⁰ have been expressed against the new agreement on the protection of intellectual property. In particular, some of them were addressed to developed countries which strongly pressured developing countries into accepting the TRIPS agreement to comply with the worldwide standard principles. In essence, less developed countries complain mainly about the fact that the Agreement represents a worldwide harmonisation: it is possible to affirm that there exists a sort of social structure, realised by multinational companies, designed to avoid competition in less developed areas. Basically, the harmonisation of IP proposed by TRIPS Agreement results irrelevant considering the inhomogeneity (unevenness) of the other adhering nations.⁷¹

Before proceeding with the analysis of the case study (Saudi Arabia), it is possible to classify them Muslim countries into three (3) categories bases on their adherence to the TRIPs and their level of engagement in the protection of international IPs:

- (1) TRIPS-Minus, which includes countries that did not join the TRIP and are observer members of the WTO;⁷²
- (2) TRIPS-Compatible, which includes Muslim countries that Joined the WTO and revised the laws on intellectual property from the middle of 90's of the last century;⁷³ and
- (3) TRIPS-Plus, including Arabic countries which on one side joined the TRIPS Agreement and on the other side signed an FTA with United States and/or European Union, raising the levels of the protection of the intellectual property standards decided by the TRIPS Agreement.⁷⁴

CASE STUDY: THE INFLUENCE OF THE

INTERNATIONAL LEGAL FRAMEWORK ON SAUDI ARABIA'S LEGISLATION

Nowadays, the influence of Islamic *Shari'ah* on modern legislations varies widely depending on the degree of social pressure and the public policy adopted by the Government. In Muslim countries, *Shari'ah* can either be regarded as the only source of law or as part of a collection of sources. More precisely, there is a distinction between certain countries in which *Shari'ah* is effectively the only source of law and others where it is accompanied by other sources. As a result, it is possible to group Muslim countries into two categories based on the different impact *Shari'ah* has on their legal system.

The first group encompasses those countries where the Quran and the *Sunnah* represent the law and the only source of legislation. One of these countries is Saudi Arabia, the only country adopting the Quran and the *Sunnah* as substantial laws and main sources of public order.⁷⁵ The second group – representing the majority of Muslim countries – comprises those countries where *Shari'ah* is one of the main sources of legislation.⁷⁶

In order to provide a satisfactory account of how *Shari'ah* impacted the process of adaptation of international standards to the national legal order, the research focused on Saudi Arabia for two reasons. Firstly, the country has the largest number of Muslims and secondly, it has the highest influence of *Shari'ah* on the legal system including areas of family and criminal law and, as a consequence, on the everyday life.⁷⁷

Indeed, the principal aim of this analysis is to understand how Saudi Arabia – a country characterised by strong Muslim religious beliefs – can carry out and fulfill the strict requirements of intellectual property rights established by the TRIPs. In other words, the investigation will be focused on the means used by Saudi legislators used to ensure compliance with the TRIPs agreement and, at the same time, observance of their traditional laws, mainly based on *Shari'ah*.

Saudi Arabia became member of the World Trade Organization

(WTO) in 2005, causing *ipso facto* the application of all WTO agreements, including the one concerning intellectual property. Moreover, in 2016 the country adopted the so-called Vision 2030 with the aim of giving a greater focus to international trade, adopting policies intended to increase the benefits deriving from the country's geographical position, described as "*an epicenter of trade and door to the world*" connecting three continents: Africa, Asia and Europe.⁷⁸

Although *Shari'ah* makes no clear reference to intellectual property, it states the obligation to respect international agreements. More precisely, the Quran states that "*freedom from obligation from Allah and his messenger toward those of the idolaters with whom ye made a treaty*".⁷⁹ Furthermore, referring to the importance of respecting agreements and contracts: "*Excepting those of the idolaters with whom ye have a treaty, and who have since abated nothing of your right nor have supported anyone against you. Fulfill their treaty to them till their term. Lo! Allah loveth those who keep their duty*".⁸⁰ The obligation imposed by *Shari'ah* to each Islamic country to fulfill signed international agreements led Saudi Arabia to apply a series of royal decrees in order to be able to respect international agreements:

- (1) Royal Decree Nr. M/51 of 26 Rajab 1435 (May 26th, 2014) approving the Trademarks Law of GCC States (2016);
- (2) Law of Patents, Layout-Designs of Integrated Circuits, Plant Varieties, and Industrial Designs (promulgated by Royal Decree Nr. M/27 of 29/5/1425H (July 17th, 2004));
- (3) Copyright Law (promulgated by Royal Decree Nr. M/41 of 2 Rajab, 1424 (August 30th, 2003));
- (4) Law of Trademarks (promulgated by Royal Decree Nr. M/21 of 28 Jumada I 1423 (August 7th, 2002));
- (5) Commercial Names Law (promulgated by Royal Decree Nr. M/15, 12 Sha'ban 1420 (November 20th, 1999)).⁸¹

Saudi Arabia revised and modernised its regulatory framework and the administrative infrastructures for the protection of IP.

When Saudi legislators enacted the abovementioned decrees for the adaptation to the international agreements, they verified the compatibility of these new regulations with the historical Islamic principles: for instance, they did not grant protection to the patent in case its purpose contradicts the principles of *Shari'ah*.

Yet, there is an evident discrepancy between what the law in the book is and what the law in action is. In fact, although the enacted laws are compatible with *Shari'ah*, they have not actually been well enforced by the State. Several Islamic States adopted laws protecting intellectual property (Egypt, UAE, Qatar, Bahrain, Jordan and so on and so forth), but they remain ineffective. Indeed, as previously mentioned in this paper, IP is often perceived as a concept born and developed in the Western world, and this common thought has negatively affected its implementation in Islamic countries. It is interesting to know that Islamic people are inclined to pirate American softwares and music, western lyrics and media, but do not pirate their local copyrighted contents, which demonstrates a strong respect for what is born within the Islamic community.⁸²

Saudi Arabia⁸³ did much more than issuing laws: many religious decrees concerning the protection of IP have been issued through the Grand Mufti of Saudi Arabia, the highest religious authority of the country, yet the practical results have been minimal.⁸⁴ According to the Special Report 301, the United States have included Saudi Arabia in their Watch List 2019, classifying it as one of the countries with highest bootlegging rate (both online and via streaming) and with no respect of the IPRs.⁸⁵

Already in 2017, Saudi Arabia attempted to address these enforcement problems by establishing the Saudi Authority for Intellectual Property (SAIP), which is responsible for all the procedures referring to intellectual property matters, from the registration of copyrights, trademarks, industrial projects and patents to the resolution of related disputes. The United States acknowledged in their report the positive cooperation between SAIP and US Patent and Trademark Office, which ended with the signing of a protocol agreement in September 2018.⁸⁶

On the harmonisation theory, the TRIPS Agreement is a form

of social engineering which was supposed to provide developed countries and multinational companies with a higher level of protection of IPRs, but *de facto* it has only increased Islamic community's rights, helping the local innovation process and rewarding inventors and artists.⁸⁷

Although the TRIPS Agreement provided a higher protection of the intellectual property rights, it did not manage to improve foreigners' conditions, failing in the objective of providing a basic standard protection for creations of the mind. However, this is not due to a conflict between TRIPS and *Shari'ah*, but between two different cultures.⁸⁸

A POSSIBLE CONNECTION BETWEEN IP INFRINGEMENTS AND RELIGIOSITY RATE

Although Islamic countries have enacted policies with the aim of protecting intellectual property rights, copyright piracy is still remarkably problematic. One determining factor could be the scarce social awareness, considering the lack of perception, on the individuals' part, of the negative consequences of IP infringements on creative industries.⁸⁹ To this purpose, there are some studies⁹⁰ attempting to elaborate possible tools to reduce web piracy in developing countries which measure the impact of the law, the religion and of social awareness on the behavior of internet users. According to Al-Rafee and Rouibah's conclusions,⁹¹ awareness and religion were found to have a significant impact on the respondents' intention to pirate digital material; however, the law factor was not found to be significant, probably due to the common opinion that laws are not always being enforced in these countries.⁹²

Moreover, according to El-Bialy and Gouda's study,⁹³ Islamic countries have the highest rate of religiosity and, at the same time, hold the record for IPRs piracy.⁹⁴ In the light of these two pieces of information, religion could be used as an enforcement mechanism through the creation of a set of social and religious-based sanctions which could deter IP violations.⁹⁵ The strong religious impact is witnessed by the assumption that many Muslims seek to ensure that everything they do is consistent with *Shari'ah*, which plays an

important role in every sphere of life. Thus, according to behavioral studies, the more religious people find suspect behaviors as unethical are less inclined to perform those conducts.⁹⁶

Therefore, it is crucial that any law, which is supposed to be effective, need to comply with *Shari'ah* principles. From this perspective, a religion that views IPRs piracy as a malevolent act is able to support the enforcement of laws protecting IP: if the majority of people within a community is inclined to follow a certain ideology (even if it comes from religious principles rather than laws) which recognises and gives effective enforcement of intellectual property rights, then there will be a greater respect for authors and, consequently, this could foster innovation.⁹⁷ In developing countries, law could be viewed as null if it contradicts the teachings of the dominant religion, which in turn could be used as an effective tool to guide people towards separating what is right from what is wrong.⁹⁸

There is a need for interplay between social awareness, religion and new laws,⁹⁹ more than in European developed countries. The first recommendation in order to prevent a “far web” scenario with respect to the illicit dissemination of IP works is to ensure that religion will play a key role in raising awareness among its members by declaring that piracy violates its tenets, thus attempting to promote the purchase of original goods and services in place of pirated ones.

Furthermore, it is worth pointing out another important factor: in poor countries, sometimes piracy is the only solution to have access to creative products because of the excessively high prices. In this regard, Hill¹⁰⁰ examined and discussed strategies to counter digital piracy including lowering prices, offering extras to legal owners of digital material, and increasing the penalties for web pirates. It is evident that low-income countries need tailored solutions. Indeed, there is no “one size fits all”. A possible strategy needs to assess the fair price of original goods and services depending on to the disposable income of individuals. Following this path, consumers would be incentivised to buy legitimate products rather

than counterfeit or pirated ones. As a complement, in these countries, IP enforcement could be guaranteed by religious-based prescriptions that will incentivise people to fairly reward others' intellectual efforts.

THE OPPORTUNITY OF INFLUENCE BETWEEN MUSLIM AND EUROPEAN SOLUTIONS

A pragmatic and flexible approach to intellectual property rights might help developing countries – including Muslim ones – to maximise the potential of their intellectual property laws.¹⁰¹ According to the Article 17 (2) of the Charter of Fundamental Rights of EU “*the intellectual property must be protected*”; this Charter became part of the European legal system since the entrance into force of the Lisbon Treaty. Although the Lisbon Treaty does not confer further power to the EU in the field of IP, it represents a declaration of political intent and a commitment to obtain the communitarian patent.¹⁰² Initially, the European Community did not explicitly refer to intellectual property, but Article 30 of the Treaty of Rome recognised “*the protection of the industrial and commercial property*” as reason to limit the free circulation of goods. At the time in which the Lisbon Treaty came into force in 2009, the EU became explicitly competent in the field of intellectual property rights (Articles 114 and 118 of the TFEU), with the goal of guaranteeing a uniform protection of these rights and to establish authorisation, coordination and control regimes, centralised at European level.¹⁰³

The European Union took action to promote the safeguard of IPRs on account of its instrumental importance to innovation, economic development and growth. In fact, countries presenting a solid regulatory framework promote the growth of innovative companies, attracting foreign investors.¹⁰⁴

Since the first years of 2000, several legal acts concerning the respect of IPRs were adopted by the EU. First of all, in this respect the then European Community (EC) adopted the Directive 2004/48/CE, concerning the respect of the intellectual property rights, aiming to reinforce the fight against piracy and counterfeiting by

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reuniting the legislations of its member countries under the coordinated direction of a centralised European management.

During the last decade, European Union has created the right conditions for the establishment of a strong sensibilisation and harmonisation of regulatory provisions about intellectual property rights, with the aim of facilitating future negotiations with other countries and creates a solid and defined base to start bilateral and multilateral agreements.¹⁰⁵ What comes to light from a careful analysis of the Directives and Regulations adopted at the European level is the constant raise of interventions promoting IPRs.

As regards trademark, the European Union approved the Regulation 2017/1001, which entered into force from October 1st, 2017.¹⁰⁶ Another European act is the new Regulation (no. 608/2013)¹⁰⁷ about the intellectual property rights, which establish procedural rules for customs authorities, granting a stronger respect of IPRs.¹⁰⁸ Moreover, it is important to highlight the recent Directive (no. 2019/790) on copyright and related rights in the Digital Single Market, entered into force on 6th June 2019.¹⁰⁹

The European Union, thanks to a strategy adopted in 2004, set the goal of increasing the respect and expansion of intellectual property rights in several developing countries. In this regard, the Commission has drawn up a list of Priority Countries (which includes Indonesia, Turkey, Malaysia, India, and the United Arab Emirates) with the goal of intensifying the dialogue between these countries and fills the gaps in the field of IPRs. Therefore, legal experts had to respond to the demand of clearness and of a modernisation of the law, which in Italy resulted in the new “Code of the industrial property”, collecting all the rules about patents and trademarks, with the sole exception of the regulation on copyright, dating back to 1941.¹¹⁰

Moving on from the European experience to that of the Muslim world, it is highly recommended that the Islamic scholars continue along the path towards a better protection of IP, pushing to create their own legal categories without distorting the Muslim culture. One should be aware that “not everyone fits the mold”, and that a

strict imposition of the European solutions might be seen as an unjustified intrusion from the Western world.¹¹¹

Muslim countries can take European models as an example of how to try to regulate the entire system; however, a reflection needs to be made: Muslim countries have a tradition which is deeply different from the Western one and base their law on the holy Quran, so they need to develop and integrate the concept of IP following their own traditions.¹¹²

Therefore, two efforts can be made: an external legal effort, and an internal one. At the external level, with respect to tangible assets it would be possible to consider an international agreement (for example between the European Union and the Gulf Countries) to promote the respect of IPRs through a tighter and stricter control at frontiers. Indeed, the key problem is that these countries are located in a strategic position between the East and the West, which makes them an easy port for counterfeit products that could be introduced in the European single market. In fact, according to the European Commission,¹¹³ the counterfeiters exploit zones of free exchange, mostly the ones located in the United Arab Emirates, to produce, store and transship counterfeited goods towards various destinations such as the European Union, camouflaging the product's provenance or shipment origin.

Another possible solution might be the settlement of an agreement establishing an intensification of controls and a greater exchange of information between customs and copyright owners in order to trace the movement of original goods and have more information about the volume of trade with the European Union, all thanks to the higher degree of control. That could be compared to the creation of a passport for the good and would allow a greater control of its movement. A way of achieving this could be to introduce a distributed ledger technology.

In addition to this external input, an internal push needs to be adopted. In fact, analysing the Islamic model, it is easy to understand that an interpretative commitment of the highest religious figures is necessary, since these countries are at least formally theocratic. Series of homogeneous declarations coming

from religious authorities can easily influence the choices of Muslims, explaining how piracy and several counterfeit products must be considered against the *Shari'ah* and therefore not acceptable.

CONCLUSION

In conclusion, the outcome of our research demonstrates that IP categories are not just a Western concept imposed on Arabic countries, but, on the contrary, they can be traced back to internal concepts within the fundamental texts upon which the *Shari'ah* is based. Indeed, through the analysis of the concept of property under the principles of Islamic law it has appeared that IP pillars are not alien to Islamic principles,¹¹⁴ being a complementary part of it.

To this purpose, Islam does not allow the efforts of others to be taken away from them without their permission. As the Holy Quran clearly mentions “*And do not eat up your property among yourselves for vanities, nor use it as bait for the judges with intent that ye may eat up wrongfully and knowingly a little of (other) people's property*”.¹¹⁵ Despite the absence of a legal religious provision that expressly recognises intellectual property, allegedly that *de facto* creators can call for a protection in case of IP infringements.¹¹⁶

A specific cultural approach is desirable, where each culture is studied and analysed to provide tailored solutions in order to fight digital piracy within its specific context. For this reason, the legal intervention in European countries had produced more positive effects with respect to the reduction of piracy rather than a what it could be expected by a hypothetical religious one. *Vice versa*, in Islamic countries the religious intervention could be more effective due to the strong influence of religion itself.

Lastly, in Saudi Arabia's case, the government should sensitise people about the economic advantages deriving from intellectual property rights and their value as instruments to promote the country's cultural and industrial development. Despite the considerable number of Islamic States establishing laws on intellectual property in compliance with the TRIPS, these laws

are not well implemented. It depends mainly from the public perception of the absence of sanctions in case of IP infringements. If people will be properly instructed about the advantaged of respecting IPRs and understand their support by *Shari'ah*, Islamic countries will sharply reduce the piracy rate.¹¹⁷

What it can certainly be suggested is the creation of study and interpretation groups with the aim of promoting intellectual property rights while adopting a bottom-up approach, starting from the daily life of the single Muslim person only in order to spread this knowledge to the wider community. Thus, it will be possible to have a higher awareness of the relevant damages caused by piracy which would lead these countries to a copyright-friendly culture.

In this way, a more efficient adaptation to international standards could be, then, guaranteed. As emerged from this analysis, the main concern related to intellectual property enforcement lies in the fact that the formal institutions of Islamic countries have difficulties in ensuring that Muslim people respect IPRs. To address the issue and promote a public recognition of IPRs, said institutions should foster a sense of morality and responsibility in their community. Regrettably, Muslims tend to not respect IPRs related to foreign properties.¹¹⁸ Islam can easily strike the balance between the copyright holders and the rest of the community in its religious principles, finding adequate instruments to protect the authors and reward their work and creativity.

Finally, another possible recommendation could be the intensification of the high level dialogue on IP issues within Arabic countries and international organisations like WIPO, WTO and EUIPO in order to influence the new commercial policies, through which it will be possible to elaborate further solutions for better answering the problems caused by digital piracy and counterfeiting. In this respect, Muslim countries might take advantage of the know-how of the competent international organisations to implement programs of technical assistance aiming at a stronger implementation and enforcement of IP principles.

Notes

- 1 Kamil Idris, Intellectual property a power tool for economic growth (World Intellectual Property Organization: 2003), p. 55.
- 2 The Statute of Anne, also known as the Copyright Act 1710 (cited either as 8 Ann. c. 21 or as 8 Ann. c. 19), is an act of the Parliament of Great Britain passed in 1710 and the first statute to provide for copyright regulated by the government and courts, rather than by private parties.
- 3 The Statute of Monopolies was an Act of the Parliament of England and the first statutory expression of English patent law. It was introduced by Sir Edward Coke and it passed on 29 May 1624.
- 4 Im Al-Jabri and Ah Abdul-Gader, "Software copyright infringements: an explanatory study of the individual and peer beliefs", *Omega Int. Journal*, 1997, Vol. 5, No. 3, pp. 335-344.
- 5 Lisa Matthewman and Amanda Rose and Angela Hetherington, *Work psychology* (Oxford University Press: 2009).
- 6 Mark Lemley, "Property, intellectual property, and free riding", *Texas Law Review*, 2005, Vol. 83, pp. 1031-1075.
- 7 William Landes and Richard Posner, "An economic analysis of copyright law", *The Journal of Legal Studies*, 1989, Vol. 18, No. 2, pp. 325-363.
- 8 Article 27 of the Universal Declaration of Human Rights, second paragraph, states expressly that: "Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author" (Paris, 1948).
- 9 WIPO, *What is intellectual property?* (WIPO Publication: 2004), pp. 2-5.
- 10 For instance, according to Aleksandra Elbakyan, for the sake of world progress the results of scientific works should be disseminated and not privatized. Following this line of thought, in 2011 she created Sci-Hub, a website born in Kazakhstan which provides free access to millions of research papers and books without regard to copyright, bypassing publishers' paywalls in various ways. See Florencia Grattarola, "Alexandra Elbakyan - Free as in Science" - *Medium* (23 December 2018) <https://medium.com/a-computer-of-ones-own/alexandra-elbakyan-free-as-in-science-de07894585a8> (accessed on 23 May 2020).
- 11 Noronha Frederick and Jeremy Malcolm (eds.), *Access to knowledge: a*

- guide for everyone, (Consumers International: 2010).
- 12 For further studies see Iain Samarinda, "Islamic law and copyright in academic world: the dynamic debates between privatization and distribution of knowledge", *Mazahib*, 2018, Vol. 17, No. 1, pp. 23-45; Juan Machin Mastromatteo, Alejandro Uribe-Tirado and Maria Romero-Ortiz, "Piracy of scientific papers in latin America: an analysis of Sci-Hub usage data", *Information Development*, 2016, Vol. 32, No. 5, pp. 1806-1814.
 - 13 For a general overview of Islamic law, see Cherif Bassiouni and Gamal Badr, "The Shari'ah, sources, interpretation, and rule-making", *UCLA Journal of Islamic & Near East Law*, 2002, Vol. 1, No. 2, pp. 135-182; Hossein Esmaeili, "The nature and development of law in Islam and the rule of law challenge in the Middle East and the Muslim world", *Connecticut Journal of International Law*, 2010, Vol. 26, No. 1, pp. 329-366; Mark Movsesian, "Fiqh and canons: reflections on Islamic and Christian jurisprudence", *Seton Hall Law Review*, 2010, Vol. 40, No. 861, pp. 861-888.
 - 14 Knut Vikor, *Between God and the sultan: a history of Islamic Law* (Oxford University Press: 2005).
 - 15 Irshad Abdal-Haqq, "Islamic law – an overview of its origin and elements", *Journal Islamic L. & Culture*, 2002, Vol. 7, No. 1, pp. 27-82.
 - 16 According to Islamic beliefs, God has placed these knowledge-based assets in an irrevocable trust for the benefit of human beings, and Muslims have entered into an irrevocable Covenant with God to be the good faith trustees of these timeless assets. As beneficiaries, Muslims draw upon these assets to lead morally intelligent lives. As trustees, they preserve these assets from the irreverence of misinformed critics, from the assault of misguided assailants, and from the mockery of fools. As trustees, they also transfer these assets to the next generation of Muslims without changing the nature of the trust and without depreciating the value of its assets. See Ali Khan, "Islam as intellectual property "My Lord! Increase me in knowledge", *Cumberland Law Review*, 2001, Vol. 31, p. 361.
 - 17 For Muslims the Quran is the foremost and the most precious asset that God has created for the benefit of all human beings (Quran 39:41; 80:10-12). The Quran's authenticity was preserved at the time of its revelation so that falsehood cannot come to it from before it or behind it (Quran 41:43). As soon as the verses were revealed, they were carefully written by "the hands of scribes, honorable and obedient" (Quran 2:11). Each verse

came down to respond to a concrete factual circumstance and calls for special awareness (Quran 33:40). The Quran is divided into 114 chapters, called surahs. Each surah is divided into verses, named ayas (which means signs, referring to signs from Allah (s.w.t.)). In the holy book there are approximately 6000 ayas. See Raj Bhala, "Theological categories for special and differential treatment", *University of Kansas Law Review*, 2002, Vol. 50, No. 635.

- 18 While the Quran provides the written law, the Sunnah supplies the case law, representing the protected knowledge of the Prophet. It embodies the application of the Quran's written law to concrete disputes and hypothetical question that arose during the Prophet's life. The substance of the Sunnah, reported in thousands of authentic cases, covers a wide range of spiritual, ethical, social, economic and legal topics.
- 19 It includes both deductive (from broad general principles of the law to a specific case) and inductive (from a specific case to general principles) method of reasoning. See John Walbridge, "Logic in the Islamic intellectual tradition: the recent centuries", *Islamic Studies*, 2000, Vol. 39, No. 1, pp. 55-75.
- 20 Diana Zacharias, "Fundamentals of the Sunni school of law", *Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht*, 2006, Vol. 66, pp. 491-507.
- 21 Bashar Malkawi, "Intellectual property protection from a Sharia perspective", *Southern Cross University Law Review*, 2013, Vol. 16, pp. 87-121.
- 22 Ibid.
- 23 The Quran states "Allah (s.w.t.) has made buying and selling lawful and usury unlawful" (Quran 2:275-278).
- 24 Ezieddin Mustafa Elmahjub, *Protection of intellectual property in Islamic Shari'ah and the development of Libyan intellectual property system* (Queensland University of Technology: 2014).
- 25 Muhammed Wohidul Islam, "Al-Mal: the concept of property in Islamic legal thought", *Arab Law Quarterly*, 1999, Vol. 14, No. 4, pp. 361-368.
- 26 Justine Koscher, "A patent pool's white knight: individual licensing agreements and the procompetitive presumption", *DePaul J. Art. Technology & Intellectual Property*, 2009, Vol. 20, No. 1.
- 27 When monopoly rights expire the previously protected creation will enter

- the public domain, thus satisfying private and public interests. For further information see Silvia Beltrametti, Intellectual property protection under Islamic law (The Prague Yearbook of Comparative Law: 2009).
- 28 Heba Raslan, "Shari'ah and the protection of intellectual property-the example of Egypt", IDEA: The Journal of Law and Technology, 2006, Vol. 47, pp. 497-499.
 - 29 Amir Khoury, "Ancient and Islamic sources of intellectual property protection in the Middle East: a focus on trademarks", IDEA: The Journal of Law and Technology, 2003, Vol. 43, p. 151.
 - 30 Muhammed Amanullah, "Author's copyright: an Islamic perspective", The Journal of World Intellectual Property, 2006, Vol. 9, No. 3, pp. 301-315.
 - 31 Abdul Ghani Azmi, "Basis for the recognition of intellectual property in light of the Shari'ah", International review of industrial property and copyright law, 2007, Vol. 3, No. 1.
 - 32 Ibn Malik Al-Muwatta, Book of judgment (Diwan Press: 1951).
 - 33 Ali Khan, n. 16.
 - 34 Quran 3:194.
 - 35 Salah Al-Fadhli, "The ethical dilemma of software piracy in Islamic societies: the case of Kuwait", The Electronic Journal on Information Systems in Developing Countries, 2009, Vol. 39, No. 7, pp. 1-9.
 - 36 The fatwa can be found on the official website of the fiqh academy, available at: <www.fiqhacademy.com> (accessed on 15 January 2020).
 - 37 The expression "Muslim Countries" refers to 30 countries, namely: Afghanistan, Algeria, Bahrain, Bangladesh, Brunei, Comoros, Djibouti, Egypt, Gambia, Indonesia, Iran, Iraq, Jordan, Kuwait, Lebanon, Libya, Malaysia, the Maldives, Mauritania, Morocco, Nigeria, Oman, Pakistan, Qatar, Saudi Arabia, Somalia, Sudan, Syria, United Arab Emirates and Yemen.
 - 38 Gil Feiler, The Middle East in the new millennium: Economic Development & Business Law (Kluwer Law International: 2000).
 - 39 "As for the man who is a thief and the woman who is a thief cut off their hands in requital for what they have reaped and as a exemplary punishment of God", Quran 5:38.
 - 40 Software management, security imperative, business opportunity, (BSA

- Global software survey. London. 2018).
- 41 UNCTAD, World Investment Report 2011, (Switzerland, 2011), available at: <https://unctad.org/en/PublicationsLibrary/wir2011_en.pdf> (accessed on 15 May 2020).
 - 42 Nadia Shehzad, "Developing intellectual property regimes in the Gulf: utilizing intellectual property for positive economic growth", *World Journal of Social Sciences*, 2012, Vol. 2, No. 6, pp. 231-242.
 - 43 Kawthar Abdalla Bayoumi, Arieff Salleh Rosman, "Framing an Islamic Vision of Intellectual Property: Maqasid-Based Approach", *International Journal of Islamic and Civilizational Studies*, 2018, Vol. 5, No. 3, p. 26.
 - 44 Maslaha means "public interest or benefit" and it is a principle used by Muslims to synthesize laws and rules through the tools used in contemporary fields such as economics, government and science. Felicitas Opwis, "Macla%a in Contemporary Islamic Legal Theory", *Islamic Law and Society*, 2005, Vol. 12, No. 2, pp. 182-223.
 - 45 David Price, *The Development of Intellectual Property Regimes in the Arabian Gulf States: Infidels at the Gates* (Routledge: 2009), p. 9.
 - 46 It is necessary to draw a distinction between Muslim countries that adopt a dual legal system (or mixed system: secular law and Sharia law) and those countries where Islam is the only source of law. However, to the purposes of the analysis in this paper, the term 'Muslim' is applied to members of both groups. Thus, the countries here designated by the term 'Muslim' are those listed in note 37.
 - 47 Mohammed El Said, *The Development of Intellectual Property Protection in the Arab World* (Edwin Mellen Press: 2008), p. 176 et seq.
 - 48 The 'Trademark Regulation' in 1871 was the first regulation regarding trademarks, based on the French Law regarding trademarks dated 1857.
 - 49 The first Patent Law of Ottomans was enacted in the Period of Autocracy in 1879. However, Ottomans were underdeveloped in terms of industrialization compared to Europe and could not produce technologies, hence they were obliged to import it. So, the enactment of the cited law was conceived to promote the transferal of technology between countries. This law had been valid for more than 100 years until the Decree no. 551, which came into force in 1995.
 - 50 An example is the Explanatory Memorandum of Egyptian Copyright Law nr. 354/1954 stating that: "this law is based upon the international

- conventions and the modern European copyright laws“. Michael Birnhack, Amir Khoury, “The Emergence and Development of Intellectual Property Law in the Middle East”, in Rochelle Dreyfuss and Justine Pila (eds), *The Oxford Handbook of Intellectual Property Law* (Oxford University Press: 2018).
- 51 Nowadays, it is becoming more and more evident that the increase in the protection of intellectual property above the usual level is causing negative consequences to these countries. Ezzeddin Elmahjub, “Intellectual Property and Development in the Arab World: A Development Agenda for Libyan Intellectual Property System”, *Arab Law Quarterly*, 2016, Vol. 30, No. 1, pp. 1-33.
- 52 Graeme Dinwoodie, “The Architecture of the International Intellectual Property System”, *Chicago-Kent Law Review*, 2002, Vol. 77, No. 3, pp. 993-1014.
- 53 Art. 4 of the Paris Convention. World Intellectual Property Organization (WIPO), Paris Convention for the Protection of Industrial Property (as amended on September 28, 1979), available at: <<https://wipolex.wipo.int/en/text/287556>>, (accessed on 15 January 2020)
- 54 Artt. 2 and 4 of the Berne Convention. World Intellectual Property Organization (WIPO), Berne Convention for the Protection of Literary and Artistic Works (as amended on September 28, 1979), available at: <<https://wipolex.wipo.int/en/text/283693>>, (accessed on 15 January 2020).
- 55 The TRIPS Agreement, which is Annex 1C of the Marrakesh Agreement, comes as a result of the Uruguay Round where Egypt was the only Arab country participating in the setting process. The text of the Agreement is available at: <https://www.wto.org/english/docs_e/legal_e/27-trips_01_e.htm>, (accessed on 15 January 2020)
- 56 Mohammed El Said, “The European Trips-Plus Model and The Arab World: From Co-Operation to Association— A New Era in the Global IPRS Regime?”, *Liverpool Law Review*, 2007, Vol. 28, No. 1, pp. 143-174.
- 57 For instance: Morocco, Jordan, Baharain and Oman signed FTAs with the US.
- 58 Although Tunisia signed the Paris Convention, it did not get involved in the standard-setting process as it was a colony under French control.

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- 59 Maldives, Iran, Iraq and Somalia have not signed yet. Available at: <<https://copyright.house.org/countries-berne-convention>>, (accessed on 15 January 2020).
- 60 Maldives and Somalia have not signed yet. Available at: <https://www.wipo.int/treaties/fr/ShowResults.jsp?lang=fr&treaty_id=2>, (accessed on 18 January 2020).
- 61 The other multilateral agreements included in the package deals negotiated by the World Trade Organization are: General Agreement on Tariffs and Trades (GATT), the General Agreement on Trade in Services (GATS), the already mentioned TRIPS, the Dispute Settlement Understanding (DSU) and the Trade Policy Review Mechanism (TPRM). The above listed deals are subject to the international method of signing agreement defined as “single undertaking approach”, according to which the production of legal effects is subject to the acceptance of the entire negotiation package. Hiroko Yamane, *Interpreting TRIPS. Globalisation of Intellectual Property Rights and Access to Medicines* (Oxford and Portland, 2011), p. 105 et seq.
- 62 The first part of the Agreement defines the implementation of the general principles of international trade, which is the national treatment (art.3) and the treatment of the most favored nations (art. 4). In the second part, there are the copyrights, patents, trademarks, industrial projects, confidential information or the so-called know-how and geographical information, which European countries are very keen on protecting.
- 63 Annex 2 of the Agreement Establishing the WTO.
- 64 The Agreement includes a safety clause in the art. 2 which integrates the Berne and Paris Conventions on the intellectual property. Moreover, it refers to the specialized institute of the United Nations, the WIPO, as an international organization with competence in this field.
- 65 E. Sciso, *Appunti di diritto internazionale dell'economia e dell'ambiente* (Giappichelli Editore: 2017), p. 309 et seq.
- 66 Ibid.
- 67 Among all the Muslim countries, 21 out of 30 joined as Members the World Trade Organization, 9 out of 30 are still observers. For further details see the official website available at: <https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm>, (accessed on 20 January 2020).
- 68 It states that courts must have the right, under certain conditions, to

- decide the disposal or destruction of goods infringing intellectual property rights. “Willful trademark counterfeiting or copyright piracy on a commercial scale must be subject to criminal offences. Governments also have to make sure that intellectual property rights owners can receive the assistance of customs authorities to prevent imports of counterfeit and pirated goods”. World Trade Organization, *Understanding the WTO* (2008), available at: <https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm7_e.htm>, (accessed on 20 January 2019).
- 69 Carlos Correa, *Intellectual Property Rights, the WTO and Developing countries. The TRIPS Agreement and Policy Options* (Zed Books: 2002), p. 95 et seq.
- 70 Zdenek Drabek (eds.), *Is the World Trade Organization Attractive Enough for Emerging Economies? Critical Essays on the Multilateral Trading System* (Palgrave MacMillan: 2010).
- 71 Indeed, non-developed countries need custom policies of intellectual properties that caters to to their own necessities rather than a uniform politic catering to everyone’s needs. Chad Cullen, “Can TRIPS Live in Harmony with Islamic Law - An Investigation of the Relationship between Intellectual Property and Islamic Law”, *SMU Science & Technology Law Review*, 2011, Vol. 14 , No. 1 (2011), p. 57 et seq.
- 72 For instance: Algeria, Libya and Iraq.
- 73 For instance: Egypt, Tunisia, Qatar and UAE.
- 74 For instance: Jordan, Baharain, Morocco and Oman. Mohammed El Said, *The Development of Intellectual Property Protection in the Arab World* (Edwin Mellen Press: 2008), p. 119 et seq.
- 75 See articles 1 and 7 of the Basic Law of Saudi Arabia, *Al Nizam Al Asasi Lil Hokm*, issued by Royal Decree No. A/90 dated 27/08/1412 H, 1992. Moreover, it must be specified that the Islamic juridical system (Sharia) includes some elements of the Egyptian, French and other secular rights. Moreover, trade controversies are managed by special committees ruled by the Islamic law.
- 76 For instance, article 2 of the Egyptian Constitution states that Islamic Jurisprudence is the principal source of legislation; article 2 of the Constitution of Bahrain states that Islamic Shari’ah shall be a main source of legislation; article 3 of the Constitution of the Republic of Yemen of 1994 states that Islamic Shari’ah is the source of all legislations.

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- 77 Abdulrahman Yahya Baamir, *Shari'ah Law in Commercial and Banking Arbitration: Law and Practice in Saudi Arabia* (Routledge: 2010), p. 32.
- 78 Message from HRH Prince Mohammed Bin Salman Bin Abdulaziz Al-Saud, available at: <<https://vision2030.gov.sa/en/vision/crown-message>>, (accessed on 20 January 2020).
- 79 The Holy Quran at 9:1 (Pickthall trans.).
- 80 The Holy Quran at 9:4 (Pickthall trans.).
- 81 For more information visit the website available at: <<https://wipo.int/en/legislation/profile/SA>>, (accessed on 28 August 2019).
- 82 Chad Cullen (2011), n. 71, at 60.
- 83 Abdulaziz Aljabre, "Understanding Software Piracy in Saudi Arabia and the Need for Change", *Journal of Emerging Trends in Computing and Information Sciences*, 2012, Vol. 3, No. 11, pp.1516-1520.
- 84 To this purpose, it is good to recall the recent case started in the Dispute Settlement Body of the WTO (DS567: Saudi Arabia — Measures concerning the Protection of Intellectual Property Rights). The 1st of October 2001, Qatar requested to consult Saudi Arabia about the Saudi Arabia's alleged failure to guarantee a proper protection of the intellectual property rights, with location in Qatar. The BeoutQ Sports, a Saudi broadcasting station, took the signal of the Qatar broadcasting station BeinSports – which holds the rights for several championships and the Champions League – and broadcast it, for free, to the whole world, in particular to Asia and Africa in their entirety. The Panel in the WTO has been formed on the 18th of February 2019. For update information about the case, visit the website available at: <https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds567_e.htm>, (accessed on 20 January 2020).
- 85 Office of the United States Trade Representative, Special 301 Report (2019), p. 57 et seq. Available at: <https://ustr.gov/sites/default/files/2019_Special_301_Report.pdf>.
- 86 Christian Bou Khater, "Intellectual property rights in the light of the Saudi Arabia's vision 2030", *International Journal of Law*, 2018, Vol. 4, No. 2, pp. 154-156.
- 87 Chad Cullen, n. 71, at 47 et seq.
- 88 Bashar Malkawi, "The Alliance Between Islamic Law and Intellectual

- Property: Structure and Practice”, University of St. Thomas Law Journal, 2013, Vol. 10, No. 3, pp. 641 et seq.
- 89 Patricia Higinio Schneider, “International trade, economic growth and intellectual property rights: a panel data study of developed and developing countries”, *Journal of development economics*, 2005, Vol. 78, No. 2, pp. 529-547.
- 90 See Nora El-Bialy and Moamen Gouda, “Can Shari’ah be a deterrent for intellectual property piracy in Islamic countries?”, *The journal of World Intellectual Property*, 2011, Vol. 14, No. 6, pp. 441-466; Sulaiman Al-Rafee and Kamel Rouibah, “The fight against digital piracy: an experiment”, *Telematics and Informatics*, 2010, Vol. 27, No. 3, pp. 283-293; Timothy Paul Cronan and Sulaiman Al-Rafee, “Factors that influence the intention to pirate software and media”, *Journal of Business Ethics*, 2008, Vol. 78, No. 4, pp. 527-545; Charles William Hill, “Digital piracy: causes, consequences and strategic responses”, *Asia Pacific Journal of Management*, 2007, Vol. 24, No. 1, pp. 9-25.
- 91 According to the study conducted by Al-Rafee, aimed at individuating the most efficient means of countering online digital piracy, the imposition of rules that make piracy illegal would be less effective compared to the presence of religious principles with the same normative content, given the necessity for the majority of the Muslim population to live, first of all, in accordance with the prescriptions of their religion. See Sulaiman Al-Rafee and Kamel Rouibah, n. 90.
- 92 One study conducted in China showed that one of the main reasons why people pirate digital material is the poor enforcement of IP laws, coupled with disrespect for the legal system. See Erik Kin Lau, “Factors motivating people towards pirated software”, *Qualitative Market Research: An International Journal*, 2006, Vol. 9, No. 4, pp. 404-419.
- 93 Nora El-Bialy and Moamen Gouda, n. 90.
- 94 Trevor Moores, “An analysis of the impact of economic wealth and national culture on the rise and fall of software piracy rates”, *Journal of Business Ethics*, 2007, Vol. 81, No. 1, pp. 39-51.
- 95 Steven Jamar, “The protection of intellectual property under Islamic law”, *Capital University Law Review*, 2010, Vol. 21, No. 1, p. 1079.
- 96 Tim Goles and Bandula Jayatilaka and Linda Parsons and Valerie Chambers, “Softlifting: exploring determinants of attitude”, *Journal of*

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- Business Ethics, 2008, Vol. 77, No. 4, pp. 481-499.
- 97 Rachel McCleary and Robert Barro, "Religion and political economy in an international panel", *Journal for the scientific study of religion*, 2006, Vol. 45, No.2, pp. 149-175.
- 98 Oscar Alafranca and Wallace Huffman, Aggregate private R&D investments in agriculture: the role of incentives, public policies, and institutions, *Economic development and cultural change*, 2003, Vol. 52, No. 1, pp. 1-21.
- 99 Nora El-Bialy and Moamen Gouda, n. 90.
- 100 Charles William Hill, n. 90.
- 101 European Commission, Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee. Trade, growth and intellectual property - Strategy for the protection and enforcement of intellectual property rights in third countries, (Strasbourg, July 1, 2014), available at: <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014DC0389&from=EN>>.
- 102 Justine Pila, "Intellectual Property as a Case Study in Europeanization: Methodological Themes and Context", in Ansgar Ohly and Justine Pila (eds.), *The Europeanization of Intellectual Property Law. Towards a European Legal Methodology* (Oxford University Press: 2013), pp. 3-23.
- 103 An example is the creation of the European Union Intellectual Property Office (EUIPO), in charge of managing trademarks and industrial design for the EU internal market, called Office for harmonization in the internal market (OHIM) until 23rd of March 2016. For further information see European Parliament Factsheet, *La proprietà intellettuale, industriale e commerciale*, (2019), available at: <https://www.europarl.europa.eu/ftu/pdf/it/FTU_2.1.12.pdf>.
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- 106 The Regulation (EU) 2017/1001 came into force as a consolidated version of the 2016 European Union Trademark Regulation. Regulation 2017/1001 on the European Union trade mark (codification).
- 107 The following detail specifications can be found in the Regulation (EU) nr. 608/2013: list by typology of intellectual property rights and expected violations; provisions for the right owners, in relation to the modalities to request protection to the customs; detailed procedures that the customs need to follow in case of identification of goods suspected to violate an IPR; establishment of the cooperation and exchange of information between customs and right owners; and lastly, measures to guarantee the protection of the interests of the legal retailers. For more information about the legislation, visit the website available at: <https://ec.europa.eu/taxation_customs/business/customs-controls/counterfeit-piracy-other-ipr-violations/legislation_en>, (accessed on 25 January 2020).
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