

Incorporeal Rights

Definition: authority of a person over something incorporeal.

In Islamic jurisprudence (*fiqh*), ownership is not restricted to a tangible, corporeal object existing in the physical world.

Property (*māl*) in Islamic jurisprudence is defined as anything that possesses recognized value among people and may lawfully be utilized. Consequently, whatever holds recognized value and provides permissible utility is considered property; this is the operative standard among the jurists.

Thus, **Incorporeal rights** fall under the designation of property in Islamic jurisprudence, and the owners have the rights to dispose of them through sale, purchase, or lease. They constitute financial rights for their owners that are safeguarded by Islamic law (*Shari'ah*).

Types of Incorporeal Rights:

First: Copyright (1886)

Copyright falls under intellectual property; it gives the author or creator the right to use the work, and prevent others from using and benefiting from it without their consent.

The author's literary and material rights are fully reserved for the creators.

- **Who is called (the author)?**

The author is the person who created the work; Whoever has their name published on the work is considered an author unless proven otherwise. In cases where their name is not mentioned; or referring to it under a pseudonym, the publisher becomes a representative on behalf of the author. The name of the author also includes anyone who contributes in the creation of visual and audio work.

It is required to **create something** in any form in order to be an author, e.g. an author may write a new book or develop a scientific work by interpreting or adding details, or by correcting its mistakes, or summarizing to make it easier for students to study. If the work is just abstracting or collecting some information with no creative work, It will not be considered as an innovation or a creation.

The author has two rights:

- 1) **Literary right:** It is not allowed to assign this effort to another person (permanently).
- 2) **Financial right:** The book can be published after the author's death by his inheritors for financial benefits for a limited period. (Temporary)

The right of composition is considered legal for reasons:

1. **Benefits are compensable in Islam:** Benefits are allowed to be compensated for money legally, and Intellectual property is a beneficial to society, therefore is it entitled to financial compensation like other benefits.
2. **The general tradition**(العرف) admits the author's right in his composition and creation and can be compensated
3. **Plagiarism is prohibited:** Islamic jurisprudence strictly prohibits plagiarism and the misattribution of statements to others. This principle is anchored in the prophetic tradition: "Whoever lies upon me deliberately, let him take his seat in the Fire." Accurate attribution is mandatory so that an author or speaker may rightfully receive credit for the good produced, or conversely, bear accountability for any harm caused.
4. **Rights correspond to responsibilities:** or” "The benefit runs with the burden." Because an author is accountable for what they produce and must answer for its impact and shoulder the liabilities, they also possess the exclusive right to reap the rewards of their work.

Abu Hurairah (May Allah be pleased with him) reported:

The Prophet (ﷺ) said, "A man utters a word pleasing to Allah without considering it of any significance for which Allah exalts his ranks (in Jannah); another one speaks a word displeasing to Allah without considering it of any importance, and for this reason he will sink down into Hell."

Second: the right of invention certificate/Patent (1791)

Definition: A patent is a type of intellectual property that gives its owner the legal right to exclude others from making, using, or selling an invention for a limited period of time in exchange for publishing an enabling disclosure of the invention.

In most countries, patent rights fall under private law and the patent holder can sue someone infringing the patent in order to enforce their rights. In some industries patents are an essential form of competitive advantage.

The Rights of the Inventor:

- 1) The inventor has a right to use his invention for a limited period of time.
- 2) The invention should be under the inventor's name.

Kinds of invention certification:

- 1) Full-Rights Certificate: Requires strict qualifying conditions and grants complete, comprehensive legal protection.
- 2) Limited Certificate: Awarded under more lenient criteria, offering restricted protections compared to a full-rights certificate.
- 3) Additive Certificate: Issued for improvements or modifications to an already certified invention.
- 4) Importation Certificate: Granted for introducing a foreign-developed invention for the first time. It operates as an exclusive

commercial enterprise right rather than protection for original inventorship. kind of certificate doesn't protect an invention but it is considered as a special enterprise.

Its rule in shariah : the right of invention certificate is legally recognized. according to the following reasons :

1. **Benefits are compensable in Islam:** Benefits are allowed to be compensated for money legally, and Intellectual property is a beneficial to society, therefore is it entitled to financial compensation like other benefits.
2. **Islamic law forbids plagiarism** and false attribution, in accordance with the Hadith of the Prophet (ﷺ): "Whoever intentionally lies about me, let him take his seat in Hellfire." Attributing words to their true author is essential, ensuring that individuals receive the recognition they earn or bear responsibility for any adverse consequences.
3. **Rights correspond to responsibilities:** because an author is accountable for what they produce and must answer for its impact, they possess the exclusive right to reap the rewards—as well as shoulder the liabilities—of their work.

Third: Trade name (1909)

Definition: A trade name is **an official name under which an individual or company conducts business**. A trademark offers companies legal protection for a particular brand, which may be associated with a trade name.

What the trade name includes:

1) The Trademark:

Serves three principal functions:

- **Distinctiveness:** Differentiating the proprietor's goods or services from competing products in the market.
- **Consumer Attraction:** Cultivating customer goodwill, familiarity with product specifications, and brand loyalty.
- **Market Surveillance:** Facilitating the monitoring of competitors and preventing unlawful imitation or infringement.

2) The Commercial Sign / Shop sign:

Designates the physical business premises and acquires reputational value over time. It typically incorporates the trader's civil name, legal title, or any distinctive designation legally tied to the commercial establishment.

3) **The Location** of the commercial store is related to its place and position.

The rights of the trade name:

1. **Exclusive Right:** Grants the owner exclusive use to distinguish their business and prevent imitation.
2. **Transferable Asset:** Holds measurable financial value and the owner has the right to sell, gift or transfer it.

- Its rule in Shareeah: its legally considered.**if it is not based on cheating or gharer(unkowin /hidden results)** according to the following reasons :

1. **Benefits are compensable in Islam:** Benefits are allowed to be compensated for money legally, and Intellectual property is a beneficial to society, therefore is it entitled to financial compensation like other benefits.
2. **The general tradition(العرف)** admits the author's right in his composition and creation and can be compensated
3. **Plagiarism is prohibited:** Islamic jurisprudence strictly prohibits plagiarism and the misattribution of statements to others. This principle is anchored in the prophetic tradition: "Whoever lies

upon me deliberately, let him take his seat in the Fire." Accurate attribution is mandatory so that an author or speaker may rightfully receive credit for the good produced, or conversely, bear accountability for any harm caused.

4. **Rights correspond to responsibilities:** or” "The benefit runs with the burden." Because an author is accountable for what they produce and must answer for its impact and shoulder the liabilities, they also possess the exclusive right to reap the rewards of their work.

Abu Hurairah (May Allah be pleased with him) reported:

The Prophet (ﷺ) said, "A man utters a word pleasing to Allah without considering it of any significance for which Allah exalts his ranks (in Jannah); another one speaks a word displeasing to Allah without considering it of any importance, and for this reason he will sink down into Hell."