

# **ESTABLISHING AN EFFECTIVE OMANI INTELLECTUAL PROPERTY SYSTEM: AN OMANI CULTURAL PERSPECTIVE**

By

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## **Abstract**

Intellectual property rights (IPR) are vital to economic growth in modern societies but societies vary in matters such as culture. Within the constraints of Islamic law, this thesis considers the Omani legal IP framework and how it can be enhanced through a wider cultural perspective. Developing a cultural, religious and internationally compatible approach to IPR may serve as a catalyst for Oman's future economic development and underpin external relations.

The research introduces an Islamic approach to activating Oman's intellectual property system and includes an empirical study of the current legal framework and present weaknesses in its implementation. This approach takes into account Omani culture and the role played by national IP administrative institutions. The approach advocated in the thesis is intended to raise IP awareness among small and medium-sized enterprises in Oman, considered to be the backbone of the developing national economy as well as providing a roadmap for the effective implementation of an IP system in Oman.

The thesis highlights how the largely Western approach to IPRs can be positively incorporated, adapted and regulated into Islamic law and culture. Accordingly, this thesis argues that the existing Omani IP system in terms of copyright, patent and trademark law can be applied to interact positively with Islamic law by respecting Omani culture, in particular public order and morality, while at the same time satisfying the demands of international agreements. The thesis puts forward policy recommendations for the Omani government with the aim of bringing about a more efficient and effective system. Developing a new and

compatible approach for Omani IPR may serve as a comparator for the wider context of economic development in the Sultanate and potentially serve as a model for other Islamic countries.

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## List of abbreviations

CCPL	Civil and Commercial Procedures Law
CNRL	Copyright and Neighbour Right Law
CPA	Consumer Protection Act
DGC	Directorate General of Customs
DGPG	Directorate General of Preaching and Guidance
FTA	Free trade agreement
GCC	Gulf Cooperation Council
GCCUTML	Gulf Cooperation Council Unified Trade Mark Law
GII	Global Innovation Index
IP	Intellectual property
IPD	Intellectual Property Department
IPRs	Intellectual property rights
IPRL	Industrial Property Rights Law
MCI	Ministry of Commerce and Industry
MERA	Ministry of Endowments and Religious Affairs
NCL	Nice Classification
OBSS	Omani Basic Statute of the State
OUSFTA	Oman and the US Free Trade Agreement
PACP	Public Authority for Consumer Protection

PASMED	Public Authority of Small and Medium Enterprises Development
PCT	Patent Cooperation Treaty
ROP	Royal Oman Police
R.D.	Royal Decree
SMEs	Small and medium-sized enterprises
SPSS	Statistical Package for the Social Sciences
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
UCLaw	Unified Customs Law
UKIPO	UK Intellectual Property Office
UPOV	International Union for the Protection of New Varieties of Plants
USTR	US Trade Representative
WTO	World Trade Organization

## CHAPTER 1 INTRODUCTION

### 1.1 Introduction

Intellectual property rights (IPRs) are examples of intangible property possessed<sup>1</sup> by either individuals or companies. These intellectual property rights represent an individual's or company's ideas which require protection, and potentially have worldwide significance and importance. Often the protection of these rights has to be reconciled within the context of different cultural norms and values, and finding a fair and compatible solution to these issues in the face of competing norms and cultures is not easy. But the global importance of searching for a fair and compatible solution to these issues cannot be underestimated.

At the international level, the IPR protection system has gone some way to addressing these issues by implementing key international agreements.<sup>2</sup> In particular, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) delivers a strong basic framework for the IPR regime in terms of copyright, industrial patents, trademarks, designs, plant variety, geographical indications of undisclosed information and the layout design of integrated circuits.<sup>3</sup> However, a number of questions have been raised with regard to its impact on opportunities for economic development.<sup>4</sup> It is difficult to determine whether TRIPS will enhance economic growth, because economic theory

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<sup>1</sup> Christine Greenhalgh and Mark Rogers, *The Value of Intellectual Property Rights to Firms* (Department of Economics, University of Oxford, 2007) 1.

<sup>2</sup> The World Trade Organization's (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is an international agreement. It was the result of the Uruguay round of multilateral trade negotiations held under the framework of the General Agreement on Tariffs and Trade (GATT). Oman became a member of the World Trade Organization (WTO) on 9 November 2000. See Section 3.3.2.

<sup>3</sup> See Section 3.2.3 below.

<sup>4</sup> Keith E. Maskus. 'Intellectual Property Rights and Economic Development' (2000) 32(2) Case Western Reserve Journal of International Law.

indicates that the protection of IP could bring about both positive and negative impacts.<sup>5</sup> Moreover, the importance of any impact would depend largely on prevailing cultural norms in any state.<sup>6</sup> It is here that one significant difficulty arises, particularly as the existing IP protection framework can be seen as very much an essentially Western approach. Consequently, many real issues rest in the willingness and adaptability of non-Western states, which have to choose whether to adapt the Western framework in accordance with local norms.

According to Price, religious beliefs, culture, a low level of economic development, and high poverty levels are examples of problems in Arab countries concerning IP protection.<sup>7</sup> However, in the domestic culture of Arab countries religious beliefs are an important element in enforcing the law, including IP law. Regarding IP protection, Islamic law continues to develop in tandem with Western ideas, but the application of Western IP systems will arguably only be effective if interpreted by Islamic countries from an Islamic perspective or model. From the point of view of Western countries, this Islamic model may be incongruous. Nevertheless, in Islamic domestic culture, an Islamic interpretation of IP law has the potential to make a positive impact when dealing with contemporary IP issues in terms of awareness of the law and the effectiveness of its application.

The importance of a cultural perspective is well recognized and accepted, and in 2007<sup>8</sup> the Provisional Committee on Proposals related to the World

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<sup>5</sup> *ibid*, p 473.

<sup>6</sup> *ibid*.

<sup>7</sup> David Price, *The Development of Intellectual Property Regimes in the Arabian Gulf States: Infidels at the Gates* (Routledge, 2009).

<sup>8</sup> World Intellectual Property Organization, 'The 45 Adopted Recommendations Under The WIPO Development Agenda' (made by the Provisional Committee on Proposals Related to a WIPO Development Agenda (PCDA)) <<http://www.wipo.int/ip-development/en/agenda/recommendations.html>> accessed 28 November 2015.

Intellectual Property Organization (WIPO)<sup>9</sup> Development Agenda (PCDA) made 45 recommendations, which it required developing countries to study. In particular, developing countries were asked to look at recommendation 35, which read, 'To request WIPO to undertake, upon request of Member States, new studies to assess the economic, social and cultural impact of the use of intellectual property systems in these States'.<sup>10</sup>

The Sultanate of Oman is a developing country and it is here that this thesis is grounded. The thesis explores Oman's developing system of IP and how its domestic IP framework has drawn inspiration from membership of the World Trade Organization (WTO), the WIPO and the United States (via a bilateral agreement).<sup>11</sup>

Moreover, the underlying theme of thesis suggests that Oman's membership and association with these bodies, together with its desire to accommodate WTO and WIPO rules within the framework of Islamic law, lay the foundation for a further derived benefit. This derived benefit arises from finding a mechanism whereby essentially Western rules can be accepted and accommodated within the cultural and religious constraints of Islam. This is a critical development at a time when the Sultanate's government is 'taking into consideration the 1998 sharp fall in oil prices which caused a national deficit of 122 million Omani Riyals'.<sup>12</sup>

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<sup>9</sup> The WIPO was established in 1967 to enhance creative activity, to foster intellectual property protection overall. It has 189 member states and holds international treaties and conventions in relation to IP. See, WIPO, 'Inside WIPO' <<http://www.wipo.int/about-wipo/en/>> accessed 14 February 2017

<sup>10</sup> World Intellectual Property Organization, 'The 45 Adopted Recommendations Under The WIPO Development Agenda' (made by the Provisional Committee on Proposals related to a WIPO Development Agenda (PCDA)) <<http://www.wipo.int/ip-development/en/agenda/recommendations.html>> accessed 28 November 2015.

<sup>11</sup> Oman officially became a member of the WIPO on 15 February 1997 and a member of the United States (via a bilateral agreement) on 13 October 2006; see Sections 3.2 and 3.3.2 below.

<sup>12</sup> Al Azri, Moosa, *Foreign investment in the Sultanate of Oman* (Klaus Schwarz Verlag 2017).

Therefore, finding a process or a mechanism whereby an IP framework can be integrated into the Oman legal system is an important step towards achieving the broader aims of economic diversity and cultural development.

Consequently, this legal research aims to examine the framework of Omani IP law by examining the country's Islamic culture and its derived socio-legal importance in the development of the Omani national economy. It will examine the role of IP institutions in supporting growth in Oman. The research will identify the level of IP awareness among Omani small and medium-sized enterprises (SMEs), which are considered by economists to be an instrument for growing businesses and creative activities.<sup>13</sup>

## **1.2 Research aims and objectives**

This research will explore the legal and regulatory impact of the IPR framework in Oman, with particular reference to the context of cultural and economic development. The research focuses on the current IPR legal framework in terms of copyright, patent and trademark regimes from an Islamic perspective. However, the development of suitable laws is only one aspect of an effective IP system. A key research aim is also to examine whether the IPR legal framework has had a favourable impact on the level of IP awareness and protection, especially with reference to Omani SMEs and to consider whether culture may play a role in this regard.

In order to fulfil the aims, the following sequence of objectives were identified and researched:

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<sup>13</sup> Christine Greenhalgh and Mark Rogers, 'The Value of Intellectual Property Rights to Firms' (Department of Economics, University of Oxford, 2007) 1.

- (1) To examine the legal and regulatory framework for IPRs in Oman, taking into account Omani culture, religion and its socio-legal importance for the development of the national economy.
- (2) To explore the power of positive aspects of Islamic law in regulating and adapting the Western IP framework towards a positive and beneficial impact in Oman.
- (3) To examine the role of the government's IP administrative framework in serving both Omani culture and the economy, and with particular reference to the impact of increasing the level of IP awareness within SMEs.
- (4) To identify and introduce a new method for increasing SMEs' IP awareness from an Islamic perspective by adding to the limited IPR-related literature in the key IP rights, namely copyright, patents and trademarks.
- (5) To assemble primary data to determine the level of SMEs' IP awareness to help policymakers improve the use of IPRs in Oman; and, secondly, to identify the salient factors that may help to increase the level of IP awareness, with particular emphasis on how SMEs respond to the impact from the Ministry of Endowments and Religious Affairs (MERA). It is anticipated that this course of analysis will serve to enhance and develop economic and cultural matters.
- (6) To undertake a descriptive analysis to identify general patterns in the perception and opinions of SMEs on IPR-related issues, followed by a critical interpretation of the results to develop a better understanding of the level of IP awareness and factors which affect their understanding, with the aim of bringing about a more efficient and effective IPR mechanism that can be developed to overcome limited IP awareness.



- (7) To develop recommendations based on the main findings of this research aimed at identifying the most effective and efficient IPR system appropriate for Oman in accordance with cultural norms.

### **1.3 The main contribution of this PhD research**

The contribution to knowledge offered by this research is significant and original for the following reasons:

**(1) Domestic level:** The research has the potential to be the first comprehensive academic work to examine the legal and regulatory framework for IPRs in Oman, taking into account culture and religion and its socio-legal importance for the development of the national economy. This research has the potential to show the power of positive aspects of Islamic law in regulating and adapting the Western IP law framework towards a beneficial impact in Oman. In addition, the research will make a unique contribution by analysing the strengths and weaknesses of IP administrative institutions. In particular, it will review the efforts undertaken by IP bodies in managing IP rights in areas of protection and enforcement, with the overall aim of increasing the level of IP awareness within Omani businesses. Examining the role of IP bodies will help to address present weaknesses and suggest reforms. The research will explore the possibility of introducing a new communication method via indirect institutions such as the MERA to increase the level of SMEs' IP awareness from an Islamic religious perspective, adding to the limited IPR-related literature in Oman in terms of the key IP rights, namely copyright, patents and trademarks.

**(2) National level:** Other states which follow an Islamic law system can potentially use this research as a framework and guidance in their

decision-making process for assessing their own IP applications requiring registration.

**(3) International level:** A new approach to increase the level of IP awareness – from a religious perspective – may be applied in other cultures depending on their domestic arrangements. This will assist international organizations to support the legal protection of IPR in Islamic states. The research focuses on the dissemination of Islamic law’s interpretation of IPR issues via the mosque and its social media channels. This novel approach has the potential to be applied in other areas of law in Oman and other similar legal systems. Western countries may recognize the power of Islamic law to shape behaviour in the IP law context and the increased potential to achieve international IP protection.

#### **1.4 Methodology**

The nature of this research will involve both analytical and empirical approaches. It involves the use of primary and secondary sources. Primary sources consist of Omani Basic Statute of the State (OBSS),<sup>14</sup> legislation, treaties and government documents, and Islamic law. Secondary sources include books, refereed journals and reports which clarify and analyse the primary sources. In order to provide a foundation for the thesis, the elements that play a key role in assessing the impact of economic and sociocultural factors and the level of IPR awareness in SMEs will be examined. This will build a theoretical background to underpin an understanding of the current legal and regulatory IPR framework in Oman.

The Sultanate of Oman is an independent Islamic state.<sup>15</sup> Omani society is influenced by its language and religion. The state religion is Islam and

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<sup>14</sup> Royal Decree (R.D.) 101/96; this is considered constitutional law.

<sup>15</sup> R.D. 101/96, art 1.

Islamic Sharia law provides the basis for its legislation.<sup>16</sup> These two factors are reflected in the structure of the OBSS.<sup>17</sup> The research examines these special sociocultural characteristics and their impact on the IPR framework implemented by the state.

The nature of Omani legal system is not restricted to only one Islamic school (Ibadi,<sup>18</sup> Sunni<sup>19</sup> and Shi'ah<sup>20</sup>). Oman is the only state where the Ibadi school is predominant. The Ibadi school represents one of the main schools of Islam, with the other two being Sunni and Shi'ah. Islamic scholars have confirmed that there is a similarity between the Ibadi and Sunni schools.<sup>21</sup> In relation to IP subject matter, Islamic scholars have

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<sup>16</sup> R.D. 101/96, art 2.

<sup>17</sup> R.D. 101/96

<sup>18</sup> The oldest fundamentalist movement in Islam is the Ibadi movement, which was established 50 years after the of Prophet Mohammed's death. He was the president of the first Muslim state (570–632). After his death and in the first four Islamic period presidencies, which were known as the rightly-guided caliphs, the controversy between followers who were 'Muslims' occurred in interpreting and understanding the Quran and the Sunnah, which were the main sources of Islam. This was a consequence of different schools of thought and sects, for example Ibadi, Sunni, Shi'ite and Mu'tazila. The Ibadi School is based on tolerance, which 'seeks unity within the ummah and peaceful coexistence with non-Muslim religions'. See Kahlan Al-Kharusi, 'Introduction: The Muslim World: special issue on Ibaḍī Islam' (2015) 105(2) *The Muslim World* 139 <<http://search.ebscohost.com/login.aspx?direct=true&db=a9h&AN=101792947&site=ehost-live>> accessed 23 March 2016.

<sup>19</sup> Hanafi, Maliki, Shafi and Hanbali

<sup>20</sup> Jafari and Zaydi

<sup>21</sup> Muhammed, Abu Zahra, *History of Islamic schools of thought in politics Beliefs and the history of doctrines jurisprudence* ( Dar Al fikr al araby, Cairo) p. 29; In addition, in 2005, the True Islam and Its Role in Modern Society conference was conducted in Jordan in response to a request from H.M. King Abdullah. The outcome of this conference is that 200 of the world's leading Islamic scholars from 50 countries issued a ruling that became known as the 'Three Points of the Amman Message'. The validity of all existing Islamic schools, including Sunni, Ibadi, Shia (Jafari and Zaydi), has thus been recognized. In addition, they clarified the nature of the differences and similarities among these Islamic schools, and stated that, "*There exists more in common between the various schools of Islamic jurisprudence than there is difference between them. The adherents to the eight schools of Islamic jurisprudence are in agreement as regards the basic principles of Islam. All believe in Allah (God), Glorified and Exalted be He, the One and the Unique; that the Noble Qur'an is the Revealed Word of God; and that our master Muhammad, may blessings and peace be upon him, is a Prophet and Messenger unto all mankind. All are in agreement about the five pillars of Islam: the two testaments of faith (shahadatayn); the ritual prayer (salat); almsgiving (zakat); fasting the month of Ramadan (sawm), and the Hajj to the sacred house of God (in Mecca).*" See The Official

used a method called *maslahah mursalah* (consideration of public interest).<sup>22</sup> In Islamic law, this method is used as a source to find a solution for modern issues.<sup>23</sup> This method is important for evaluating whether IP issues raise any ethical concerns, because there is a link between this source and the objective of Sharia.<sup>24</sup> Therefore, the Islamic principles highlighted in this thesis can be recognised by the Ibadī and other Sunni schools of thought.

## **How doctrinal research will interact with interviews (Stage 2)**

This study partly adopts an empirical approach to achieve its objective.

Lee E. Teitelbaum states that:

*If laws are intended to produce certain results, questions about whether they do produce the expected results, whether they produce other results, and whether the identifiable results are as consistent with the reason for law as one might have anticipated, are all important to examine. Of course, identifying the purposes, expected results, and rationality of legal strategies reintroduces the theoretical aspect of the research enterprise, which is*

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Website of the Amman Message. 'The Amman Message' <<http://ammanmessage.com>> accessed on 19 April 2019.

<sup>22</sup> Eziuddin Elmahjub, 'An Islamic Perspective on the Theories of Intellectual Property' in J. Gilchrist and B. Fitzgerald (eds), *Copyright Perspectives* (Cham 2015) 70.

<sup>23</sup> Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (The Islamic Text Society 1991) 235 (for more detail about *maslaha al-morsalh* see Section 4.3.4.3 below).

<sup>24</sup> It protects five Islamic Sharia's objectives ( peoples' faith, human, intellect, posterity and wealth) see Dusuki, Asyraf Wajdi and Abdullah, Nurdianawati Irwani, 'Maqasid al-shari'ah, Maslahah and Corporate Social Responsibility' (2007) 24(1) *The American Journal of Islamic Social Sciences* (AJISS) 25-45, PP 31-3.

*generally made explicit in doctrinal articles but is equally important for empirical study.*<sup>25</sup>

Doctrinal and empirical approaches will be used to supplement each other: both methods are important in generating concrete arguments for legal and administrative reforms. Doctrinal research will include comprehensive and complex analysis of the current IP framework in Oman. Therefore, it will be helpful to understand how current legislation has been developed and applied while recommending the essential developments needed.<sup>26</sup>

In context of this research, IP administrative institutions have roles to play in the Omani IPR framework. Their role in serving Omani culture and economy is by managing IP rights (protection, enforcement), activity related to IP legal authority and increasing the level of IP awareness within Omani businesses. The strengths and weaknesses of the efforts undertaken by the administrative IP bodies in serving growth scenarios will be critically examined. In addition, how authorized institutions communicate and disseminate IPR information to companies will be evaluated.

To gain an understanding of the operation of the Omani IP regulatory regime in practice, semi-structured interviews<sup>27</sup> with key officials who the

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<sup>25</sup> Lee E. Teitelbaum, 'An Overview of Law and Social Research' (1985) 35(4) Journal of Legal Education 465, 466 <<http://www.jstor.org/stable/42898024>> accessed 22 November 2017.

<sup>26</sup> Khalid I. Al-Saleem. 'The Legal Framework for the Sustainable Development of Iraqi Oil and Gas: A Study in Particular Reference to the Kurdistan Region, and with Special Emphasis on The New Delhi Declaration' (PhD thesis, The University of Portsmouth 2015) 29.

<sup>27</sup> In a semi-structured interview, 'the researcher will have a list of themes and questions to be covered, although these may vary from interview to interview. This means that you may omit some questions in particular interviews, given a specific organisational context that is encountered in relation to the research topic. The order of questions may also be varied depending on the flow of the conversation. On the other hand, additional questions may be required to explore your research question and objectives given the nature of events within particular organisations. The nature of the questions and the

most of them were representatives of the decision maker at their departments. They operate within the Omani IPR legal framework were carried out to study the roles and practice of the relevant agencies.<sup>28</sup> These included what may be termed direct institutions, such as the Intellectual Property Department (IPD), the Directorate General of Customs (DGC), the Public Authority for Consumer Protection (PACP) and the courts, and what may be termed an indirect institution, the Ministry of Endowments and Religious Affairs (MERA). The purpose was to clarify the legal issues surrounding the IP framework and how they are applied in practice and the data was read in the narrative approach. This data will be helpful in identifying the strengths and weaknesses for reforms.

The impact of direct Omani IP institutions on cultural and economic development can arguably be bolstered with the support of the prevailing indirect institution. In particular, the MERA can potentially enhance the protection of IPRs and increase the level of IP awareness. Another aim of the 'empirical study' interviews was therefore to acquire insight into the power of indirect institutions (including those concerning religious beliefs) to enhance IP law protection and increase the level of IP awareness. Furthermore, interviews with officers in direct institutions were also held to assess the importance of indirect institutions, such as mosques, in

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ensuing discussion mean that data will be recorded by audio-recording the conversation or perhaps note taking" see Saunders, Mark, Philip Lewis and Adrian Thornhill, *Research methods for business students* (5ed, Financial Times Prentice Hall, Harlow 2009)p219. This part is designed as inductive qualitative research.

<sup>28</sup> Participants selected based on their role and experience in IP institutions under the Omani government. The interviews took place from June 2016 to July 2016 (face to face) and one interview alone took place in 13 March 2017 (by phone) because the participant had professional experience about the role of the customs authority. In addition, the research was conducted by using clear ethical procedures guided by NTU's code of ethical research. Therefore, the identity of the participants under this research is concealed for ethical reason and Participants will only be recognized by their unique generated code (e.g. IPD1, IPD2, MERA 1 etc.). For further information about 'Student Guide to Ethic' see on [https://www4.ntu.ac.uk/soc/document\\_uploads/76322.pdf](https://www4.ntu.ac.uk/soc/document_uploads/76322.pdf).

disseminating Islamic law, from their point of view. As a result, the research will introduce a new method to increase the level of IP awareness from an Islamic religious perspective. This approach can potentially be aimed at the public and private sectors, adding to the limited IPR-related literature in Oman.

Using this methodology, the researcher arrived at a qualitative interpretation to determine the impact of the current legal and regulatory IPR framework in Oman and suggested reforms needed.<sup>29</sup>

### **Empirical survey of the level of IPR awareness by Omani SMEs (Stage 3)**

The level of IP awareness among IP owners (usually companies) is considered by economists to be an instrument for growth and creative activities.<sup>30</sup> Accordingly, a high level of IP understanding may make a significant contribution to the national economy. Increasing IP awareness in Oman is the role of direct and indirect institutions, in particular the IPD and the MERA; the data acquired by interviews will help to discover the extent to which these institutions recognize and support local innovation by raising the level of IP awareness within the private sector.

An empirical survey of Omani SMEs was carried out to establish an accurate indication of the level of IP awareness within SMEs, to potentially help policymakers to improve the use of IPR in a nation. This study also aimed to identify the salient factors that can help to increase level of IP awareness, with particular emphasis on how SMEs respond to the impact of the Ministry of Endowments and Religious Affairs (MERA). An

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<sup>29</sup> A brief interview protocol was delivered to each interviewee in advance of the scheduled interview. Furthermore, two interviews were recorded and the four notes were taken with respect to ethical issues (in accordance with the university's ethical approval).

<sup>30</sup> Christine Greenhalgh and Mark Rogers, 'The Value of Intellectual Property Rights to Firms' (Department of Economics, University of Oxford 2007) 1.

interpretation of the empirical data was developed with the aim of bringing about a more efficient and effective IPR mechanism that can be developed to overcome limited IP awareness. In order to get a deeper understanding of factors which affect the level of IP awareness, the author refers to the data which has been presented and analysed in a qualitative approach.

The empirical survey targeted Omani SMEs to provide the dataset for analysis. The target population of companies classified as SMEs in accordance with the definition in the regulations promulgated by the Ministry of Commerce and Industry.<sup>31</sup> All the companies surveyed have intangible corporate IP assets. This will assist in avoiding misinterpretation and raise the validity of the research.

The main survey data for this research was collected from 140 randomly selected SMEs in Oman<sup>32</sup> (from a total of 6,000 SMEs currently registered with the Public Authority of Small and Medium Enterprises Development) by using a computer-supported programme, Statistical Package for the Social Sciences (SPSS) software, and code assistance.<sup>33</sup> The survey was designed in the style of an efficiency study, where the identities of the respondents remained anonymous.

The survey questionnaire was based on the UK Intellectual Property Office (UKIPO) IP awareness survey of 2006, as replicated in New Zealand in 2009, in terms of assessing the level of IP awareness in these jurisdictions.<sup>34</sup> The survey data was used to facilitate the critical analysis

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<sup>31</sup> See Section 6.2 below.

<sup>32</sup> See Table 6.1 below.

<sup>33</sup> See Section 6.3 below. This software is the most popular in social science, where it is used to organize describe and analyse the data. See Soleman Hassan Abu-Bader, *Using Statistical Methods in Social Science Research with a Complete SPSS Guide* (2nd edn, OUP 2011) 2.

<sup>34</sup> Robert Pitkethly, Chris Lewis and Concept House. 'UK Intellectual Property Awareness Survey 2006' (UK Intellectual Property Office 2006) 11.



of the impact of the legal and regulatory of IPR framework in Oman and it can suggest which reforms are needed in Oman. All information related to the empirical questionnaire methodology is discussed in Chapter 6.<sup>35</sup>

### **1.5 Outline of the thesis**

The structure of the research will comprise an analysis of the current legal and regulatory IPR framework in Oman and an examination of the level of IP awareness of this framework among SMEs. This thesis seeks to determine the shortcomings within the Omani framework and suggest which reforms are needed. This will be done by examining the IP regime from an Islamic perspective and evaluating whether this perspective can positively impact on growth in relation to IPRs and IP awareness within SMEs. The thesis consists of seven chapters directed towards meeting this objective and it is divided into two parts.

The first part consists of three chapters (Chapters 2, 3 and 4). Chapter 2 examines whether Islamic law recognizes traditional Western justifications in relation to private property ownership as extended to IP protection. It examines the importance and impact of cultural factors in relation to IPRs and their role in achieving social growth within one nation such as bringing justice into line with culture, enhancing the role of law and respect for authority.<sup>36</sup> In the third section, the characteristics of the Omani Basic Statute of the State (OBSS)<sup>37</sup> is studied to help develop a deeper understanding of the main legal foundations in Oman, which impact on regulation or implementation of IP law. Culture is an important factor that must be recognized by lawmakers when drafting IP laws, as well as for the courts when dealing with IP issues.<sup>38</sup>

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<sup>35</sup> See Section 6.3 below.

<sup>36</sup> See Section 2.2 below.

<sup>37</sup> R.D. 101/96

<sup>38</sup> See Section 2.3 below.

Chapter 3 discusses the background to the key IP international agreements. It examines the development of the IP framework in the Omani legal system pre-TRIPS and afterwards, in terms of copyright, patents and trademarks.<sup>39</sup> This study discusses and analyses the IPR framework in Oman in terms of copyright, patents and trademarks.<sup>40</sup>

Chapter 4 analyses the power of positive aspects of Islamic law in regulating and adapting Western IP law frameworks towards a beneficial impact in Oman. The first part examines an Islamic perspective which clarifies the extent of IP protection under Islamic law, by focusing on the status of legitimate IP labour and unfair IP trade practices and the preservation of property through its circulation (*rawāj*).<sup>41</sup> This helps to introduce the second part of this chapter, the power of Islamic law and culture in regulating the scope of Western IPRs. This can be achieved by identifying whether and how Omani culture or Islamic law principles can be applied to reconstruct a standard and provide guidance for Omani IP systems. It will also explore the extent to which Islamic law can contribute to clarifying the scope of the concept of public order and morality provisions in the Omani IP framework.<sup>42</sup> The last part discusses the real impact of applying this standard, in particular its role in serving the concept of Islamic economic development.<sup>43</sup>

The second part consists of two chapters (Chapters 5 and 6). Chapter 5 examines the role of IP administrative institutions in serving Omani Islamic culture and economy by managing IP rights (protection, enforcement), activating related IP legal authority and increasing the level of IP awareness within Omani businesses. It examines whether they

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<sup>39</sup> See Sections 3.2 and 3.3 below.

<sup>40</sup> See Sections 3.4 and 3.5 below.

<sup>41</sup> See Section 4.2 below.

<sup>42</sup> See Section 4.3 below.

<sup>43</sup> See Section 4.4 below.

take into consideration the religious viewpoint in the IP system and how they can be interrupted or activated. Therefore, it is essential to assess the strengths and weaknesses of these institutions in serving growth scenarios.<sup>44</sup> The second part of Chapter 5 introduces an indirect institution that uses its authority to change the IP legal understanding among business and Omani society. This is a new method and one of the main findings of thesis aimed at increasing the level of IP awareness from an Islamic religious perspective within SMEs. This method can add to the limited IPR-related literature in Oman and in similar Islamic legal systems in terms of the key IP rights, namely copyright, patents and trademarks.<sup>45</sup>

Chapter 6 is based on an empirical study and aims to achieves its objectives by gathering primary data to determine the level of IP awareness within SMEs. It is followed by an analysis which identifies general patterns in the perceptions and opinions of SMEs. The results have been critically interpreted to develop a better understanding in relation to level of IP awareness and the factors which affect their understanding. There is particular emphasis on how SMEs respond to the impact from the MERA. Both of these aims will serve cultural and economic development.

Chapter 7 sets out the conclusions of the thesis and provides a valuable insight into IPR-related issues and IP awareness in Omani SMEs. It clarifies key elements which should be taken in account by Omani policymakers in serving growth scenarios and inculcating IP awareness in particular, to harness the power of Islamic religion to develop an Islamic IP framework.

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<sup>44</sup> See Section 5.2 below.

<sup>45</sup> See Section 5.3 below.

It should be mentioned that in conducting this research it was difficult to get sufficient resources written by IP specialists in Arabic. Another problem was the apparent lack of IP-related case law and judgments issued by the Omani courts. The Omani legal system is based on civil-law principles and judgments are necessarily based on available legislation. Consequently, an Omani court is not obliged to follow principles established by other courts (known in the common-law system as precedents) regardless of those courts' levels.<sup>46</sup> Moreover, decisions of Omani courts are not published, although the Supreme Court draws general principles from their judgments and publishes them quarterly. Consequently, and in pure legal terms – there is a lacuna in the information available – particularly in terms of court judgments – which could have given a better indication as to the real protection of IP in the Omani legal system.

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<sup>46</sup> Case No. 337/2006 Supreme Court Decision, Muscat, Oman, 2006.

**PART I THE POSITIVE ASPECTS OF ISLAMIC LAW IN  
REGULATING AND ADAPTING THE WESTERN IP FRAMEWORK TO  
OMAN**

## **CHAPTER 2 THE HISTORICAL BACKGROUND OF IPR AND THE OMANI LEGAL SYSTEM.**

### **2.1 Introduction**

Intellectual property is a corpus of knowledge, the content of which requires communities to decide on whether it warrants being protected by certain property rights. IPRs enjoy some similarities with the possession of property rights or land. But knowledge is much greater than just intellectual property; it is embodied in individuals, in organizations and in innovative technologies and, for a long time, it has been seen as a main instrument of economic development. With current technical progress, particularly in the field of biotechnology and information and communications technologies, knowledge gained kudos insofar as it was the main source of competitive advantage for business and the state.<sup>47</sup> However, each country may differ in the way in which it defends or protects IPR, often because of cultural understandings, and in particular because of religious beliefs. Furthermore, in some countries, the structure of the legal system can impact in the provision of IP protection. For example, there is an Islamic law influence on culture and lawmaking in 57 countries, including the Sultanate of Oman. From an Islamic perspective, this influence regulates the rights and wrongs of human responsibilities in areas such as civil, commercial, and IP issues. It can be found that some jurisdictions take Islamic law into consideration.

Therefore, for the purpose of this research, it is appropriate that a foundation chapter should introduce and explain the historical background of IPRs and the current Omani legal system. In Section 2.2 this study will explore the justifications relied on by tradition Western

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<sup>47</sup> John H. Barton, *Integrating Intellectual Property Rights and Development Policy: Report of the Commission on Intellectual Property Rights* (Commission on Intellectual Property Rights 2002) 11.

scholarship to defend the protection of IPRs, and it will also try to discover whether Islamic law recognizes traditional Western theories. It also critically examines the importance of cultural perspective of IPR.<sup>48</sup> In addition, Section 2.3 will examine the Omani legal system, the importance of which rests on the following.

Firstly, this legal system demonstrates historic improvement, and an understanding that the Omani government can respond to any recommendations which help to improve its legal system, and these include improvements to IP laws which can help to reduce negative economic and cultural effects.

Secondly, examining the characteristics of the Omani Basic Statute of the State (OBSS)<sup>49</sup> may help in the understanding of the main legal foundations of Oman, which can impact in regulating or implementing any domestic laws such as Islamic law. This is an important factor that must be recognized by lawmakers when drafting IP laws, and for the court when dealing with any IP issues.

Finally, examining the current types of Omani courts system and their jurisdiction helps to identify the type of court with authority to hear IP law matters.

Of similar importance to exploring the 'mechanics' of law, and its interpretation and the lawmaking processes in Oman, is the historical background of IPRs. This is an area of research to be introduced in the next section.

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<sup>48</sup> See Section 2.2.2 below.

<sup>49</sup> R.D. 101/96.

## **2.2 The historical background of IPR**

### **2.2.1 Traditional Western and Islamic theoretical rights**

The emergence of new ideas, methods, goods and processes is essential for economic development, creating employment, technical, commercial and sociocultural growth. Therefore, offering legal protection for innovation and the creation of ideas is the essence of intellectual property. The main purposes for this are that it stimulates and increases production and encourages the creation and diffusion of ideas, which is crucial for development. To achieve these purposes there must be some preventative mechanism to safeguard ideas and prevent others from violating protected ideas.<sup>50</sup>

Legal and political scholars have often challenged the status and legality of intangible property, and have raised the issue of why IPRs must be offered protection.<sup>51</sup> Therefore, it would seem useful to note some of the theories which philosophers rely on to justify the protection of intellectual property, which include economic theory, natural theory, reward theory, personality theory and utilitarian justification.<sup>52</sup> This inevitably raises the question of the extent to which Islamic law recognizes the above theories. It should be noted that Islamic scholars rely on principles derived from the Quran and Sunnah and other sources of Islamic law, which will be examined in Chapter 4.<sup>53</sup>

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<sup>50</sup> Catherine Colston and others, *Modern Intellectual Property Law* (Routledge 2010) 44.

<sup>51</sup> Lionel Bently and Brad Sherman, *Intellectual Property Law* (OUP 2014) 3.

<sup>52</sup> These theories could help the researcher in examining several Islamic scholars who rely on one or more of these theories in justifying intellectual property rights, which will be discussed in the following chapter.

<sup>53</sup> See Section 4.3.4.3 below.



### 2.2.1.1 The economic justification of IPR

Intellectual property rights are closely linked to the markets. They perform a vital role in establishing the formation of markets. The law and economics approach tackles the subject of what incentives are required in creating IP protection that must be offered to it. Generally, these approaches propose that the market should be 'allocatively efficient',<sup>54</sup> where creators privately own IPRs. Private ownership offers incentives to produce the intellectual goods for the existing market.<sup>55</sup> This means that the needs of the market cannot be met unless IP rights are protected. A natural result is that IPRs should be afforded strong legal protection because 'the ability to "free-ride" on another's intellectual property would undermine allocative efficiency'.<sup>56</sup>

In addition, the economic and legal character of each kind of IP right differs from one to other. For example, a patent monopoly provides for its owner legally enforceable protection against independent discovers of inventions; copyright provides its owner protection against copying work but it does not prohibit the independent creation of the same work. However, the basic character of IP rights is that they are legal property rights in abstract objects.<sup>57</sup>

Islamic law supports the concept of offering protection for private property, which can be extended to IPRs owing to its economic value, which plays a vital role in supporting economic growth<sup>58</sup> Therefore, the

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<sup>54</sup> 'This occurs when there is an optimal distribution of goods and services, taking into account consumer's preferences'. See Tejvan Pettinger. 'Allocative Efficiency | Economics Help' <<http://www.economicshelp.org/blog/glossary/allocative-efficiency/>> accessed 15 March 2016.

<sup>55</sup> Tanya Francis Aplin and Jennifer Davis, *Intellectual Property Law* (OUP 2009) 12.

<sup>56</sup> Tanya Aplin and Jennifer Davis, *Intellectual Property Law: Text, Cases, and Materials* (OUP 2013) 12.

<sup>57</sup> Peter Drahos, *A Philosophy of Intellectual Property* (Dartmouth Aldershot 1996).

<sup>58</sup> See Sections 4.2 and 4.4 below.

right of ownership is recognized in Islamic law because it determines human behaviour and humans' relationship with others (Allah and human beings), and also determines human behaviour in dealing with wealth and regulates the correct approach to the relationship between the owner and their community.<sup>59</sup>

### **2.2.1.2 Natural rights**

In the seventeenth and eighteenth centuries, Western legal and political philosophers argued that an individual's right to the possession and disposal of private property was a person's natural right.<sup>60</sup> The idea of natural rights does not indicate that a person is born with IPRs, but it means that these rights can be identified as legal by the morality and rationality of human beings, regardless of any rules under positive law.<sup>61</sup> It should be noted that John Locke claimed a theory of property instead of IP. However, scholars have used Locke's theory of property to justify the existence and legal protection afforded to IP owing to its rhetorical strength and the effective interpretation of his arguments.<sup>62</sup>

The theory of property is developed in Chapter V of the *Second Treatise*, where Locke argues in favour of private ownership of goods and land on the basis of the effort or labour which individuals expend to produce goods or to cause the land to produce goods of value to human beings.<sup>63</sup> In addition, legal philosophers have relied on the following passage written by Locke to justify rights and therefore IP:

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<sup>59</sup> Sheikh Suleiman Al-Sitri, 'Private Property in the Islamic Economy and Its Impact on the Distribution and Transactions' (2008) 25 *The Word for Studies and Researches*

<sup>60</sup> Sukhninder Panesar, 'Theories of Private Property in Modern Property Law' (2000) 15(1) *Denning Law Journal* 113 <<http://www.ingentaconnect.com/content/ubpl/dlj/2000/00000015/00000001/art00006>> accessed 28 March 2016.

<sup>61</sup> Jeremy Waldron, *The Right to Private Property* (OUP 1990).

<sup>62</sup> Tanya Aplin and Jennifer Davis, *Intellectual Property Law: Text, Cases, and Materials* (2nd edn, OUP 2013).

<sup>63</sup> Karen I. Vaughn. 'John Locke and the Labor Theory of Value' (1978) 2(4) *Journal of Libertarian Studies* 312.

*God, who hath given the World to Men in common, hath also given them reason to make use of it to the best advantage of Life, and convenience. The Earth, and all that is therein ... belong to Mankind in common, as they are produced by the spontaneous hand of Nature; and no body has originally a private Dominion, exclusive of the rest of Mankind, in any of them, as they are thus in their nature state...*<sup>64</sup>

In addition, Drahos states that Locke's key arguments are as follows;

- 1 God has given the world to people in common.*
- 2 Every person has a property right in his own person.*
- 3 A person's Labour belongs to him.*
- 4 Whenever a person mixes his Labour with something in the commons he thereby makes it his property.*
- 5 The right of property is conditional upon a person leaving in the commons enough and as good for the other commoners.*
- 6 A person cannot take more out of the commons than they can use to advantage.*<sup>65</sup>

With regard to common property, Locke tries to demonstrate that there are two natural principles of private property. Firstly, 'every man has Property right in his own Person. This no Body has any Right but to

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<sup>64</sup> John Locke, *Locke: Two Treatises of Government Student Edition* (CUP 1988) Ch. 5, para 26, at p. 18.

<sup>65</sup> Peter Drahos, *A Philosophy of Intellectual Property Volume 1* (Dartmouth Aldershot 1996) 43.

himself'.<sup>66</sup> This means that to have ownership in one's self is to have ownership in one's acts. Such acts belong to the individual from the time when they own a natural right in performing them without obstacles.<sup>67</sup> The second principle follows the first one and refers to acts that are performed by a person labouring on common resources. A person's labour belongs to that person alone, therefore Locke states that, when an individual mixes their labour with common resources, such resources are taken from the commons and put into the range of private property, thus they make it their property.<sup>68</sup>

Locke's theory of property can be applied to abstract or intellectual property. It could be argued that, if someone has property in their intellectual labour, when they mix their labour with common resources (notions, theories or raw material), this labouring consequently gives them the property rights to the resource. The property rights in intellectual creations function similarly to a return or reward for the creator's labour. Instead, these rights are a reward for the contribution to the public domain. In either case, an individual's labour or contribution must be rewarded as a natural rights justification.<sup>69</sup>

As has already been illustrated, Oman is one of a number of Islamic countries,<sup>70</sup> therefore the theoretical framework of Locke's private property might be adapted under Islamic law in the Quran:

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<sup>66</sup> John Locke, *Locke: Two Treatises of Government Student Edition* (CUP 1988) Ch. 5, para 26, at p. 18.

<sup>67</sup> Sukhninder Panesar. 'Theories of Private Property in Modern Property Law' (2000) 15(1) *Denning Law Journal* 113, 128 <<http://www.ingentaconnect.com/content/ubpl/dlj/2000/00000015/00000001/art00006>> accessed 28 March 2016.

<sup>68</sup> *ibid*

<sup>69</sup> Tanya Aplin and Jennifer Davis, *Intellectual Property Law: Text, Cases, and Materials* (2nd edn, OUP 2013) 8.

<sup>70</sup> See Section 2.3.1.1 below.

*It is He (Allah) who created everything on earth for you.*<sup>71</sup>

The Quran states:

*He has also made subservient to you all that is in the heavens and the earth. In this there is evidence (of the Truth) for those who use their minds.*<sup>72</sup>

Fairness is used in justifying private property in both Western traditional philosophy and in Islamic law, Muslim scholars state that natural resources held in common are recognized as lawful (*mubah*).<sup>73</sup> From an Islamic perspective, *mubah* includes anything not owned, such as hunting fish in the sea and reaping fruit from non-owned trees, vacant land (*al-ard al jarda*), mines (*ma'adin*), animals etc. In short, if someone has worked to improve or enhance a resource, then that person has the right to claim the resource or property as their own – because of their labour (in Islamic law it is called *ahraaz al-mubah*).<sup>74</sup> Furthermore, the concept of labour theory in Islam was highlighted by Abdul Raham ibn Khaldun<sup>75</sup> and is similar to Locke's theory.

In his fifth chapter of the first volume of Ibn Khaldun's book *al-muqaddimah*, he:

*refers to several verses from the Qur'an that illustrate that Allah has given the world with all its natural resources for the benefit of humankind. He maintains that 'hands of humans' have equal opportunities to appropriate those resources, and once an individual exerts his or her labour*

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<sup>71</sup> Muhammad Sarwar, *The Holy Quran, Arabic Text with English Translation* (Islamic Seminary 2001) 4; see also Quran, al-Baqarah 2:29.

<sup>72</sup> Quran, al-Jathiyah 45:13.

<sup>73</sup> Eziuddin Elmahjub, 'An Islamic Perspective on the Theories of Intellectual Property' in J. Gilchrist and B. Fitzgerald (eds), *Copyright Perspectives* (Springer 2015) 69.

<sup>74</sup> *ibid*

<sup>75</sup> He died in CE 1406, 298 years before John Locke, who died 1704.

*on a certain object, it becomes his/her own property and thus 'cannot be taken without remuneration'. This could be understood as recognition of exclusive right from an Islamic perspective.*<sup>76</sup>

As a result, the concept of private property is recognized in Islamic law, and Oman takes it into account in its legal system (as examined in the next section). It seems that the theoretical framework of Islamic private property can be extended to IPRs,<sup>77</sup> and this issue will be discussed in Chapter 4 in more detail.<sup>78</sup>

### **2.2.1.3 Reward theory**

The rights afforded to IP (copyright, patents or trademarks) is a reward owed by the community to creators in return for their created work or ideas and their service to the community.<sup>79</sup> In other words, society has a moral responsibility to compensate and reward the inventors; the reason behind rewarding the inventor of intangible resources is for their qualities and talents.<sup>80</sup>

However, the nature of the reward remains controversial among some scholars, who ask why an individual must be granted an exclusive right, particularly where other systems of reward exist. For example, the Nobel Prize contributes to reducing the economic and social cost to prize winners. According to IP experts Bentley and Sherman, the usual answer to this question is that copyright permits the general public to decide who should be rewarded and the scope of the reward. If consumers purchase

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<sup>76</sup> *ibid*, 70

<sup>77</sup> *ibid*, 80

<sup>78</sup> See Section 4.2 below.

<sup>79</sup> Paul Torremans, *Holyoak and Torremans Intellectual Property Law* (OUP 2013) 24.

<sup>80</sup> Theodoros Papaioannou, 'Can Intellectual Property Rights be Morally Justified? The Case of Human Gene Patents' (DIME Workshop on Rules, Norms and Standards in the Institutional IPR Environment, March 2006) <[http://ipr.dime-eu.org/files/active/0/IPR-WORKING-PAPER-8\\_Papaioannou.pdf](http://ipr.dime-eu.org/files/active/0/IPR-WORKING-PAPER-8_Papaioannou.pdf)> accessed 15 April 2016.

more copies of a book, the greater the economic reward to the copyright owner. As a result, property rights often provide the best system to guarantee a reward proportionate to the appreciation of the work by the public.<sup>81</sup>

The theoretical framework of reward theory recognized in Islamic law demonstrates the financial and moral right of the author, because intellectual production is the fruit of their mind. Under Islamic law, this must be protected and rewarded. According to the Sunnah, the Prophet Mohammed (peace be upon him – ‘pbuh’) is reported to have said,

*Nobody has ever eaten a better meal than that which one has earned by working with one’s own hands. The Prophet of Allah, David used to eat from the earnings of his manual labor.*<sup>82</sup>

This is interpreted as saying that a reward must be given to the creator or inventor in return for their creation.

#### **2.2.1.4 Personality right theory**

Personality theory, like labour theory, has an intuitive appeal when applied to intangible or IP. The concept rests on the manifestation of the inventor’s personality. The famous philosophical writing in this regard is Hegel’s theory of property.<sup>83</sup> For Hegel, the will of an individual is basic to their existence, which always seeks actuality and effectiveness on Earth.<sup>84</sup> Hegel argues that an individual needs to externalize their freedom to the world in order for it to become an idea. This helps them

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<sup>81</sup> Lionel Bently and Brad Sherman, *Intellectual Property Law* (OUP, 2014) 37.

<sup>82</sup> Muhammad Muhsin Khan, *Sahih Bukhari* (Peace Vision 1979) volume 3, book 34, number 286.

<sup>83</sup> Justin Hughes. ‘The Philosophy of Intellectual Property’ (1988) 77(2) *Georgetown Law Journal* 330.

<sup>84</sup> *ibid*, 331.

to be aware of their freedom.<sup>85</sup> Hegel states that 'A person must translate his freedom into an external sphere in order to exist as Idea'.<sup>86</sup> Consequently, IP and other forms of property play a role in the individual's progress. However, ethical concerns could be raised if the public uses the IP right without the consent of its creator.<sup>87</sup>

As in Hegel's theory of property, in which to have property is natural and common sense,<sup>88</sup> Islamic law supports the theory by acknowledging that a person seeking to have private property is a natural disposition of human beings.<sup>89</sup> To illustrate that, the main source of Islamic law, the Quran, mentions that 'And you [humans] love wealth with inordinate love'.<sup>90</sup> And 'He [the human being] certainly has a strong love for wealth and riches'.<sup>91</sup> The Prophet Mohammed (pbuh) said,

*If the son of Adam (the human being) had two valley of money, he would wish for a third...etc.*<sup>92</sup>

Islamic law recognizes the desire of human beings to own private property. The purpose of the law is to protect private property, which

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<sup>85</sup> Desiree Hidalgo, 'Ownership and Private Property from the Perspectives of Hegel and Marx' (2013) 3(2) The Agora: Political Science Undergraduate Journal 140.

<sup>86</sup> Thomas Malcolm Knox, *Hegel's Philosophy of Right* (1943) para 41.

<sup>87</sup> Gungor Surmeli. 'The Enforcement of Intellectual Property Rights (IPR) in Turkey in the EU Accession Process: A Perception Analysis of the Police Officers Dealing with IPR Crimes' (PhD thesis, Durham University 2011) 13.

<sup>88</sup> Salasai states that 'Ownership apart from its social function, contained claims, powers and immunities that may be vested in several person other than the owner'; see S. Salasai, 'The Concept of Land Ownership: Islamic perspective' (1998) 2(2) Bulletin Geoinformasi 288.

<sup>89</sup> Eziuddin Elmahjub, 'An Islamic Perspective on the Theories of Intellectual Property' in J. Gilchrist and B. Fitzgerald (eds), *Copyright Perspectives* (Springer 2015) 71.

<sup>90</sup> Abdullah Yusuf Ali and Susan Smith, *The Qur'an: Translation* (Tahrike Tarsile Qur'an, 2001); Karim Ginena and Azhar Hamid, 'Corporate and Shari'ah Governance of Islamic Banks' in *Foundations of Shari'ah Governance of Islamic Banks* 47

<sup>91</sup> Muhammad Sarwar, *The Holy Quran, Arabic Text with English Translation* (Islamic Seminary 2001); Quran, 100:08.

<sup>92</sup> Muhammad Muhsin Khan, *Sahih Bukhari* (Peace Vision 1979) Volume 8, Book 76, Number 444.



takes human nature into consideration. This protection can be extended to IPR for reasons as analysed above.<sup>93</sup>

### **2.2.1.5 Utilitarian justification of IPR**

Utilitarian theory relies on a different criterion for reward by determining what is useful or beneficial for the public domain, rather than concentrating on the nature of the entitlement for creators. Jeremy Bentham supports utilitarian theory and rejects the concept that laws derive from natural rights. In his opinion, 'natural rights is simple nonsense: natural and imprescriptible rights, rhetorical nonsense – nonsense upon stilts'.<sup>94</sup> Bentham's prime argument is that the key requirement to maximizing the happiness of community is the existence of rights in using, appropriating and transferring objects of interest.<sup>95</sup>

According to this theory, IP laws are restricted to utilitarian-inspired targets which are crucial in fostering science and useful arts; in this way they can achieve social objectives. In addition, IP law cannot be justifiable unless it can stimulate social utility or the public welfare of the community, in which case the ethical value of an action or public policy must be identified via its outcome of fostering the public welfare of society as a whole.<sup>96</sup> Accordingly, the IP regime should be designed to be compatible with the utilitarian principle.<sup>97</sup>

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<sup>93</sup> *ibid*; it should be noted that Ezieddin mentions these parts from the Quran and Sunna in this article, p. 71.

<sup>94</sup> Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (Courier Corporation 2007) 501.

<sup>95</sup> Sukhninder Panesar. 'Theories of Private Property in Modern Property Law' (2000) 15(1) *Denning Law Journal* 113 <<http://www.ingentaconnect.com/content/ubpl/dlj/2000/00000015/00000001/art00006>> accessed 28 March 2016

<sup>96</sup> *ibid*

<sup>97</sup> This theory could raise different examples of what is beneficial for society. Therefore, understanding the beneficial or something more incentive for society could differ from one society to another. This issue will be discussed in Chapter 4.

Islamic law has similarities to Western traditional justifications, insofar as it supports the concept of utilitarian theory, which is used to justify the right of private property. Elmahjub found that two Muslim scholars also supported this theory in their conclusions: al-Ezz Ibn Abd Alslam (CE 1261) and Imam Al-Shatibi (CE 1388). They concluded that it is obvious within the instruction from the Quran and Sunnah that the fundamental objective of Islamic law is fostering the welfare of the society and preventing damage that can bring undesirable effects on it. For this reason, Islamic scholars take the concept of public interest into consideration.<sup>98</sup> They rely on Islamic source of *maslaha al-morsalh*, which is a mechanism used as a source in Islamic law, to find a solution for modern issues.<sup>99</sup>

In addition, Ibn Khaldun emphasized that human labour is necessary for wealth accumulation (which is important to welfare) and that profits and gains in most issues are values that arise from human labour. He also notes that the welfare of society relies on the amount of labour in a community. This means that if the community respects human labour it will flourish and bring a positive effect; otherwise, if there is no respect for human labour, it will suffer from undesirable outcomes.<sup>100</sup>

In summary, this analysis has attempted to provide the famous justifications of IPR as seen in the context of Western traditional perspectives and as seen from the context of Islamic law, of which Oman

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<sup>98</sup> Ezieddin Elmahjub, 'An Islamic Perspective on the Theories of Intellectual Property' in J. Gilchrist and B. Fitzgerald (eds), *Copyright Perspectives* (Cham 2015) 70.

<sup>99</sup> Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (The Islamic Text Society 1991) 235; see Dusuki, Asyraf Wajdi and Abdullah, Nurdianawati Irwani, 'Maqasid al-shari'ah, Maslahah and Corporate Social Responsibility' (2007) 24(1) *The American Journal of Islamic Social Sciences* (AJISS) 25-45.(for more detail about *maslaha al-morsalh* see Section 4.3.4.3 below).

<sup>100</sup> Ezieddin Elmahjub, 'An Islamic Perspective on the Theories of Intellectual Property' in J. Gilchrist and B. Fitzgerald (eds), *Copyright Perspectives* (Springer 2015) 70–71. Eziddin quoted from Izz Ibn Abd Alslam (2003) *Qaw'aid al-Ahkam fi Islah al-Anam* (Dar ibn Hazm) 7, 262.

is a part, and which recognize justifications in relation to private property which can extend to IP protection. Understanding these justifications might suggest that the most important elements are those sought by philosophers in seeking to help the economic and cultural growth of communities. Therefore, the following is an examination of IPRs from a cultural perspective.

### **2.2.2 Critically examining the cultural perspective of IPRs**

In many communities in the Arab world, including Oman, Islamic religious principles play an important role in legal culture.<sup>101</sup> Islamic law sets out principles of right and wrong, or of a person's duty when they deal with legal issues.<sup>102</sup> As a result, it is important to examine IPRs from cultural perspective because there are few studies in relation to IPRs and culture. According to Madhavi, IPRs must be understood as social and cultural relations, and not only understood as an incentive for creation.<sup>103</sup> In addition, there are a number of scholars who have proposed the value of engaging in cultural research and law. For example, Austin Sarat and Jonathan Simon analysed the cultural perspective of law by concentrating on the relationship between cultural lives and law. They were also involved in analysing in what way the law is a part of the cultural processes which effectively contribute in the formation of public relations.<sup>104</sup> Moreover, there are two directions which may be followed in order to find the relationship between law and culture. They may be:

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<sup>101</sup> See Section 2.3.1.1 below.

<sup>102</sup> See Chapter 4 below.

<sup>103</sup> Madhavi Sunder. 'IP' (2006) 59(2) Stanford Law Rev 257 <<http://www.jstor.org/stable/40040300>> accessed 15 June 2016 257.

<sup>104</sup> David Tan. 'Going GaGa: Intellectual Property and Pop Culture' (2012) 4(12) The WIPO Journal: Analysis of Intellectual Property Issues 64.

1) *As a cultural conditioning of the law i.e. the influence of cultural factors on the definite content of the law, as well as its form, and application.*

2) *The influence of law on the culture of a given society or, more broadly, of a given cultural circle.*<sup>105</sup>

Furthermore, it should be noted that each geopolitical space can have different legal traditions or culture. Culture runs deeper than just a 'system'; a system can be reformed by the use of simple basic laws or constitutions to be in line with culture.<sup>106</sup> However, the culture or tradition of one country is the sum total and the product of its history or of the experience of generations who have developed legal customs and dispute settlement mechanisms.<sup>107</sup>

According to Olwan's view, there are a number of IP scholars who have noted that in developing countries individuals do not take IPR into consideration and are not able to enforce it because of cultural differences between industrialized and non-industrialized nations. She states, 'it can be argued that IP systems in the West are based on ideologies (individualism, commodification, reward and consumerism) that are not in conformity with the beliefs of indigenous and local communities in developing countries (collectivism, universal access and community)'.<sup>108</sup> Price<sup>109</sup> seemingly agrees with Olwan's view,<sup>110</sup> but does not say so explicitly. Both found that culture could affect the attitudes of individuals to IP protection. This means that each culture has different attitudes

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<sup>105</sup> Polonia. 'The Role of Law as a Culture-Shaping Factor' <<http://biblio.juridicas.unam.mx/libros/1/469/3.pdf>> accessed 20 January 2016.

<sup>106</sup> David Pimentel, 'Culture and the Rule of Law: Cautions for Constitution-Making', *A Road Map of a New Constitution for Turkey* (1st edn, Carolina Academic Press 2014) 82.

<sup>107</sup> David Pimentel, 'Culture and the Rule of Law: Cautions for Constitution-Making' (2013) *Fordham International Law Journal*.

<sup>108</sup> Rami M. Olwan, *Intellectual Property and Development* (Springer 2013) 162.

<sup>109</sup> David Price, *The Development of Intellectual Property Regimes in the Arabian Gulf States* (1st edn, Routledge-Cavendish 2009)

<sup>110</sup> Rami M. Olwan, *Intellectual Property and Development* (Springer 2013).

when dealing with IPR. It also seems that the main reason why some countries do not give national importance to IPR is that they may suffer from existing cultural guidelines that influence their views regarding such issues. For example, in Arab countries, there are very few studies which deal with IP issues because they are modern cases, and further Islamic scholarship is needed in this field.

According to Mezey, law as culture might mean:

*emphasizing the pervasive power of culture, a power that might be conceived as either excluding the possibility of a legal realm that could be articulated without recourse to culture, or establishing the possibility of cultural regulation that functioned independently of law. Either way, law is a colony in culture's empire, and sometimes a rather powerless one.*<sup>111</sup>

Olwan recommended that, in order to recognize the relationship between culture and social growth, developing countries must develop a cultural theory.<sup>112</sup> This would form the reason for respecting IP laws and would take into account social context and culture. This would be conducive with the needs of societies in developing countries and would help support them in their social growth.<sup>113</sup> Therefore, in order to develop this theory, it should be noted that legal systems can be designed to be a mirror of deep-rooted cultural values, or can be designed to change these values. However, the first kind of legal system (that which respects its culture and does not go against its values) can make a progressive impact on society, since it can interact with cultural norms in positive way. It can

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<sup>111</sup> Naomi Mezey. 'Law as Culture' (2001) 13(35) The Yale Journal of Law & the Humanities 51–52.

<sup>112</sup> Rami M. Olwan, *Intellectual Property and Development* (Springer 2013).

<sup>113</sup> *ibid.*

bring justice in line with culture, enhancing the role of law and causing respect for authority.<sup>114</sup>

Cultural elements raise problems and opportunities; the crucial role for lawmakers or courts is to identify them and respond to them in line with their culture. There are a number of examples, examined below, which show how cultural factors can interact with the legal system.<sup>115</sup> The main example is how cultural factors can help in respecting authority. As mentioned above, religious beliefs can be a factor in respecting authority because they foster a level of respect by their followers and increase awareness in this respect. This means that a religious reference can enjoy a high level of respect in some nations or communities, and this respect does not come from deterrence or fear but from genuine respect for the religious reference.<sup>116</sup> It could follow that the religious authority, which comes to be reflective of cultural norms, may inspire much more respect than those of, say, officers in charge of law enforcement.<sup>117</sup> As a result, such a culture may have an effect on attitudes, values, beliefs and the behaviour of its followers, but it also provides a yardstick by which government can improve its legal system by embracing a cultural understanding and adapting laws accordingly.<sup>118</sup>

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<sup>114</sup> David Pimentel. 'Culture and the Rule of Law: Cautions for Constitution-Making' (2013) Fordham International Law Journal 103.

<sup>115</sup> *ibid*

<sup>116</sup> AL-khalili said that the concept of religious institutions in Islam does not exist because this term implies that religion is restricted to only those institutions under state administration. However, it must be said that religious references on the promotion of virtue and prevention of vice must be under the responsibility of each individual in the community. See Ahmed Al-Khalili, 'The Concept of Religious Institution or Authority Should Be Corrected' <<http://albaladoman.com/9139>> accessed 16 March 2016.

<sup>117</sup> Pimentel states that 'Religious authorities and traditional leaders (the wise, the old, the descendants of heroes) may inspire much greater respect than political leaders or law enforcement personnel'. See David Pimentel, 'Culture and the Rule of Law: Cautions for Constitution-Making' (2013) Fordham International Law Journal 82, 106.

<sup>118</sup> This issue has been examined in this thesis. See Sections 5.3, 6.4.5 and 6.5.6 below.

Furthermore, culture can be a foundational source of a country's legal system. In some communities, the source of law is its culture; in particular, in some Islamic countries the main sources for all legislation is Islamic law, because Muslims believe that its religious references can deal with any civil and commercial issues as well as relate to IPR cases. The source of a legal system is a critical factor for the way in which the community identifies and responds to that legal system, and, when law recognizes their culture and conforms to it, law becomes imbued with legitimacy.<sup>119</sup>

The legal system can interact with a country's culture in positive or negative ways. For example, IP laws or international agreements can recognize the importance of traditional knowledge protection and genetic resources. Another example is where the legal system does not extend to protection for intellectual works which are against public order and morality, in other words those which go against a nation's culture. This interaction can be achieved by using copyright law or patent or trademark law in order to bring the legal system into line with a country's culture.<sup>120</sup>

From the above discussion it appears that there are a number of elements which can be used to determine the impact on the legal and regulatory influences of IPR framework in one country such as Oman, particularly from a religious cultural perspective. As a result, the assessment of the cultural perspective of IP law requires that proper attention be given to several elements in this regard, for example the role of IP and international conventions in the protection of culture<sup>121</sup> as

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<sup>119</sup> This issue has been examined; see Section 2.3.1.1 below.

<sup>120</sup> The impact of culture on national economic development within the Islamic context will be examined; see Section 4.4 below.

<sup>121</sup> See Peter K. Yu. 'The Confucian Challenge to Intellectual Property Reforms' (2012) 4(1) WIPO Journal 1, who states, 'In the past decade, the interrelationship between intellectual property and culture has featured with increasing frequency and prominence in the global policy debate. In September 2000, WIPO established the

well as the impact of religious principles (such as Islam) on IP protection. The main reason for examining the importance of cultural issues of IP from a religious perspective under this thesis is that religion can have a substantial impact on communities where Muslim people account for over 90% of the population. Its followers believe that Islamic law offers a comprehensive way of life and its rules address all aspects of life, including civil and commercial issues.<sup>122</sup> As a result, Islamic law does not accept provisions under the laws which void its principles. Thus, it is important to take an Islamic view into account. This understanding can help to provide applicable solutions and improvement; moreover, as a result, examining the religious perspective of IP can help bring IP systems into line with Omani culture and this can help in the stability of the IP system. In other words, when the Islamic perspective is applied to the field of IP protection, it can be found to be relevant and effective in developing and maintaining a strong culture of ethical behaviour for economic development, which will be examined in Chapter 4.<sup>123</sup>

Culture can affect the level of IP awareness, and there are a number of ways this impact can be assessed, not least of which is by examining attitudes, values, religious beliefs and the behaviour of its followers.<sup>124</sup> In doing so, policymakers can improve legal systems and protections by

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Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore to provide a forum for international policy debate and development of legal mechanisms and practical tools concerning the protection of traditional knowledge ... and traditional cultural expressions (folklore) against misappropriation and misuse, and the intellectual property ... aspects of access to and benefit-sharing in genetic resources.'

<sup>122</sup> Results were published in 2011 of a survey which 'shows that Islamic countries' population is highly confident in these religious leaders, since an average of 83% of the sample collected from these countries had either "a great deal of confidence" or "quite a lot of confidence" towards those religious authorities'. See Nora El - Bialy and Moamen Gouda, 'Can Shari'a Be a Deterrent for Intellectual Property Piracy in Islamic Countries?' (2011) 14(6) The Journal of World Intellectual Property 455.

<sup>123</sup> See Sections 4.2, 4.3 and 4.4 below.

<sup>124</sup> Examining these factors cannot be done unless specific questions are applied in the IP survey in this regard, which will be explained in the IP awareness chapter.



enhancing the cultural unpinning of the system.<sup>125</sup> IPR awareness is critical in operating an IP system more efficiently. According to Pitkethly, 'One of IPRs roles is to act as an incentive to invest in innovation but Innovators must be aware that the IP system exists and Innovators must be sufficiently aware of the system to:1-Use the system efficiently 2-Have a reasonable chance of obtaining the benefits offered'.<sup>126</sup> The level of IPR awareness in Oman's SMEs will be analysed in Chapter 6.<sup>127</sup>

In summary, the above discussion shows the importance of cultural factors in relation to IPR that can achieve social growth within one nation. It is clear that philosophers seek to achieve social growth within the community by giving justifications that help to achieve legal protection for IPRs. Next, the Omani legal system will be discussed and analysed.

### **2.3 The background of the Omani legal system**<sup>128</sup>

Most countries around the world have established future plans for governance through their constitutions, which typically establish new strategies for government. The most important feature of a constitution is to protect the cultural, economic and political plans, as well the legal system. For the first time in recent history, Oman has implemented its basic legal document to reform its legal system to be in line with its cultural and economic plan, as well as to enhance the role of law.<sup>129</sup>

The following section provides an introduction of the Omani legal system. It will begin with examining the Omani constitution in order to understand the Omani plan to preserve, in particular, its culture and economy. This

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<sup>125</sup> These elements will be explained in more detail in the IP awareness chapter.

<sup>126</sup> Robert Pitkethly. 'Intellectual Property Awareness & SMEs' (WIPO 2006).

<sup>127</sup> See Sections 6.4 and 6.5 below.

<sup>128</sup> As a foundation chapter to introduce that the legal system in Oman, see the introduction to this chapter.

<sup>129</sup> Hussain Alsalmi, 'Oman's Basic Statute and Human Rights: Protections and Restrictions with a Focus on Nationality, Shura and Freedom of Association' (PhD thesis, University of Manchester 2012).

section also will explain the effect of the Omani Basic Statute of the State (OBSS) on the judiciary branch, which is important to enhance the role of law in relation to IP rights and achieve its enforcement through courts. Hence, the Omani court system's hierarchy and jurisdiction will be explored.

### **2.3.1 The Basic Statute structure**

Sultan Qaboos<sup>130</sup> issued a royal decree (R.D.)<sup>131</sup> on 6 November 1996 promulgating the 'Basic Statute of the State' (OBSS). The OBSS comprises seven chapters and 81 articles. The first chapter covers 'The State and the System of Government', which consists of nine articles. It sets the religion of the state, the language and the basis of legislation. It stresses that the system of government is a hereditary sultanate (monarchy) and stipulates how the succession to the throne is organized.<sup>132</sup> The second chapter covers 'Principles Guiding State Policy' with regard to the country's economy, political process, social culture and security. These are only guiding principles, which provide some direction for government to follow its strategies, make decisions and develop legislation. The principles establish a basic framework that permits regular and predictable advancement together for the government and political process.<sup>133</sup>

'Public Rights and Duties' is the third chapter, comprising one third of the OBSS and consisting of 26 articles. Most articles are in relation to public rights and civil liberties and the remaining four articles are about public duties.<sup>134</sup> The OBSS has a fourth chapter entitled 'The Head of the State', which is comprised of 17 articles.<sup>135</sup> The first three articles consist of the

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<sup>130</sup> He has been the sultan of Oman since 23 July 1970 and he is 74 years old.

<sup>131</sup> R.D. 101/96.

<sup>132</sup> R.D. 101/96.

<sup>133</sup> R.D. 101/96.

<sup>134</sup> R.D. 101/96.

<sup>135</sup> R.D. 101/96.

sultan's powers and functions. This chapter describes the main institutions in the state and the distribution of government, which include 'The Sultan', 'The Council of Ministers', The Prime Minister, 'His Deputies and Ministers', 'Specialised Councils' and 'Financial Affairs'. The existence of these institutions in this chapter could indicate that the sultan controls them more than the Omani Council and the judiciary. A bicameral chamber comprises the Consultative Council (Majlis A'Shura) and the State Council (Majlis A'Daula), which are introduced in the fifth chapter, the 'Oman Council'. Both councils' powers, sessions and procedures were unconventional, and it was left for external law to regulate their duties. However, the amendments to this chapter, introduced in 2011, established more powers and determined the sessions and procedures for both councils.<sup>136</sup>

The 13 articles regarding the judiciary are covered in Chapter 6. That chapter also deals with the role of the public prosecution and attorney general, which share a part under the Omani legal system.<sup>137</sup> It should be mentioned that the OBSS<sup>138</sup> repeats the verses 'law' and 'laws' approximately 103 times, which emphasizes the rule of law as one of the basic statute objectives to be applied in the future. The 'General Provisions' section is delivered in the last chapter, with 10 articles that highlight the significance of international treaties in domestic law, together with regulating the relationship between the Basic Statute and existing laws.<sup>139</sup>

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<sup>136</sup> OBSS, R.D. 101/96.

<sup>137</sup> R.D. 101/96.

<sup>138</sup> R.D. 101/96.

<sup>139</sup> OBSS, R.D. 101/96. It should be noted that Article 72 gives the international agreement importance when the Basic Statute is applied, which states 'The application of this Basic Statute shall not prejudice treaties and agreements the Sultanate has entered into with other countries, international institutions and organisations'. This means that the domestic laws must be in line with international agreements.

It should be noted that the above chapters consist of characteristics in terms of the preservation of culture and recognizing IPRs.<sup>140</sup> The following section aims to explain the features which are linked to this study.

### **2.3.1.1 Salient features of the Omani Constitution**

The Constitution of Oman has features that distinguish it from other constitutions. In general, a constitution can be categorized into different types, for example, written<sup>141</sup> and flexible, aimed at non-democratic, absolute monarchy<sup>142</sup> and unionist systems. The Omani Basic Statute can be classified as a flexible constitution that can be amended without any limitations, such as deadlines, compulsory principles or protecting articles.<sup>143</sup> Constitutional law is the basis of legislation, and all laws must conform to it, since a constitution contains a number of principles that affect the state's approach to the issuance of laws and regulations and the achievement of their enforcement. It is essential to examine the characteristics that may affect the state when implementing its domestic laws, including the IP framework, as well as the courts when they deal with any cases in particular relating to IP issues. The courts' role will be explored in the analysis within the following part. The following are the salient characteristics of the Constitution of Oman.

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<sup>140</sup> There are other unique features such as the importance of law, the independence of judiciary and the significance of international treaties in domestic law. However, this study will explore the features that are linked to this study.

<sup>141</sup> A written constitution defines 'a formal document defining the nature of the constitutional settlement, the rules that govern the political system and the rights of citizens and governments in a codified form'; see politics.co.uk, 'Written Constitution' (2015) <<http://www.politics.co.uk/reference/written-constitution>> accessed 28 September 2015.

<sup>142</sup> Which means 'a state ruled by a single absolute hereditary ruler' see Vernon Bogdanor, *The Monarchy and the Constitution* (OUP 1997) 1.

<sup>143</sup> Hussain Alsalmi, 'Oman's Basic Statute and Human Rights: Protections and Restrictions with a Focus on Nationality, Shura and Freedom of Association' (PhD thesis, University of Manchester 2012).

## 1. Confirmation of the cultural character of Omani society<sup>144</sup>

Omani society has been influenced by its language and religion. These two factors are reflected in the structure of the Basic Statute.<sup>145</sup> The first article of the OBSS<sup>146</sup> states that 'the Sultanate of Oman is an Arab, Islamic, independent State'. This article gives importance to the cultural character of Omani society related to its language and religion.<sup>147</sup> The Arabic language is dominant in Oman, though other languages exist and are in use. In the capital of Oman, 'Muscat' English is widely spoken, particularly in business spheres. Furthermore, a small number of individuals speak their own languages, such as Asian languages.<sup>148</sup>

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<sup>144</sup> Culture can be defined as an 'integrated pattern of human knowledge, beliefs, and behaviour that is both a result of and integral to the human capacity for learning and transmitting knowledge to succeeding generations. Culture thus consists of language, ideas, beliefs, customs, taboos, codes, institutions, tools, techniques, works of art, rituals, ceremonies, symbols.' See Encyclopaedia Britannica, *Britannica Concise Encyclopedia* (Shanghai Foreign Language Education Press, Shanghai 2006) 430.

<sup>145</sup> David Pimentel states in his conclusion, 'Some cultures have features that may be helpful and supportive in the effort to establish the Rule of Law, such as respect for authority, or extra-legal incentives to avoid anti-social behaviour. Some cultures have components that are inherently destructive of the Rule of Law, such as a longstanding tradition of public corruption. Local culture can, therefore, present either opportunities or obstacles for the Rule of Law promotion efforts. The constitution must be drafted with this in mind, leveraging and building upon those aspects of existing culture that serve Rule of Law objectives, while accommodating and mitigating those that threaten to undermine the Rule of Law.' See David Pimentel, 'Culture and the Rule of Law: Cautions for Constitution-Making' (Works.bepress.com 2012) <[http://works.bepress.com/david\\_pimentel/13/](http://works.bepress.com/david_pimentel/13/)> accessed 29 September 2015.

<sup>146</sup> R.D. 101/96.

<sup>147</sup> The question must be asked why the Omani government chose the phrase 'the Basic Statute' rather than the more usual phrase 'Constitution of the State'. 'Constitution' – *dustur* in Arabic – is not the correct Arabic word. It has a Persian origin and it is not mentioned in previous wholly Arabic lexicons before 1869. On the other hand, 'Basic Statute' – *netham asasi* in Arabic – is a term with an Arabic origin. This was a result of the current sultan's efforts, where he avoids the use of terminologies which have no source or are not used in the Arabic language in order to preserve the culture of the country. According to N. Siegfried (2000), '... the connotation of the term *dustur* bears a European influence. Therefore, governments wanting to emphasise the importance of Islamic principles in the basic law also avoid the term *dustur*'. See Nikolaus A. Siegfried. 'Legislation and Legitimation in Oman: The Basic Law' (2000) 7(3) *Islamic Law and Society* 362.

<sup>148</sup> Hindi, Urdu, Persian and Baluchi are spoken.

Minorities of Omanis speak Swahili, especially those who came from Tanzania. The Mehri language is spoken in the south of Oman.

Article 3 of the OBSS states that Arabic is the official language.<sup>149</sup> As a result, the Omani government implemented this requirement in its laws; for example,<sup>150</sup> according to Article 3 of the Criminal Procedures Law,<sup>151</sup> the conduct of all procedures stipulated in that law must be conducted in the Arabic language, and the court should hear the statements of litigants and witnesses in Arabic. When litigants or witnesses are not Arabic speakers, the courts should rely on a translator after the oath. Furthermore, in Article 27 of the Civil and Commercial Legal Procedures Law, Arabic is the language of litigation and courts will not accept any papers or documents, unless they are edited in Arabic or accompanied by Arabic translation. It applies the same requirement when litigants and witnesses are not Arabic speakers as stated in the Criminal Procedures Law, mentioned above.<sup>152</sup>

One consideration that must feature prominently when any domestic laws are drafted is that they must rely on Sharia or Islamic law. The basic statute mentions the phrase 'Islam' and 'Islamic' several times. The first article of the OBSS states that 'the Sultanate of Oman is an Arab, Islamic and independent State', which refers to the state belonging to the Islamic nation.<sup>153</sup> In addition, the OBSS contains a clause which states that '[t]he State's religion is Islam and the Islamic Shari'a is the basis of legislation'.<sup>154</sup> The classification of Sharia law as the basis of legislation does not mean that it is as a main or principal source of legislation. However, this clause of the OBSS can be considered to be of prescriptive

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<sup>149</sup> R.D. 97/99

<sup>150</sup> Marashaha, M. (2005). Views over the Basic Statute. *The Basic Statute Characteristics* (in Arabic).

<sup>151</sup> R.D. 101/96.

<sup>152</sup> R.D. 97/99.

<sup>153</sup> OBSS, R.D. 101/96.

<sup>154</sup> R.D. 101/96, art 2.

rather than descriptive character. Therefore, lawmakers should take into consideration that when they draft any law, particularly related to IP laws, they should comply with Sharia law. This enhances the important role of Sharia in Omani public life.

It should be noted that the Oman government stressed the importance of protecting Omani culture over its OBSS,<sup>155</sup> in particular when implementing international agreements into domestic laws, which must be implemented in Arabic. Additionally, the procedures must be followed when dealing with civil, commercial and criminal cases, as well as IP disputes. The laws must be in accordance with Islamic Sharia.

## **2. Recognizing the IPR**

Another feature of the Omani constitution is recognizing IPRs. The OBSS<sup>156</sup> can be defined as the fundamental character of the Omani economy, because it has made a future plan for the government to protect its economy, granting several rights under Article 11, including the right of property. It states that 'Private ownership or property is safeguarded and no one shall be prevented from disposing of his property except within the limits of the Law'.<sup>157</sup> The definition of property, *AlMulkih* in the Arabic translation, is the right which is owned by a person who has the right to sell or commercialize it. The interpretation of property under OBSS not only includes traditional property, for example tangible assets like a physical estate, but also intangible assets, such as copyright, patents and trademarks.

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<sup>155</sup> R.D. 101/96.

<sup>156</sup> R.D. 101/96.

<sup>157</sup> This was the only indication made in relation to property rights under OBSS. No indication is specified as to how 'property' is to be defined. In addition, there is currently no constitutional court in Oman.

The purpose of the following section is to explain the judicial system in Oman that has been affected by the OBSS and explore its historic development, which could be beneficial to protect IPRs.

### **2.3.2 Historical overviews of the Omani judicial system**

When Sultan Qaboos came to power, the judicial system was unfamiliar with the acts and regulations as they presently apply. There was a lack of different degrees of jurisdiction. The Sharia courts relied on Islamic law, in particular on the Ibadi doctrine.<sup>158</sup> They had jurisdiction over civil, criminal and commercial disputes in addition to personal status cases. They were supervised by the Ministry of Justice.<sup>159</sup> Furthermore, customs and tribal traditions performed a role in the reconciliation of disputes. Several tribal and international agreements made a contribution to improving the judicial system in that period.

The establishment of the Ministry of Justice in 1970 contributed to developing the modern judicial system. This improvement happened

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<sup>158</sup> The oldest fundamentalist movement in Islam is the Ibadi movement, which was established 50 years after the of Prophet Mohammed's death. He was the president of the first Muslim state (570–632). After his death and in the first four Islamic period presidencies, which were known as the rightly-guided caliphs, the controversy between followers who were 'Muslims' occurred in interpreting and understanding the Quran and the Sunnah, which were the main sources of Islam. This was a consequence of different schools of thought and sects, for example Ibadi, Sunni, Shi'ite and Mu'tazila. The Ibadi School is based on tolerance, which 'seeks unity within the ummah and peaceful coexistence with non-Muslim religions'. See Kahlan Al-Kharusi, 'Introduction: The Muslim World: special issue on Ibādī Islam' (2015) 105(2) *The Muslim World* 139 <<http://search.ebscohost.com/login.aspx?direct=true&db=a9h&AN=101792947&site=ehost-live>> accessed 23 March 2016. The Ibadi sect represents one of the main schools of Islam, such as Sunni and Shi'ah. The population of Ibadi are few in number compared with Sunni and Shi'ah. Oman is the only state where the Ibadi sect is predominant; a smaller number of them are elsewhere in the world, such as Zanzibar, Libya (in 'Tripolitania'), Tunis (in 'Jerba's island') and Algeria (in 'Mzab'). No official statistics exist about the actual number of Ibadi. However, Omani citizens are estimated to make up around 50% of people belonging to the Ibadi School. See Mark N. Katz, 'Assessing the Political Stability of Oman' (2004) 8(3) *Middle East Review of International Affairs Journal* 5, 6 <<http://hdl.handle.net/1920/3031>> accessed 29 April 2007.

<sup>159</sup> Mohamed Al Mawali, *Omani Judiciary and Its History and Development* (Alhambra Library for Publishing and Distribution, 2013).



when a number of decrees were issued in order to regulate various aspects of the country's development such as the Insurance Companies Law,<sup>160</sup> the Commercial Registration Law,<sup>161</sup> the Banking Law,<sup>162</sup> the Criminal Law<sup>163</sup> and the Commercial Companies Law.<sup>164</sup> As a result of several laws and regulations, specialized courts and quasi-judicial committees were established. This development in the judicial system resulted in the extraction of some jurisdiction from Sharia courts.<sup>165</sup> Table 2.1 below shows comparisons between three types of judiciaries.

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<sup>160</sup> R.D. 12/1979.

<sup>161</sup> R.D. 3/1973.

<sup>162</sup> R.D. 7/1974.

<sup>163</sup> R.D. 7/1974.

<sup>164</sup> R.D. 4/1974.

<sup>165</sup> *ibid.*

**Table 2.1 Comparisons between three types of judiciaries**

<i>Judiciary</i>	<i>Years</i>	<i>Jurisdiction</i>
Sharia judiciary	Before 1970 and 1973	It had jurisdiction over civil, criminal and commercial disputes in addition to personal status cases
Commercial judiciary	In 1972 it was called the Settlement of Commercial Disputes Committee <sup>166</sup>  In 1981 it was called the Authority for the Settlement of Commercial Disputes <sup>167</sup>  In 1997 it was called the Commercial Court <sup>168</sup>	(1) Disputes that occur between traders or companies  (2) Interpreting commercial contracts, for example selling, renting or loan contracts  (3) Conflicts that occur over the interpretation or application of any provisions of the laws relating to business
Criminal judiciary	In 1973 it was called the Police Crime Court <sup>169</sup>  In 1984 it was called the Criminal Court	Handled any kind of criminal offence

Table 2.1 shows three types of judiciaries – Sharia, commercial and criminal – as well as the years of establishment and their jurisdiction during that period. For example, in 1973 the Police Crime Court<sup>170</sup> was

<sup>166</sup> R.D. 72.

<sup>167</sup> R.D. 79/81.

<sup>168</sup> R.D. 13/97.

<sup>169</sup> R.D. 1/73.

<sup>170</sup> R.D. 1/73.

established, which later became the Criminal Court.<sup>171</sup> With regard to commercial disputes, the Authority for the Settlement of Commercial Dispute<sup>172</sup> was established, which subsequently became the Commercial Court.<sup>173</sup> The Omani government established different courts and committees. For example, the jurisdiction to reconcile disputes in land affairs was conferred to the Land Affairs Committee,<sup>174</sup> supervised by the Ministry of Housing. Jurisdiction over rental disputes was vested in the Rental Disputes Resolution Committees.<sup>175</sup> Therefore, it appears that there was no single origination or council responsible for regulating or administering these different courts and committees, which were dealing with civil, criminal and commercial disputes.

### **2.3.2.1 The legal system after the Basic Statute**

The issuance of the Basic Statute contributed to the development of the legal system in Oman, in particular the establishment of jurisdiction. It defined the Omani strategy of the judiciary by providing a chapter dealing with the judiciary and drawing guidelines for government, which were unclear before the OBSS's promulgation.<sup>176</sup> This chapter lists a number of judicial guarantees and principles, stating that 'The dignity of the judiciary, and the integrity and impartiality of the judges are a guarantee for the rights and freedoms'.<sup>177</sup> In addition, it also deals with the independence of the judiciary, which states it should be applied. The courts in their various kinds and hierarchies should practise their power, and their decisions shall be made according to the law. It is worth mentioning that the OBSS states the main principles, which, importantly,

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<sup>171</sup> R.D. 25/84.

<sup>172</sup> R.D. 79/81.

<sup>173</sup> R.D. 13/97.

<sup>174</sup> R.D. 6/72.

<sup>175</sup> R.D. 4/73.

<sup>176</sup> R.D. 101/96.

<sup>177</sup> R.D. OBSS 101/96, Article 59.

defined the trends in established legal courts, their degrees and their jurisdictions. This development was a reason for issuing the Judicial Authority Law,<sup>178</sup> which contributed to uniting the ordinary litigation authorities into courts with particular divisions.

Oman, as other Arab countries, is a civil-law jurisdiction. The structure of its judicial system contains two kinds of judicial bodies: ordinary courts that have jurisdiction over commercial, civil and criminal matters, including IP infringement matters, and specialized courts. The structure of the Omani judicial system is illustrated in Table 2.2, including the jurisdiction of each court.

### **2.3.2.1.1 Regular courts**

The regular courts have jurisdiction to review cases related to civil and commercial litigation, arbitration, personal status, public and labour, tax and rental suits, and other cases that are referred to them under the law,<sup>179</sup> including IP infringement matters.<sup>180</sup> The ordinary court system comprises three types of courts: the Supreme Court, appellate courts and primary courts. The ordinary court hierarchy is clarified below from those of highest jurisdiction to the lowest jurisdiction.<sup>181</sup>

#### **1. The Supreme Court**

The Supreme Court is the highest part of the judicial pyramid, located in the capital, Muscat. It was founded under the judiciary law, which was issued by Royal Decree No. 90/99. The Supreme Court consists of the

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<sup>178</sup> R.D. 90/99. Royal Decree No 9/2012 established the Superior Committee of Justice, which has contributed to the independence of the judiciary.

<sup>179</sup> R.D. 90/99 (The Judicial Authority Law), art 8.

<sup>180</sup> The Civil & Commercial procedures Law, R.D. 29/2002, art 36.

<sup>181</sup> R.D. 90/99, art 1.

president and a sufficient number of vice-presidents and judges, and comprises several departments to adjudicate on all forwarded disputes. Each division is headed by the president, vice-president or the oldest judge and its sentences are issued by five judges.<sup>182</sup> The Supreme Court has jurisdiction over reviewing the judgments of appellate courts in the following circumstances:<sup>183</sup>

- (1) When an objected judgment is based on a violation of law or error in its application or interpretation.
- (2) When there occurs a nullity in judgment or in procedures which affect the judgment.

Collections of its judgments are issued annually by the Technical Bureau Office in the Supreme Court; these comprise the main principles of this court.<sup>184</sup>

## **2. Appeal courts**

The appeal courts are the second-class courts, which have appellate jurisdiction over judgments by the primary courts in accordance with stipulated procedures laws (civil, penal).<sup>185</sup> They do not have authority to examine disputes at first instance but they have authority to review judgments from the primary courts. They consider applications in contradiction of the judgment of the primary courts. They have authority to either accept the judgments of the primary courts or reverse them.

Thirteen Courts of Appeal exist in the major cities of Oman and an appellate panel comprises three judges. They are headed by the court's president or oldest judges and its sentences are issued by three

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<sup>182</sup> R.D. 90/99 (The Judicial Authority Law), art 2.

<sup>183</sup> The Civil & Commercial Procedures Law, R.D. 29/2002, art 239.

<sup>184</sup> R.D. 90/99 (The Judicial Authority Law), art 4 There are no legal principles issued in relation to intellectual property law.

<sup>185</sup> The Civil & Commercial procedures Law, R.D. 29/2002, art 211.

judges.<sup>186</sup> The general assembly of each regional appeals court will make decisions, in which the civil or criminal department will have jurisdiction over IP-related cases.

### **3. The primary courts**

The primary courts are authorized to examine different disputes, such as civil and commercial litigation, arbitration, personal status, public and labour, tax and rental suits, and other cases that are referred to them under the law. Each court is comprised of one judge or three judges.<sup>187</sup> No specialized IP court department exists in Oman, where instead civil or criminal departments in regional primary courts have jurisdiction over IP-related cases. There are 44 primary courts in Oman and they are spread among different cities.<sup>188</sup> Table 2.2 below shows the structure of the Omani judicial system.

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<sup>186</sup> R.D. 90/99 (The Judicial Authority Law), art 5.

<sup>187</sup> R.D. 90/99 (The Judicial Authority Law), art 7.

<sup>188</sup> R.D. 90/99 (The Judicial Authority Law), art 6 and appendix 1.

**Table 2.2 The structure of the Omani judicial system**

<i>The ordinary court</i>	<i>Specialized jurisdiction</i>
<p><b>(1) The Supreme Court:</b> The highest of the judicial pyramid, which has jurisdiction over reviewing the judgments of appeal courts.</p>	<p><b>Military court:</b> The military court has jurisdiction over military offences that are committed by members of the armed and security forces.<sup>189</sup></p>
<p><b>(2) Appeal courts:</b> They have appellate jurisdiction over judgments by the primary courts in accordance with stipulated procedures laws (civil, penal).</p>	<p><b>Administrative courts:</b> The administrative courts have authority to review administrative cases in relation to government administrative decisions. They have jurisdiction over the cases of registration decisions of patent and trademarks and other registerable IPRs from the IP Office. It is a first-instance court. Its judgments may be appealed to the administrative appeal courts.<sup>190</sup></p>
<p><b>(3) The primary courts:</b> These courts have been authorized to examine different disputes, such as civil, commercial and criminal cases. They have jurisdiction over IP-related cases.</p>	

<sup>189</sup> R.D. 110/2011 (Military Justice Law), art 14

<sup>190</sup> R.D. 91/99 (The Law of Administrative Court) and its amendments by R.D. 3/2009, art 6(2).

### **2.3.2.1.2 Alternative dispute resolution**

#### **1. Committees of Conciliation and Reconciliation**

The law of the Committees of Conciliation and Reconciliation was issued in 2005.<sup>191</sup> They have jurisdiction over civil and commercial disputes, including IP disputes, but they do not have jurisdiction in criminal cases. Their procedures are not subject to the legal procedures followed in the ordinary courts. Settlement procedures must be terminated within 60 days from the date of application. This may be extended for a term no more than 30 days based on the agreement of the parties. The acceptance of the magistrate is optional for its parties. When its parties sign onto the reconciliation statement, it can be enforced according to ordinary court procedures.

#### **2. Arbitration**

The Arbitration in Civil and Commercial Disputes Act was issued in 1997,<sup>192</sup> offering alternative methods to resolve disputes between individuals or companies during a certain period identified in advance and through the procedures of the parties' choice.

### **2.4 Conclusion**

This chapter has provided the well-known justifications of IPR from a Western traditional perspective, and it seems that Islamic law recognizes these justifications in relation to private property, which can be extended to IP protection. Understanding these justifications might suggest that the most important elements are those sought by philosophers in seeking to help the economic and cultural growth of communities. In addition, critically examining the cultural perspectives of IPRs shows the

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<sup>191</sup> R.D. 98/2005.

<sup>192</sup> R.D. 47/1997.



importance of this factor in relation to achieving cultural growth within one nation. It can be examined from different points of view; in particular, from a religious perspective, it will be suitable for Oman to bring international justification and international agreement into line with Omani national culture.

Finally, this chapter has provided an introduction to the Omani judicial system and its hierarchy and jurisdiction, as well as how the system has developed and its effect in relation to IP. The Omani judicial system has an important feature, which is to protect IPRs from infringement. In a basic sense, the development of the judicial branch could offer judicial remedies for IPRs-related issues.

The next chapter will discuss and analyse development of the IPR framework in Oman in terms of copyright, patents and trademarks, which will help in identifying the main issues to achieve the objectives of this thesis.

## **CHAPTER 3 COPYRIGHT, PATENT AND TRADEMARK IN OMAN**

### **3.1 Introduction**

The previous chapter discussed the justifications relied on by traditional Western scholarship to defend the protection of IPRs, and the recognition by Islamic law of these traditional Western theories. It also critically examined the cultural perspective of IPRs. In addition, it examined the Omani legal system. It is now important to turn attention to the consideration of the elements that help Omani legislators to improve legal IP standards.

This chapter will examine the IP framework in Oman for several important reasons. Firstly, the aim is to highlight the complexities of IP law and concepts in order to the difficulties of applying such a system in Islamic jurisdiction can be appreciated. Secondly, it is equally important to look at the IP framework because the objective is to understand the role of administrative institutions in achieving the objective of enhanced growth (under Chapter 5). Consequently, this chapter will help to develop recommendations aimed at solving any persistent difficulties in the administrative sector (under Chapter 5) and will obviously help in the analysis of the Omani IP awareness survey, which is the subject of Chapter 6.

In particular, in Section 3.2 this chapter will give an overview of the key international agreements. In Section 3.3 it will examine the development of the IP framework in the Omani legal system pre-TRIPS and in the TRIPS era, in terms of copyright, patents and trademarks. Finally, Section 3.4 will discuss the IPR framework in Oman in terms of copyright and, in Section 3.5, patents and trademarks (industrial rights).

## **3.2 Overview of the key international agreements**

IP international coordination is important to stimulate innovation and creativity across all nations that can serve economic and cultural development. Worldwide collaboration can be traced back to the 1880s in regard to copyright and industrial rights. The essential international agreements on IP are briefly explored below. These agreements are the source of Oman's obligations in relation to the IP framework. It will be noted that an Islamic perspective is still lacking.

### **3.2.1 Berne Convention for the Protection of Literary and Artistic Works**

The Berne Convention was signed in 1886 and is considered to be the first multilateral convention to deal with the areas of literary and artistic works. It has been modified several times to increase the standard of IP protection, for example by the Stockholm amendments in 1967, the Paris amendments in 1971 and the modifications of September 1979.<sup>193</sup> The conventions cover many provisions stipulating the types of work to be protected under the convention, and set out some of the key principles relating to how works by 'foreigners' should enjoy equal protection in all state parties to the convention. Additionally, the convention established the economic and literary rights guaranteed to authors and the duration of the copyright protection granted to their work.<sup>194</sup> In 1998, according to royal decree,<sup>195</sup> Oman became a party to the Berne Convention, the consequences of which will be examined in the following section.

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<sup>193</sup> For more information about the Original Berne Convention and its subsequent revision, see Knowledge Ecology International, 'Berne Convention Revisions, and the Evolution of Its Limitations and Exceptions to Copyright' <<https://www.keionline.org/book/berne-convention/berne-convention-revisions-and-the-evolution-of-its-limitations-and-exceptions-to-copyright>> accessed 7 July 2018.

<sup>194</sup> WIPO, 'Berne Convention for the Protection of Literary and Artistic Works (1886)' <<http://www.wipo.int/treaties/en/ip/berne/>> accessed 8 February 2017.

<sup>195</sup> No: 63/98.

### **3.2.2 Paris Convention for the Protection of Industrial Property**

The Paris Convention, which was adopted in 1883, deals with the protection of industrial property such as patents, trademarks, industrial designs, utility models, trade names and much more including unfair competition. It was considered to be the first comprehensive agreement which bestowed on creators or inventors a guarantee that their IPRs were under protection in other nations.<sup>196</sup> The Paris Convention was revised in Brussels in 1900, Washington in 1911, The Hague in 1925, London in 1934, Lisbon in 1958 and Stockholm in 1967, and it was amended in 1979. This convention is administered by the WIPO and it has 177 contracting states, including, since 1998, Oman.<sup>197</sup>

### **3.2.3 Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)**

The World Trade Organization's (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is an international agreement administered by the WTO. It was result of the Uruguay Round of multilateral trade negotiations held under the framework of the General Agreement on Tariffs and Trade (GATT). TRIPS delivers a strong IPR regime in terms of copyrights, industrial patents, trademarks, designs, plant variety, geographical indications of undisclosed information and the layout design of integrated circuits. The TRIPS Agreement is binding on all WTO members. Parties to the TRIPS Agreement should implement a minimum standard of IPRs, which is

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<sup>196</sup> WIPO, 'Paris Convention for the Protection of Industrial Property (1883)' <<http://www.wipo.int/treaties/en/ip/paris/>> accessed 8 February 2017.

<sup>197</sup> *ibid*, accessed 15 February 2018.

provided under TRIPS.<sup>198</sup> Oman became a member of the World Trade Organization (WTO) on 9 November 2000.

### **3.3 Development of the IP framework in the Omani legal system: pre- and since TRIPS**

#### **3.3.1 Omani IP system pre-TRIPS**

Chapter 2 demonstrated that Islamic law recognizes Western theories of IPRs, but it also has to be remembered that Oman takes into account these provisions and its national heritage when regulating domestic laws. Oman relies on Sharia provisions as the basis of all legislation.<sup>199</sup> This means that, in Oman, political and Islamic scholars observe the theoretical protection of IPR but it is not formally regulated.<sup>200</sup>

As a result, the legal framework of copyright in Oman is new and was developed between 1996 and 2008. The first Law of Copyright was issued in 1996 by royal decree<sup>201</sup> and regulated the rights of authors, while also providing terms of protection for their work. While this law provided the author of the work with such protection, it ignored related rights. Furthermore, it did not take into consideration the Berne Convention for the Protection of Literary and Artistic Works. Afterwards, the Law of Censorship was issued by Royal Decree in 1997,<sup>202</sup> under the jurisdiction of the Ministry of Heritage. For example, it was able to conduct an examination in terms of works of art and give permission for works of art to be published and circulated.

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<sup>198</sup> World Trade Organization, 'Understanding the WTO: The Agreement – Intellectual Property: Protection and Enforcement' <[https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/agrm7\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm7_e.htm)> accessed 8 February 2017.

<sup>199</sup> OBSS. R.D. 101/96, art 2.

<sup>200</sup> The extent of IP protection will be examined with more explanation in the following chapter.

<sup>201</sup> Copyrights Law, R.D. 7/1996.

<sup>202</sup> No. 65/97.

The Omani industrial property framework can be traced back to 1987, when the only the trademark was regulated. In 1987, Oman issued, by royal decree, the Law of Trademarks and Commercial Indications,<sup>203</sup> which regulated some matters regarding trademarks such as the registration, use, assignment, invalidation and opposition of trademarks and other issues. This reflects that the Omani government recognized the importance of trademark protection owing to its the economic importance for encouraging investment and raising competition among companies. However, pre-TRIPS, Oman ignored the importance of other industrial rights such as patents, designs and geographical indications. In December 1992, the Supreme Council of the Gulf Cooperation Council (GCC), of which Oman is a part, issued the unified Patent Law. The relevant office is located in Riyadh, Saudi Arabia, to which an applicant can apply for patent protection via the one route application system and the resulting patent protection will extend to all member states.<sup>204</sup>

### **3.3.2 Omani IP System since TRIPS, and the free trade agreement with the US**

#### **3.3.2.1 TRIPS era protection (1996–2008)**

To foster and enhance the protection of the creativity and intellectual property of Omani citizens, a royal decree<sup>205</sup> was issued in 1996 which led to Oman joining the World Intellectual Property Organization (WIPO). On 15 February 1997, Oman formally became a member state. Article 3 of the Convention establishing WIPO states its aim as:

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<sup>203</sup> No. 68/87.

<sup>204</sup> Mohammed F. Al-Hajeri. 'The Gulf Cooperation Council (GCC) Patent Office' (2006) 28(1) World Patent Information; it should be noted that it started to accept applications in 1998 and Oman did not implement this version of the law. However, if a patentee's right has been infringed, enforcement and remedies will be according to each member state's national patent law; see Article 26 of Patent Regulation of the Cooperation Council for the Arab States of the Gulf.

<sup>205</sup> No: 74/96.

*(i) to promote the protection of intellectual property throughout the world through cooperation among States and, where appropriate, in collaboration with any other international organization,*

*(ii) to ensure administrative cooperation among the Unions.<sup>206</sup>*

Owing to its membership, Oman was required to enhance its IP legal framework. As a result, in 1998, by royal decree,<sup>207</sup> Oman became a party of other international treaties such as the Paris Convention for the Protection of Industrial Property and the Berne Convention for the Protection of Literary and Artistic Works. Oman benefitted from the expertise of the WIPO in implementing an IP legal framework and obtained advice as to the way in which it could cooperate with the WIPO to further reform IP law.

The WIPO requires its member states to be compliant with international treaties, and especially with the TRIPS Agreement. In 1994, Oman joined the Uruguay Round of General Agreement on Tariffs and Trade (GATT). However, before Oman joined the WTO in 2000, it was required to reform its national IP framework, which included the following:

- 1. Copyright and related rights, Royal Decree No: 37/2000, promulgated on 21 May 2000.*
- 2. Trademarks, data and trade secrets and protection from illegal competition, Royal Decree No: 38/2000 dated 21 May 2000.*

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<sup>206</sup> Article 3 of the Convention Establishing the World Intellectual Property Organization.

<sup>207</sup> No. 63/98.

3. *Industrial designs & modules, Royal Decree No: 39/2000, dated 21 May 2000.*
4. *Geographical indications protection law, Royal Decree No: 40/2000, dated 21 May 2000.*
5. *Integrated circuits topography, Royal Decree No: 41/2000, dated 21 May 2000.*
6. *Patent law, Royal Decree No: 82/2000, dated 23 September 2000.*
7. *Botanical inventions Protection Law, Royal Decree No: 92/2000, dated 8 October 2000.*

Membership of TRIPS required Oman to reform its IP framework as set out above. However, there are some reservations here because, while industrialized states might benefit from the TRIPS framework, it can pose difficulties for developing countries, mainly in terms of strategic growth issues. For example, accessing medicine, traditional knowledge and transferring of technology and food security are among the problems raised.<sup>208</sup> It seems that political pressure has been exerted by developed countries, in particular by the US, to raise the legal standard of IP. For example, before the TRIPS era, between 1995–2000 Oman was on the US 'watch list' of the Special 301 report.<sup>209</sup> The main reason for this

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<sup>208</sup> Rafael Pastor, 'The Impact of Free Trade Agreements on Intellectual Property Standards in a Post-TRIPS World' (2006) Bilaterals.org. Disponible <http://www.bilaterals.org/article.php3>.

<sup>209</sup> It is 'the outcome of a Congressionally-mandated annual review of the global state of intellectual property rights (IPR) protection and enforcement. The review reflects the Administration's resolve to encourage and maintain enabling environments for innovation, including effective IPR protection and enforcement, in markets worldwide, which benefit not only US exporters but the domestic IP-intensive industries in those markets as well.' See Office of the United States Trade Representative, 'Special 301' <<https://ustr.gov/issue-areas/intellectual-property/Special-301>> accessed 16 February 2017.



inclusion was the software piracy problem. When it implemented the new IP framework it was removed from the Special 301 list and subsequently has not been reinstated.

### **3.3.2.2 Oman and the US Free Trade Agreement (OUSFTA)**

Since 2001, US exports to Oman are estimated to have been US\$593 million (consumer products) and US imports from Oman (mainly oil) US\$555 million in 2005.<sup>210</sup> Therefore, it can be argued that US companies try to limit the exceptions under the TRIPS Agreement to serve their own interests. Consequently, after 2001 the US Trade Representative (USTR) informed the US Congress that it should begin bilateral talks with GCC member states, about free trade agreements.<sup>211</sup> The USTR announcement stated that '[t]he signing of the FTA between the USA and its Gulf partners would replicate the pacts signed with Amman and Rabat'. The USTR went on to say that FTAs would be valuable for the US because they help in creating employment opportunities for enterprises and farms, therefore facilitating consumers in diversifying their options and saving money.<sup>212</sup> However, the way in which the US has signed its FTA with Bahrain created widespread discontent within GCC member states because it presented the agreement as a *fait accompli*. The dissatisfaction began in Oman and extended to the United Arab Emirates (UAE).<sup>213</sup> Within the GGC, only Bahrain and Oman have FTAs with the US currently in force. As a result, the most memorable development of IP standards was realized on 13 October 2006, when Oman and the US Free Trade Agreement (OUSFTA) negotiations were concluded after a seven-month

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<sup>210</sup> Mary Jane Bolle, 'US-Oman Free Trade Agreement' (2006) Congressional Research Service.

<sup>211</sup> The member states of the Gulf region are Oman, Bahrain, Kuwait, Qatar, Saudi Arabia and the United Arab Emirates.

<sup>212</sup> David Price, *The Development of Intellectual Property Regimes in the Arabian Gulf States* (Routledge-Cavendish 2009).

<sup>213</sup> *ibid.*

discussion.<sup>214</sup> It was signed by the Omani Minister of Commerce and Industry and the USTR. OUSFTA was the fourth US bilateral agreement with the Arab countries (after agreements with Jordan, Bahrain and Morocco).

Because of the OUSFTA, Oman once again undertook legislative improvements so as to harmonize its IP laws with the United States. This included reform under Chapter 15 of OUSFTA, which deals with the theme of IP, by building extensively on the foundations of other FTAs. It is a most detailed chapter, which aims to provide a high standard of IP protection. The first article of OUSFTA confirms this high standard, stating that 'Each Party shall, at a minimum, give effect to this Chapter'. There is a requirement that Oman be a party to international treaties (moving to TRIPS-plus provisions). Oman is a party to a number of treaties that have been ratified during the implementation of OUSFTA.<sup>215</sup> The main treaties are:

- (1) The Patent Cooperation Treaty (PCT) of 1970.<sup>216</sup>
- (2) The convention that governs satellite transmission and the distribution of programmes of 1974.
- (3) The 1989 Madrid Treaty, which governs the protocols of global trademarks.
- (4) The Budapest Treaty of 1977, which deals with global recognition of microorganisms that are deposited within the guidelines of patent procedures.

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<sup>214</sup> *ibid.*

<sup>215</sup> OUSFTA, 14(2)(3).

<sup>216</sup> The PCT is characterized by a common procedure used to protect patent applications, which control innovations around the world, through internationally accredited application systems. Applications can be made by citizens of a country contracted to oversee the process. In general, filing an application can be conducted at the patent offices of the contracted country or at the WIPO headquarters in Geneva, Switzerland.

- (5) The International Union for the protection of New Varieties of Plants (UPOV) Convention, which was ratified in 1991.
- (6) The Trademark Law Treaty (TLT) of 1994.<sup>217</sup>
- (7) The 1996 WIPO Treaty affecting Copyrights and Phonograms.

Furthermore, Chapter 15 of OUSFTA deals with several areas of IPRs such as copyright, patents, trademarks, geographical indications, enforcement measures and transition periods. In addition, Oman made legislative changes to meet its OUSFTA commitments in relation to IP obligations. Thus, the current Copyright and Neighbour Right Law (CNRL)<sup>218</sup> and Industrial Property Rights law (IPRL)<sup>219</sup> were issued in 2008.<sup>220</sup>

The next sections will examine copyright (Section 3.4) and patents and trademarks (Section 3.5).

### **3.4 Omani IP legal framework (copyright and related rights)**

Copyright and related rights are considered in law to be instruments which offer protection for their owners contributing to the cultural and economic growth of nations.

The purpose of the copyright legal framework is to enhance creativity, foster innovation, help to access knowledge at any time and protect freedom of expression.<sup>221</sup> Consequently, this legal framework

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<sup>217</sup> The international role played by TLT is in simplifying the application of internal and global structures in trademark registration. Several clauses in the TLT relate to the registration procedures of trademarks, which are in three stages. These include registration of the application, registration modifications and renovation. Application norms for the three stages are created to enhance awareness among applicants and holders at the head offices.

see [http://www.wipo.int/treaties/en/ip/tlt/summary\\_tlt.html](http://www.wipo.int/treaties/en/ip/tlt/summary_tlt.html).

<sup>218</sup> R.D. 65/2008.

<sup>219</sup> R.D. 67/2008.

<sup>220</sup> It should be noted that in September 2017, when a researcher drafted this research, the Omani government issued GCC Trade mark law by R.D. 33/2017, which made new amendments to the trademark section of the IPRL.

<sup>221</sup> Raymond Shih Ray Ku, Jiayang Sun and Yiyang Fan, 'Does Copyright Law Promote Creativity? An Empirical Analysis of Copyright's Bounty' (2009) 62(6) Vand L Rev 1667.

encourages countries all over the world to achieve these purposes by becoming a member of related international treaties or by developing their national copyright law. For this reason, Omani copyright is currently subject to the Copyright and Neighbour Rights Law (CNRL), which was introduced in 2008.<sup>222</sup> It is useful to examine the many copyright issues that will make the following chapters easier to follow. Firstly, this section will examine the legal nature of 'protected works' and the definition of author. Secondly, it will consider the author's moral and economic rights and the duration of copyright in addition to neighbouring rights (related rights).

### **3.4.1 Protected works and definition of author in Omani law**

The CNRL has developed a comprehensive list of protected works, and states that:

*The created works of literature, arts and science shall enjoy protection under this law regardless of their value, type, and way of expression or purpose of their production.*<sup>223</sup>

A 'work' is any intellectual creation in the field of literature, arts and science, of any kind or method of expression, importance or purpose.<sup>224</sup> The work should be original and can demonstrate an author's intellectual creation.<sup>225</sup> The personality of the author should be shown in their created work to distinguish it from another. Furthermore, Omani legislation affords protection for works contained under the Berne

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<sup>222</sup> R.D. 65/2008.

<sup>223</sup> CNRL, R.D. 65/2008, 2.

<sup>224</sup> CNRL, R.D. 65/2008, 1(4).

<sup>225</sup> *Interlego AG v Tyco Industries Inc* [1989] AC 217.

Convention Article 2. The following then considered subject matter protected under CNRL:<sup>226</sup>

- 1) *Books, booklets, articles, pamphlets and other written works.*
- 2) *Computer programs and databases whether readable from the computer or other.*
- 3) *Works that are orally recited such as lectures, speeches, discussions and other oral works.*
- 4) *Dramatic, musical and choreographic works, silent shows (pantomimes) and other works made for acting performance.*
- 5) *Musical compositions with or without words.*
- 6) *Audio-visual works.*
- 7) *Works of drawing, painting, architecture, sculpture, lithography, printing on fabric, wood or metals, and any similar works in fine arts.*
- 8) *Photographic works and similar.*
- 9) *Works of applied and plastic arts either handcrafted or industrial.*
- 10) *Illustrations, geographical maps, plans, sketches, and three-dimensional works related to geography, topography, or architecture.*

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<sup>226</sup> CNRL, R.D. 65/2008, 2. The question is to what extent the Omani legal framework can restrict the use of this subject matter.

In addition, the TRIPS Agreement requires its member states to take into consideration the Berne Convention and the TRIPS Appendix.<sup>227</sup> TRIPS did not define the terms author or work, but it referred to the author or a legal person as an individual who can own IPRs under Article 3 of the Agreement.<sup>228</sup> Under TRIPS, its members have the right to determine if the legal person who cannot create the work has a lawful right to use it.

Rationally, only a natural person has the ability to create the work. Therefore, the Omani legislators deal with this subject in a different way from other Arab countries such as Egypt.<sup>229</sup> Egypt defines an author as 'The person who creates the work'.<sup>230</sup> This article does not specify whether an author should be *the natural* or *legal* person. Likewise, Omani legislators define 'work' as 'Any production in the literary, artistic, or scientific domain, of whatever type, way of expression, importance, or purpose'.<sup>231</sup>

Furthermore, the CNRL states:

*The natural or legal person, who took the initiative to create the collective work and undertook to publish it under his name, shall be owner of the moral and economic rights of the work, unless agreed otherwise in writing.*<sup>232</sup>

It seems that natural and legal persons are not equal owners of a copyright because an author is defined as a natural person but not as a

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<sup>227</sup> Arthur E. Appleton and Michael G. Plummer, *The World Trade Organization: Legal, Economic and Political Analysis* (Springer Science & Business Media 2007).

<sup>228</sup> TRIPS Article 3 Paragraph 3.

<sup>229</sup> Under Egypt's Copyright Law 2002, 138 (3).

<sup>230</sup> CNRL, R.D. 65/2008, 5(3).

<sup>231</sup> CNRL, R.D. 65/2008, 5(4).

<sup>232</sup> CNRL, R.D. 65/2008, 22.

legal person. Copyright ownership cannot be a legal person unless an exception to this rule exists, for example a collective work.<sup>233</sup>

The issue raised poses the question of how ownership of the copyright is determined if a work is commissioned between 'an author and the commissioner', or if a work is created by an employee in course of their employment. Omani legislation does not make specific reference to how this can be dealt with. As a result, the language seems to indicate that the legal right holder of a copyright work is the person who created the work and not a commissioner or employer, unless otherwise specified in a written contract. However, if the copyright work is considered to be a collective work which was commissioned by an employer, then the issue of copyright may be difficult to prove in practice.<sup>234</sup> This means that Omani companies could be put at risk should they make a written assignment of copyright in an employment contract or commissioning agreement to pass the copyright work to an employer or commissioner (them/companies). This issue will be raised as a question in the Omani SMEs survey to determine their level of IP awareness in Chapter 6.<sup>235</sup> Next, moral and economic rights will be examined.

### **3.4.2 Moral and economic rights**

The Berne Convention and TRIPS established both moral and economic rights, in which moral rights protect the personality of the writer and integrity of their work and economic rights protect the author in the

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<sup>233</sup> According to CNRL, R.D. 65/2008 under Article 1(6), which defines the collective work as 'Any work created by a group of authors under the supervision of a natural or legal person who undertakes to publish under his own liability and supervision. The efforts of authors shall be integrated in the general objective when it is not possible to separate the share of all authors and distinguish it independently.'

<sup>234</sup> CNRL, R.D. 65/2008, 22.

<sup>235</sup> See Table 6.9A and Section 6.5.2 below.

commercial exploitation of their work.<sup>236</sup> However, a remarkable difference exists under TRIPS in which member nations are not required to follow the provision which regulates the author's moral rights under national law; the requirement under this agreement is restricted to authors' economic rights in accordance with Article 9 of TRIPS.<sup>237</sup> In Oman, CNRL stipulates that the authors have two kinds of rights: moral and economic rights.<sup>238</sup> Consequently, this part moves on to examine both moral and economic rights.

### **3.4.2.1 Moral rights**

The moral rights of the author are protected by the CNRL<sup>239</sup> under Article 5 which provides:

*The author shall enjoy non-prescriptive and non-transferable moral rights, such as:*

*a. Right to claim authorship of the work in the manner he determines.*

*b. Right to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the work, which would be prejudicial to his honour or reputation.*

*It is absolutely void and null to dispose of any of these rights, whether such disposition results or does not result in compensation.*

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<sup>236</sup> J. Adrian L. Sterling, *World Copyright Law: Protection of Authors' Works, Performances, Phonograms, Films, video, Broadcasts and Published Editions in National, International and Regional Law* (London: Sweet & Maxwell 1999).

<sup>237</sup> Arathi Ashok. 'Economic Rights of Authors under Copyright Law: Some Emerging Judicial Trends' (2010) *Journal of Intellectual Property Rights* 15–46.

<sup>238</sup> R.D. 65/2008.

<sup>239</sup> R.D. 65/2008.



*The author's general successor shall enjoy these rights, and the Ministry shall succeed to these rights in the absence of a public successor to the author.*<sup>240</sup>

This Omani article complied with Article 6*bis* of the Berne Convention, which requires that an author should have two kind of rights, such as the right of attribution and integrity of their work. Article 6*bis* of the Berne Convention has remained unchanged from the time it was introduced at the 1928 Rome revision conference.<sup>241</sup>

Under the Omani provision, the right of attribution means that an author has the right to 'claim authorship of the work in the manner he determines'.<sup>242</sup> Omani legislators use a broad expression under this article, which suggests that the author has the right to publish their created work anonymously or under a pseudonym, to prevent others from using their name in their created work and other works.<sup>243</sup>

In addition, an author has an integrity right, which means that they can object to any distorted treatment of their created work. The author's integrity right can be infringed depending on the mutilation caused to their honour or reputation. The derogatory treatment of an author's work is not classified, at first glance, as infringing their integrity right. The question of whether a creator's integrity right over their artistic work has been violated should be identified by relying on an 'objective' criteria that a judge can determine after examining the effects of the mistreatment on the author's honour or reputation. Alternatively, it may be determined

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<sup>240</sup> R.D. 65/2008, art 5.

<sup>241</sup> Article 6*bis*(1) states that 'the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honour or reputation'.

<sup>242</sup> R.D. 65/2008, art 5.

<sup>243</sup> N.C. Suhl, 'Moral rights protection in the United States under the Berne Convention: A fictional work'. (2001) 12 Fordham Intell. Prop. Media & Ent. LJ 1203.

by a 'subjective' standard, which might rely on the author's own view of the mistreatment and its impact on their reputation.<sup>244</sup> Omani legislators used language which suggests that they favoured the subjective test.

The CNRL<sup>245</sup> introduced the criteria established by the Berne Convention regarding the exclusion from the scope of moral rights. In terms of moral rights, it does not require explicit protection over and above the rights of attribution and integrity. In addition, the Omani legislators do not stipulate the right of withdrawal for an author of a work, which can give them authority to prevent the circulation of their created work on the ground that their work has stopped representing their views.

The previous Omani law under of CNRL<sup>246</sup> provided an author with the right to claim violation of their right of integrity<sup>247</sup> without considering whether an infringement has had an effect on their reputation. Moreover, Article 5(a) of the CNRL<sup>248</sup> does not require that the infringement of the attribution right have had an effect on the reputation of the author. However, Article 5(b) does require that the integrity violation must have had an impact on the reputation of the author.<sup>249</sup>

### **Independence from economic rights**

Article 6*bis*(1) of the Berne Convention states that an author's moral and economic rights should be independent. Therefore, an author has the right to claim authorship of their moral right 'even after transfers' of economic rights. Article 6*bis*(2) says the minimum protection of this

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<sup>244</sup> Mira T. Sundara Rajan. 'Moral Rights in Developing Countries: The Example of India' (2003) 8(5) the Journal of Intellectual Property 357, 365.

<sup>245</sup> R.D. 65/2008.

<sup>246</sup> 37/2000.

<sup>247</sup> 37/2000, art 5(2), with regard to 'any deletion, alteration, addition or any other change to his work'.

<sup>248</sup> R.D. 65/2008.

<sup>249</sup> CNRL, R.D. 65/2008, art. 5(a)(b).

rights is 'at least until the expiry of the economic rights'.<sup>250</sup> It is evident that under this article member states have the right to provide perpetual protection for moral rights.<sup>251</sup> Moreover, 'this particular formulation reflects the need to accommodate extended terms of moral rights protection in certain civil law jurisdictions'.<sup>252</sup> In Oman, the CNRL<sup>253</sup> confirms the independence of economic and moral rights. Article 5 states that 'The author's general successor shall enjoy these rights, and the Ministry shall succeed to these rights in the absence of a public successor to the author'.<sup>254</sup> For example, if the creator dies, their general successor can claim authorship of their moral right. However, if the author did not have general successor, the Ministry of Commerce and Industry (MCI) will succeed to their rights. It should be noted that, in this case, the court will determine who the general successor is according to Islamic law.<sup>255</sup> Furthermore, the creator does not have the right to transfer their moral right to another party.<sup>256</sup>

### **3.4.2.2 Economic rights**

In terms of economic rights,<sup>257</sup> the CNRL<sup>258</sup> stipulates that the author of a work can enjoy the exclusive economic right to act, prevent or permit the following activities:

*a) The reproduction of his work*

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<sup>250</sup> Berne Article 6bis(2).

<sup>251</sup> Claude Masouyé and William Wallace, *Guide to the Berne Convention for the Protection of Literary Works (Paris Act, 1971)* (World Intellectual Property Organization 1978) 43.

<sup>252</sup> Mira T. Sundara Rajan. 'Moral Rights in Developing Countries: The Example of India' (2003) 8(5) the *Journal of Intellectual Property* 357, 365.

<sup>253</sup> R.D. 65/2008, art 5.

<sup>254</sup> *ibid.*

<sup>255</sup> This issue needs further study on the extent to which it contradicts Islamic law.

<sup>256</sup> CNRL, R.D. 65/2008, art 5.

<sup>257</sup> The Berne Convention determines these economic rights for an author of the work which can control actions (such as translation, reproduction, broadcasting, adaption and public performance) in relation to work under Arts 8, 9, 11, 11ter, 12 and 14.

<sup>258</sup> R.D. 65/2008, art 5(3).

*b) Translation of his work into another language, prepare derivative works based upon the copyrighted work, musical re-composition, or modification in another form.*

*c) The disposition of the original or a copy of his work to the public through sale or other transfer of ownership.*

*d) Rental of the original or a copy of his work embodied in sound recording, of his movie work, or computer program, for commercial purposes.*

*e) Public performance of his work.*

*f) Communication to the public.*

*g) Broadcasting of his work.<sup>259</sup>*

The above restricted acts can be considered major exclusive economic rights arising from the ownership of copyright work.<sup>260</sup> The author has exclusive economic rights to their work as shown above, and they can authorize another party to use their work partially or wholly. They also have the right to decide the exploitation period.<sup>261</sup> The question is to what extent a copyright work can be appreciated under Islamic law. This issue will be examined in Chapter 4.

### **3.4.3 The duration of copyright**

The duration of copyright protection for a legal person has been determined under Article 12 of the TRIPS Agreement, which should be not less than 50 years.<sup>262</sup> Moreover, the Berne Convention has

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<sup>259</sup> Art 5(3).

<sup>260</sup> Charlotte Waelde and others, *Contemporary Intellectual Property* (4th rev edn, OUP 2016).

<sup>261</sup> This issue will be examined in the SME IP awareness survey.

<sup>262</sup> it states 'whenever the term of protection of a work, a photographic work or a work of applied art, is calculated on the basis other than the life of a natural person. Such

determined the duration of copyright on the ground that an author is a natural person, but TRIPS can apply the duration of protection to a legal person.<sup>263</sup>

Article 12 of TRIPS differs from the Berne Convention regarding the duration of copyright protection for audio and visual works. Article 7(2) of the Berne Convention stipulates that:

*in the case of cinematographic works, the countries of the Union may provide that the term of protection shall expire fifty years after the work has been made available to the public with the consent of the author, or, failing such an event within fifty years from the making of such a work, fifty years after the making.*<sup>264</sup>

The expression making the work 'available to the public' is broader than the expression 'authorized publication'<sup>265</sup> stipulated in TRIPS. Making the work accessible for the public does not limit publication, but it might take place via any way of communication to the public, for example by making the created work accessible in libraries.

The Berne Convention stipulates that, in the matter of the protection of photographic works and of works of art, these works should be protected for not less than 25 years from the date of making the work. If there is no conflict between the two conventions (Berne and TRIPS) in relation to photographic works, the WIPO Treaty<sup>266</sup> is substituted for the non-

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term shall be no less than 50 years from the end of the calendar year of authorized publication, or, failing such authorized publication within 50 years from the making of the work, 50 years from the end of the calendar year of making.'

<sup>263</sup> United Nations Conference on Trade and Development and International Centre for Trade and Sustainable Development, *Resource Book on TRIPS and Development* (CUP 2005) 181.

<sup>264</sup> Art 7(2).

<sup>265</sup> See Article 12 of TRIPS.

<sup>266</sup> 1996.

application of the fourth paragraph of Article 5 of the Berne Convention. This means that the duration of protection of photographic works is equal to the term of protection of literary and artistic works.<sup>267</sup>

With regard to the duration of copyrighted work, the economic rights differ according to the type of owner of the economic right. It should be noted that, under Chapter 15 of OUSFTA, Oman is required to strengthen the protection given to the owner of a copyright work. Table 3.1 below will explain the duration of copyright.

**Table 3.1 The duration of copyright**

<i>Type of economic right</i>	<i>Duration of protection</i>	<i>Exception to duration of protection</i>
An author	The life of the author plus 70 years <sup>268</sup>	No exception permitted
Authors of joint works <sup>269</sup>	Their life plus 70 years <sup>270</sup>	No exception permitted

<sup>267</sup> Sabri Hamad Khater, *The Implementation (Tfrid in Arabic) of The TRIPS' rules in the Intellectual Property laws (Comparative Study)* (The House of Legal Books 2012).

<sup>268</sup> CNRL, R.D. 65/2008, art 26. Under this article the right starts 'from the beginning of the Gregorian calendar year following the year of his death'.

<sup>269</sup> Defined under Article 1(7) of CNRL as 'Any work created with the contribution of many persons irrespective of whether it is possible or not to distinguish the share of each, unless otherwise agreed, and which is not classified under collective works'.

<sup>270</sup> CNRL, R.D. 65/2008, art 27. Under this article the right starts 'from the beginning of the Gregorian calendar year following the year of the death of the last surviving author'.

Collective works <sup>271</sup> and audio-visual works <sup>272</sup>	Ninety-five years <sup>273</sup>	'if such works were not published during twenty-five years starting from the date they were completed, the economic rights of these works shall be protected for <b>one hundred twenty years</b> starting from the first day of the Gregorian calendar year following their creation.' <sup>274</sup>
Works published anonymously or under a pseudonym	Ninety-five years <sup>275</sup>	'If such works were not published during twenty-five years starting from the date of completion, the economic rights of these works shall be protected for <b>one hundred twenty years</b> starting from the first day of the Gregorian calendar year following their creation, and if the identity of the author is known or revealed during the mentioned period, the term of protection shall be according to the provisions of Article (26, 27) according to circumstances.' <sup>276</sup>

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<sup>271</sup> Defined under Article 1(6) of CNRL as 'Any work created by a group of authors under the supervision of a natural or legal person who undertakes to publish under his own liability and supervision. The efforts of authors shall be integrated in the general objective when it is not possible to separate the share of all authors and distinguish it independently.'

<sup>272</sup> Defined under Article 1(9) of CNRL as 'The work composed of a series of linked images giving the impression of motion and recorded on medium or any other devices, either along with audio or not, like movies'.

<sup>273</sup> CNRL, R.D. 65/2008, art 28. Under this article the right starts 'from the first day of the Gregorian calendar year following the year during which these works were legally published the first time'.

<sup>274</sup> CNRL, R.D. 65/2008, art 28.

<sup>275</sup> CNRL, R.D. 65/2008, art 29. Under this article the right starts 'from the first day of the Gregorian calendar year following the year during which these works were legally published for the first time'.

<sup>276</sup> CNRL, R.D. 65/2008, art 29.

Works of applied arts	Ninety-five years <sup>277</sup>	'If such works were not published during twenty-five years starting from the date of completion, the economic rights of these works shall be protected for <b>one hundred twenty years</b> starting from the first day of the Gregorian calendar year following their creation.' <sup>278</sup>
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The Omani copyright framework offers a legal monopoly over the use of created work as noted in Table 3.1 above for a certain period. If a copyrighted work results in an illegal monopoly under Islamic law, then there is a question as to whether this copyright work can be restricted under the Omani legal framework. This issue will be examined in Chapter 4.<sup>279</sup>

#### **3.4.4 Neighbouring rights (related rights)**

While copyright offers protection for authors' works, neighbouring rights are rights which offer protection for only a few categories such as the rights of performers, producers of sound recordings, and broadcasting organizations because they play a critical role in communicating or disseminating their works to public. Bainbridge states that related rights 'can be described as derivative or entrepreneurial works and there is no requirement for originality; for example repeat broadcasts each attract their own copyright'.<sup>280</sup>

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<sup>277</sup> CNRL, R.D. 65/2008, art 30. Under this article the right starts 'from the first day of the Gregorian calendar year following the year during which these works were legally published for the first time'.

<sup>278</sup> CNRL, R.D. 65/2008, art 30.

<sup>279</sup> See Section 4.4 below.

<sup>280</sup> David I. Bainbridge, *Intellectual Property* (9th edn, Pearson 2012) 31.



The TRIPS Agreement<sup>281</sup> and the Rome Convention regulate the neighbouring rights or related rights such as the rights of performers, producers of phonograms, and broadcasting organizations.<sup>282</sup> With regard to the rights of performers, such as the fixation of live performances and reproduction of fixations of performances, Article 14(1) of TRIPS stipulates that:

*In respect of a fixation of their performance on a phonogram, performers shall have the possibility of preventing the following acts when undertaken without their authorization: the fixation of their unfixed performance and the reproduction of such fixation.*<sup>283</sup>

In the case of live performance, the TRIPS provision is narrower than the coverage of the Rome Convention provision under Article 7.1. This is because Article 14 of TRIPS is broader in scope than just the fixation of a live performance on a phonogram. However, the relevant provision in the Rome Convention states that the protection provided for performers shall contain the possibility of preventing fixation on any medium. Under TRIPS, there is a lack of definition of a 'phonogram',<sup>284</sup> and this lack of definition seems to indicate that there is a possibility of applying the definition set out in the Rome Convention, which provides 'phonogram to

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<sup>281</sup> The TRIPS Agreement states that the provisions of the Berne Convention shall be included within its framework. However, it did not provide for the provisions of the Rome Convention with regard to related rights, for example in terms of the performers or producers of sound recordings or broadcasting organizations. It is important to note that the provisions of TRIPS are easier than the Berne Convention in this context. In addition, it added important amendments to the Berne provisions, for example the extent of term protection.

<sup>282</sup> Claude Masouye, *Guide to the Rome Convention and to the Phonograms Convention* (World Intellectual Property Organization 1981).

<sup>283</sup> Art 14(1).

<sup>284</sup> WIPO, *Implications of the TRIPS Agreement on Treaties Administered by WIPO* (WIPO publication no. 464, World Intellectual Property Organization 1997) 23.

mean any exclusively aural fixation of sounds of a performance or of other sounds'.<sup>285</sup>

The impact of the requirements regarding the reproduction of the fixation of performances is similar in both TRIPS and the Rome Convention,<sup>286</sup> although there are variations. There is an obligation for allowing performers to prevent the reproduction of such fixations when an infringer makes the reproduction without their consent. However, the provision under Article 7.1(c) of the Rome Convention is broader.<sup>287</sup>

With regard to the rights of producers of phonograms, the TRIPS Agreement states that 'Producers of phonograms shall enjoy the right to authorize or prohibit the direct or indirect reproduction of their phonograms'.<sup>288</sup> There is no difference between the commitments of TRIPS and the Rome Convention. In addition, TRIPS provides for the rights of broadcasting organizations. It states:

*Broadcasting organizations shall have the right to prohibit the following acts when undertaken without their authorization: the fixation, the reproduction of fixations, and the rebroadcasting by wireless means of broadcasts, as well as the communication to the public of television broadcasts of the same. Where Members do not grant such rights to broadcasting organizations, they shall provide owners of copyright in the subject matter of broadcasts with the possibility of preventing the above acts, subject to the provisions of the Berne Convention (1971).<sup>289</sup>*

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<sup>285</sup> Article 3(b).

<sup>286</sup> Article 7.1(c).

<sup>287</sup> WIPO, *Implications of the TRIPS Agreement on Treaties Administered by WIPO* (WIPO publication no. 464, World Intellectual Property Organization 1997) 24.

<sup>288</sup> Art 14 (2).

<sup>289</sup> TRIPS, art 14(3).

According to the Rome Convention, broadcasting organizations' rights 'to authorise or prohibit' additionally cover fixation, the reproduction of fixation (without the author's permission) and the rebroadcasting by means of wireless transmissions. However, 'in the case of communication to the public, it only covers television broadcasts',<sup>290</sup> and only in specific circumstances. In the latter case, the state in which protection is requested can determine the conditions under which the rights can be exercised.<sup>291</sup>

While the comparisons between TRIPS and the Rome Convention could indicate that TRIPS offers more rights for broadcasting organizations, the second sentence of the previous article of TRIPS states that 'Where Members do not grant such rights to broadcasting organizations', which suggests that essentially no commitment but only an option is stipulated granting such rights to broadcasting organizations.<sup>292</sup>

In Oman, the CNRL divides the rights of copyright (which is the author's right)<sup>293</sup> and neighbouring rights into two chapters.<sup>294</sup> Article 1 of CNRL defines neighbouring rights (or related rights) as 'The rights of the performers, producers of sound recordings and broadcasting organizations'.<sup>295</sup> These neighbouring rights will be explained below.

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<sup>290</sup> WIPO, *Implications of the TRIPS Agreement on Treaties Administered by WIPO* (WIPO publication no. 464, World Intellectual Property Organization 1997) 25.

<sup>291</sup> Article 16.1(b).

<sup>292</sup> WIPO, *Implications of the TRIPS Agreement on Treaties Administered by WIPO* (WIPO publication no. 464, World Intellectual Property Organization 1997) 26.

<sup>293</sup> R.D. CNRL 65/2008, art 2.

<sup>294</sup> Bently and Sherman stated that '*The logic of distinguishing between these two types of subject matters lies in the fact that neighbouring (or entrepreneurial) typically derivative, in the sense that they use or develop existing authorial works, that they are a product of technical and organizational skill rather than authorial skill, and that the rights are initially given not to the human creator, but the body or person that was financially and organizationally responsible for the production of the material*'. See Lionel Bently and Brad Sherman, *Intellectual Property Law* (OUP 2014) 33

<sup>295</sup> R.D. 65/2008.

With regard to the rights of the performers, 'performers' is defined under Article 1 as those 'who perform the work in any way for example, acting, singing, orating, reciting, playing, or dancing'.<sup>296</sup> Performers have moral rights which have been implemented in Oman owing to its membership of WIPO Performances and Phonogram. These moral rights include the right of attribution and the integrity right.<sup>297</sup> In addition, performers have exclusive economic rights, which are specified under Article 16:

- 1. Broadcasting and communication to the public of their unfixed (live) performances.*
- 2. Fixation of their unfixed performances*
- 3. Preventing the use of their unfixed (live) performance in any way unless a prior written authorization is obtained.*
- 4. Making available to the public of the original or copies of their performances through sale or other transfer of ownership.*
- 5. Renting their broadcasted performances to the public, for commercial purposes.*

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<sup>296</sup> R.D. 65/2008, art 1.

<sup>297</sup> Article 14 states that 'Performers shall enjoy non-transferable and non-prescriptive eternal moral rights, including:

a- Right to claim authorship of their performances, whether live or recorded, as done by them, except where omission is dictated by the manner or use of the performance;

b- Right to object to any distortion, mutilation or other modification of their performance, which would be prejudicial to their honor or reputation.

Any disposal of such copyrights either compensated or not, shall be void.

The performers' public successor shall succeed the rights stipulated in this article, and the Ministry shall succeed to these rights, in the absence of a general successor for the performers.'

6. *Broadcasting or any communication to the public of their performances fixed in a sound recording.*

7. *Reproduction of their fixed performances.*<sup>298</sup>

In terms of the rights of producers of sound recordings, the CNRL states that the natural or legal person can be a producer of sound recordings who takes accountability for the first fixation of the sound recording. This person can enjoy the exclusive economic rights stipulated in Article 14:

*(1) The use of their recordings in any way, including reproduction and rental. (2) Making available to the public of the original and copies of their sound recordings through sale or other transfer of ownership. (3) Broadcasting or any communication to the public of their sound recordings.*

Finally, Omani legislation provides protection for broadcasting organizations, which have the right to transmit via 'wireless means, audio or audio-visual broadcasting, or any representation thereof'.<sup>299</sup> This organization has the exclusive economic rights set out in Article 18, which stipulates:

*(1) Fixing, reproducing, broadcasting and rebroadcasting their programs and communicating them to the public; (2) Prohibiting others from communicating the television recording of their programs to the public without a prior written authorization. It shall be considered prohibited for others to record, reproduce, rent, re-broadcast, distribute or communicate such to the public by any means.*<sup>300</sup>

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<sup>298</sup> R.D. 65/2008.

<sup>299</sup> R.D. 65/2008, art 1.

<sup>300</sup> R.D. 65/2008.

With regard to the duration of neighbouring rights, the economic rights of the performers or producers of sound recordings and broadcasting organization is different than those of copyright. Table 3.1 below explains the duration of neighbouring rights in Oman.

**Table 3.2 The duration of neighbouring rights**

<i>Type of economic rights</i>	<i>Duration of protection</i> <sup>301</sup>	<i>Exception to the duration of protection</i>
The economic rights of the performers	Ninety-five years <sup>302</sup>	'If such work was not published during twenty-five years starting from the date of completion, the economic rights of this work shall be protected for one hundred twenty years starting from the first day of the Gregorian calendar year following its creation.' <sup>303</sup>
The economic rights of the producers of sound recordings	Ninety-five years <sup>304</sup>	'If such sound recording was not published during twenty-five years starting from the date of completion, the economic rights of such work shall be protected for one hundred twenty years starting from the first day of the Gregorian calendar year following the creation of such sound recording.' <sup>305</sup>
The rights to broadcast programmes of the broadcasting organizations	Twenty years <sup>306</sup>	No exception permitted

<sup>301</sup> Which starts 'from the first day of the Gregorian calendar year following the year in which the recorded performance, sound record or program was legally published or broadcasted for the first time'. R.D. 65/2008, arts 31, 32 and 33.

<sup>302</sup> R.D. 65/2008, art 31.

<sup>303</sup> R.D. 65/2008, art 31.

<sup>304</sup> R.D. 65/2008, art 32.

<sup>305</sup> R.D. 65/2008, art 32.

<sup>306</sup> R.D. 65/2008, art 33.

Table 3.1 shows the duration of neighbouring rights. If these economic rights result in an illegal monopoly under Islamic law, the question should be to what extent these economic rights are restricted under the Omani legal framework. This issue will be subject of Chapter 4.<sup>307</sup>

Hence, while the term of protection is given to the owners of neighbouring rights, it varies in terms of duration in effect.

### **3.4.5 Fair use policy**

Those economic rights of the right holder have some exceptions that should be applied by member states, and they are called a fair use policy. It means, in some cases, that a person may use other copyrighted work without the right holder's consent. In the CNRL, free use of works is explained in Chapter 5, in which explains circumstances in which the public can use other protected works, for example quoting paragraphs for clarification or for reasons of criticism, use in educational institutions, reproduction, broadcasting etc.<sup>308</sup> These limitations are important in

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<sup>307</sup> See Section 4.4 below.

<sup>308</sup> CNRL, R.D. 65/2008, art 20; this article clarifies the fair use of the work:

`1. Quoting paragraphs from a protected work lawfully made available to the public in another work for clarification, explanation, or criticism purposes, to the extent of the desired purpose and as much as justified by such goal.

2. Use of the work in meetings within the family or through an educational institution for clarification during face-to-face educational or teaching purposes, within the limits justified by such goal, provided that this would be done with no direct or indirect compensation.

3. Reproduction, to the extent justified by the purpose and without the purpose of direct or indirect financial gain, of a single copy by reprographic means of protected works by public libraries, non-commercial documentation centers, educational establishments and scientific and cultural institutions, provided that such reproduction shall be:

a- For a published article or short work whereas the purpose of reproduction is to meet the need of a natural person for use in a study or research and provided that reproduction shall be for one time, or at varying intervals. Reproduction shall also be considered if repeated, on separate and unrelated occasions, and that there is no collective license available under which such reproduction can be made, or;

b. Reproduction for the purpose of maintaining the original copy or replacing a lost or damaged copy for which it is not possible to obtain a substitute.

4. Reproduction, broadcasting, or making available to the public by the press of portions of articles published in newspapers or periodicals on current economic, political, or religious topics and of broadcast works of the same character, in cases in which the



creating a balance between the extent of public rights in using copyrighted materials and right holder in preventing an infringement. The exclusive right of IP owners and fair access by the public to their property have been considered under Islamic law; this will be the subject of Chapter 4.<sup>309</sup>

### **3.4.6 Registration procedure of copyright**

There is no procedure under the Berne Convention to register a copyrighted work in member states. It is an automatic right which does not need registration. Thus, the WIPO does not provide a copyright registration system.<sup>310</sup> However, some countries, including Oman, offer voluntary registration (despotising) system, which can help the right owner in solving disputes over creation or possession.<sup>311</sup> Other issues to

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reproduction, broadcasting, or such communication thereof is not expressly reserved for the right owner at the time of publication.

5. Reproduction of a single copy of a computer program by the lawful owner of the copy, provided that it is necessary for the use of the computer program for the purpose and extent for which the computer program was obtained, or for archival purposes and for the replacement of the lawfully owned copy of the program in the event that the original copy is lost, destroyed or rendered unusable, or making an adapted, altered, or modified copy of the program, or translated into another computer language, whenever deemed necessary to match with a certain computer, and provided that it is exclusively used by the legitimate owner of the original copy.

6. Public performance of a dramatic, musical or dramatic musical, choreographic, pantomime works or any other work, created for dramatic performance, if:

- a- Religious ceremonies to the extent justified by the nature of these celebrations.
- b- Purposes of face-to-face learning activities in approved non-profit educational institutions, in classrooms or similar places dedicated to education.

In both cases, it is provided not to obtain, directly or indirectly, any financial gain.

7. Broadcasting organizations may, by their own means, for the purposes of use in their broadcasts, make a temporary recording of a work, provided that:

- a- The broadcasting organization is entitled to broadcast this work;
- b- The broadcasting organization destroys this recording after six months from execution thereof, unless the right owner agrees to extend this period, except for keeping one single copy of this recording for archive purposes.'

<sup>309</sup> See Section 4.2.3 below.

<sup>310</sup> WIPO. 'Copyright Registration and Documentation Systems' <[http://www.wipo.int/copyright/en/activities/copyright\\_registration/](http://www.wipo.int/copyright/en/activities/copyright_registration/)> accessed 10 February 2017.

<sup>311</sup> CNRL, R.D. 65/2008, art 34. The copyright's owner has the right, on depositing a copy of the work performance, or phonogram, at his own expense to the MCI. The CNRL expresses this issue in the passive expression and does not use mandatory expression.

be examined in the survey will ask whether Omani SMEs thought an IP application was necessary to gain copyright (as presented in Chapter 6).<sup>312</sup>

In summary, Omani legislation benefits from international treaties in order to regulate related rights issues and to be in conformity with these treaties. It is clear that Omani legislation increases the duration of the protection of these rights<sup>313</sup> and obliges the owner to write a contract when they transfer their economic rights to another party.<sup>314</sup> The main reason for this is that Oman is committed to observing these provisions in accordance with Chapter 15 of the OUSFTA.

As a result, this analysis can help to develop a critical review of Chapters 4, 5 and 6 by asking:

- (1) to what extent Islamic law can regulate the scope of Western concepts of copyright law which underpin the Omani national IP law framework.
- (2) to what extent the Omani IP Institutions currently have the necessary human resources to efficiently manage copyright protection and enforcement, or to conduct IP awareness training for business.
- (3) to analyse the level of Omani SMEs awareness survey with reference to the copyright system.

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It states that 'The right holder shall have the right, to deposit, at his own expenses, one copy of the work, performance, or phonogram with the Ministry, and such deposit is considered as presumption of ownership, and bylaws shall determine deposit system and the manner of publication. They also determine due fees, in accordance with prevailing financial regulations.' In addition, depositing procedures have been regulated under Chapter 2 of Ministerial Decision No 103/2008 (The Executive Regulations of the Law on Copyright and Neighbouring Rights). This issue will be examined under the SME survey in Chapter 6.

<sup>312</sup> See Table 6.10 below.

<sup>313</sup> OUSFTA, art 15.4.

<sup>314</sup> OUSFTA, art 15.4. 6(b).

This section has explored the copyright system. The next examines the patent and trademark legal framework.

### **3.5 Omani industrial property (patent and trademark)**

The extensive application of the expression 'industrial' is stipulated in the Paris Convention for the Protection of Industrial Property: 'Industrial property shall be understood in the broadest sense and shall apply not only to industries and to all manufactured or natural products, for example, wines, grain, tobacco leaf, fruit, cattle, minerals, mineral waters, beer, flowers, and flour'.<sup>315</sup> Owing to Oman's membership of the WTO, it complies with TRIPS. It must also maintain compliance with OUSFTA. For this reason, Oman has promulgated the IPRL<sup>316</sup> to regulate patents and trademarks, which are the subject of this section. It will examine patents in Section 3.5.1 and trademark protection in Section 3.5.2.

#### **3.5.1 Patent protection in Oman**

A patent provides a limited monopoly granted to an applicant, who, in return, is required to disclose technical patent information, which is information that can be used by a person skilled in the art. Subsequently, the national patent office issues a patent to the applicant, who can then enjoy exclusive rights from the date the application was filed; that applicant's rights are protected for the next 20 years.<sup>317</sup> The person granted a patent can stop an infringer from trading, reproducing, distributing or using the product without their permission.

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<sup>315</sup> Article 1(3).

<sup>316</sup> R.D. 67/2008 and its amendment under GCC Trade Mark Law R.D. 33/2017 make new amendments to the trademark section of the IPRL.

<sup>317</sup> Lionel Bently and Brad Sherman, *Intellectual Property Law* (OUP 2014) 375.

This section will examine the scope of patent protection and the rights conferred.

### **3.5.1.1 Scope of patent protection**

The TRIPS Agreement aims for member states of WTO to implement effective and appropriate IP protection within their national legal system, thus supporting trade between the representative countries. TRIPS harmonises the availability of patent rights under Article 27(1), which states that 'subject to the provisions of paragraphs 2 and 3, patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application'.<sup>318</sup>

There are two important factors that arise from this article and which have to be taken into consideration before a patent can be granted: firstly, it is clear that three common requirements exist for patentability: (1) the invention needs to be 'new' (2) it must be 'an inventive step' and (3) it must be 'capable of industrial application'. Secondly, member states are obliged to provide protection for inventions in all fields of technology.<sup>319</sup> The TRIPS Agreement does not give details on how these requirements are applied to the national laws of member states. It allows, but does not oblige, member states to provide exclusions to the patentable subject matter. For example, Article 27(2) and (3) provides that:

*Members may exclude from patentability inventions, the prevention within their territory of the commercial*

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<sup>318</sup> TRIPS, art 27(1): 'subject to the provisions of paragraphs 2 and 3, patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application'. See also this article's repetition in Article 15.8, paragraph 1, of OUSFTA.

<sup>319</sup> TRIPS, art 27(1); see also this article's repetition in Article 15.8, paragraph 1 of OUSFTA.

*exploitation of which is necessary to protect order public or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by their law.*

*3. Members may also exclude from patentability: (a) diagnostic, therapeutic and surgical methods for the treatment of humans or animals; (b) plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes<sup>320</sup>*

The TRIPS Agreement uses a passive voice. It does not use mandatory language, where member states would have to choose to provide exclusions under their domestic law. There is flexibility insofar as member states have to make decisions in relation to the level of inventiveness they wish to establish for patent protection. Nations are also able to adopt requirements better suited to their domestic law. The main reason for this is that it encourages local innovation, while taking into account other related national interests. Additionally, there is no provision under the Paris Convention that meets this TRIPS provision.<sup>321</sup> Therefore, it is useful to critically analyse the requirements of patentability in Oman.

The Omani IPRL stipulates the definition of non-patentable and patentable subject matters. Regarding non-patentable subject matter, Article 2(1) and (2) of IPRL states that such subject matter are excluded from patentability.<sup>322</sup> Inventions that are contrary to public order and

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<sup>320</sup> TRIPS.

<sup>321</sup> WIPO, *Implications of the TRIPS Agreement on Treaties Administered by WIPO* (WIPO publication no. 464, World Intellectual Property Organization 1997) 46.

<sup>322</sup> IPRL. R.D. 67/2008 states 'A) Discoveries, scientific theories and mathematical methods;

morality cannot qualify for patent protection in Oman. Examples of inventions which may fall within the scope of prohibited subject matter, are those which are inconsistent with Islamic law. For example the use of medication that contains alcohol, specifically wine, or whose components have been derived from pork would be prohibited. Similarly machines that have been invented which promote activity that conflicts with public order and morality such as gambling, or biotechnology related issues may also be prohibited. The extent to which these provisions exist under Omani IP law, give the competent authorities<sup>323</sup> the power to regulate IP rights according to Islamic culture. This is an issue which will be explored in more detail in chapter 4, section 4.3.

### **3.5.1.2 Conditions of patentability in Oman**

In terms of patentable subject matters, an invention may be patentable if it meets a legal standard in any field of technology, which means that

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B) Schemes, rules or methods for doing business, performing purely mental acts or playing games;

C) Natural substances; this provision shall not apply to the processes of isolating those natural substances from their original environment;

D) Known substances for which a new use has been discovered; this provision shall not apply to the use itself, where it constitutes an invention

E) Animals other than micro-organisms, and essentially biological processes for the production of animals and their parts, other than non-biological and microbiological processes;

F) Inventions, the prevention within the territory of Oman of the commercial exploitation of which is necessary to protect *ordre public* and morality

2 – The provisions of the previous paragraph shall not apply to the following inventions:

A) Industrial processes which, in whole or in part, consist of steps that are performed by a computer and are directed by a computer program.

B) Product inventions consisting of elements of a computer-implemented invention, including in particular:

1 – Machine-readable computer program code stored on a tangible medium such as a floppy disk, computer hard drive or computer memory; and

2 – A general purpose computer whose novelty over the prior art arises primarily due to its combination with a specific computer program.'

<sup>323</sup> IP institutions which will be subject of chapter 5 such as IP office,elt.

it should make a technical contribution to the art.<sup>324</sup> The notion of patentability was introduced under Article 1 of IPRL that an invention must satisfy to qualify for a patent. This article requires 'an idea of an inventor, which permits in practice the solution to a specific problem in the field of technology. An invention may be, or may relate to, a product or a process.'<sup>325</sup> In addition, the invention should satisfy three requirements: it should be new, involve an innovative step and be capable of industrial application. These are explored below.

### **1. New**

Only inventions which are new can be granted under the patent system. The IPRL states that 'An invention is new if it is not anticipated by prior art. Prior art shall consist of everything disclosed to the public, anywhere in the world, by publication in tangible form or by oral disclosure, by use or in any other way, prior to the filing or, where appropriate, the priority date, of the application claiming the invention'.<sup>326</sup> The question can arise whether the novelty requirement can be precluded if an inventor disclosed their invention before the filing date. The IPRL states that the applicant does not have the right to file the patent application if they have disclosed their invention. However, there is an exception to this rule if the disclosure happens within one year preceding the filing date or the priority date of the application and 'if it was by reason or in consequence of acts committed by the applicant or his predecessor in title or of an abuse committed by a third party with regard to the applicant or his predecessor in title'.<sup>327</sup> This is an issue which will be explored in greater depth in Chapter 6, which deals with the survey and its results, but

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<sup>324</sup> Lionel Bently and Brad Sherman, *Intellectual Property Law* (OUP 2014) 459.

<sup>325</sup> R.D. 67/2008, art 1.

<sup>326</sup> IPRL, R.D. 67/2008, art 3(1).

<sup>327</sup> IPRL, R.D. 67/2008, art 3(1).

generally the question is whether SMEs are aware of the disclosure requirement under the Omani legal system.<sup>328</sup>

## **2. Inventive step**

Not all new inventions can be patentable and the inventive step is the second main requirement. The main criterion of this condition is stipulated under the IPRL,<sup>329</sup> which states:

*an invention shall be considered as involving an inventive step if, having regard to the differences and similarities between the claimed invention and the prior art as defined in subsection (2) (b), the claimed invention as a whole would not have been obvious to a person skilled in the art at the filing date or, if applicable, at priority date of the claimed invention.*

The applicant must show that the invention is not trivial. To determine this an investigation should take place into whether there has been any prior art that includes identical features. In order for an invention to be patentable, it should have non-obvious variances from prior art. This means that it is essential that a person's skill in the art and would not have thought that the invention subject matter was clear at the time the invention was created. For this reason, the examination range is very technical.<sup>330</sup> There is some subjectivity with this kind of test, and the

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<sup>328</sup> See Table 6.6 below.

<sup>329</sup> IPRL, R.D. 67/2008, art 11(1), (2)(a)(b).

<sup>330</sup> Michael Astorino, 'Obviously Troublesome: How High Should the Standard Be for Obtaining a Patent' (2007) 89 J Pat & Trademark Off Soc'y 239; Tun-Jen Chiang, 'A Cost-Benefit Approach to Patent Obviousness' (2008) 82 John's L Rev 39; Gregory N. Mandel, 'Patently Non-obvious: Empirical Demonstration that the Hindsight Bias Renders Patent Decisions Irrational' (2006) 67 Ohio St LJ 1391.



combination of that examination with a deep technical understanding of the subject field is key for an equitable and balanced application.<sup>331</sup>

The importance of having technical knowledge in the same field of invention is that it permits the examiner to distinguish between two main elements of the prior art and the suggested claims.<sup>332</sup> This helps when assessing the ordinary skill level in the field and identifying what can be considered obvious on the basis of ordinary skill level. Taking into account the above elements is the only guarantee that the examiner will have the ability to provide rational and objective proof of the obviousness or the non-obviousness.<sup>333</sup> According to Nesheiwat, 'It is the level of technical expertise in the patent's subject area that allows a seemingly purely subjective test to be made objectively'.<sup>334</sup>

### **3. Capability of industrial application**

The third condition is the capability of industrial application. The IPRL<sup>335</sup> states that:

*an invention shall be considered industrially applicable if it can be made or used in any kind of industry or if it has specific, substantial and credible utility. The term 'industry' shall be understood in its broadest sense, as any human economic activity leading to the production of goods and services; it shall cover, in particular, handicraft, agriculture, fishery and services.*

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<sup>331</sup> Ferris Nesheiwat, 'The Compliance with Intellectual Property Laws and their Enforcement in Jordan-A Post-WTO Review Analysis' (Durham University 2012) 55.

<sup>332</sup> So a question is whether there are any challenges that the Omani government faces in examining patent applications, which will be the subject of Chapter 5.

<sup>333</sup> Ferris Nesheiwat, 'The Compliance with Intellectual Property Laws and their Enforcement in Jordan-A Post-WTO Review Analysis' (Durham University 2012) 55.

<sup>334</sup> Faris K. Nesheiwat, *Misapplying Globalization: Jordan and the Intellectual Property Policy Challenge* (Cambridge Scholars Publishing 2014) 28–29.

<sup>335</sup> IPRL, R.D. 67/2008, art 3(3).

The applicant is required to demonstrate the usefulness of the requested invention for some purpose. For example, they should provide an indication of practical application of their invention, functions or profitable use.<sup>336</sup>

The invention should satisfy above three requirements, which means that a patent applicant needs a deep technical knowledge of the subject field. As a result, a question is to what extent the Omani IP Department is able to carry out the technical examination of patent applications and whether it has sufficient experts in different technical fields. This issue will be examined in Chapter 5.<sup>337</sup>

### **3.5.1.3 Rights conferred**

The TRIPS Agreement regulates the issue of rights conferred under Article 28, which states that the owner has exclusive rights and the right holder has the right to license their right to another party to use in return for a required fee. In terms of exclusive rights, the rights granted for a patent owner could differ depending on whether the kind of patent granted is for a product or for a process.<sup>338</sup> The full disclosure of the patent by its owner is the obligation to complete the invention disclosure in a method 'sufficiently clear and complete for the invention to be carried out by a person skilled in the art, and may require the applicant to indicate the best mode for carrying out the invention known to the inventor',<sup>339</sup> in exchange for the right to a patent. With regard to a product patent, the owner of a patent is able to prevent third parties from making, using, offering for sale or selling that product, or importing it for these goals. With respect to the process, the owner of a patent can prevent unlicensed persons from using, offering for sale, selling or importing the product that

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<sup>336</sup> Paul Torremans, *Holyoak and Torremans Intellectual Property Law* (OUP 2016).

<sup>337</sup> See Section 5.2.1 below.

<sup>338</sup> TRIPS, art 28.

<sup>339</sup> *ibid*, art. 29.

is gained via that process. Member states must be agreeable to these obligations. However, while the Paris Convention did not include this corresponding provision, the domestic laws of the member countries usually offer protection for similar rights.<sup>340</sup> Over and above the exclusive rights, the rights holder of a patent is entitled to enter a licensing agreement with others, and possesses the right to assign the patent. There is no corresponding provision under the Paris Convention, but national laws recognize these rights.<sup>341</sup>

In Oman, according to the IPRL,<sup>342</sup> an inventor's exclusive rights are granted from the filing date of the patent application, and then those rights are protected for 20 years from that date of application. In terms of products and process patents, the IPRL<sup>343</sup> lists acts that are prohibited without the prior approval of the patentee. These acts also comply with the TRIPS Agreement, as mentioned above. A patentee also has the right to assign or authorize their rights to others.<sup>344</sup> In summary, the Omani legislation benefits from the TRIPS Agreement by granting exclusive rights to a patentee. It brings domestic law into compliance with this agreement. The analyses resulting from this point will help achieve several objectives, for example: the scope of patent protection within the context of an Islamic perspective; developing recommendations for IP administrative institutions to solve any ongoing deficiencies in achieving protection and enforcement; and, finally, analysing the level of SMEs' awareness as highlighted in the survey.

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<sup>340</sup> WIPO, *Implications of the TRIPS Agreement on Treaties Administered by WIPO* (WIPO publication no. 464, World Intellectual Property Organization 1997).

<sup>341</sup> *ibid.*

<sup>342</sup> IPRL, R.D. 67/2008, art 12(1)(a).

<sup>343</sup> IPRL, R.D. 67/2008, art 11(1), (2)(a)(b).

<sup>344</sup> IPRL, R.D. 67/2008, art 11 (3). This issue will be examined in the SME survey in Chapter 6.

In summary, the patent legal system in Oman has been explored. The next part will examine the trademark framework, which is equally important to achieve the objectives of this thesis.

### **3.5.2 Trademark protection in Oman**

Historically, trademarks have always played a primary role in economic growth, and they have been considered to be vital elements of contemporary global trade.<sup>345</sup> According to Bainbridge, the rationale for a trademark serves two main goals: 'first, reflecting the fact that a registered trade mark is an item of property, to protect business reputation and goodwill; and second, to protect consumers from deception, that is to prevent the buying public from purchasing inferior goods or services in the mistaken belief that they originate from or are provided by another trader'.<sup>346</sup> Omani trademark legislation represents a milestone in the trademark framework under IPRL and its amendments.<sup>347</sup> Therefore, the aim of this section is to explore the main issues regarding trademark law, such as the definition of a trademark, the scope of trademark protection, the use of trademark requirements, and the registration processes for a trademark.

#### **3.5.2.1 Definition of trademark**

The TRIPS Agreement, under Article 15(1), stipulated the subject matter protected by a trademark:

*Any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark. Such signs, in particular words*

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<sup>345</sup> William M. Landes and Richard A. Posner, *The Economic Structure of Intellectual Property Law* (Harvard University Press 2003).

<sup>346</sup> David I. Bainbridge, *Intellectual Property* (9th edn, Pearson 2012) 689.

<sup>347</sup> IPRL, R.D. 67/2008, amended by GCCUTML R.D. 33/2017.

*including personal names, letters, numerals, figurative elements and combinations of colours as well as any combination of such signs, shall be eligible for registration as trademarks. Where signs are not inherently capable of distinguishing the relevant goods or services, Members may make registrability depend on distinctiveness acquired through use. Members may require, as a condition of registration, that signs be visually perceptible.*<sup>348</sup>

Essentially, this article defines a trademark as having two main requirements. Firstly, a sign or a combination of a sign should be submitted by the applicant to ensure registration. While a definition for the word 'sign' is lacking, a list of instances is stated, which includes personal names, letters etc. Secondly, a sign is required to be distinctive based on its origin. It must be distinguishable between goods and services that are made by the applicant and identical goods and services that were made by another. There are two sources of distinctiveness. Inherent distinctiveness is the first source.<sup>349</sup> For instance, the term 'Exxon' has an essential inherent distinctiveness, and it is capable of distinguishing between the petroleum goods of one enterprise from those of another.<sup>350</sup> The second source of distinctiveness includes certain other signs that could be distinctive through their use but are not inherently capable of distinctiveness because they include a descriptive component. In addition, various modern trademark regimes permit the registration of

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<sup>348</sup> TRIPS, art (15)1.

<sup>349</sup> Paul Torremans, Hailing Shan and Johan Erauw, *Intellectual Property and TRIPs Compliance in China: Chinese and European Perspectives* (Edward Elgar Publishing 2007).

<sup>350</sup> Justin Malbon, Charles Lawson and Mark Davison, *The WTO Agreement on Trade-Related Aspects of Intellectual Property Rights: A Commentary* (Edward Elgar Publishing 2014).

these signs that are capable of distinguishing without imposing any further requirements and then they leave it to the marketplace to expunge signs that are incapable of being distinguished from another.<sup>351</sup>

The TRIPS Agreement allows for a somewhat further restrictive approach and permits member states, before registering marks, to seek proof of distinctiveness obtained by using signs that are 'only capable of distinguishing and that are not inherently distinctive'<sup>352</sup> However, the Paris Convention (Article *6quinquies*B(2), concerning the registration of signs registered in the origin state) provides that a sign could be rejected if there is a lack of any distinctive character; however, Article *6quinquies*C(1) requires that all factual situations be taken into account to determine if a sign is entitled to protection, including the period of time in which the sign was in use.<sup>353</sup>

Additionally, there is a third requirement under the above quote that is not mandatory. This is that the member states of the WTO have a choice to determine whether the signs must be visually perceptible. This condition could be effective in excluding some kind of marks, such as sound trademarks and smell trademarks. Therefore, member states of the WTO that seek to exclude these types of signs have been advised to implement this optional condition instead of defining the mark requirement in a restrictive way.<sup>354</sup>

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<sup>351</sup> *ibid.*

<sup>352</sup> Paul Torremans, Hailing Shan and Johan Erauw, *Intellectual Property and TRIPs Compliance in China: Chinese and European Perspectives* (Edward Elgar Publishing 2007) 42.

<sup>353</sup> WIPO, *Implications of the TRIPS Agreement on Treaties Administered by WIPO* (WIPO publication no. 464, World Intellectual Property Organization 1997) 33.

<sup>354</sup> Paul Torremans, Hailing Shan and Johan Erauw, *Intellectual Property and TRIPs Compliance in China: Chinese and European Perspectives* (Edward Elgar Publishing 2007).

In Oman, with regard to the distinctive requirement, the situation is similar. It is noted that the definition of trademark in accordance with Article 1 of the IPRL<sup>355</sup> and amended by the GCC trademark law,<sup>356</sup> does not provide for the possibility that signs could be distinctive through use; however, there is an exception for this type of sign in Article 36(3), which states that, 'notwithstanding the provisions of subsection 2(1), the Registrar or the Court shall have the authority to decide whether a mark has acquired secondary meaning or distinctiveness through continued use. In that event the mark shall be registrable.'<sup>357</sup>

Additionally, as has been presented previously, TRIPS listed several examples of marks that can be registered. Under the currently active provisions in Oman, a mark can be names, words, signatures, figures, letters, titles, drawings, logos, pictures, engravings, colours or combinations of colours, but there is no requirement that the mark must be visually perceptible.<sup>358</sup> It stipulates explicitly that 'sounds, scents'<sup>359</sup> can be registered as a trademark because Oman joined the OUSFTA, which states that 'Neither Party may require, as a condition of registration, that signs be visually perceptible, nor may a Party deny registration of a trademark solely on the grounds that the sign of which it is composed is a sound or a scent'.<sup>360</sup> This means that it requires member states to provide applicants with the ability to register this type of trademark.<sup>361</sup>

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<sup>355</sup> R.D. 67/2008, art 1, amended by GCCUTML R.D. 33/2017, art 1.

<sup>356</sup> R.D. 33/2017.

<sup>357</sup> IPRL, R.D. 67/2008, art 36(2), amended by GCCUTML R.D. 33/2017, art (2)1.

<sup>358</sup> IPRL, R.D. 67/2008, art 1, amended by GCCUTML R.D. 33/2017, art (1).

<sup>359</sup> IPRL R.D. 67/2008, art 1 amended by GCCUTML R.D. 33/2017, art (1).

<sup>360</sup> Chapter 15, art, 15.2(1).

<sup>361</sup> Art 15.2.1.

Under Oman legislation, the registrar can refuse to register any mark that does not meet the criteria for the definition of trademark.<sup>362</sup> It confirmed that a signed registration cannot occur if the use of a trademark on goods and services is against public order and morality.<sup>363</sup> For example, trademarks related to Beers, Alcoholic beverages, and 'Tobacco; smokers'. This condition, which may have an effect on Omani culture, will be examined in greater detail in Chapter 4.<sup>364</sup>

In summary, it appears that member nations follow their own interests when implementing the protection of trademark, as has been presented previously. Therefore, OUSFTA has a significant impact on the IPRL<sup>365</sup> in terms of defining a trademark. It requires the Omani legislator to accept the registration of a mark that is not recognizable by sight, such as sounds and scents. It is important to explore the rights that afford protection to the trademark's right holder.

### **3.5.2.2 Scope of protection**

Article 16 of the TRIPS Agreement states the scope of protection for a registered trademark. It provides the right holder of a registered trademark with the right to take legal action against trademark infringement when an identical or similar type of mark is used by an infringer without the right holder's consent, and it is used in the course of trade and that use causes a likelihood of confusion. According to this article, an assumption of the likelihood of confusion can occur if an identical mark has been used by the infringer on identical products or services. It appears that the scope of the protection's definition under the above article provides a significant degree of flexibility for the member

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<sup>362</sup> IPRL R.D. 67/2008, art 36(2) amended by GCCUTML R.D. 33/2017, art (2).

<sup>363</sup> IPRL R.D. 67/2008, art 36 (2)(B), but it is modified by a new Article 2 (2) of GCCUTML R.D. 33/2017.

<sup>364</sup> See Section 4.3.6.1.

<sup>365</sup> IPRL R.D. 67/2008.



nations regarding the level of protection that they will provide under their national laws. For example, the key condition is that 'similar' trademarks may not be utilized on 'similar' products. This can be interpreted precisely so that marks and goods have to be virtually identical in order to justify protection. Another possible interpretation is that it can be interpreted liberally, so that marks and goods must be categorized within the same classification in order to justify protection.<sup>366</sup>

In Oman, the right holder has an exclusive right to use their trademark and the right to prevent others from using it without consent. The main conditions of that usage must involve 'using identical or similar signs, including geographical indications, (in course of trade) to distinguish the goods or services related to those in respect of which the mark is registered, where such use would result in a likelihood of confusion... etc.'<sup>367</sup> Under this article, there is no standard that clarifies how to determine the similarity of a sign or a likelihood of confusion, so the court has a discretionary power to decide the perspective from which infringement should be defined.

So, the question is to what extent a trademark can be appreciated under Islamic law. This issue will be examined in Chapter 4.<sup>368</sup>

### **3.5.2.3 Use requirement**

The TRIPS Agreement states:

- 1. If use is required to maintain a registration, the registration may be cancelled only after an uninterrupted period of at least three years of non-use, unless valid*

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<sup>366</sup> Kha Sabri Hamad Khater, *The Implementation (Tfrid in Arabic) of the TRIPS' Rules in the Intellectual Property Laws (Comparative Study)* (The House of Legal Books 2012).

<sup>367</sup> GCCUTML (R.D. 33/2017, art 16(2)).

<sup>368</sup> See Sections 4.3 and 4.4 below.

*reasons based on the existence of obstacles to such use are shown by the trademark owner. Circumstances arising independently of the will of the owner of the trademark which constitute an obstacle to the use of the trademark, such as import restrictions on or other government requirements for goods or services protected by the trademark, shall be recognized as valid reasons for non-use.*

*2. When subject to the control of its owner, use of a trademark by another person shall be recognized as use of the trademark for the purpose of maintaining the registration.*<sup>369</sup>

The member states of the WTO implement this provision under their domestic laws. Omani legislation gives a person with a legitimate interest in the trademark the right to submit a request to remove a mark from the register on the grounds that a registered mark has not been used by the right holder for a continuous period of five years or longer. Following the request, the court has the discretionary power to decide the consequences for the non-use of a registered trademark. The burden of proof can be discharged by the trademark owner in cancellation proceedings if they can prove special circumstances that prevented them from using the trademark, such as import restrictions or any government or market barriers.<sup>370</sup>

#### **3.5.2.4 Registration process for a trademark**

The protection of a trademark can be obtained by registering it at the national and regional levels.<sup>371</sup> An applicant may complete an application

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<sup>369</sup> Art 19.

<sup>370</sup> R.D. 67/2008, art 42(2) and its amendment under GCCUTML (R.D. 33/2017, art 23.

<sup>371</sup> Chapter 1 of GCCUTML (R.D. 33/2017) GCCUTML.

at the national or regional trademark office and pay the required fee. At an international level, an applicant has two routes: either they may file the required application with the trademark office of each nation or they may file by using the WIPO Madrid System. This system is considered to be a one-stop solution for registration and management of trademarks in the 98 countries, of which Oman is one.<sup>372</sup> Table 3.3 below shows the registration process for a trademark in Oman.

**Table 3.3 Registration process for a trademark and appeal**

<i>Steps</i>	<i>Procedure</i>	<i>Appeal</i>
Application	Applicant can file a written request to register a mark at the IPD. <sup>373</sup>	
Application prosecution	Registrar can accept the application or impose a conditional acceptance, reject an application. <sup>374</sup>	If an application has received a conditional acceptance, or has been refused, an applicant has the right to appeal the registrar’s final decision to a committee within 60 days of being informed of the registrar’s final decision. If the committee refuses the appeal, the applicant has the right to appeal the committee’s final decision to the administrative court within 60

<sup>372</sup> WIPO, ‘Madrid – The International Trademark System’ (Wipo.int, 2017) <<http://www.wipo.int/madrid/en/>> accessed 14 February 2017. It should be noted that Oman is part of the Protocol Relating to the Madrid Agreement and it entered into force on 16 October 2007. See [http://www.wipo.int/treaties/en/notifications/madridp\\_gp/treaty\\_madridp\\_gp\\_175.html](http://www.wipo.int/treaties/en/notifications/madridp_gp/treaty_madridp_gp_175.html).

<sup>373</sup> The Executive Regulations of Industrial Property Law, Ministerial Decision No (105/2008), art 3.

<sup>374</sup> Under GCCUTML (R.D. 33/2017), art 11.

		days of being informed of the registrar's final decision. <sup>375</sup>
Opposition <sup>217</sup>	<p>Within 60 days of registration's announcement in the <i>Official Gazette</i>,<sup>376</sup> any interested person can file a written opposition to the IPD about the registration of a trademark.</p> <p>The registrar should notify both parties within the time limit set under Gulf Cooperation Council Unified Trade Mark law (GCCUTML).<sup>377</sup></p>	The opposition decision can be appealed to the court within 60 days. <sup>378</sup>
Post-registration	The right holder of a registered trademark has the right at any time to apply to the registrar to make any additions or modifications to their mark, but it required that additions or modifications should not	An applicant has the right to appeal the registrar's final decision. <sup>380</sup>

<sup>375</sup> R.D. 67/2008, art 38 (3) (B) and its amendment by GCCUTML (R.D. 33/2017), art 12.

<sup>376</sup> The Executive Regulations of Industrial Property Law, Ministerial Decision No 105/2008 Article 12. In Oman, The *Official Gazette* considers 'a governmental publication for laws, royal decrees, royal decision, regulations, ministerial decisions, official and commercial announcements, and any other materials deemed to be necessary for the development and regulation of Omani society. The Official Gazette is regulated by the Law of the Official Gazette.' See <http://mola.gov.om/eng/publications.aspx>.

<sup>377</sup> R.D. 67/2008, art 38(2)(B,C,D) and its amendment under GCCUTML (R.D. 33/2017), art 13(2).

<sup>378</sup> R.D. 67/2008, art 38(2)(B) and its amendment under GCCUTML (R.D. 33/2017), art 14.

<sup>380</sup> It applies the same rules stipulated under R.D. 67/2008, art 38(3)(B) and its amendment under GCCUTML (R.D. 33/2017), art 12.

	<p>considerably affect the trademark's essence.<sup>379</sup> The effect of trademark registration is to confer these exclusive rights for a period of 10 years. The right holder can renew their trademark for additional periods.</p>	
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Table 3.3 above clarifies the registration process for a trademark granted under Omani law for the applicant of a trademark and any interested person, as well as the appeal process.<sup>381</sup> Any interested person can oppose an advertised trademark by relying on absolute or relative grounds. 'Absolute grounds' means that they can oppose the entire application by proving that the registration of the trademark is in error, for example the mark is non-distinctive or is descriptive of a product and/or services. The assessment under these grounds examines the mark itself. Conversely, 'relative grounds' means that the owner of an earlier trademark or right can oppose on these grounds because the applicant's trademark would conflict with their trademark.<sup>382</sup> The result of the trademark registration is that a right holder can be conferred with the exclusive right to its use or license it to another party to use in return for a required fee. In the event of litigation, it also provides them with legal certainty and enhances an owner's position during the litigation.<sup>383</sup> Furthermore, the owner of a trademark has the right to take legal action

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<sup>379</sup> GCCUTML (R.D. 33/2017), art 17.

<sup>381</sup> So a question is whether the Omani government faces any challenges in examining trademark applications, which will be the subject of Chapter 5.

<sup>382</sup> Charlotte Waelde and others, *Contemporary Intellectual Property* (4th revised edn, OUP 2016) 601.

<sup>383</sup> This issue must be examined under the survey in Chapter 6; see Table 6.10 below.

because civil<sup>384</sup> and criminal<sup>385</sup> remedies have been provided for under Omani law, which lists several punishable violations, such as a counterfeit registered trademark and unlawful use of a registered trademark.

This section has explored the legal system for registration and protection of trademarks in Oman. In summary, the Omani legislation benefits from the TRIPS Agreement and OUSFTA, as it brings domestic law into compliance with this agreement.

### **3.6 Conclusion**

The essential international IP treaties and conventions in terms of copyright, patents and trademarks have been explored, and have included the Berne Convention, the Paris Convention and TRIPS. Additionally, the developments related to IP in Oman pre-TRIPS and since TRIPS and OUSFTA have been examined. Oman is a party to a number of international and regional agreements in relation to IPRs and, as a result of becoming a member of WTO and OUSFTA, Oman put a great effort into improving its IP standards. The IP legal framework in Oman has been amended several times to be brought into line with its international commitments under TRIPS and OUSFTA.

The three main IP terms, namely copyright, patents and trademarks, have been discussed. With regard to the copyright system, the owner of copyrighted work has the moral and economic rights, which allow authors to prevent modifications of their works even when the ownership of such works has been passed to another individual. The copyright owner has the right to transfer their copyright ownership to anyone they choose by licence. The law clarifies fair use policy to balance the right holder and public interest. This means copyright framework does not give the owner

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<sup>384</sup> For example, confiscation orders, destruction orders and precautionary measures.

<sup>385</sup> R.D. 67/2008 under Chapter 6 and its amendment under GCCUTML (R.D. 33/2017), arts 42 and 43.

an exclusive right to benefit from this framework, but it leaves room for safeguarding the public interest through the fair use policy. In addition to that, it is not obligatory to register or deposit copyrighted work. Thus, this system can promote cultural and economic development.

In terms of patents, Oman's patent system succeeded in making the patent law more compatible with international standards (TRIPS and OUSFTA). It clarifies the conditions of patentability, which stipulate that the invention needs to be new, possess an inventive step and be capable of industrial application. The Omani legislation lists under Article 2(1) and (2) such subject matter that is not patentable; in particular, inventions that are contrary to public order and morality do not qualify for patent protection.<sup>386</sup> With regard to trademarks, Oman has made a contribution in expanding the scope of protection; for example, the OUSFTA has a great impact on the IPRL<sup>387</sup> in terms of defining trademarks. It obliges the Omani legislation to accept the registration of a sign which is recognizable by sight, such as sounds and scents.<sup>388</sup> It also simplifies the procedure of registration, promotes legal certainty and so on. A right holder can confer an exclusive right to use it or license it to another party in return for a fee.

Despite this successes in improving the Omani IP legal system, challenges still exist, which will be subject of subsequent chapters.

Chapter 4 addresses various challenges including the extent to which IP rights protection in Oman can be recognized under Islamic law. A further question concerns the extent to which Islamic law regulates the scope of Western concepts of IP law, which underpin the Omani national IP law.

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<sup>386</sup> (Which will be discussed under Chapter 5 as an instrument that can be used by Oman to protect its culture.)

<sup>387</sup> IPRL R.D. 67/2008.

<sup>388</sup> IPRL R.D. 67/2008, art 1 amended by GCCUTML R.D. 33/2017, art 1.

Chapter 5 examines the role of IP administrative institutions in serving Omani Islamic culture and economy by managing IP rights (protection, enforcement) and activation-related IP legal authority and increasing the level of IP awareness within Omani businesses. In addition, it evaluates the extent to which Oman can adopt an Islamic IP approach through the MERA as a way of enhancing IP framework awareness and understanding to serve its cultural and economic growth.

Finally, Chapter 6 aims to achieve its objectives by gathering primary data to determine the level of IP awareness within SMEs. It is followed by an analysis which identifies general patterns in the perceptions and opinions of SMEs. The results have been critically interpreted to develop a better understanding in relation to level of IP awareness and the factors which affect their understanding.



## CHAPTER 4 AN ISLAMIC APPROACH TO IPR

### 4.1 Introduction

Price stated that religious beliefs, culture, a lower degree of economic growth, and higher poverty levels are examples of problems in Arab countries regarding IP protection.<sup>389</sup> However, in Arab countries domestic culture and in particular religious beliefs are important elements in enforcing the law and bringing about positive societal impact. Islamic law continues to develop in tandem with Western ideas regarding IP rights protection, but the application of Western IP systems can be interpreted from an Islamic interpretation model. This Islamic model may be incongruous from the point of view of Western countries. For example, the Western approach can contradict an Islamic understanding of IP in areas of public order and morality, because the Muslim faith is required to fulfil the rules given by the Creator; consequently, any guidelines in the area of IP must conform to the notion that justice in society can only be achieved within the scope of the Creator's guidelines. Arguably, 'Secular capitalism, has recently experienced an erosion of values, whereby the financial sector has put its own interests above those of the rest of society'.<sup>390</sup> Consequently, some of the IP law issues arising where the Western interpretation varies from an Islamic interpretation include registration of trademarks for alcohol, offensive marks etc.

Nevertheless, for Islamic domestic culture adopting an Islamic interpretation of IP law brings a positive impact and provides adequate legal protection for dealing with contemporary IP issues. Intellectual property rights *per se* do not operate under Islamic law by providing

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<sup>389</sup> David Price, *The Development of Intellectual Property Regimes in the Arabian Gulf States: Infidels at the Gates* (Routledge 2009).

<sup>390</sup> Zamir Iqbal and Abbas Mirakhor, *Economic Development and Islamic Finance* (Directions in Development, World Bank Publications 2013) 87.

comprehensive and particular rules as in the case of divine responsibilities or inheritance.<sup>391</sup> However, there is a flexibility under Islamic law to deal with commercial issues; for example, Muslim scholars use evidence, based on their legal culture, to justify the protection of physical property, which may be extended to an intellectual product or created work. This process and thinking were demonstrated in Chapter 2.<sup>392</sup> Scholars relied on principles derived from Quran and Sunnah and other sources of Islamic law.<sup>393</sup> Therefore, the subject of this chapter is to present the power of positive aspects of Islamic law in regulating and adapting the Western IP law framework towards a positive and beneficial impact in Oman. To achieve this objective, it is appropriate to address the following questions:

- (1) To what the extent is IP rights protection be recognized under Islamic law?
- (2) To what extent can Islamic law regulate the scope of Western concepts of IP law which underpin the Omani national IP law framework? This will be addressed by identifying whether and how Omani culture or Islamic law principles can be applied to reconstructing a standard and provide guidance for Omani IP systems, and the extent to which Islamic law can contribute to clarifying the scope of the concept of public order and morality provisions.<sup>394</sup>

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<sup>391</sup> Bashar H. Malkawi. 'Alliance between Islamic Law and Intellectual Property: Structure and Practice' (2013) 10(3) University of St Thomas Law Journal 623.

<sup>392</sup> see Section 2.2.1.

<sup>393</sup> see selection of Islamic sources in Section 4.3.4.3.

<sup>394</sup> The evolution of public order and morality in the context of this thesis will be from legal and Islamic points of view and it will not examine the philosophical Western theories in ethics. Recommended future study can be a comparative study between Western theories of ethics and the Islamic approach presented in this thesis.

- (3) What is the real impact of applying the Islamic IP standard, in particular its role in serving the concept of Islamic economic development?

In order to achieve the objectives of this chapter, the next section will explore these questions.

## **4.2 The extent of IP protection under Islamic law**

The following part will give an Islamic perspective, which may clarify the extent of IP protection under Islamic law by focusing on the status of legitimate IP labour and unfair IP trade practices and the preservation of property through its circulation (*rawāj*).

### **4.2.1 The recognition of ownership arising from intellectual labour**

Islamic scholars rely on the evidence from Islamic sources<sup>395</sup> to justify the recognition of ownership arising from intellectual labour.<sup>396</sup> For example, the Prophet Mohammed (pbuh) said: 'Nobody has ever eaten a better meal than that which one has earned by working with one's own hands'.<sup>397</sup> This statement indicates a degree of appreciation for the physical labour of human beings, by protecting the fruit that was generated through their work. It is argued that their appreciation can be extended to apply to the fruits of intellectual labour. According to Islamic researcher Azam, who relies on Beheshty's earlier work, '[t]he scope of

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<sup>395</sup> see selection of Islamic sources in Section 4.3.4.3.

<sup>396</sup> Eziuddin Elmahjub, 'An Islamic Perspective on the Theories of Intellectual Property' in J. Gilchrist and B. Fitzgerald (eds), *Copyright Perspectives* (Springer 2015) 63.

<sup>397</sup> Muhammad Muhsin Khan, *Sahih Bukhari* (Peace Vision 1979), vol 3, book 34, number 286; see Muhammad Zulfiqar, *Zakah According to Quran & Sunnah* (Darussalam 2011).

the term “labour” is large enough to accommodate terms like “physical” as well as “mental exertions”.<sup>398</sup>

In addition, a further Islamic principle is that ‘the norm in regard to things (cases)’ is that of permissibility. This has been interpreted to mean that, if someone created ideas or an invention, it is permissible under Islamic law for the fruit generated from the work to be protected in a similar manner to physical labour.<sup>399</sup> However, this Islamic rule (or principle) is restricted by other sources of Islamic law. For example, in the Quran Allah said ‘Do not push yourselves into perdition’<sup>400</sup> and the Prophet Mohammed (pbuh) has been reported as saying that ‘There should be neither harming [*darar*] nor reciprocating harm [*diraar*]’.<sup>401</sup> According to this rule, if the intellectual labour has the potential to bring harmful effects to society or is otherwise against Islamic law, it cannot be lawful or capable of legal enforcement. This indicates that, for example, the copyright that ensues from the creation of an original work, or the labour spent in conceptualizing a trademark or a new and beneficial industrial invention, can be recognized as ‘legitimate’ labour generated through effort – as long as it is within the rules of Islamic law.<sup>402</sup> Therefore, society or the public must only respect this ownership of ‘legitimate’ intellectual labour. On the same basis, Islamic law has legitimated an award of compensation for the infringement of other intellectual property, regardless of the infringer’s intention. This helps to clarify the extent of

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<sup>398</sup> Azmi, Ida Madieha bt Abdul Ghani. ‘Intellectual Property Laws and Islam in Malaysia’ (Phd thesis, Queen Mary & Westfield College 1995) 113.

<sup>399</sup> Ezieddin Elmahjub, ‘An Islamic Perspective on the Theories of Intellectual Property’ in J. Gilchrist and B. Fitzgerald (eds), *Copyright Perspectives* (Springer 2015) 64.

<sup>400</sup> Muhammad Sarwar, *The Holy Quran, Arabic Text with English Translation* (Islamic Seminary 2001) (02:195).

<sup>401</sup> Abeer Hussam Eddin Al-Lahham, ‘Traditionalism or Traditiona-Lieism: Authentication or Fabrication?’ (2014) 8(3) *International Journal of Architectural Research* 67. He quoted from the translation by Ibrahim and Johnson-Davis (1977), *An-Nawawi’s Forty Hadith* (An-Nawawi, n.d.) 106 <<http://bible-quran.com/islam-hadiths-hadiths-32-34-nawawi>>.

<sup>402</sup> Silvia Beltrametti, ‘The Legality of Intellectual Property Rights under Islamic Law’ (2009) *The Prague Yearbook of Comparative Law* 61.

the concept of 'legitimate labour' under Islamic law which encourages the protection of IP.

#### **4.2.2 How Islam encourages the legitimate IP trade**

Islamic law encourages legitimate trade that does not cause damage to third parties, and it has condemned acts such as, for example, cheating, unfair trading and the use of another's work without the owner's consent. These principles are similar to Western concepts of unfair trade practices and IP rights infringement. For example, in the Quran it is stated that,

*Do not use your property among yourselves in illegal ways and then deliberately bribe the rulers with your property so that you may wrongly acquire the property of others.*<sup>403</sup>

*Believers, do not exchange your property in wrongful ways unless it is in trade by mutual agreement...*<sup>404</sup>

According to these two verses, Almighty God forbids the unlawful use of another's property. They also indicate that people's rights and their property are safeguarded under Islam, and this constitutes a rule that shall not be violated.<sup>405</sup> The Grand Mufti of Oman has publicly pronounced via a public speech disseminated on YouTube that Islam forbids imitation and counterfeiting in trading<sup>406</sup> Accordingly, from a religious perspective, legitimate labour generated through the effort of a creator or inventor must be respected. Therefore, when this Islamic rule is applied in the context of IP rights, it prohibits the use of trademarks without the consent

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<sup>403</sup> Muhammad Sarwar, *The Holy Quran, Arabic Text with English Translation* (Islamic Seminary 2001) (002:188).

<sup>404</sup> Ibid, at 4:029.

<sup>405</sup> Nasser Al-Ghamdi. 'The Protection of Intellectual Property in Islamic Jurisprudence and Economic Implications' (Third International Conference on Islamic Economics Umm Al Qura University in Makkah 31 May 2005) 44.

<sup>406</sup> AL Harthy, 'The Question of Dhikr's society' in Omani TV Official channel (ed) (Muscat 2015).

of the owner, and companies cannot copy software without the consent of the right holder. This means the use or sale of copied software is prohibited by religious reference.<sup>407</sup> Consequently, this exploration shows that Islam condemns deceitful and unfair trade practices including IP rights infringements.

#### **4.2.3 Sharia law and the preservation of property through its circulation (*rawaj*)**

Sharia law seeks the protection of property via its circulation. In other words, property should be circulated among the widest numbers of people in society without causing any harm to the legitimate owner.<sup>408</sup> This concept does not appear to have a Western equivalent, as is the case for unfair trade practices. In this regard, the Quran expressly indicates that objective by stating that:

*Whatever God grants to His Messenger (out of the property) of the people of the towns, belongs to God, the Messenger, the kinsfolk, the orphans, the destitute and to those who may become needy while on a journey, so that it will not circulate only in the hands of rich ones among them. Take only what the Messenger gives to you and desist from what he forbids you. Have fear of God; God is severe in His retribution.*<sup>409</sup>

Indeed, in Islamic law, an essential component of wealth safeguarding is circulation of wealth. It promises a balance between cultural need and

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<sup>407</sup> Saif AL hadi, 'The Question of Dhikr's Society' in Omani TV Official channel (ed), (Muscat 2013)

<sup>408</sup> Asyraf Wajdi Dusuki and Said Bouheraoua. 'The Framework of Maqasid Al-Shari'ah and Its Implication For Islamic Finance' (2011) 2(2) Islam and Civilisational Renewal 325.

<sup>409</sup> Muhammad Sarwar, *The Holy Quran, Arabic Text with English Translation* (Islamic Seminary 2001) (59:7).

sustainable economic growth. In order to achieve this, Sharia determines a method that equalizes personal ownership of property and reasonable access of the public to the owner of wealth.<sup>410</sup> This principle appears to have much in common with the rationale of the existence of formal IP rights, namely to encourage and support creativity and innovation to benefit the public and for the creators/inventors to profit before their creation falls into the public domain to be shared by the public for free. Further, this Sharia formula can be directly applied to IP rights protection, insofar as it suggests the balance between the exclusive right of IP owner and fair access of the public to their property. This formulation can be examined in measures which include, for example;

- (1) **Copyrights:** Copyrights provide several mechanisms that function to preserve wealth through its circulation such as protecting the expression rather than the idea, so an individual has the right to use the other's idea without any restriction. If an author creates a book, another party can use the idea (knowledge) to create their own version or expression. In addition, the exclusive rights of an author are restricted by what is known as 'exceptions and limitations': for educational reasons, reporting news etc. Furthermore, the copyrighted subject matter is not permanent but is limited by time mechanisms, after which it will be in the public domain.<sup>411</sup>
- (2) **Patents:** Patents operate various mechanisms that aim to protect wealth through its circulation where the inventor is required to fully disclose patent information. This information or property can be used by a third party to develop their own ideas. In addition, a patent is not permanent but limited by time

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<sup>410</sup> Asyraf Wajdi Dusuki and Said Bouheraoua, *The Framework of Maqasid al-Shari'ah and Its Implication for Islamic Finance*, vol 2 (Pluto Journals 2011) 325–326.

<sup>411</sup> See Section 3.4 above.

and usually ends after the expiry of 20 years from the application date. Furthermore, a third party cannot use protected patent rights without the owner consent.<sup>412</sup>

- (3) **Trademarks:** Trademark systems protect an owner's IPR when it circulates in the market, where it prevents a third party from using a registered trademark without the owner's consent, and protects consumers from imitated and counterfeited products.<sup>413</sup>

In summary, Islamic law provides three key religious rules that support the aims of IPRs protection: firstly, the rights of a creator or inventor to have their invention rights balanced against the public use of the invention; secondly, the need for a legitimate IP trade which aims to protect IP from harmful practices; and, thirdly, the principle of the preservation of wealth through its circulation to distribute the financial benefits of IP rights which flow from the first creator to the public. It is clear that in essence Islamic law, which applies to Oman, supports the system of protecting IP rights in general, on a similar basis as for IP protection developed by Western scholars, discussed in Chapter 2.<sup>414</sup>

However, under Islamic law the scope of IP protection can differ from the Western point of view. Consequently, the key points of difference will be the subject of next section, which will examine the extent to which Islamic law can regulate the scope of Western concepts of IP law which underpin the Omani national IP law framework.

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<sup>412</sup> See Section 3.5.1 above.

<sup>413</sup> See Section 3.5.1 above.

<sup>414</sup> See Section 2.2.1 above.



## **4.3 The power of Islamic law culture in regulating the scope of Western IPR**

### **4.3.1 Overview**

Intellectual property systems (copyright, patents and trademarks) comprise exclusions from protected subject matter and/or restrictions of the rights of IP holder.<sup>415</sup> In particular, IPRs cannot be registered, enforced or used if they are excluded on the basis of public order or public policy considerations. These areas are in themselves grounded in the wider concept of cultural norms. According to Johanna Gibson, it is possible to interpret the exceptions arising from public order and morality under IPRs by the way of contributing to wider ethical aspect established under the law, which means according to national culture.<sup>416</sup> These exceptions are based on logical reasons which seek to achieve:

*ethical social and developmental concerns, introducing a dynamic of legal duties in return for the constraints on the individual liberties of users accessing the public good of knowledge. Furthermore, the exception to patentability for reasons of morality and public order introduces 'an inherent symmetry' between the rights introduced by the patent system and the social duties to provide solutions of collective interest and acceptability. the accountability to the moral order or public morality engages, to a limited extent, collective agreement on the desirability of an invention.*<sup>417</sup>

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<sup>415</sup> See Chapter 3.

<sup>416</sup> Johanna Gibson, *Intellectual Property, Medicine and Health: Current Debates* (Ashgate 2009) 93.

<sup>417</sup> *ibid.*

There is an inherent ambiguity within the terms of both the public order and the morality exclusions under the IP system. The extent of their application depends on the domestic culture and the experiences of member nations.<sup>418</sup> With regard to the historical foundations of this exclusion, the existence of academic literature is limited in this context. So, the next section will examine both the public order and morality terms in order to discover whether there are clear definitions that can show a positive impact on Omani culture.<sup>419</sup>

### **4.3.2 The concept of 'IP public order' and morality**

This section will examine both *ordre public*, or 'public order', and morality in order to find out whether there are clear definitions in this context.

#### **4.3.2.1 The concept of IP public order**

The notion of *ordre public* is derived from French law and is difficult to translate into English. As a result, this original French phrase is utilized in the TRIPS Agreement.<sup>420</sup> There is a different legal definition of public order or *ordre public*. It is essential to look at these definitions; they could help to find the requirements of this term. A broader explanation suggests the equivalence of *ordre public* and 'public order' or 'public policy'.<sup>421</sup> However, a narrower interpretation of *ordre public* suggests that it expresses more the social structures issues which can threaten the community, for example issues which bring undesirable effects on the

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<sup>418</sup> The European Court of Justice supports this concept. It states 'that public policy was a territorial concept that may evolve over time'; see *Yvonne Van Duyn v Home Office* [1974] ECR, Case 41/74.

<sup>419</sup> The evolution of public order and morality in the context of this thesis will be from the legal and Islamic points of view and it will not examine the philosophical Western theories in ethics.

<sup>420</sup> United Nations Conference on Trade and Development and International Centre for Trade and Sustainable Development, *Resource Book on TRIPS and Development* (CUP 2005) 375.

<sup>421</sup> Åsa Hellstadius. 'A Quest for Clarity: Reconstructing Standards for the Patent Law Morality Exclusion' (PhD thesis, Stockholm University 2015) 162.

structure of civil society.<sup>422</sup> Gervais also stresses that the term *ordre public* 'concerns the fundamentals from which one cannot derogate without endangering the institutions of a given society'.<sup>423</sup> When the UK attempted to implement this commitment of the Strasbourg Convention (1963), it suggested that the meaning of this term was:

*although the expression includes public order in so far as this related to for example, rioting, the expression primarily covers such matters as good government, the administration of justice public service, national economy policy and the proper conduct of affair in the general interest of the state and society.*<sup>424</sup>

At EU level, the European Patent Office (EPO) has experience in this regard. In its view, *ordre public* relates to the concept of security. It embodies 'the protection of public security and the physical integrity of individuals as part of society and the protection of the environment'.<sup>425</sup> In Arabic literature, there are several interpretations of the term public policy stated by legal experts who try to define it. For example, it is a set of rules and regulations which is necessary for the protection the structure of society in which individuals cannot disagree or change, because they have been implemented for reasons which are over individual and private interests.<sup>426</sup> In his definition, Mamdouh Armush

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<sup>422</sup> United Nations Conference on Trade and Development and International Centre for Trade and Sustainable Development, *Resource Book on TRIPS and Development* (CUP 2005) 375.

<sup>423</sup> Daniel Gervais, *The TRIPS Agreement: Drafting History and Analysis* (3rd edn, Sweet & Maxwell/Thomson Reuters 2008) 343.

<sup>424</sup> MAL Banks, *The British Patent System. Report of the Committee to Examine the Patent System and Patent Law* (1970) 68; see also Daniel Gervais, *The TRIPS Agreement: Drafting History and Analysis* (3rd edn, Sweet & Maxwell/Thomson Reuters 2008) 343.

<sup>425</sup> *ibid.*

<sup>426</sup> Abdullah Al-Otaibi, *Public Order in the Muslim State* (Treasures Sheville 2009) 50; he cited from Mustafa Arjaoui, *General Theory of Law* (Dar Al Manar 1986) 341–342.

says that the assessment of public policy must be according to the social principles of such countries which are based on their politics, religion, economy, morality and sociality. One interpretation stresses that the meaning of public policy can be different from one time to other.<sup>427</sup>

Therefore, from the above explanations of public policy it appears that there is an ambiguity of this term and an absence of a standard by which it is important to demonstrate the process of its assessment. According to Al-Otaibi, the term public order is based on two criteria, which cannot be separated from the public interest and are not constant on one particular style. The first criterion is based on the 'normative concept' and the second on the 'relativity idea'. The normative concept means that public order is based on the public interest, which inspires and is taken from society. Therefore, the law must be expressed according to the structure of society. In other words, it is a mirror of society. Thus, the criterion of assessment of public order must be based on an objective standard: it takes its reality as individuals use it, not as it must be. In term of the relativity concept, this varies from one place or time to other. What is public order in one nation may be different in another.<sup>428</sup> For example, a body in Saudi Arabia cannot register a trademark related to Class 33, 'Alcoholic beverages', which is against Islamic view,<sup>429</sup> while in the UK the owner can enjoy the protection of this mark. Consequently, what is the concept of morality?

#### **4.3.2.2 The concept of morality**

The nature of the idea of morality is wide-ranging and ambiguous. It is an unclear notion which is normally assumed to rely on the collective

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<sup>427</sup> Abdullah Al-Otaibi, *Public Order in the Muslim State* (Treasures Sheville 2009) 50.

<sup>428</sup> *ibid*, at 52–53.

<sup>429</sup> David Price, *The Development of Intellectual Property Regimes in the Arabian Gulf States: Infidels at the Gates* (Routledge 2009).

beliefs of a society.<sup>430</sup> At the EU level, the EPO Board of Appeal has explained that morality is linked to the belief that particular conduct is right and normal while other conduct is immoral or unacceptable. This belief originated from the accepted norms that are deeply inherent in a certain culture. For the purposes of the EPO, this culture is the culture rooted in European community and civilization.<sup>431</sup> The TRIPS notion of morality appears compatible with the European point of view, in as much as the notion is naturally different and therefore the difficulty is to determine its contents more generally. This approach is usual under TRIPS's purpose in this particular area, specifically its adaptation into domestic law.<sup>432</sup> In addition, Hellstadius states:

*From the guiding principles found both in the WTO and EPO context, the common denominator is that the concept of morality is relative to the values prevailing in a society. For the purposes of TRIPS, morality depends exclusively on collective beliefs that naturally vary between societies; depending more on cultural beliefs, religious values and historical perceptions than geographical borders.*<sup>433</sup>

Furthermore, one interpretation of morality is that it is the set of ethical rules which are used to manage a society in a particular place and era.<sup>434</sup> This explanation gives each culture certain characteristics based on relative standards. Other understandings link morality to rules that people must follow, which are the result of inherited beliefs, customs and religion that have impacted on society.<sup>435</sup>

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<sup>430</sup> Åsa Hellstadius, 'A Quest for Clarity: Reconstructing Standards for the Patent Law Morality Exclusion' (PhD thesis, , Stockholm University 2015) 163.

<sup>431</sup> *ibid.*

<sup>432</sup> *ibid.*

<sup>433</sup> *ibid.*, 164.

<sup>434</sup> Abdullah Al-Otaibi, *Public Order in the Muslim State* (Treasures Sheville 2009) 60.

<sup>435</sup> *ibid.*

The nature of the IP public order and morality idea is unclear insofar as it is dependent on culture and place; moreover, the notion of public policy can be broader than morality. Therefore, it can be claimed that some cultures can have a standard that might be helpful in assisting the exceptions under IP system. In particular, the above analysis demonstrates that the concept of public order and morality can be linked to the legal culture of certain nations: for example, the legal culture in Oman is regulated under Islamic law.

The integration of public order and morality into IP system can be both efficient and effective. It could help to bring international agreements into domestic law and for them to be in line with national culture and values. To properly discuss the roles of public order and morality exclusions, investigations at the international and domestic levels must be undertaken to identify the public order and morality clause of IPRs, in particular the system of copyright, patents and trademarks.

#### **4.3.3 The roles of public order and morality in the IP system internationally and domestically**

Although many domestic laws have been enacted to control state or local concepts of public order and morality, these are generally restricted to regulate the behaviour of those who the subject to them.<sup>436</sup> However, international IP agreements and conventions have established the rules for the protection of IPRs on the basis of the public order perspective, which may respect such national culture. The next section will identify the public order and morality clause under IPR and, in particular, the system of copyright, patents and trademarks at the international and domestic levels in order to achieve the aim of the section.

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<sup>436</sup> Marc J. Randazza, 'Freedom of Expression and Morality Based Impediments to the Enforcement of Intellectual Property Rights' (2016) 16(1) Nevada Law Journal 108.  
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#### **4.3.3.1 Copyright protection and 'the public order and morality clause'**

Article 17 of the Berne Convention, although not in explicit terms, gives governments the right to reject copyright protection for public order and/or morality reasons. It states that:

*The provisions of this Convention cannot in any way affect the right of the Government of each country of the Union to permit, to control, or to prohibit, by legislation or regulation, the circulation, presentation, or exhibition of any work or production in regard to which the competent authority may find it necessary to exercise that right.*<sup>437</sup>

This right to enact measures for the sake of public order and morality has been approved by the WIPO Guide to the Berne Convention and the WTO Panel.<sup>438</sup> This Article 17 refers mainly to censorship, by which the government has the authority 'to control, or to prohibit' the 'circulation, presentation, or exhibition'<sup>439</sup> of any work or production, which includes the right of censorship for sake of public order.<sup>440</sup> Therefore, Omani copyright law<sup>441</sup> provides protection for the types of work contained in Article 2 of the Berne Convention.<sup>442</sup> The CNRL<sup>443</sup> stipulates that the

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<sup>437</sup> Berne Convention, art 17.

<sup>438</sup> It states that 'the WIPO Guide to the Berne Convention, that explained that Article 17 relates mainly to censorship and public order'; see World Trade Organization Panel, 'China-Measures Affecting the Protection and Enforcement of Intellectual Property Rights' (World Trade Organization, 26 January 2009) WT/DS362/R, para 17.126.

<sup>439</sup> WIPO states that 'presentation may be understood as broad enough to refer implicitly to all non-copy-related rights (public performance, broadcasting, communication to the public by wire), and, of course, "circulation" (a term which seems to mean distribution after the first sale of copies) and "exhibition", if covered by any right in a given country, are to be subject to the obligation to grant national treatment;'; see Mihály Ficsor, *Guide to the Copyright and Related Rights Treaties Administered by WIPO and Glossary of Copyright and Related Rights Terms* (WIPO 2004) 96, para, 17.2.

<sup>440</sup> *ibid*, at 96, para 17.3.

<sup>441</sup> CNRL, R.D. 65/2008.

<sup>442</sup> CNRL, R.D. 65/2008, 2.

<sup>443</sup> R.D. 65/2008.

authors have two kinds of rights, namely economic rights and moral rights.<sup>444</sup> In addition, there are no conditions under copyright law in Oman which state that the types of works that are not protectable under Article 2 are those that arise regarding cultural issues or against public order and morality.<sup>445</sup>

However, the Omani Law of Press and Publications<sup>446</sup> restricts some economic rights of the right holder by stating that, if the work or the publication of such works goes against public order, morality and Islamic principles by publishing work through visual media, audio-visual means or the use of the internet or information technology, then<sup>447</sup> the authorizing ministry has the rights to take legal action against any violators.<sup>448</sup> The types of work which are explicated under this law are defined in this way: 'Publications: means all writings, drawings or photographs or other copies'.<sup>449</sup> This means that the law does not restrict all types of work which fall under copyright law. This means that copyright ownership exists but dissemination is restricted/censored by the above article.<sup>450</sup>

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<sup>444</sup> See Section 3.4.2 above. While economic rights are those rights which assist the writer in the commercial exploitation of their creation, moral rights are those rights that offer protection for the personality of the writer and the integrity of their work. Both rights have been established by the Berne Convention and TRIPS.

<sup>445</sup> The clause of public order and morality is less explicit on enforcement in the context of copyright protection, but under the system of patent and trademark it is more explicit. This is principally because the protection of copyright depends on the creation instead of permitting any dependency upon registration. Consequently, this automatic protection makes the member states more obliged via this agreement than they are in other aspects of IPRs such as patents and trademarks, where a layer of administrative procedures exist between the IPR right holder and the required protection. See—J. Randazza, 'Freedom of Expression and Morality Based Impediments to the Enforcement of Intellectual Property Rights' (2016) 16(1) Nevada Law Journal 126.

<sup>446</sup> R.D. 84/48).

<sup>447</sup> R.D. 49/84.25.26.

<sup>448</sup> Employees who have the status of judicial police (R.D. 49/84.71).

<sup>449</sup> R.D. 49/84.1.

<sup>450</sup> The right of censorship can be practised by the Omani government; for example, Article 21 of CPA requires that companies respect religious values, customs and traditions when they circulate any goods or services to consumers. So if owners of



#### **4.3.3.2 Patents and the 'public order and morality clause'**

According to Article 27.2 TRIPS:

*Members may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect ordre public or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by their law.*

The implementation of this provision under domestic law means that member states may, in certain circumstances, reject a patent if it is important to protect the state's social interests. The language which has been used under this provision is not mandatory language, and member states have the choice to stipulate exclusion under their national law; it is a provision acknowledging a broad spectrum of exclusion, built on 'ordre public or morality' concerns. This means that there is a lacuna which can be interpreted in different approaches.<sup>451</sup>

Hellstadius stated that this provision is based on several criteria and allows a member nation to meet its requirements under TRIPS, where they are able to exclude an invention from patentability. However, these criteria, which a member state may rely on to justify the deprivation of patentability, suffer from a lack of clarity and are ambiguous. In principle, this article can be separated into three or four factors (depending on national interpretation) that deal with the application of exclusion.<sup>452</sup>

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copyrighted work would like to trade in their IP right, they should take into consideration Omani public order under this article, which will be analysed in the next chapter, Section 5.2.3.

<sup>451</sup> Åsa Hellstadius. 'A Quest for Clarity: Reconstructing Standards for the Patent Law Morality Exclusion' (PhD thesis, Stockholm University 2015) 157.

<sup>452</sup> *ibid*, at 157.

Firstly, an exception according to Article 27(2) cannot be applied unless it is required to prevent an invention's commercial exploitation. Consequently, this condition cannot be applied when it is for non-commercial uses of the invention, for example for the purpose of scientific research. Secondly, this article introduces the criterion called the 'necessity test', which is used in the assessment of whether the protection of social interest is justified. The article states that prevention of 'commercial exploitation' is 'necessary to protect order public or morality'. Thirdly, Article 27(2) TRIPS states that 'the exclusion from patentability should not be made merely because the exploitation is prohibited by a Member state's national law'. This qualification clarifies that the assessment of the 'commercial exploitation' of the invention is essential in order to protect *ordre public* or morality rather than relying on domestic laws.<sup>453</sup>

The power of the state to provide for exclusion from patentability has been implemented as follows in Omani domestic legislation.

In Oman, Article 2 stipulates that patent protection should not be given for 'Inventions, the prevention within the territory of Oman of the commercial exploitation of which is necessary to protect order public and morality'.<sup>454</sup> Unfortunately, this law does not give any indication how the concept of public order and morality within patent system can be interpreted. Similar issues can arise under this law within the trademark section under LIPR,<sup>455</sup> which will be analysed in the following section.

#### **4.3.3.3 Trademarks and the 'public order and morality clause'**

Oman has international obligations in terms of the protection and registration of trademarks. For example, Article 6*quinquies*(3) of the

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<sup>453</sup> *ibid*, at 157.

<sup>454</sup> LIPR, R.D. 67/2008.

<sup>455</sup> R.D. 67/2008.

Paris Convention originally stipulated: 'Trademarks covered by this Article may be neither denied registration nor invalidated except ... when they are contrary to morality or public order and, in particular, of such a nature as to deceive the public'.<sup>456</sup> The concept of public order and morality was set out in the 1883 version, which set out the ground rules for denial or invalidation of a trademark registration. According to Bodenhausen, 'A mark contrary to morality would, for example, be a mark containing an obscene picture. A mark contrary to public order would be a mark contrary to the basic legal or social concepts of the country concerned'.<sup>457</sup> This means that a mark should not be used against such cultural values. It should be noted that 'the reference [in the above article] is to the mark itself, and not to associated goods or service'.<sup>458</sup> The above article was implemented in Oman under Article 38(4)(c)(3).<sup>459</sup>

Consequently, the question of public order and morality can create tensions when read alongside Article 15(4) of TRIPS, which states that 'The nature of the goods or services to which the trademark is applied shall in no case form an obstacle to registration of the trademark'.<sup>460</sup>

It suggests that when used in relation to products or services, for example alcohol or tobacco products, which are against Islamic rules, these may not be refused registration because of the goods with which it is related. The tension can be resolved by interpreting Article

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<sup>456</sup> Paris Convention, art 6(3).

<sup>457</sup> Georg Hendrik Christiaan Bodenhausen, *Guide to the Application of the Paris Convention for the Protection of Industrial Property, as Revised at Stockholm in 1967* (WIPO 1968) 116.

<sup>458</sup> United Nations Conference on Trade and Development and International Centre for Trade and Sustainable Development, *Resource Book on TRIPS and Development* (CUP 2005) 234.

<sup>459</sup> LIPR, R.D. 67/2008.

<sup>460</sup> It should be noted that Oman had implemented this article under IPRL, Article 36(2)(B) but it has been modified by new Article 2(2), which suggests ensuring that registration may not occur if the use of a trade mark is on goods and services which are against public order and morality. This means that the registration can be refused or invalidated on the ground of public order.

*6quinquiesley*, in which member states, of which Oman is one, can argue that they have the right to refuse the registration of a sign used on such goods (which constitute an infringement of public order and morality) not because of the goods but because 'promotion of the mark itself has adverse consequences for the public; that is, the mark "as such" is injurious to the public order because it encourages a type of behaviour known to cause serious injury and the behaviour is not linked or limited to the product of a particular enterprise.'<sup>461</sup>

It should be noted that Oman implemented this article under the LIPR,<sup>462</sup> Article 36(2)(B), but this has been modified by a new Article 2(2) of the GCCUTML, which suggests that registration may not occur if the use of a trademark on goods and services is against public order and morality. This means that the availability of exclusive trademark rights is under the assessment of the IP Office, which can refuse an application, or alternatively a court can invalidate a registration on the grounds of public order and morality. This means it may be take into consideration any possible use of the mark, which should not be against public order and morality.<sup>463</sup> The role of the IP Office and court in interpreting this provision will be examined in the next chapter.<sup>464</sup>

It may be that there are those who find the arguments related to public order and morality unconvincing, but the crucial factor is that, even if the

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<sup>461</sup> United Nations Conference on Trade and Development and International Centre for Trade and Sustainable Development, *Resource Book on TRIPS and Development* (CUP 2005) 234.

<sup>462</sup> R.D. 67/2008.

<sup>463</sup> The flexibility in term of relating to denials of trademark registration which is contrary to morality or public order was not changed under the TRIPS agreement in 1994, which was adopted by Oman. Article 15(2) of the TRIPS Agreement stipulates that member states may refuse trademark registration on 'other grounds' set out in Article 15(1) – such as a 'lack of distinctiveness of sign, lack of distinctiveness acquired through use, lack of visual perceptibility', stipulating that 'they do not derogate from the provisions of the Paris Convention (1967)'. So members stats can continue to enact laws prohibiting the registration of offensive trademarks without violating their international commitments under the TRIPS Agreement.

<sup>464</sup> See Section 5.2 below.

government allowed the registration of any mark or service, it is still entitled to ban or limit the market of that product on public order grounds. So, an alcoholic beverage might receive a trademark but the marketing and sale of the beverage could be limited or banned according to a broader interpretation of the law.

This interpretation has been supported by a former director-general of the WIPO, which administrates the Paris Convention:

*Article 7 [Paris Convention, which is reproduced in Article 15(4) of TRIPS] does not address the question of permission to use a registered mark. Therefore, countries party to the Paris Convention remain free to regulate the sale of certain types of goods and the fact that a mark has been registered for such goods does not give the right to the holder of the registration to be exempted from any limitation of using the mark which may be decided by the competent authority of the country where the mark is registered.*<sup>465</sup>

Under this argument, if the registration of a trademark is allowed regardless of the nature of goods and services, but the use of that mark is regulated, it suggested that a priority has been placed on the perspective of public order. In Oman, the sale of products and services are well regulated to accord with Omani culture and Islamic values. As

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<sup>465</sup> Alberto Alemanno and Enrico Bonadio, 'Do You Mind My Smoking? Plain Packaging of Cigarettes Under the TRIPS Agreement' (2011) 10(3) *The John Marsh Review of Intellectual Property Law* 451, 469–468 <<https://hal-hec.archives-ouvertes.fr/hal-00588701>> accessed 15 October 2017. He cited from Neil E. Collishaw, *Tobacco Control and the Paris Convention for the Protection of Industrial Property*, (1996) 5 *Tobacco Control* 165 (citing a letter from A. Bogsch, former WIPO director-general, to director-general of the World Health Organization on 22 February 1995); see also Letter from Ludwig Baeumer, Dir. Indus. Prop. Law Dept., to Ralph Oman (31 August 1994).

has been presented,<sup>466</sup> these regulations fall under the Consumer Protection System R.D. 53/2011. For example, under Article 20, companies are required to respect religious values, customs and traditions when they circulate any goods or services to consumers.<sup>467</sup> This means that the use of registered trademark can be restricted. This provision will be explored in the next chapter, which looks at direct IP enforcement policy and how it is activated to enhance Islamic legitimate IP trade.<sup>468</sup>

In summary, the above analyses identified certain aspects of the public order and morality clauses under IPR, in particular the system of copyright, patents and trademarks at the international and domestic levels. As identified earlier, the concept of public order and morality may be linked to the legal culture in Oman, which regulates under Islamic law. The existence of this provision under international agreements and Omani IP law give the Omani component authority<sup>469</sup> the power to regulate IP right according to the country's culture. Consequently, in the Omani legal system, the public order perspective must be discussed from a religious viewpoint in order to find a standard that can be used to examine several IP issues, which will be helpful for IP office or court or any component authority as a guideline. In addition, this standard can also be applied in some Islamic counties which have a similar IP system, such as Saudi Arabia and others.

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<sup>466</sup> See Section 4.3.3.1 above: 'Copyright protection and "the public order and morality clause"'.  
<sup>467</sup> CPA, R.D. 66/2014.

<sup>468</sup> See Section 5.2.3 below.

<sup>469</sup> IP institutions which will be subject of next chapter, such as the IP Office.

#### **4.3.4 Islamic law as a way of interpreting the IP public order and morality clause**

There is always a need in each group for a system of rules governing the behaviour of individuals that stipulates their rights and prohibitions. This system controls the individual and will favour collective necessities determined by the priorities of each group, according to its philosophical, moral and religious values. Individuals will move within the framework of this system without the possibility of violating it. So, the idea of public order and morality rules came to control these individuals and can restrict individual rights according to the country's cultural understanding and values.<sup>470</sup> It may affect domestic IP protection or may restrict its use.

The concept of public order and morality is very broad and ambiguous in relation to the IP, and Islamic legal scholars cannot find an accurate definition for it. Therefore, it is important to examine Islamic law in order to find the extent to which it is possible to find a standard which regulates the concept of public order and morality. These standards will be important when assessing the condition of public order and morality in relation to the application of IPRs, as mentioned previously.

##### **4.3.4.1 The concept of IP public order in Islam**

The concept of Islamic public order is based on two original principles: the concept of the divine and the humanitarian. The concept of the divine means 'purpose' and 'source'. According to the 'purpose' idea, Islam guides the lives of all human beings to get a good relationship with Allah (God), the Almighty, to please Him and not to deviate from its Sharia or Islamic law. Allah said,

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<sup>470</sup> Ali Gomaa. 'The Public Order in Islam' <<http://today.almasryalyoum.com/printerfriendly.aspx?ArticleID=303748>> accessed 12 April 2016.

*We have created jinn and human beings only that they might worship Me. I do not expect to receive any sustenance from them or that they should feed Me.*<sup>471</sup> (51: 56–57)

*To your Lord will all things eventually return.*<sup>472</sup>

Muslims believe in Allah as the final destination of all human beings. All targets, humanitarian and social goals are considered to be only as a servant of the highest purpose that seeks the satisfaction of Allah.<sup>473</sup> Furthermore, the other dimension of the divine, interpreted as 'source', indicating a pure approach of the Lord, comes from the inspiration of God which was internal to the Messenger of Allah, peace be upon him.<sup>474</sup> As a result, the Islamic system refers all sources to the word of Allah, which means that governance is to God. This means that the Islamic researcher, or in Arabic *mujtahd*, can detect the rule of Allah in the various IP issues in accordance with the Islamic methodology and its rules.

Humanitarian means that Islam, on the one hand, is a divine message from 'purpose' and 'source' as mentioned above, and on the other hand it is required from the community.<sup>475</sup> The message of Islam targets all human beings and aims to protect them in order to achieve happiness in this world and win bliss in the hereafter. Consequently, it is clear that, by honouring God, human beings are exploiting the universe.<sup>476</sup>

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<sup>471</sup> Muhammad Sarwar, *The Holy Quran, Arabic Text with English Translation* (Islamic Seminary 2001) (51:56–57).

<sup>472</sup> *ibid*, at 53:042.

<sup>473</sup> Imad Tariq Al-bashri. 'Public Order in Islamic Law' (2004) (111) *Journal of Contemporary Muslim*  
<[http://almuslimalmuaser.org/index.php?option=com\\_k2&view=item&id=575:elneza m-el3am](http://almuslimalmuaser.org/index.php?option=com_k2&view=item&id=575:elneza m-el3am)> accessed 12 April 2016.

<sup>474</sup> *ibid*; Muhammad Sarwar, *The Holy Quran, Arabic Text with English Translation* (Islamic Seminary 2001); Al-najm (53:1–4).

<sup>475</sup> Ali Gomaa. 'The Public Order in Islam'  
<<http://today.almazryalyoum.com/printerfriendly.aspx?ArticleID=303748>> accessed 12 April 2016.

<sup>476</sup> *ibid*.



Understanding both of these concepts of public order under Islamic law in general will help to identify its implication as well as the elements of public order in relation to IP under Islam, which may affect domestic IP protection or restrict its use.

**The implication of the concept of the divine and the humanitarian origins IP public order to the legislation of Islam.**

In a similar way to what has been mentioned previously, the philosophical Islamic system is built on two key concepts – ‘divine’ and ‘humanitarian’. As a result, it is important for cultures and societies that accept Islam as a religion to adapt their systems according to philosophical Islamic systems. For example, if the legal system of any nation is the necessities of life, it is crucial for the Islamic societies to adapt their domestic legislation and legal applications on the origin of the philosophical Islamic system.

The question must be asked how there can be a framework of legitimacy within the Islamic law system. The concept of legitimacy is, in fact, relatively new. It has appeared with the emergence of modern nations, which seek to achieve security for its residents.<sup>477</sup> It establishes its legitimacy by issuing basic laws (or a constitution), laws and regulations in order to organize its domestic and external system within the community, individuals, institutions and the state itself. However, the concept of legitimacy in the Islamic law system can be understood in a different way. There is a difference in the structure of the origin of legitimacy under the Islamic system.

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<sup>477</sup> Imad Tariq Al-bashri. ‘Public Order in Islamic Law’ (2004) (111) Journal of Contemporary Muslim  
<[http://almuslimalmuaser.org/index.php?option=com\\_k2&view=item&id=575:elneza-m-el3am](http://almuslimalmuaser.org/index.php?option=com_k2&view=item&id=575:elneza-m-el3am)> accessed 12 April 2016.

The Islamic system is based on a 'divine' concept, where Allah is the owner of creation and the universe. The Quran (Allah's words) organizes comprehensively organizes people's lives. The explanation of regulation in the Quran can be found in the Sunnah of His Messenger (Mohammed). This means that Allah's words are the main basis of all legal provisions and it may affect decision-making in assessing any IP application which requires registration. For example, trademarks and patents or dissemination of copyrighted work can be restricted/censored, as will be analysed in the following section. Therefore, legitimacy according to the Muslim interpretation relies on the concept of the divine. This view of legitimacy and the Islamic regime produces substantial effects.<sup>478</sup> They consider Allah to be the main source of legitimacy and the only reference to the provisions.<sup>479</sup> The consequences of this understanding this doctrine are as follows:

- (1) Religion is the origin, so all laws and regulations must be in line with the nation's religion.<sup>480</sup> As a result, the OBSS contains a clause which makes clear that:

*The State's religion is Islam and the Islamic Shari'a is the basis of legislation.*<sup>481</sup>

The classification of Sharia law as the basis of legislation does not mean it is the main or a principal source of legislation. However, this clause of the OBSS<sup>482</sup> can be considered to be of prescriptive character rather than descriptive character.

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<sup>478</sup> *ibid.*

<sup>479</sup> *ibid.*

<sup>480</sup> Ali Gomaa. 'The Public Order in Islam' <<http://today.almasryalyoum.com/printerfriendly.aspx?ArticleID=303748>> accessed 12 April 2016.

<sup>481</sup> R.D. 101/96.

<sup>482</sup> R.D. 101/96.

(2) The concept of public order must be understood in the framework of Islamic law to be aimed at achieving the social interest.<sup>483</sup> Individuals or companies will enjoy freedom within the limits of what is permitted by Islamic law. It becomes the will of the Islamic system, which is not limited, incomplete or powerless but is a will which has legitimated its control from the concept of the divine and its implications. As a result, free will and its movement have been determined within the framework of these controls and rules or provisions.<sup>484</sup> This concept can affect domestic IP protection or it may be restrict its use.

Therefore, according to above analyses, it appears that IP public order in Islam involves three main elements: firstly, the right of the public, or, in particular, the right of Allah, is to achieve His purposes for human beings, to bring benefit to Him and to maintain rights; secondly, the human being must be understood in terms of the different kinds of rule in Islamic law, to achieve their objective; and, finally, the concept of interest must be understood within an Islamic framework that is designed to protect human beings. The next section examines these elements.

#### **4.3.4.2 Establishing the concept of IP public order under Islamic law.**

The laws and regulations are favourable for the life of human beings, however, if they are not enforced, they cannot be obeyed. For example, the IP laws come to offer protection for creators or inventors and to allow them to get economic values from their creation, so this system cannot

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<sup>483</sup> The concept of interest under Islamic law will be clarified in the following section as including human life, mind, religion, human dignity and property. See section 4.3.4.5 below.

<sup>484</sup> Imad Tariq Al-bashri, 'Public Order in Islamic Law' (2004) (111) *Journal of Contemporary Muslim*  
<[http://almuslimalmuaser.org/index.php?option=com\\_k2&view=item&id=575:elneza-m-el3am](http://almuslimalmuaser.org/index.php?option=com_k2&view=item&id=575:elneza-m-el3am)> accessed 12 April 2016.

succeed in its purpose unless it enforces them through relative organization such as courts. Similarly, there are rules under the Quran which enforce a set of punishments.<sup>485</sup> Therefore, to achieve the rule of Islam, Allah's rights should be taken into consideration and given importance through the implementation of specific acts and avoidance of the forbidden acts, which shall not be contrary to matters relating to the rights or duties of Allah. These provisions and liabilities are called public order, which are considered as being the origins of Sharia and are the most important features for Islamic scholars when they deal with any issues. In addition, there are the five ruling values of Islamic divine law (in Arabic, *al-hukum*), which can be analysed to establish the idea of public order and discover which category fits within the public order idea. As a result, it is important to examine the first element of public order: what is the nature of Allah's commands and what determines who is obligated (in Arabic, these people are *mukalf*). The second element to be examined is the meaning of *al-hukm* (a legal rule) and its classifications. Thirdly, it is important to examine the notion of interest in Islam. Finally, it is important to mention the type of public order sources which Islamic scholars depend on to produce *fatwa* or *al-hukm* (rule or Islamic views). The following are the elements of IP public order: the nature of Allah's commands, ruling in Islam and the concept of interest. These elements can be used by appropriate authorities in decision-making in assessing any IP application which requires registration, e.g. trademarks and patents or where the dissemination of copyrighted work can be restricted/censored.

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<sup>485</sup> Mashhad Al-'Allāf, *Mirror of Realization: God is a Percept, the Universe is a Concept* (Mashhad Al-Allaf 2003) 48.

## 1. The nature of Allah's commands

The nature of Allah's commands to humans are in the range of human capacity. In the Quran, there is no command or order from Allah that humans do not have the ability to perform.<sup>486</sup> So the Muslim who is *mukalf*, male or female, is obligated to obey these commands.<sup>487</sup> The main characteristic of public order or Allah's right is that it must be compulsory by obligating or prohibiting such act. As a result, the individual does not have the choice to neglect the rights of Allah.<sup>488</sup>

## 2. Ruling in Islam

There are the five classifications of ruling in Islam *al-hukm* which target human *mukalf*.<sup>489</sup>

- (1) *Wajeb* (compulsory)
- (2) *Mandob* (recommended or commendable)
- (3) *Mubah* (lawful)
- (4) *Makrooh* (not recommended or abominable)
- (5) *Haram* (forbidden or illegal).

These rulings are driven by Islamic scholars from the main sources of Islam such as the Quran and the Sunnah, which are the traditions built on the Hadith, or words and action, of the Prophet Mohammed, the ijma, which is the consensus on a legal issue, and *qiyas*, which is a type of

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<sup>486</sup> The Quran states that "God demands not from a soul, except what he is able to do" (Qur'an, 2:286). See Rafik I. Beekun and Jamal A. Badawi, 'Balancing Ethical Responsibility among Multiple Organizational Stakeholders: The Islamic Perspective' (2005) 60(2) J Bus Ethics 137.

<sup>487</sup> It is remarkable that the Prophet Mohammed stated that 'three (categories of) people are free from responsibility, the insane until he is sane, the sleeping until he wakes up and the child until his reaching maturity'. See Mohammad Saiful Islam. 'Fundamental Human Rights towards Childhood: Islamic Guidelines Are Unique to Protect the Child', (2015) 4(2) Journal of Asia Pacific Studies 189, quoting from Abu Dawud 4402.

<sup>488</sup> Abdullah Al-Otaibi, *Public Order in the Muslim State* (Treasures Sheville 2009) 38.

<sup>489</sup> Mashhad Al-'Allāf, *Mirror of Realization: God Is a Percept, the Universe Is a Concept* (Mashhad Al-Allaf 2003).

severe analogical reasoning.<sup>490</sup> Consequently, the concept of IP public order can be linked to these five classifications, so below is an analysis for each category.

### **(1) *Wajeb* (compulsory)**

This class would include commitments such as daily prayers, compulsory fasting, *Zakat*<sup>491</sup> etc., which are required of every Muslim who has the capability to perform them.<sup>492</sup> According to this requirement, Muslims do not have a choice to refuse to perform them. They are responsible for the consequences of their acts; for example, according to Islamic scholars, when a Muslim ignores performance of these obligatory behaviours they will be punished in this world and the hereafter. Therefore, *wajeb* could be considered IP public order because the rights of Allah are compulsory,<sup>493</sup> and the agreement which neglects the rights of Allah will be unenforceable and unvalued.

### **(2) *Mandob* (recommended or commendable)**

This *al-hukm* is called *nafileh* or *mstahab* in Arabic. *Mandob* is any action that is recommended but not obligatory. There is no punishment for neglecting these actions, but there is reward for performing them.<sup>494</sup> For example, according to the Quran, 'Believers, if you take a loan for a known period of time, have a just scribe write it down for you'.<sup>495</sup> The meaning of the word of Allah in Arabic indicates that it is *mandob* – recommended but it is not compulsory for the parties. For example, if the

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<sup>490</sup> These sources will be analysed in the next part of this research.

<sup>491</sup> This means that, if IP owner possess a minimum amount of wealth, it must be payable for the poor and needy. See Section 6.5.4.

<sup>492</sup> *ibid.*

<sup>493</sup> Abdullah Al-Otaibi, *Public Order in the Muslim State* (Treasures Sheville 2009) 42.

<sup>494</sup> Mashhad Al-'Allāf, *Mirror of Realization: God Is a Percept, the Universe Is a Concept* (Mashhad Al-Allaf 2003) 52.

<sup>495</sup> Muhammad Sarwar, *The Holy Quran, Arabic Text with English Translation* (Islamic Seminary 2001) (Quran, 2:282).

owner of IP rights agreed with other parties to use that owner's right, it is recommended to document that agreement, but this is not obligatory. The reasons are to protect individuals' rights and their inheritance from contradiction or forgetfulness. Therefore, *mandob* is not considered to be public order because it is missing the main the characteristic of public order in so far as it is not compulsory.<sup>496</sup>

### **(3) *Mubah* (permitted but morally indifferent)**

This command, called *halal* in Arabic ('lawful' in English), is the situation in which Muslims have the authority to make a decision on whether or not to perform any action (considered lawful). This individual liberty has been given by Allah. According to Islamic law, all things in life in their original condition and natural are lawful (*mubah*), except if there is a rule prohibiting such an act.<sup>497</sup> Therefore, this command remains outside the circle of IP public order unless its features are changed to be compulsory by obligating or prohibiting such act.

### **(4) *Makrooh* (discouraged or abominable)**

*Makrooh* is a recommendation for Muslims to avoid an act; for example, in Islam divorce is not recommended according to the Prophet Mohammed (pbuh), who said, 'The most abominable of permissible things in the sight of Allah is divorce'.<sup>498</sup> However, there is a reward when Muslims avoid not doing *makrooh* and there is no punishment. It appears that *makrooh* is in contrast to or against the *mandob*. Therefore, it is missing the main attribute of public order, which is obligation.

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<sup>496</sup> Abdullah Al-Otaibi, *Public Order in the Muslim State* (Treasures Sheville 2009) 42.

<sup>497</sup> Allah said in the Quran: 'He is Who created for you all that is on earth [outside the earth or hidden inside it]'. (Quran, 2:29).

<sup>498</sup> Mashhad Al-'Allāf, *Mirror of Realization: God Is a Percept, the Universe Is a Concept* (Mashhad Al-Allaf 2003) 53.

### **(5) *Haram* (forbidden or prohibited)**

*Haram* is an act that is prohibited under Islam law. Muslims does not have the right to perform such an act because it is prohibited under the Quran and Sunnah.<sup>499</sup> For example, if an individual has agreed with other parties to supply software without the owner's consent, this agreement cannot be enforceable because both parties have agreed to perform or act in a manner which is prohibited under Islamic law.<sup>500</sup> Therefore, the main feature of public order exists under this kind of command because the right of Allah to command individuals not to perform an act makes it compulsory to stop doing such act, so neglecting Allah will be illegal.<sup>501</sup>

In conclusion, it appears that the concept of IP public order cannot be linked to all five rules of Islam and it is only restricted under the rules which have compulsory feature such as *wajeb* or *haram*. These rules do not give human beings a choice to refuse them or neglect them because they are considered a right of Allah.<sup>502</sup>

### **3. The concept of interest**

At this juncture, the third element of public order under Islamic law will be examined, namely the 'concept of interest'. The interest in Islam can be divided into the essential or fundamental interests for human being which aim to protect five main necessities (human life, mind, religion, human dignity, property).<sup>503</sup>

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<sup>499</sup> *ibid*, at 54.

<sup>500</sup> According to Manshhad, examples of *haram* include 'killing, theft, unlawful sexual activity or adultery, drinking alcohol, and gambling': *ibid*, at 54. It should noted that some issues linked to IP will be examined in this chapter.

<sup>501</sup> Abdullah Al-Otaibi, *Public Order in the Muslim State* (Treasures Sheville 2009).

<sup>502</sup> Yusuf Al-Qaradawi, *The Lawful and the Prohibited in Islam (al-halal wal haram fil Islam)* (American Trust Publications 1999) 18.

<sup>503</sup> Ali Gomaa. 'The Public Order in Islam' <<http://today.almasryalyoum.com/printerfriendly.aspx?ArticleID=303748>> accessed 12 April 2016.



Essential interests aim to respect the right of Allah and improve the morals of human beings. Therefore, the objective of Islam is to protect five main necessities, according to Abū Ḥāmid al-Ghazālī, who said:

*The very objective of the sharīah is to promote the well-being of the people, which lies in safeguarding their faith (dīn), their lives (nafs), their intellect ('aql), their posterity (nasl), and their wealth (ma'l). Whatever ensures the safeguarding of these five serves public interest and is desirable, and whatever hurts them is against public interest and its removal is desirable.*<sup>504</sup>

Firstly, human life is the greatest gift of Allah, so nobody has the right to infringe it, even the human himself.<sup>505</sup> Humans have been created and honoured by Allah in order to perform His duties on Earth. Allah says: 'do not push yourselves into perdition'.<sup>506</sup> For example, IP protection cannot be granted for inventions or created work that can harm human beings. Second, Islam's aim is to protect the religion, which is considered the main reformer for every aspect of human life.<sup>507</sup> So it is natural to offer protection for it under domestic laws or constitutions, for example in Arab countries such as Oman and Saudi Arabia; furthermore, Islam also aims to protect the minds of human beings and prevent their minds from being

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<sup>504</sup> Marc J. Randazza. 'Freedom of Expression and Morality Based Impediments to the Enforcement of Intellectual Property Rights' (2016) 16(1) Nevada Law Journal 317; he cited from Abū Ḥāmid al-Ghazālī, *al-Mustaṣfā min 'ilm al-uṣūl* (al-Maktabah al-Tijāriyyah 1937), 1:139–140.

<sup>505</sup> Mohammed AL-Zoheily. 'The Purposes of the Islamic law and Human Rights Basis' <[http://library.islamweb.net/newlibrary/display\\_umma.php?lang=&BabId=3&ChapterId=3&BookId=287&CatId=0&startno=0](http://library.islamweb.net/newlibrary/display_umma.php?lang=&BabId=3&ChapterId=3&BookId=287&CatId=0&startno=0)> accessed 21 April 2016.

<sup>506</sup> Muhammad Sarwar, *The Holy Quran, Arabic Text with English Translation* (Islamic Seminary 2001) 26; Rana Zamin Abbas and others, 'Managerial Ethics in Islamic Framework' (2012) 3(7) International Journal of Business and Social Science 101, 104; see also Soorat Al-Baqarah, 2:195.

<sup>507</sup> Mohammed AL-Zoheily. 'The Purposes of the Islamic law and Human Rights Basis' <[http://library.islamweb.net/newlibrary/display\\_umma.php?lang=&BabId=3&ChapterId=3&BookId=287&CatId=0&startno=0](http://library.islamweb.net/newlibrary/display_umma.php?lang=&BabId=3&ChapterId=3&BookId=287&CatId=0&startno=0)> accessed 21 April 2016.

assaulted. It protects its foundation, the ability to think, freedom and creativity, even in matters of faith.<sup>508</sup> According to the Holy Quran:

*We have honoured the sons of Adam; provided them with transport on land and sea; given them for sustenance, things good and pure; and have conferred on them special favours, above a great part of our creation.*<sup>509</sup>

For example, IP protection cannot be given for something that can affect the minds of human beings, such as alcohol (this issue will be clarified when applying IP standards in the following section). In addition, Islam aims at the preservation of human rights in dignity. For example, Islam does not allow racial discrimination in any form. Finally, property is the basis of life, and Islam gives importance to it. Allah makes mankind guardians over it and permits them to earn from it by legal methods and enjoy it by using it moderately.<sup>510</sup> This means that any conduct that leads to undermining protected IPRs can be prohibited under Islamic law, for example infringing protected IPRs, which considered as physical property.

As has been presented, there are two dimensions of interest in Islam, which are considered a framework and general standard to a moral filter instrument by providing different levels of judgements (essential interest and complementary interests).<sup>511</sup> They can be used by IP examiners or courts to determine ethical concerns. They are flexible, and, according Dusuki and Bouheraoua,

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<sup>508</sup> *ibid.*

<sup>509</sup> Abdullah Yusuf Ali and Susan Smith, *The Qur'an: Translation* (Tahrike Tarsile Qur'an 2001) 181; El-Seoudi, Abdel Wadoud Moustafa Moursi, 'Human Rights in Islamic law' (2012) 7(5) *Social Sciences (Pakistan)* 684 (Quran 17:70).

<sup>510</sup> Mohammed AL-Zoheily, 'The Purposes of the Islamic law and Human Rights Basis' <[http://library.islamweb.net/newlibrary/display\\_umma.php?lang=&BabId=3&ChapterId=3&BookId=287&CatId=0&startno=0](http://library.islamweb.net/newlibrary/display_umma.php?lang=&BabId=3&ChapterId=3&BookId=287&CatId=0&startno=0)> accessed 21 April 2016.

<sup>511</sup> Asyraf Wajdi Dusuki and Said Bouheraoua, *The Framework of Maqasid al-Shari'ah and Its Implication for Islamic Finance*, vol 2 (Pluto Journals 2011) 328.

*This [the levels] reflects the dynamism of the pyramid of maṣlaḥah in assisting decision-making processes within different contexts, time and space. If, for instance the circumstances change, inviting firms to respond and consequently reconsider their roles within society, this will necessitate them to re-align all their business institutions (such as mission, vision, policy deployment, decision-making, reporting, corporate affairs, etc.) to the new maṣlaḥah so long as it does not contradict the principles outlined by the sharīah.*<sup>512</sup>

IP offices and courts (other IP institutions)<sup>513</sup> are assumed to protect Islamic public order, consisting of the essential necessities (human life, mind, religion, human dignity, property) in general. For example, IP offices must accept the registration of trademarks or invented ideas (patents) which aim to safeguard the values of religion or other Islamic essential needs. Namely, they (the court or IP Office) have to respect these religious and moral responsibility to avoid engaging any companies in unlawful IP activities that contradict Islamic law and can neglect the public interest and the right of Allah.<sup>514</sup>

In summary, IP public order under the Omani legal system is the right of Allah and is embodied in Islamic law. These rights are demanded by Allah from the individual in order to achieve their interests. The right of Allah has been stipulated under the Quran and Sunnah; there are other sources that Islamic scholars can rely on in order to judge whether such an act is, for example, obligatory to obey or whether it is recommend or not. Therefore, it is important to mention the type of public order sources which Islamic scholars depend on to produce *fatwa* or *al-hukm* (rule or

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<sup>512</sup> *ibid.*

<sup>513</sup> See Section 5.2 below.

<sup>514</sup> This issue will be examined in Section 5.2.

Islamic views). These sources can be defined as key Islamic sources which help in assessing any IP application which requires registration, e.g. patents and trademarks or whether the dissemination of copyrighted work can be restricted/censored.

#### **4.3.4.3 The sources of Islamic public order law applicable to IP rights**

Islamic law consists of four sources, which are the Quran, Sunnah, ijma and qiyas.<sup>515</sup> The primary sources of Sharia are the Quran and the Sunnah,<sup>516</sup> while secondary sources are ijma (consensus) and qiyas (analogy), which are derived from the primary sources. In addition, there are other sources which can be used by Islamic scholars including treatments and laws which Islamic scholars rely on to produce *fatwa* or *al-hukm* (rule or Islamic views). The following is the primary sources of Islam.

##### **(1) Quran**

The Quran is the revelation of Allah and the fundamental truth of this Sharia law is religious experience. The Quran is the primary and substantial source of knowledge in Islamic law.<sup>517</sup> Muslim believe that the Quran was revealed to the Holy Prophet Mohammed (pbuh) over a period of 23 years (13 years in Mecca and 10 years in Medina) in order to meet the need of society.<sup>518</sup> It consists of 114 chapters. Muslims believe that

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<sup>515</sup> See the definition of *ijma* and *qiyas* above in Islam.

<sup>516</sup> M. Cherif Bassiouni and Gamal M. Badr, 'Shari'ah: Sources, Interpretation, and Rule-Making' (2002) 1 UCLA Journal of Islamic and Near Eastern Law 138.

<sup>517</sup> Abd Allāh Al Salimi, *Ṭal'at al-shams: sharḥ Shams al-uṣūl* [*The Rising Sun: A Commentary on Shams al-usul, a Work on the Principles of Jurisprudence*] (2nd edn, Imam Al-Salmi Library 2010) 95; Ismail Al Agbari, 'An Introduction to Ibadi Jurisprudence' (Yarmouk University 1990) 52; Khallaf, Abdul Wahhab, *The Roots of Islamic Jurisprudence and Synopsis of Islamic Legislation* (Dar Al Fikr Al Araby, Cairo, 1996), 26.

<sup>518</sup> Abul Fadl Mohsin Ebrahim, 'Vaccination in the Context of Al-Maqasid Al-Shariah: Objectives of Divine Law and Islamic Medical Jurisprudence' (2014) 3(10) Arabian

it is a living miracle of Allah's messenger which contains the living challenges to whole human beings. For example, Quran introduced the golden rule of inheritance that is implemented within the Omani family law of inheritance and in other parts of Islamic countries.<sup>519</sup>

## **(2) Sunnah**

The conduct of the Holy Prophet Mohammed (pbuh) is called the Sunnah. Allah's messenger not only received this Quranic revelation and transferred it to human beings, but he conducted other roles such as interpreting and completing it in justification and enforcement. The Quran has stated the Prophet's (pbuh) role in several chapters; for example, Allah the Almighty says to His messenger:

*We have revealed to you the Book in all Truth so that you judge among people by the laws of God. However, never defend the treacherous ones.*<sup>520</sup>

He also says that:

*The Messenger of God is certainly a good example for those of you who have hope in God and in the Day of Judgment and who remember God very often.*<sup>521</sup>

The Sunnah of the Holy Prophet Mohammed (pbuh) contains three categories:<sup>522</sup>

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Journal of Business and Management Review (Oman Chapter) 44; John L. Esposito and Natana J. DeLong-Bas, *Women in Muslim Family Law* (Syracuse University Press 2001) 5.

<sup>519</sup> John L. Esposito and Natana J. DeLong-Bas, *Women in Muslim Family Law* (Syracuse University Press 2001) 5.

<sup>520</sup> Muhammad Sarwar, *The Holy Quran, Arabic Text with English Translation* (Islamic Seminary 2001) 84; see Quran 4:105.

<sup>521</sup> Qura'n 33:21.

<sup>522</sup> Naeem Ur Rahman, 'Attitude of Muslims towards Islamic Banking and Finance in the North West of England: A Socio-economic Perspective' (Durham 2012) 32.

- (1) Sunnah *Qawliyyah*, which is the statement of Allah messenger and sayings;
- (2) Sunnah *Filiyyah*, which is the deeds of the Prophet or his acts;
- (3) Sunnah *Taqririyyah*, which is the approbation and participation or 'his silent or tacit approval of certain deeds of which he had knowledge'.<sup>523</sup>

### **(3) *Ijma* (consensus)**

The third source of Islamic law is *ijma*, which means the consensus of society, in particular Muslim society or the collective judgement of Islamic scholars.<sup>524</sup> *Ijma* derived its legitimacy as a main source of Islamic law from the Quran and Sunnah. God Almighty says, 'We have made you (true Muslims) a moderate nation so that you could be an example for all people and the Prophet an example for you'.<sup>525</sup> The Islamic scholars interpreted the meaning of Allah's words that the *ijma* must be followed and shall not be violated. Furthermore, the Prophet Mohammed (pbuh) said 'my community [*ummah*] will never agree upon an error'. The interpretation of what Prophet Mohammed said means that Muslim scholars only can agree the right thing but they cannot agree on error.<sup>526</sup> The Ibadī School believes that the *ijma* must include all Muslim scholars, so it not restricted to a certain Islamic school and time. Therefore, the

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<sup>523</sup> John L. Esposito and Natana J. DeLong-Bas, *Women in Muslim Family Law* (Syracuse University Press 2001) 5.

<sup>524</sup> Abd Allāh Al Salimi, *Ṭal'at al-shams: sharḥ Shams al-uṣūl [The Rising Sun: A Commentary on Shams al-usul, a Work on the Principles of Jurisprudence]* (2nd edn, Imam Al-Salmi Library 2010) 100.

<sup>525</sup> Muhammad Sarwar, *The Holy Quran, Arabic Text with English Translation* (Islamic Seminary 2001) (2:143).

<sup>526</sup> Abd Allāh Al Salimi, *Ṭal'at al-shams: sharḥ Shams al-uṣūl [The Rising Sun: A Commentary on Shams al-usul, a Work on the Principles of Jurisprudence]* (2nd edn, Imam Al-Salmi Library 2010) 107.

consensus of Islamic scholars on contemporary national and international concerns can be considered the legitimacy of *ijma*.<sup>527</sup>

#### **(4) Qiyas (analogy)**

*Qiyas* is the fourth source of Islamic law and means analogy.<sup>528</sup> It is only justified to resort to *qiyas* when a new matter requires a solution or new rule but the solution cannot be found in the main source of Islamic law, the Quran or the Sunnah, or a definite *ijma*.<sup>529</sup>

Therefore, this task, which is performed by Islamic scholars, is called *ijtihad*, which means that they perform their best to deduce the rule from existing sources of Islamic law.<sup>530</sup> Technically, the definition of 'qiyas is the extension of a Shari'ah value from an original case, or *asl*, to a new case, because the latter has the same effective cause as the former'.<sup>531</sup> For example, according to the Prophet Mohammed (pbuh), who said 'The killer shall not inherit [from their victim]', by *qiyas* this rule is the extension of the deprivation of a killer from inheritance (from their victim) to a deprivation of them from the will of their victim.<sup>532</sup>

#### **(5) Other sources of public order**

It is remarkable and also vital to note that the Ibadi School as well as other Sunni schools such as the Hanafi, Maliki, Shafi'i and Hanbali schools

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<sup>527</sup> Ismail Al Agbari. 'An Introduction to Ibadi Jurisprudence' (Yarmouk University 1990) 100-101.

<sup>528</sup> Abd Allāh Al Salimi, *Ṭal'at al-shams: sharḥ Shams al-uṣūl* [*The Rising Sun: A Commentary on Shams al-usul, a Work on the Principles of Jurisprudence*] (2nd edn, Imam Al-Salmi Library 2010) 140.

<sup>529</sup> Nabil Shehaby. 'Illa and Qiyās in Early Islamic Legal Theory' (1982) 102(1) Journal of the American Oriental Society 27.

<sup>530</sup> Al Khalili, Ahmed, *Clarification of the Impact of Ijtihad and Modernisation in the Development of Islamic Societies* (Ministry of Endowments and Religious Affairs, Muscat, 2010).

<sup>531</sup> Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (The Islamic Text Society 1991) 180.

<sup>532</sup> *ibid*.

agree that the four sources for the Islamic law are the Quran, the Sunnah, *ijma* and *qiyas*. However, there are controversial sources which are considered by these schools, though not all of them agree. It notable that Ibadi Islamic scholars consider another source of Islamic law:

- (1) *istishab* (escorting or companionship)<sup>533</sup>
- (2) *istihsan* ((juristic preference)<sup>534</sup>
- (3) *maclahah mursalah* (consideration of public interest)<sup>535</sup>
- (4) *sadd al-dhara'i`* (blocking the means)<sup>536</sup>
- (5) *shar'man Qablanä* (revealed laws preceding to Islamic law Islam)<sup>537</sup>
- (6) *urf* (customary law).<sup>538</sup>

It should be noted that the first source, *istishab*, is considered Islamic law by the Ibadi and Shafi'i Schools, but the second source, *istihsan*, is a

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<sup>533</sup> Mohamed defined this source: '*istishab* denotes a rational proof which may be employed in the absence of other indications; specifically, those facts, or rules of law and reason, whose existence or non-existence had been proven in the past, and which are presumed to remain so for lack of evidence to establish any change. The technical meaning of *istishab* relates to its literal meaning in the sense that the past "accompanies" the present without any interruption or change'; see *ibid*, at 259.

<sup>534</sup> Defined as 'a method of exercising personal opinion in order to avoid any rigidity and unfairness that might result from the literal enforcement of the existing law'; see *ibid*, at 247.

<sup>535</sup> This 'consists of considerations which secure a benefit or prevent a harm but which are, simultaneously, harmonious with the objectives (*maqasid*) of the *Shari'ah*. These objectives, the same author adds, consist of protecting the five "essential values", namely religion, life, intellect, lineage and property'; see *ibid*, at 235.

<sup>536</sup> This 'implies blocking the means to an expected end which is likely to materialise if the means towards it is not obstructed. Blocking the means must necessarily be understood to imply blocking the means to evil, not to something good'; see *ibid*, at 269.

<sup>537</sup> The 'extent to which the shariah of Islām is related to the This subject represents the of previous revelations. The Qur'an and the Sunnah have chronicled the lives of laws previous prophets and some of the rulings of the revelations they received'; see Saim Kayadibi. '*Istihsan (Juristic Preference): The Forgotten Principle of Islamic Law*' (Durham University 2006) 59.

<sup>538</sup> This is defined as 'recurring practices which are acceptable to people of sound nature'.

Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (The Islamic Text Society 1991) p248.



source of legislation for Ibadi and Hanafi schools.<sup>539</sup> Furthermore, the Ibadi and al-Maliki Schools consider *maslahah mursalah* (consideration of public interest)<sup>540</sup> and *sadd al-dhara'i* (blocking the means) as sources. Finally, the Ibadi School takes the last two sources as sources of Islamic law, *Shar'man Qablanä* and *Urf* (customary law).<sup>541</sup>

It should be noted that the concept of *maslahah mursalah* (consideration of public interest) is used by Islamic scholars, contemporaneously, to deal with any new IP issues. This method is important in evaluating whether IP issues could raise any ethical concern because there is a link between this source and the objective of Sharia, which are:

*Quite similar at the first glance. However, in a more detailed analysis, the two concepts are actually complement and interdependent between each other. The Shari'ah objectives doctrine is related with the protection of the human basic elements [human lives, mind, religion, human indignity, property] while maslahah is the level of protection of those elements.*<sup>542</sup>

Furthermore, there are other sources of IP public order such as treaties and agreements. Islamic law considers treaties and agreements sources of public order and it asks its followers to respect them. It requires them to be in line with Islamic rules. In the Quran, Chapter 17 *sūrat l-isrā* (The

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<sup>539</sup> Ismail Al Agbari. 'An Introduction to Ibadi Jurisprudence' (Yarmouk University 1990) 127.

<sup>540</sup> This 'consists of considerations which secure a benefit or prevent a harm but which are, simultaneously, harmonious with the objectives (*maqasid*) of the *Shari'ah*. These objectives, the same author adds, consist of protecting the five "essential values", namely religion, life, intellect, lineage and property'; see *ibid*, at 235.

<sup>541</sup> Ismail Al Agbari, 'An Introduction to Ibadi Jurisprudence' (Yarmouk University 1990) 128

<sup>542</sup> Abdullaah Jalil, 'The Significances of Maslahah Concept and Doctrine of Maqasid (Objectives) Al-Shari'ah in Project Evaluation' (2006) 3(1) The Journal of Muamalat and Islamic Finance Research (JMIFR) 6.

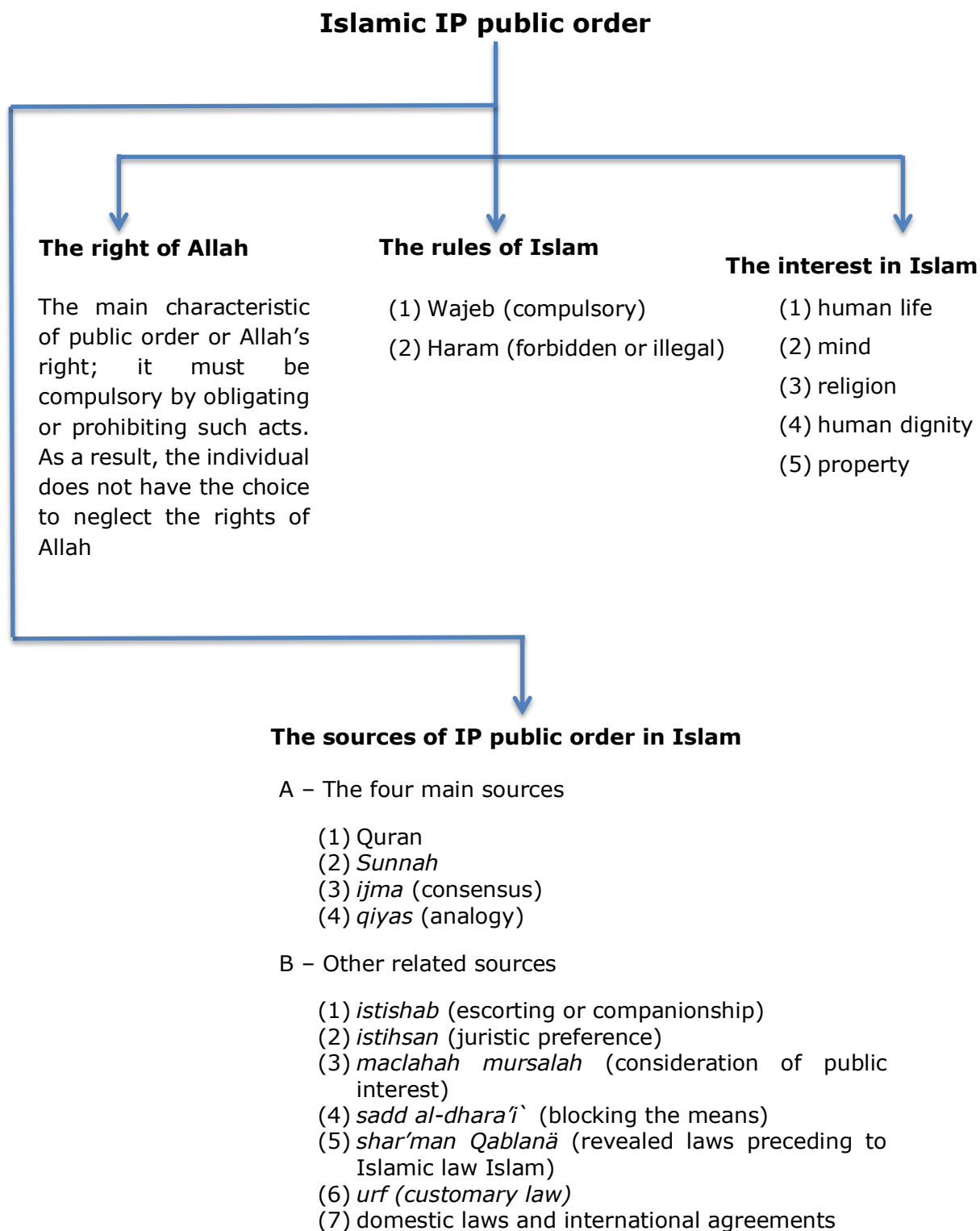
Night Journey) says 'And fulfill [every] commitment. Indeed, the commitment is ever [that about which one will be] questioned.'<sup>543</sup> Other evidence in this regard is in the Quran: 'O you who believe! Fulfill (all) obligations...'.<sup>544</sup> Therefore, Islamic law gives importance to treaties and international agreements and the Omani Basic Statute also offers protection to respect international agreements. Diagram 4.1 below illustrates the Islamic IP public order.

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<sup>543</sup> Sultan Ahmad, *Islam in Perspective* (Author House 2011) 223.

<sup>544</sup> Norazlina Zainul, Fauziah Osman and Siti Hartini Mazlan, 'E-Commerce from an Islamic Perspective' (2004) 3(3) *Electronic Commerce Research and Applications* 283; they quote from Maulana Muhammad Ali, 'English Translation of the Holy Quran, with Explanatory Notes' (2010) 1 *AAIIL* (UK) 138.

**Diagram 4.1 The Islamic IP public order**



#### **4.3.4.4 The concept of IP morality in Islam**

In spite of the moral values which have been developed in any community, which can be a complicated matter related to the customs, cultural traditions, community leadership, knowledge and rationalities, many Muslims find difficulty when evaluating morality independently from the perspective of religion. In general, understanding concepts of morality under Islamic law can be in the form of rules, obligations and accountabilities, which are derived directly from the primary sources (the Quran and Sunnah). According to Fazlur Rahman, ethical behaviour in the context of Islam 'is not expressed in terms of propositions, but rather in terms of divine dictates and actions'.<sup>545</sup> The Prophet Mohammed (pbuh) has been considered an excellent moral exemplar because the Quran says 'The Messenger of God is certainly a good example for those of you who have hope in God and in the Day of Judgment and who remember God very often'.<sup>546</sup> Furthermore, the mission of the Prophet Mohammed (pbuh) is considered to be 'perfect good character' by practising and illustrating all the Islamic moral values himself. Consequently, the record of his sayings and actions (Sunnah) are the main source which provides moral guidance. In addition, there are two reasons why all Muslims must acknowledge that the Quran is the heart of their ethics: firstly, believing the Quran is the word of God and, secondly, believing it covers, certainly or probably, the responses to all inquiries of people daily life.<sup>547</sup>

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<sup>545</sup> J. Mark Halstead, 'Islamic Values: A Distinctive Framework for Moral Education?' (2007) 36(3) *Journal of Moral Education* 284; he quotes from F. Rahman, 'Law and Ethics in Islam' in R.G. Hovannisian (ed.), *Ethics in Islam* (Undena 1985), 3–15, 18.

<sup>546</sup> Muhammad Sarwar, *The Holy Quran, Arabic Text with English Translation* (Islamic Seminary 2001) (Al-Ahzab 21).

<sup>547</sup> J. Mark Halstead, 'Islamic Values: A Distinctive Framework for Moral Education?' (2007) 36(3) *Journal of Moral Education* 284; he quotes from F. Rahman, 'Law and Ethics in Islam' in R.G. Hovannisian (ed.), *Ethics in Islam* (Undena 1985), 3–15, 14.

In Islam, there is a pair of notions that agree generally to the English term of morality. In fact, there are three dimensions of morality in Islam. Firstly, it can refer to the rules, obligations and responsibilities specified under Islamic law. For example, the rules of Islam (*al-hukm*)<sup>548</sup> that have been presented so far have moral dimensions. For example, if an individual looks at the moral purpose of the prohibition of certain act as such theft, murder, highway robbery, drinking alcohol and charging interest or – in relation of IPRs – giving protection for trademarks in relation to alcohol (which is not acceptable under Islamic law), it means at the measure of the morality that:

*The negative prescriptions are preventive and precautionary measures to safeguard, maintain the original quality of the human value system, and protect it from degeneration, devaluation, perversion, indecency and temptation.*<sup>549</sup>

However, as a measure of public order, the purpose of the prohibition of certain acts or behaviour under Islamic law is different because it is Allah's right and it has the main characteristic of public order such that it is compulsory to behave in such a way. As a result, the concept of morality intervenes in the notion of public order by in its foundation,<sup>550</sup> and the objective of Islamic rules is to protect and refine morality to be the original quality of the human value.

The second dimension of morality is the etiquette and ethical behaviour related to good upbringing. In Islam, the notion of morality extends beyond what is usually included in other cultures; the Prophet

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<sup>548</sup> See Section 4.3.4.2 above on rulings in Islam, *wajeb* (compulsory), *mandob* (recommended or commendable), *mubah* (lawful), *makrooh* (not recommended or abominable), *haram* (forbidden or illegal).

<sup>549</sup> *ibid*; he quotes from Moustafa, Sa'ad M., 'The Concept of Morality in Islam', (1990) 63(1) Magazine al-Azhar 119–120.

<sup>550</sup> Abdullah Al-Otaibi, *Public Order in the Muslim State* (Treasures Sheville 2009) 60.

Mohammed (pbuh) enjoys a special reverence among the Muslim community and every aspect of his personal lifestyle and performance is considered an excellent model for his followers. For this reason, the Sunnah is considered a main source for Muslims because it provides a record of the Prophet's actions and sayings as well as a guide for Muslims on how can behave. Consequently, it is uncommon to find any argument in Islam concerning the matters of family ethics, sexual morals or contemporary IP issues because the Sunnah of the Prophet Mohammed (pbuh) resolved these issues.<sup>551</sup> In addition, the Islamic qualities are the third dimension of morality; they are also related to the Prophet's example and these virtues rely on his lifestyle, which is important to regulate IP activities. Examples include:

*sincerity, responsibility, integrity, honesty, truthfulness, keeping of commitments, fair dealing, discipline, self-control, humility, patience, endurance, courage, thankfulness, dignity, honor, self-respect, purity, modesty, chastity, kindness, helpfulness, co-operation, charitableness, generosity, hospitality, consideration, good manners, brotherliness, warmth, lovingness, striving, hard work and love of knowledge.*<sup>552</sup>

In summary, in the Omani jurisdiction, the concept of morality cannot be understood outside the context of Islamic law, because it relies on its sources. Therefore, it embodies the concept of public order<sup>553</sup> as well as other rules of Islam (for example, recommended, not recommended, or

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<sup>551</sup> J. Mark Halstead, *Islamic Values: A Distinctive Framework for Moral Education?* vol 36 (Taylor & Francis 2007) 288.

<sup>552</sup> *ibid*; he referred to Suzanne Haneef, *What Everyone Should Know about Islam and Muslims* (Adam 1999) 90–97.

<sup>553</sup> It has a 'compulsory feature' by obligating or prohibiting acts called *haram* ('forbidden') or *wajeb*.

lawful behaviour)<sup>554</sup> that aims to achieve the original quality of the human value, which is consistent with common sense.

#### **4.3.4.5 Establishing the IP standards of public order and morality**

Decision-making processes regarding IP subject matters must be transparent and validated, particularly if it concerns the public interest. For example, the issue of ethics may concern such cultures, therefore its operation requires a logical and legal interpretation that may be applicable to be consistent with its culture.<sup>555</sup> A method for making assessment must be clarified before examining any IP issues by identifying what kind of evidence is required and sources can be relied on.

In relation to making the assessment, in terms of IP subject matter, Islamic law provides an indication of possibilities to use such methods; this includes, as has been illustrated, the concepts of IP public order and morality under Islamic law. Thus, there are two types of methods or tests which can be used to find whether the IPR are against public order or morality. These tests are the IP public order test and the IP morality test.<sup>556</sup>

#### **1.The standard of IP public order under Islamic law**

The 'IP public order test' originated from Islamic law, where it should be considered by an IP examiner or court or other IP institution.<sup>557</sup> The test consists of three elements as follows. Firstly, the basis of this standard is

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<sup>554</sup> As has been presented so far regarding *mandob* (recommended or commendable), *mubah* (lawful) or *makrooh* (not recommended or abominable), which miss the main feature of public order.

<sup>555</sup> Åsa Hellstadius, 'A Quest for Clarity: Reconstructing Standards for the Patent Law Morality Exclusion' (PhD thesis, Stockholm University 2015) 213.

<sup>556</sup> It should be noted that IP examiner should take into consideration the extent to which Islam protects the IP framework as explained by the status of legitimate IP labour, unfair IP trade practices and the preservation of property through its circulation (*rawāj*). See Section 4.2 above.

<sup>557</sup> See Section 5.2 below.

the assessment of whether IP subject matter is acceptable or unacceptable under Islamic law. If it is not acceptable, the IP examiner must look at what kind of feature this rule is based on under Islamic law; this must have a 'compulsory feature' by obligating or prohibiting such act (called *haram* (forbidden) or *wajeb*). The examiner must take into consideration that these rules cannot be violated and modified or agreed against them (this is called the right of Allah). If the rules and procedures fail to include this feature, they cannot be considered public order such as *mandob* (recommended or commendable), *mubah* (lawful) or *makrooh* (not recommended or abominable). Secondly, the IP examiner should not only rely on primary sources of Islamic law but also rely on other sources of it including the rules which are set by Islamic scholars in form of Islamic views (*fatwa*) or nations in the form of laws, regulations and treaties which do not contradict Islamic law.<sup>558</sup> Finally, the IP examiner or courts should take into consideration the purpose of IP subject matter, and whether its aim is to protect society and help achieve their public interest in this world and the hereafter.<sup>559</sup> This means that this embodies the right of Allah, who established this universe in order to protect the five main necessities, which are human life, mind, religion, human dignity and property. Based on the above analysis, for an IP examiner to decide IP subject matter will be against public order ground they must take into account the questions illustrated in Diagram 4.2.

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<sup>558</sup> It should be noted that the IP examiner must take into consideration the extent to which Islam protects the IP framework as has been presented in Section 4.2.

<sup>559</sup> Abdullah Al-Otaibi, *Public Order in the Muslim State* (Treasures Sheville 2009) 54 (in Arabic).



### **Diagram 4.2 Assessment of Islamic IP public order**

(1) Is the IP subject matter acceptable under Islamic law?

'No'



(2) Is the source used to make the decision whether it is unacceptable reliable under Islamic law?

'Yes'



(3) Does the IP subject matter which is not acceptable have a 'compulsory feature' by obligating or prohibiting an act?

'Yes'



**IP subject matter will be against the public order ground.**

## **2. The standard of IP morality under Islamic law**

The 'morality test' standard is closely tied to public order standard. The IP examiner or court or other IP institution<sup>560</sup> should take into consideration the three elements illustrated in the public order test. However, there is a difference in the nature of the rules that have been violated. Namely, the IP examiner should assess whether the IP subject matter is acceptable or unacceptable, based on Islamic law and its sources. They must look not only at the type of feature this rule is based on under Islamic law, which should have a 'compulsory feature' by obligating or prohibiting such act, but also at whether this rule can also be abominable or not recommended under Islamic law (*makrooh*). Therefore, the IP examiner must take into consideration the following questions when they assess any subject matter in this context, as illustrated in Diagram 4.3.

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<sup>560</sup> See Section 5.2 below.

### Diagram 4.3 Assessment of Islamic IP morality

(1) Is the IP subject matter acceptable under Islamic law?

'No'



(2) Is the source used to make the decision over whether it is unacceptable reliable under Islamic law?

'Yes'



(3) Does the IP subject matter which is not acceptable have a 'compulsory feature', or is it abominable or not recommended under Islamic law (*makrooh*)?

'Yes'



(4) Is the aim of the restricted subject matter to refine human being behaviour or achieve the original quality of the human value?

'Yes'



**IP subject matter will be against the morality ground.**

#### **4.3.4.6 Moving from standard to legal tests for IP subject matter**

The extent of protectable subject matter under international level is very broad if compared with its scope under Islamic jurisdictions. Islamic law has a theoretical concept of public order and morality, which may be a reason for limiting the scope of protection for different intellectual products. Therefore, the following part will examine some examples about the impact of Islamic law on the subject matter of trademarks, copyright and patents.<sup>561</sup>

##### **1. Trademarks**

Companies can register trademarks in the 45 classifications of goods and services.<sup>562</sup> However, cultural issues or issues considered to be against public order and morality can arise. For example, a controversial issue could occur in registering trademarks related to class 32, 'Beers',<sup>563</sup> class 33, 'Alcoholic beverages', and class 34, 'Tobacco; smokers' articles; matches'. In addition, there are some goods that are prohibited by Islamic views which are protected by trademarks, for example in cases where food or cosmetic products<sup>564</sup> contain components which have been derived from animals such as pork.<sup>565</sup> So there are questions whether trademarks on these kinds of product can be registered. This means that registering these trademarks can be unpredictable insofar as it depends on the IP offices' understanding of the conditions and the courts'

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<sup>561</sup> The impact of this standard, in Oman, might occur more in trademark subject matter than in copyright and patents.

<sup>562</sup> This international classification has been established by the Nice Agreement (1957); it is called the Nice classification (NCL) and it classifies goods and services for mark registration purposes. It should be noted that Oman has adopted the Nice classification; see LIPR R.D. 67/2008, arts 1 and 36(11).

<sup>563</sup> Mineral and aerated waters and other non-alcoholic drinks; fruit drinks and fruit juices; syrups and other preparations for making beverages.

<sup>564</sup> Under Class 3,

<sup>565</sup> Islamic views on the use of cosmetic products and components: see Saif AL hadi, 'The Question of Dhikr's society' in Omani TV channel (ed), (2013).

principles in this regard, particularly if they believe that the conditions are subject to an Islamic view.<sup>566</sup> To clarify this, the IP public order test will be applied to class 34, 'Tobacco; smokers'.

As has been presented, in the standard of public order test, an IP examiner must consider questions that has been presented so far in this context under Diagram 4.2. Firstly, they must consider whether the registration of trademarks on tobacco and smokers is acceptable under Islamic law; if the answer is 'no', for example, it may take account of the Grand Mufti of Oman, Al khalili, who stated that 'smoking and sale of tobacco is prohibited by Islam'.<sup>567</sup> Secondly, an IP examiner must consider whether the source used to make decisions in this regard is dependable under Islamic law; if answer is 'Yes', then they must provide evidence which is reliable. For example, Al khalili stated that:

*It is well know that smoking causes cancer and cardiovascular diseases in addition to more than 70 ailment, as stated by some physician, or 120 as said by our ancient scholar. Man shall not sip or eat poison as it kills and God Almighty has said in the Holy Quran **Do not kill yourselves for God Almighty is most merciful to you (4:29)**.since it has been proved that smoking causes cancer, the verdict on smoker will be commensurate with the verdict on one who sip poison. Tobacco is a slow poison as killing himself in this context. God Almighty explained the verdict of self-killing when he said: **One who that, with hostility or unjustly, will be set on fire by us and that is easy for God Almighty**. prophet Muhammed also*

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<sup>566</sup> This issue will be examined in the next chapter. See Section 5.2 below.

<sup>567</sup> World Health Organization and Regional Office for the Eastern Mediterranean, *Islamic Ruling on Smoking* (Egypt 2000) 91 <<http://www.who.int/iris/handle/10665/119631>> accessed 28 May 2016.

*clarified this when he said: 'one who sips poison will eternally sip the same poison on the day of final judgment.'* Smoking also means spending money for nothing besides the harmful impacts it imposes on passive smoker.<sup>568</sup>

The sources which are used in this Islamic view are extracted and interpreted from the primary sources of Islam, the Quran and Sunnah. It is also seeking to respect the right of Allah to achieve the public interest by preventing harm to human beings, as has been presented in above Islamic view. Finally, the IP examiner should consider whether this Islamic evidence has a compulsory feature which is contained. In this example, it is prohibited to do an act – 'smoking or sale of tobacco'. This prohibition can extend to intellectual subject matter, in this case the registration of trademarks in terms of 'Tobacco and smokers'. Hence, IP examiners may refuse this application on the ground it is against IP public order.

Furthermore, a similar test can be applied to class 33, 'Alcoholic beverages'. There is evidence in Islamic law that these acts are prohibited according to the Quran, and warnings against the consumption of wine are set in numerous part of the Quran.<sup>569</sup> For example, according to the Quran:

*Believers, wine, gambling, the stone altars and arrows  
(that the pagans associate with certain divine characters)*

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<sup>568</sup> World Health Organization and Regional Office for the Eastern Mediterranean, *Islamic Ruling on Smoking* (Egypt 2000) 91 <<http://www.who.int/iris/handle/10665/119631>> accessed 28 May 2016.

<sup>569</sup> Michalak and Trocki state that 'The Quranic term khamr is often translated as wine, but has a broader meaning, from a root that means "to cover", "to cause" mental confusion or to disturb the mind'; see Karen Trocki and Laurence Michalak, 'Alcohol and Islam: An Overview' (2006) 33(4) *Contemporary Drug Problems* 528.

*are all abominable acts associated with satanic activities.  
Avoid them so that you may have everlasting happiness.*<sup>570</sup>

The Prophet Mohammed (pbuh) said, 'Whatever intoxicates in a greater quantity is also unlawful in its smaller quantity'. The verses in the Quran, beside the interpretations of the Sunnah – what the prophet says – in this context have been used to prohibit all alcoholic beverages by Islamic denominations such as the Ibadi and Sunni Schools. For example, the Grand Mufti of Oman mentioned the medical and social impact of all alcoholic beverages on human beings. Alcohol can bring negative consequence on public interest or on human beings, and it can be a reason for:

*increasing the risk of many medical problems (such as liver cirrhosis, certain cancers, high blood pressure, stroke and congenital malformations). Furthermore, alcohol consumption increases the risk of family, work and social problems (such as absenteeism, accidents, unintentional injury, violence, homicide and suicide). Different patterns of alcohol consumption result in different types of harm: acute, chronic or alcohol dependence. Regarding social harm, research supports the existing relationship between alcohol consumption and risk of family, work and social consequences, alcohol dependence/alcoholism, alcoholic psychosis, (traffic) accidents, assaults, criminal behaviour, unintentional injury, violence and suicide.*<sup>571</sup>

As a result, an IP examiner can consider the primary sources of Islam when assessing any application and its impact on the public interest. In

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<sup>570</sup> Muhammad Sarwar, *The Holy Quran, Arabic Text with English Translation* (Islamic Seminary 2001) (5:90).

<sup>571</sup> Nina Rehn and others, *Alcohol in the European Region: Consumption, Harm and Policies* (WHO Regional Office for Europe 2001) 86.

this example, the rule of Islam has the compulsory feature of prohibiting to do an act. The act can extend to intellectual products. Hence, there is the possibility of refusing such registration of a trademark in this context.

## **2. Copyright**

Copyright subject matter may be restricted in some jurisdictions and within the framework of Islamic law. For example, as has been presented, relevant authorities can deny the protection of copyrighted work or publications if they are against public order and morality. For example, in 2014, a book was published called *almalh*, or 'salt' in English, which included stories of fantasy and some sexual stories. This book was criticized by Omani society because it was not thought beneficial for the Omani community, and because it was against public order and Islamic law. The government responded to Omani public pressure and prevented publication of the book.<sup>572</sup>

Furthermore, the test of IP public order can be applied if there is a software that can be used for gambling activities which cannot be protectable. Such activities are expressly mentioned in the Quran:

*Believers, wine, **gambling**, the stone altars and arrows (that the pagans associate with certain divine characters) are all abominable acts associated with satanic activities. Avoid them so that you may have everlasting happiness.*<sup>573</sup>

It is also seeking to respect the right of Allah to achieve the public interest by preventing harm to human beings. Controversial issues could be raised by artistic works depicting any prophets or by the creation of films or programmes that represent any prophets by applying the IP public

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<sup>572</sup> Salim Al abri, 'Order Withdrawal of the "Sult" Book' (Avb.s-oman.net 2014) <<http://avb.s-oman.net/showthread.php?t=2128231>> accessed 30 November 2015.

<sup>573</sup> Muhammad Sarwar, *The Holy Quran, Arabic Text with English Translation* (Islamic Seminary 2001) (5:90).



order test. According to the Islamic Fiqh Academy, Islamic scholars agreed that prohibition of this conduct relies on the third source of Islamic law – *ijma* – and the rule has a compulsory feature.<sup>574</sup> Therefore, it cannot protect this copyrighted work.

### 3. Patents

Islamic law encourages the freedom of research which:

*[c]onstitutes a means to discover the order established by God Almighty in His creation. Nevertheless, Islam stresses that the door cannot be left wide open, without restriction, to the generalized implementation, without limit, of the results of scientific research, without examining them closely in the light of Shari'a, so to authorize what is lawful 'halal' and prohibit what is [unlawful] 'haram'. It is not allowed to apply a discovery just because such an application is technically possible.*<sup>575</sup>

In particular, certain inventions may fall within the scope of prohibited subject matters if they are inconsistent with Islamic law. For example, some medication can be patentable. However, the central question rests on the issue of whether such protection is against public order and morality. Perhaps this dichotomy can be illustrated by reference to the Islamic view – for instance, the use of medication that contains alcohol, specifically wine which causes feelings of excitement or dizziness or which has a powerful impact on a person's senses are prohibited by

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<sup>574</sup> Islam Question and Answer 'Islamic Fiqh Council's Decision in the Rule of Representation of the Prophets and Companions' <<https://islamqa.info/ar/163107>> accessed 15 April 2016; see also Mohammed Al-Rally, *The Rulings of the Performance's Art in Islamic Jurisprudence* (Al-Rashed Library 2008) 185.

<sup>575</sup> Eziuddin Elmahjub, 'An Islamic Perspective on the Theories of Intellectual Property' in J. Gilchrist and B. Fitzgerald (eds), *Copyright Perspectives* (Springer 2015) 57; he quotes from Resolutions and Recommendations of the Council of Islamic Fiqh Academy, 1985–2000, 209.

Islamic Sharia – but the rule only applies to medication whose components have been derived from pork or have alcohol unless there is no alternative medication to treat diseases and it is necessary to use them.<sup>576</sup> The evidence can be found in primary sources of Islam as has been presented within the registration of the trademark test regarding wine or products which are derived from pork.<sup>577</sup> Patents for such inventions, such as wine extraction and preservation methods,<sup>578</sup> wine bottle sealing and dispensing devices<sup>579</sup> can be refused in Oman based on IP public order and morality.

Furthermore, in the case of inventions that promote activity that conflicts with Islamic IP public order and morality such as gambling, or inventions related to ‘enhancing gambling devices with commercial advertising indicia’, are likely to be refused in Oman, for the reason illustrated above in relation to copyright for items related to gambling.<sup>580</sup> In addition, controversial issues could be raised in term of a gene patent, where a biotechnology business seeks to patent genes which are utilized in

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<sup>576</sup> Khlan Al kharusi, ‘Ask A Mufti’ in Oman Official TV (ed) (2015); see Islamic Fiqh Council at its sixteenth session, held in Mecca, 2 October 2002. On the distinction see Siraj Desai who states the “difference between alcohol that is in medicine and the wine sold in bottle stores is that the medicinal alcohol is not made from grapes but is instead manufactured from wheat, molasses, sugars, etc. Whereas wine is made from the fermentation of grapes and this is what the Qur’aan has described as KHAMR or wine.” See Islam Question and Answer, ‘Alcohol in Medicine’ <http://islamqa.org/hanafi/askmufti/44920> accessed 10 September 2018.

<sup>577</sup> For Islamic views on the use of cosmetic products and components, see Saif AL hadi, ‘The Question of Dhikr’s society’ in Omani TV channel (ed) (2013).

<sup>578</sup> Gregory Lambrecht, ‘Wine Extraction and Preservation Device and Method’ in CORAVIN Inc (ed), (US, 2012) <<http://worldwide.espacenet.com/searchResults?DB=EPODOC&compact=false&query=US8225959>> accessed 8 July 2018.

<sup>579</sup> Weinberg Morgan William and Miller Burton Allen, ‘Wine Bottle Sealing and Dispensing Device’ (US, 2012) <<http://worldwide.espacenet.com/searchResults?DB=EPODOC&compact=false&query=US8272538>> accessed 8 July 2018.

medical and research applications. For example, there is an Islamic view which states that it is permissible to use genetic engineering to treat and cure anaemia. However, genetic engineering cannot be used to improve a foetus via abolishing unwanted physical or behavioural features.<sup>581</sup>

In Oman there is a National Bioethics Committee which is responsible for assessing any new biotechnology issues and the IP office can refer any patent application to assess public order and morality. It has a member who is specialized in Islamic law.<sup>582</sup>

To sum up, it appears that the effectiveness of Islamic standards with regard to the scope of protectable subject matters, which can differ from the Western point of views and standards, does not present a conceptual inconsistency between Islamic law and the concept of IP. However, they only limit the scope of protectable subject matter under the IP legal system to be with line with Islamic culture, since Oman is an Islamic state. Therefore, the existing IP legal system can have a positive impact by respecting the Omani culture, which leads to social development. It should be noted that an Islamic researcher with IP law expertise could adjudicate matters arising from the application of religious principle to IP applications or related issues. However, further study is needed to examine the extent to which this Islamic standard can limit the scope of protectable subject matter in terms of copyright and related rights, trademarks and patents, and whether it can be extended to include industrial designs by providing extensive contemporary examples. It should aim to produce a written Islamic model guide for direct institutions based on the Islamic standard presented in this chapter.

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<sup>581</sup> Bashar H. Malkawi, 'Intellectual Property Protection from a Sharia Perspective' (2013) 16(16) Southern Cross University Law Review 116 <<http://search.informit.com.au/fullText;res=AGISPT;dn=20142347>> accessed 20 March 2018. He cites from Aftab J. Ahmed, 'Gene Therapy Redux' (1995) 27 Journal of the Islamic Medical Association 93, 94.

<sup>582</sup> Decision of the President of Sultan Qaboos University, no 2013/181.

#### **4.4 The real challenge of the Islamic IP standard in the context of Omani cultural and economic development**

The implications of the standards within the broad context of this research show that when the Islamic perspective is applied to the field of IP protection, it is found to be relevant and effective in developing and maintaining a strong culture of ethical behaviour for economic development.

It should be noted that the Islamic concept of development relies on three interrelated dimensions: individual self-development; physical resource development (which can extend to non-physical resources); and the development of the human collectivity. 'The first specifies a dynamic process of the growth of the human toward perfection. The second specifies the utilization of natural resources to develop the earth to provide for the material needs of the individual and all of humanity. The third concept encompasses the progress of the human collectivity toward full integration and unity.'<sup>583</sup> The first dimension begins with an intense consciousness of himself and the Creator, and any actions that are taken should be in complete accord with the guidelines given by the Creator, which leads to the harmonization and unity with the rest of humankind and creation. The aim is to ensure progress on the three interrelated dimensions of Islamic growth. Consequently, if three dimensions fail to go forward side by side it can lead to harmful distortions.

Consequently, the standard of IP public order and morality may play a role in refining human and business activities according to Islamic theoretical understanding because it is intended to provide justice to protect the five interests (human life, mind, religion, human dignity and

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<sup>583</sup> Zamir Iqbal and Abbas Mirakhor, *Economic Development and Islamic Finance* (Directions in Development, World Bank Publications 2013) 159.

property) through the compliance with rules.<sup>584</sup> This standard can enhance the concept of Islamic economic development.<sup>585</sup> It can facilitate the success of all dimensions of growth. It allows the Omani IP Office or any competent authority to consider and balance the interests of IP right holder and the objective of Omani culture. The consequences of this standard can be as follows:

- (1) A shift away from profit maximization towards value maximization. In a conventional system, economic development is focused mainly on maximizing profit, but Islam seeks to maximize the values by offering systems that can enhance its performance and involve a spiritual and ethical foundation. This means that any decisions relying on profit alone can encourage selfish behaviour.<sup>586</sup>
- (2) This standard can dictate that the production process must be inoffensive and pure from beginning to end. It should accord with Islamic principles. This means that IP protection must be guided by the standards of public order and morality, which have an effect on wider society by refusing IP registration or invalidate IP protection or restricted its use. For example, the IP framework offers a lawful monopoly over the use of IPR, as noted in Chapter 3, for a certain period. If copyrighted work or patent results in

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<sup>584</sup> See Section 4.3.4.5 above.

<sup>585</sup> Because it aims to protect the interest of Islam, as shown in Diagram 4.1, which shows the Islamic IP public order.

<sup>586</sup> Applying above Islamic standard under Omani legal system can arise intranational issues if any member states of WTO consider that its rights are being impaired by another contracting party. So, this case can be a subject of WTO dispute settlement (Article 64) or the dispute settlement mechanisms under the OUSFTA (Chapter 20 of this agreement). This new issue needs further study in light of the main elements presented in this chapter.

unlawful monopoly under Islamic law then there is a question as to whether this IP right can be enforced or invalidated.<sup>587</sup>

- (3) The need for a sustainable management consideration within foreign companies where future investment in Oman is concerned.

It is apparent that in the present era Omani society needs powerful, creative and innovative management from the Omani government in order to achieve its cultural and Islamic objective – which seeks value maximization rather than profit maximization. Therefore, the threat to Western investors, and particularly their investments in IP rights, can be limited according to Islamic law. The restriction may impact on the profits the IP owners seek to achieve. This exploration of Omani IP standards demonstrates a philosophical diversity between the Omani and Western systems. Nevertheless, it can provide foreign companies with ideas on how they can manage this issues and even what types of products and services might be protected under the Omani system. In addition, they can recognize that they have higher ethical responsibility when choosing to invest in Oman, rather than just being concerned with profit maximization alone. As a result, they should have a long-term plan to invest in Oman according to the models and standards of Islamic law in order to survive in the competitive atmosphere.<sup>588</sup>

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<sup>587</sup> The difficulty is that any IP right will be assessed individually. In Islam, 'That may depend upon whether the protected product is a public necessity. If the product is not a necessity and does not supply a major convenience, then the first criterion is missing and that particular monopoly may be permissible under Sharia. However, if the product involved is a necessity, it becomes a closer question. For example, intellectual property rights to the cure for a disease may be an impermissible monopoly. In that case, the government may need to purchase the rights for that product at a fair price and make it available to the public at a reasonable price.' See Bashar H. Malkawi, 'Alliance between Islamic Law and Intellectual Property: Structure and Practice' (2013) 10 University of St Thomas Law Journal 634.

<sup>588</sup> It is important to examine to what extent Omani companies have been affected by Islamic culture; this issue will be examined in Chapter 6 and the IP awareness survey.

## **4.5 Conclusion**

Islamic law generally supports the protection of IPR and it can agree with Western IP systems in general where it stresses the need for legitimated IP trade and protects the right holders from harmful practice by other parties as well as preserving IP wealth through its circulation.

Omani culture, which is based on Islamic law and philosophy, can regulate the Western scope of IP protection by reconstructing the concept of IP public order and morality, as has been presented this study. In particular, the concept of Islamic IP public order, together with the concept of IP morality, which has been previously designated, serves as a practical and effective model to formulate a decision framework for assessing any application in particular under IP system.

Therefore, both the standard of IP public order and the standard of IP morality can contribute towards the reconstruction of guidelines for decision-making in assessing any IP application which requires registration, e.g. trademark and patents, or whether the dissemination of copyrighted work can be restricted/censored, by this standard. The framework also allows the Omani IP Office to consider and balance the interests of IP right holder and the objective of Omani culture. Therefore, the existing IP legal system can interact positively with Islamic law by respecting the Omani culture.

The impact of this standard can achieve Islamic economic development, which relies on three interrelated dimensions: individual self-development, physical resource development (which can extend to non-physical resources) and the development of the human collectivity. It seeks to move to value maximization rather than profit maximization, detecting the IP protection from beginning to end. As a result, this framework can impact on ethical behaviour of companies who refine their activities in order to generate a positive image of the business in the eyes

of the present or potential clients and in Omani culture as a whole.<sup>589</sup> Consequently, there is clearly a suggestion of the need for a sustainable management when considering future investment in Oman from Western point of view.

The second part of this thesis intends to examine Omani IP administrative framework and IP awareness within SMEs. In Chapter 5, the strengths and weaknesses of the efforts undertaken by the administrative IP bodies in serving growth scenarios will be critically examined. It will evaluate the extent to which Oman can adopt modern Islamic approach to IP awareness. Chapter 6 is based on an empirical study and aims to achieves its objectives by gathering primary data to determine the level of IP awareness within SMEs. It is followed by an analysis which identifies general patterns in the perceptions and opinions of SMEs. The results have been critically interpreted to develop a better understanding in relation to level of IP awareness and the factors which affect their understanding.

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<sup>589</sup> Rusnah Muhamad, Mohd Edil Abd Sukor and Mohd Rizal Muwazir, 'Corporate Social Responsibility: An Islamic Perspective' (2008) 43 *Asian Journal of Accounting Perspectives* 25.



**PART II OMANI IP ADMINISTRATIVE FRAMEWORK AND IP  
AWARENESS WITHIN SMES**

## **CHAPTER 5 THE ROLE OF OMANI DIRECT AND INDIRECT IP ADMINISTRATIVE FRAMEWORK IN SERVING THE GROWTH SECTOR**

### **5.1 Introduction**

Although Oman has founded a comprehensive IP legal framework in compliance with its international treaty obligations,<sup>590</sup> this effectiveness may be less than optimal unless it is designed to support and enhance the legal protection of IP rights. The twin features of supporting and enhancing IP rights are both needed in order to make a positive impact on recognizing the existence of IP rights in Oman at the national and international levels.

As discussed earlier, in Chapter 2, national culture has an important impact on the Omani legal system. This impact cannot be seen as independent of the complex issues which arise from the domestic religious practices in Oman, which 'play a significant part in sculpting social behaviour'.<sup>591</sup> Consequently, legal enforcement of an IP right in Oman can be regarded as a matter of religion or Islamic law.<sup>592</sup> Oman has established a direct IP administrative framework that governs the protection and enforcement of IP rights. However, a parallel indirect approach to IP rights also exists in religious law. The Omani government institutions that comprise the direct administrative framework are the Intellectual Property Department (IPD), the Directorate General of Customs (DGC), the Public Authority for Consumer Protection (PACP) and the courts. The parallel indirect approach is controlled by the Ministry of

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<sup>590</sup> See above, Chapter 3.

<sup>591</sup> Kim Shyan Fam, David S. Waller and B. Zafer Erdogan, 'The Influence of Religion on Attitudes towards the Advertising of Controversial Products' (2004) 38(5/6) *European Journal of Marketing* 537.

<sup>592</sup> Magaji Chiroma and others, 'Role of Fatwa in the Fight against Terrorism: The Relevance of the Malaysian Fatwa Model to the Anti-Boko Haram Crusade' (2014) 4(1) *GSTF Journal of Law and Social Sciences (JLSS)* 34

Endowments and Religious Affairs (MERA), which communicates religious ethics to the Muslim community. These ethics consist of beliefs and worship, as mentioned in the Quran or the Sunnah of the Prophet, with a particular focus on religious ethics as it relates to property, both tangible and more recently intangible IP rights.<sup>593</sup>

The aim of this chapter is to examine the role of the IP administrative framework in Oman in serving both Omani culture and the economy, and with particular reference to the impact of increasing the level of IP awareness within SMEs. In addition, it will evaluate the extent to which Oman can adopt a modern Islamic approach to IP awareness. In particular, this indirect approach could be carried out by the MERA with a view to improving the Omani community's awareness of the direct Omani IP framework and importantly, by communicating religious and ethically sound principles of behaviour and conduct in relation to IP rights ownership and enforcement. To achieve these objectives, the researcher conducted semi-structured interviews with the key officials as explained in chapter one<sup>594</sup> and this chapter presents the primary findings of those interviews.

Section 5.2 will explore the government institutions that comprise Oman's 'direct' administrative IP framework. This is followed by Section 5.3, which will evaluate the extent to which Oman can adopt Islamic IP approach through the MERA as a way of enhancing IP framework awareness.

## **5.2 Direct IP administrative framework**

It is important to understand the various direct administrative institutions in Oman that have a role to play in the country's IP law framework.

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<sup>593</sup> Interview with MREA 1 (Muscat, Oman, 21 July 2016).

<sup>594</sup> See section 1.4 above.

The relevant government institutions, such as the Omani Intellectual Property Department (IPD), the Directorate General of Customs (DGC), the PACP and the courts (Council of Judicial Affairs) will also be referred to in order to determine the extent of the role.

### **5.2.1 Omani Intellectual Property Department (IPD) under the administration of the Ministry of Commerce and Industry (MCI)**

The Ministry of Commerce and Industry (MCI) has legal responsibilities under R.D. 2017/11 to protect IPR in accordance with IP domestic law and international conventions, by coordinating with related institutions such as the DGC or the PACP.<sup>595</sup> Therefore, the MCI established the IPD, which is based at the General Directorate of Trade in Muscat.<sup>596</sup>

The IPD is accredited to deal with 13 international agreements, and with the depositing procedures for copyrighted work, registration procedures for patents and trademarks and other registrable IPRs.<sup>597</sup> Its tasks and responsibilities are laid down in copyright law and industrial law. The IPD consists of two divisions, 'copyright and neighbouring rights' and 'industrial property', which provide more than 60 services in the field of IPRs.<sup>598</sup>

However, there is no related department or division within the MCI, which is responsible for enforcing and inspecting the commercial enterprises that infringe IPRs, and there is no division responsible for increasing the

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<sup>595</sup> Appendix No. 1(6), the full title of this R.D. is 'Determining Functions of the Ministry of Trade and Industry and the Adoption of Its Organizational Structure'.

<sup>596</sup> It should be noted that under R.D. 2005/102, Appendix No. 1(10) the MCI had a duty to inspect commercial enterprises that sell non-original artistic works by communicating with other institutions to prevent an infringement. However, R.D. 2017/11 removed this responsibility from the MCI and it seems that it will be under the PACP.

<sup>597</sup> It should be noted that the registration of copyrighted work is not essential (see Chapter 3). In addition, the registration for plant varieties is under the Ministry of Agriculture.

<sup>598</sup> Interview with IPD 1 (Muscat, Oman, 3 July 2016).

level of IP awareness. This means that MCI does not exercise some of its IPR enforcement duties stipulated under Royal Decree 2017/11.<sup>599</sup> Furthermore, the IPD has jurisdiction over disputes relating to IPRs between companies, but it should be remembered that these decisions are not binding on the parties.<sup>600</sup> In 2015, the IPD’s revenue stood at 7 million Omani Riyals (approximately 14 million GBP).<sup>601</sup> Therefore, its importance to the Omani economy is not insignificant.

### 5.2.1.1 Human resources

A key issue in any IP administration system, including that administered by the Omani IPD, is human resources. Remarkably, the IPD administrative workload rests on only 10 members of staff, whose responsibility it is to examine all international and domestic applications of registerable IPRs. Currently, there is one director and nine employees. Table 5.1 below illustrates the IPD staff and their roles.<sup>602</sup>

**Table 5.1 The number of IPD staff in 2016**

<i>Field of IP</i>	<i>Copyright and neighbouring rights</i>	<i>Patent applications</i>	<i>Trademark applications</i>	<i>Other such as post-man</i>
Number of employees	1	3	5	1

*Sources:* compiled by author based on interviews

The level of IP knowledge, level of education and qualifications of the administrative staff are also important. The researcher visited the institutions on 3 July 2016 and was able to confirm that these employees

<sup>599</sup> Appendix No. 1(6)(10) and, in particular, a clear trademark enforcement under GCCUTML (R.D. 33/2017).

<sup>600</sup> Interview with IPD 1 (Muscat, Oman, 3 July 2016).

<sup>601</sup> *ibid.*

<sup>602</sup> *ibid.*

had received certain training courses from the WIPO, consisting of one or two workshops per year in relation to IP enforcement. However, the participants on the WIPO training courses had only drawn from government authorities (not private companies) in order to increase the level of institutional IP awareness. In addition, certain staff also received training courses from the Gulf Cooperation Council (GCC) centre in Kuwait (five times a year for two employees only) and the WIPO (there are no specific number of courses; this depends on member states' requests).<sup>603</sup>

Furthermore, the lack of resources might also impact on the ability of IPD to conduct IP awareness courses for companies. This issue was confirmed by one member of IPD, who stated that:

*We do not have a Media marketing system (to increase IP awareness for companies) due to the facilities which are available; we only have trained relevant enforcement bodies (direct institutions).<sup>604</sup> IPD conducts courses only one or two times a year for direct institutions. For this reason, IPD received queries in relation to IP issues by companies or people using twitter or MCI or by phone or by visiting the IPD. But the IPD does not has an account on twitter ... in addition, due to our workload, we cannot answer more than one question and we have to recommend that they visit the WIPO website for more information.<sup>605</sup>*

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<sup>603</sup> Interview with IPD 1 (Muscat, Oman, 3 July 2016).

<sup>604</sup> *ibid.*

<sup>605</sup> *ibid.*

This statement gives an indication of the negative impact of limited IPD resources on the business community, who are not receiving opportunities to access IP awareness training and materials.

In the sections to follow, issues specific to the IPD's copyright, patents and trademarks divisions will be critically analysed.

#### **5.2.1.2 The Omani IPD copyright division**

It is admirable that, despite the limited IPD staff, certain strategic IP framework objectives have been successful. For example, in 'copyright and neighbouring rights' the divisional statistical data shows that from 1997 to January 2017 2,939 copyright works were deposited in this division.<sup>606</sup> The main reason for the low number of copyright works deposited is that works are obtained automatically under the Omani legal system, as discussed in Chapter 3.<sup>607</sup> This issue will be examined under the Omani SMEs survey as to whether SMEs thought an IP application was necessary to gain copyright protection (undertaken in Chapter 6).<sup>608</sup>

However, problems related to limited IPD human resources clearly have an adverse impact on the ability of the IPD to achieve its IP awareness raising objective in term of processing the number of patent and trademark applications submitted. This is an issue to be explored below.

#### **5.2.1.3 The Omani IPD patent division**

In Oman, the author has confirmed that there have been a limited number of patent applications, approximately 3,232, since the implementation of the IP framework in 2002. Only 27 patents have been

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<sup>606</sup> The data was requested by the researcher at the end of 2016. It should be noted that the owner of copyrighted work is not obliged to register their copyrighted work; see Chapter 3.

<sup>607</sup> CNRL, R.D. 65/2008, art 34; see Section 3.4.6 above.

<sup>608</sup> See Table 6.10 below.

granted in Oman to date. The main reason for the limited number of patents granted in Oman pre-2010 was that there was no regulation as to the application fee for applying for a patent.<sup>609</sup> Table 5.2 below sets out the number of patent applications submitted to the IPD to examine over a 13-year period.

**Table 5.2 Patent applications submitted in the period 2002–2015<sup>610</sup>**

Year	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	20013	2014	2015
International	2	44	88	177	160	225	236	237	217	282	255	300	304	343
National	-	-	-	-	3	5	4	5	11	14	4	4	1	4

The data demonstrates that the majority of patent applications are international,<sup>611</sup> whereas there are very few domestic patent applications. This sheds light on our understanding of the low level of IP awareness and creativity in Oman, and, together with the poor IPR administration system, there is a clear indication that significant resources and expertise are needed in the technical patent examination phase. The IPD conducts substantive examinations of patent applications where the technical inspection is performed by internal chemical engineering experts because there is only one technical expert in this field in the IPD and there are no experts in any other field.<sup>612</sup> On 10 September 2013, and due to the lack of experts in other technical fields, Oman and the Egyptian Patent Office signed a memorandum of understanding to carry out the technical examination of patent

<sup>609</sup> Interview with IPD 1 (Muscat, Oman, 3 July 2016).

<sup>610</sup> Mohammed Al Balushi, *The Privatisation of the Intellectual Property Sector* (2016). This study has been submitted to the Minister of Commerce and Industry in Oman.

<sup>611</sup> As has been presented in Chapter 3, Omani is a party to its FTA with the US, which might impact in increasing the number of patent applications.

<sup>612</sup> Interview with IPD 1 (Muscat, Oman, 3 July 2016).



applications on behalf of Oman in return for payment. To date, Oman has referred approximately 257 applications to the Egyptian Patent Office.<sup>613</sup> The future of IPD has been explained by a member of IPD staff who stated 'IPD has a plan to access more technical assistance by signing other agreements with Australia and Europe, the US and Malaysia'.<sup>614</sup>

There is a pressing need for a qualified patent examiner to be employed by the Omani IPD to examine patent applications and provide strategic policy advice in the field of technical innovation. The IPD should consider how to ensure appropriate patent examining staff as this has a direct impact on the quality of the patents granted in Oman. Patent examination training could also be developed by sponsoring staff to be to work with patent office examination staff in the Gulf region and further afield.

Furthermore, the inconsistencies between the number of national and international patent applications raise questions about the level of IP and specifically patent awareness within Omani companies, which do not seem to be aware of how they can benefit from Oman's patent system. The extent of the awareness of IP is a matter to be discussed in following chapter.

Owing to the limited number of patents filed, the Omani government does not appear to take the local research and development community into consideration. Not unsurprisingly, Oman ranks very low in the Global Innovation Index 2016 (GII 2016). The GII 2016 is co-published by Cornell University, INSEAD and the WIPO. Oman ranks seventy-third out of 128 countries based on 82 indicators. The index takes into account knowledge and technology outputs fields, where Oman ranked 95, 113 for knowledge creation and 119 for patent applications.<sup>615</sup> This relatively

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<sup>613</sup> Mohammed Al Balushi, *The Privatisation of the Intellectual Property Sector* (2016).

<sup>614</sup> Interview with IPD 1 (Muscat, Oman, 3 July 2016).

<sup>615</sup> Cornell University, INSEAD and WIPO, *The Global Innovation Index 2016* (Winning with Global Innovation 2016).

low international ranking is a likely factor which has the effect of reducing foreign investment in Oman.

It is critically important for the patent division of Oman's IPD to develop a strategic plan to carry out its objective of increasing the level of IP awareness within the country to benefit the domestic economy. Policies and measures need to be implemented to assist more Omani domestic companies to file patents. An increase in the number of patents filed would justify increased expenditure on human resources within IPD and provide Oman companies with inexpensive IP applications. Part of the IPD patent division's strategic plan should access to further technical assistance agreements to support its patent examination processes.

#### **5.2.1.4 The Omani IPD trademark division**

The data regarding the trademark applications is not published by the IPD. Therefore, following a written request by the author, the IPD compiled information showing that in 2017 the total number of trademark applications filed between January 1987 and January 2017 was 106,768. The Trade Marks division carries out more than 70% of the IPD's workload.<sup>616</sup> Nevertheless, there were still a limited number of national trademark applications as compared with international applications. For example, the data in 2015 shows that the number of national trademark applications was 5,361, while the number of international Madrid Protocol<sup>617</sup> applications was 13,555 during a period ending in April 2016. The total number of trademarks granted amounted to only 3,500 for the period ending October 2015.<sup>618</sup>

Under the Madrid Protocol, according to the WIPO:

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<sup>616</sup> IPO, all data compiled for the author upon a written request, 2017.

<sup>617</sup> See Chapter 3.

<sup>618</sup> Mohammed Al Balushi, *The Privatisation of the Intellectual Property Sector* (2016). This study has been submitted to the Minister of Commerce and Industry in Oman.

*The Office of a designated Contracting Party [including Oman's IPD] must communicate its notification of provisional refusal within one year from the date on which it was notified of the international registration or subsequent designation by WIPO. In certain limited circumstances, Contracting Parties can opt to extend the refusal period to 18 months, or even longer.*

*In the absence of a notification of provisional refusal within the applicable time limits, the mark is considered protected in the territory of the designated Contracting Party concerned for all the goods and services for which protection has been requested.<sup>619</sup>*

A key problem within the Trade Marks division is the backlog in examining trademark applications. The limited number of IPD staff engaged in trademark examinations is a likely factor contributing to the backlog and delays in trademark application examination. This has an impact on the Omani Trade Mark division obligation to notify the provisional refusal to register marks applied for under the Madrid Protocol.

However, as a result of Oman's culture and predominant religion there is a further issue arising with trademark examinations. The IPD applies legislation, which includes absolute grounds of refusal to register a mark, especially if the mark applied for is considered to be contrary to public order and morality. As discussed earlier, in Chapter 4, the issue of standards of public order and morality in Oman are heavily influenced by Islamic religious principles. Public order and morality are concepts which can be interpreted according to the national or Islamic culture in Oman.

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<sup>619</sup> WIPO, 'Frequently Asked Questions: Madrid System' <<http://www.wipo.int/madrid/en/faq/>> accessed 16 March 2017; see Madrid Protocol Article 5(2)(b) and (c).

While IPD trademark examination staff are limited, the issue of the need for training tailored to applying intrinsic absolute grounds of refusal in the Omani context is also a need to enhance the ability to efficiently examine trademark applications.

#### **5.2.1.5 The Omani IPD going forward**

Although it was a significant achievement to implement a TRIPS-compliant IP rights framework into the Omani legal system, it remains a challenge for the IPD to meet several objectives in terms of enhancing the level of IP awareness and enforcement of IP rights in Oman. One challenge is that the IPD currently does not have the necessary human resources to efficiently manage the copyright, patent, trademark and design applications it receives. This in turn has a negative impact on the wider objective of encouraging Omani creative expression, innovation and brands. In conclusion, the Omani IPD should develop a comprehensive strategic, specifically focusing on human resources, training and technical assistance, IP awareness and SMEs. This strategic analysis will enhance the Omani IPD's ability to offer quality IP advice, manage applications and conduct IP awareness courses for companies and the public, benefitting Omani society as a whole. In addition, the IPD should consider developing a social media strategy to increase the level of IP awareness through Twitter, Snapchat, Facebook etc.<sup>620</sup>

The challenges faced by the Omani IPD impact on Omani cultural, economic and political development. We saw that, for example, the Omani IPD might face negative impact from its failure to examine trademark applications within the Madrid Protocol mandatory time limit (18 months). The scope of the concept of IP public order and morality provisions under the IP framework has been interpreted by the IPD

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<sup>620</sup> The MCI does not activate some of its IPR enforcement duties stipulated under R.D. 2005/102.

according to Islamic law, which often necessitates the input of Oman's Islamic scholars, adding an additional layer to the patent and trademark examination processes.<sup>621</sup> However, the IPD currently does not have a specific standard to assess this provision. Further there is no Islamic law researcher in the IPD to examine IP applications, rather this scholarly activity is carried out outside the IPD.<sup>622</sup> Nevertheless, IPD staff are required to produce examination reports that apply the public order and morality principles to private monopoly IP rights applications and they require more authoritative guidance. An express standard relation to public policy and morality would contribute bespoke Omani guidelines for decision-making in assessing any IP rights application. To achieve this objective, the Omani IPD should consider appointing an Islamic law researcher with IP law expertise who could adjudicate matters arising from the application of religious principle to IP applications.

Finally, in line with other IP offices around the globe, it is vitally important for the IPD to begin to publish an annual report setting out its strategic objectives, statistics, resources and finances as a matter of good institutional governance. This would also support the Omani IPD to enhance its position at national, regional and international levels. Such a report would have the function of identifying the challenges and would make suggestions on how they could be solved. It will help in identifying the extent to which the IP framework contributes to the Omani economy.

In summary, the credibility of the Omani IPD is at stake. Its ability to meet its obligations as an IP Registry administrative body is a real issue. The business community, nationally and internationally, may lose confidence in the IPD's administrative ability to provide legal protection. Local and foreign companies will be less inclined to take advantage of IP

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<sup>621</sup> Interview with IPD 1 (Muscat, Oman, 3 July 2016).

<sup>622</sup> Interview with IPD 1 (Muscat, Oman, 3 July 2016).

legal protection or, worse, decide not to invest in Oman. Consequently, the Omani culture and economy will not benefit as well as it could from the implementation of its IPR framework.

In addition to the IPD, another actor in Oman's direct IP framework is the Directorate General of Customs (DGC). The DGC is a key body in the fight against counterfeiting, piracy and IP infringements generally, taking enforcement action in conjunction with IP owners.

### **5.2.2 The Directorate General of Customs (DGC)**

Counterfeit goods and IP rights piracy is considered a major problem in the Middle East, and an issue that can affect the economy. According to Omani data, the total number of confiscated items in 2015 was 440,823.<sup>623</sup> This statistic might pose a threat to the Omani economy, which needs to take measures to prevent the entry into the Omani market of counterfeit goods. The numbers of copyrighted products (CDs or DVDs, audio or visual or software) was around 3,886.<sup>624</sup> Therefore, according to the Business Software Alliance (BSA), rates and commercial values of unlicensed software in Oman are very high, as explained in Table 5.3 below, which shows the situation between the years 2009 and 2015.

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<sup>623</sup> PACP, 'Annual Statistical Report 2015' (PACP 2015) <<http://pacp.gov.om/getattachment/0f077174-963c-4a11-a9c2-5e974f3e3913/>> accessed 17 March 2017.

<sup>624</sup> *ibid.*

**Table 5.3 Rates and commercial values of unlicensed software in Oman<sup>625</sup>**

Years	2009	2010	2011	2012	2013	2014	2015
Rates Unlicensed Software Installation %	63	–	61	—	60	—	60
Commercial Value of Unlicensed Software (\$M)	\$39	-	\$36		\$65		\$59

Table 5.3 indicates that the low level of IP protection for copyrighted works is due to the low level of IP enforcement. Therefore, as a part of Omani economic and cultural development, Oman must take the major step of protecting IPRs through the DGC. The DGC plays a major role in fighting IPR infringement and it has been established and placed under the control of the Royal Oman Police (ROP). They act at the borders as the first line of IP protection by investigating shipments and confiscating counterfeit products. IP protection is treated as a trade-related issue, which requires the DGC to rearrange its priorities, which are not restricted to controlling trade-related issues but extend to weapons, drugs and harmful substances. Consequently, the DGC is providing border measures under agreements with GCC under Unified Customs Law (UCLaw), which is implemented in Oman by Royal Decree No. 67/2003, and international agreement (TRIPS and OUSFTA), implemented in Oman under Section 5 of the IPRL<sup>626</sup> and Article 41 of the CNRL.<sup>627</sup> Customs officers derive their power in relation to IP issues through these sets of laws.

<sup>625</sup> Business Software Alliance (BSA), 'Seizing Opportunity through License Compliance: BSA Global Software Survey 2016' <[http://globalstudy.bsa.org/2016/downloads/studies/BSA\\_GSS\\_US.pdf](http://globalstudy.bsa.org/2016/downloads/studies/BSA_GSS_US.pdf)> accessed 16 May 2017.

<sup>626</sup> R.D. 67/2008. It should be noted that Omani government issued a new GCCUTML (R.D. 33/2017) and some amendments have been introduced under Section 5, art 37.

<sup>627</sup> R.D. 65/2008.

With regard to UC law, there is no specific reference in relation to IP enforcement at the borders, however the language under Article 24 requires the DGC to take all measures to prevent the entry and exit of any prohibited or restricted goods and it cannot exercise this authority until there is approval from the competent authority.<sup>628</sup> It should be noted that UCLaw defines the meaning of goods under Article 1(14), which includes intellectual goods, and it also defines the meaning of 'prohibited or restricted goods' under Article 1(26) and (27) as those prohibited or restricted under UCLaw or any Omani legal system, for example the IP framework.

Therefore, Omani national law regulates all border measures under the IPRL<sup>629</sup> and Article 41 of the CNRL;<sup>630</sup> the DGC has two distinct categories: passive protection, in which it responds to IP right holder requests to prevent infringing their IPRs, and active protection, in which it takes legal action by investigating on its own initiative to prevent any act of infringement. Table 5.4 represents a list of the courses of action taken to protect the border, which is important for protecting the Omani economy from infringing goods. This list of the course of action shows the current Omani IP framework and the corresponding international standard.

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<sup>628</sup> R.D. 67/2003.

<sup>629</sup> R.D. 67/2008 and its amendments under GCCUTML (R.D. 33/2017).

<sup>630</sup> R.D. 65/2008



**Table 5.4 The course of action and remedies involving alleged IP rights under TRIPS and the Omni IP framework.**

<i>TRIPS and TRIPS-plus article, implemented by Oman</i>	<i>Industrial rights</i>	<i>Copyright and related right</i>
(1) The right holder may request or custom has the authority to prevent any act of infringements by suspension of release of goods <sup>631</sup>	The right holder has the right to request from customs to suspend the releasing of goods which might inferring their IP right by submitting their application in this respect.  The custom may exercise this authority without registration	The right holder has the right  Customs may exercise this authority
(2) Application process to initiate legal proceedings which submitted by right holder in case of infringement of their right should provide specific information to the customs authority <sup>632</sup>	Under Article 37(1) <sup>633</sup>  The IP owner application should include:  (1) 'sufficient <i>prima facie</i> evidence that the importation of counterfeit trademark goods is taking place or is imminent, and that there is <i>prima facie</i> an infringement of his intellectual property right',	Under Article 41(1) <sup>634</sup>  The IP owner application should include:  (1) sufficient proof to convince the Customs authorities that their right has been infringed  (2) sufficient information

<sup>631</sup> TRIPS, art 51.

<sup>632</sup> TRIPS, art 52.

<sup>633</sup> A new GCCUTML (R.D. 33/2017); some amendments have been introduced under Section 5, art 37(1), but IPRL (R.D. 67/2008), art 79(1) stated that the IP owner can apply an application if that the importation is taking place or is imminent, and that there is *prima facie* an infringement of his intellectual property rights.

<sup>634</sup> CNRL, R.D. 65/2008.

	(2) sufficient information	
(3) Security or equivalent assurance <sup>635</sup>	The DGC may request security within three working days from receipt of the notification	DGC may request security
(4) Notice of suspension <sup>636</sup>	Customs should notify both the importer and the applicant of the suspension of the release of goods <sup>637</sup>	The custom should notify both the importer and the applicant of the suspension <sup>638</sup>
(5) Duration of suspension <sup>639</sup>	Customs can suspend for 10 working days; this can be extended for a further 10 working days <sup>640</sup>	Customs can suspend for 10 working days; this can be extended for a further 10 working days <sup>641</sup>
(6) Indemnification of the importer and of the owner of goods <sup>642</sup>	Appropriate compensation <sup>643</sup>	Appropriate compensation <sup>644</sup>
(7) Right of inspection and information <sup>645</sup>	Has been granted <sup>646</sup>	Has been granted <sup>647</sup> under

<sup>635</sup> TRIPS, art 53.

<sup>636</sup> TRIPS, art 54.

<sup>637</sup> IPRL, R.D. 67/2008 (80), amended by Article 37(4) of GCCUTML (R.D. 33/2017).

<sup>638</sup> CNRL, R.D. 65/2008, art 41(2)(A and B).

<sup>639</sup> TRIPS, art 55.

<sup>640</sup> IPRL, R.D. 67/2008 (86), amended by Article 37(5)(c) of GCCUTML (R.D. 33/2017).

<sup>641</sup> CNRL, R.D. 65/2008, art 41(2)(C).

<sup>642</sup> TRIPS, arts 55 and 56.

<sup>643</sup> IPRL, R.D. 67/2008 (85), amended by Article 37(3) of GCCUTML (R.D. 33/2017).

<sup>644</sup> CNRL, R.D. 65/2008, art 41; this condition does not express it clearly but it can be understood from the language of this article.

<sup>645</sup> TRIPS, art 57.

<sup>646</sup> IPRL, R.D. 67/2008 (81), repeated under Article 37(5)(c) of GCCUTML (R.D. 33/2017)

<sup>647</sup> CNRL, R.D. 65/2008, art 41(2)

(8) Customs authority can take <i>ex officio</i> action if IP right has been infringed	Customs has this authority <sup>648</sup>	Customs has this authority under Article 41(1) <sup>649</sup>
(9) De minimis exports <sup>650</sup>	Small quantities of goods of a non-commercial nature contained in travellers may be excluded from the provisions of border measures <sup>651</sup>	Similar exclusion under Article 41(4) <sup>652</sup>

*Source:* compiled by author based on the text of the TRIPS Agreement, OFTA, CNRL and IPRL<sup>653</sup>

The enforcement of IPRs by the DGC has been properly implemented in Oman according to international standards, in order to encourage and strengthen the safety and security of legitimate trade. In terms of public policy, this should assist Omani economic development by providing national and international companies with adequate IP protection with respect to border controls to safeguard their products and services. Moreover, border controls may help to protect Omani culture from unlawful IP trade, for example preventing counterfeit software, which can be against Islamic rules.<sup>654</sup>

Despite this success, challenges still exist in the management and enforcement of IP legal system to prevent IP infringements. For example, the IP owner should submit a written notice to the DGC to request that it

<sup>648</sup> IPRL, R.D. 67/2008, art 79(2), repeated under Article 37(4) of GCCUTML (R.D. 33/2017).

<sup>649</sup> CNRL, R.D. 65/2008.

<sup>650</sup> TRIPS, art 60.

<sup>651</sup> IPRL, R.D. 67/2008 (90), repeated under Article 38 of GCCUTML (R.D. 33/2017).

<sup>652</sup> CNRL, R.D. 65/2008.

<sup>653</sup> Amendments under GCC Unified Trade Mark Law (R.D. 33/2017).

<sup>654</sup> See Islamic *fatwa* in the following chapter.

monitor and notify relevant authorities of suspected infringing goods that enter Oman.<sup>655</sup> This application applies in relation to copyright and registered trademarks.<sup>656</sup> However, it is restricted in relation to patent-protected goods, where customs authorities have no authority to take border measures by acting *ex officio*, to prevent infringement related to patent products unless the right holder of a patented product requests, from the court, an order to prevent infringement. The court has authority to grant an injunction to stop this act and grant any other remedy such as awarding damages.<sup>657</sup> Consequently, the role of DGC in relation to patented products comes after the court grant an injunction, but not after submitting a written notice to the DGC.<sup>658</sup> In addition to the above rules in relation to patented products, customs authorities have more authority in relation to patented pharmaceutical products which enter the Omani market under the scheme established by the decision of the WTO General Council. The DGC should apply the same border measures in relation to trademarks to stop the illegal importation or re-exportation of pharmaceutical products in the above scheme.<sup>659</sup>

In practice, fewer than 10 applications have been submitted to the DGC by IP owners.<sup>660</sup> This could be the result of a low level of IP awareness within Omani companies. Thus, the limited number of IP owner applications might have an effect on custom officers when they act *ex officio* to temporarily impound any goods and suspend clearance.

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<sup>655</sup> This issue will be examined in the following chapter, which will seek to discover to what extent resources and expertise in DGC are competent to make these decisions, which, after all, can protect the companies in Oman, in particular SMEs.

<sup>656</sup> Trademarks will raise other problem in identifying whether they have been infringed or not and also, if the owner of the copyrighted work has not deposited his right, this will make it difficult for the customs officer to monitor this IPR.

<sup>657</sup> IPRL. R.D. 67/2008, art 65(1), (2), (3).

<sup>658</sup> The law does not mention whether the patent owner can register their right in the DGC or not.

<sup>659</sup> IPRL. R.D. 67/2008, art 65(1), (2), (3), (4).

<sup>660</sup> Interview with DGC 3 (Muscat, Oman, 13 March 2017).

In addition, Table 5.4 sets out the source of the DGC's legal authority to act *ex officio* to temporarily impound any goods and suspend clearance; the IP owner has 10 days to file a legal action, otherwise the suspected goods will be released.<sup>661</sup> The issue is, if the IP owner is not interested in filing a legal action, does the DGC have legal responsibility for any damage to imported goods? In practice this involves carrying out, and being responsible for, administrative, legal and financial liabilities. For this reason, one IP expert in DGC stated that 'the use of *ex officio* authority to detect infringing goods might be a result in shifting the burden of resources from the IP owner to the DGC and, it could make Customs officials liable in case of wrong detention'.<sup>662</sup>

In practice, *ex officio* authority has not been exercised by DGC in order to protect IP owners,<sup>663</sup> rather, it has been used to protect the public interest – for instance, to control the Omani market in counterfeit cigarettes and tobacco or other illegal goods which affect the health and safety of consumers. The DGC refers the cases to court by relying on UCLaw, but not on the IP framework. Remarkably, one member of DGC stated that 'Eventually, those counterfeit cigarettes will be seized and destroyed. Yet, instead of considering the case as a violation of IP laws, a judge will render it as not in compliance with the required specifications or a violation of tax evasion laws'.<sup>664</sup> Thus, The DGC needs to develop adequate IP expertise on the subject of identifying and responding to IP infringement and working with IP rights holders.<sup>665</sup>

IP enforcement by the DGC is problematic for several reasons such as a lack of IP regulation, insufficient IP experts, no official online IP record

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<sup>661</sup> IPRL, R.D. 67/2008 (86); it has been repeated under Article 37(5)(c) of GCCUTML (R.D. 33/2017) and CNRL R.D. 65/2008, art 41(2).

<sup>662</sup> Interview with DGC 3 (Muscat, Oman, 13 March 2017).

<sup>663</sup> Interview with DGC 2 (Muscat, Oman, 27 July 2016).

<sup>664</sup> Interview with DGC 3 (Muscat, Oman, 13 March 2017).

<sup>665</sup> Michael Blakeney, *Guidebook on Enforcement of Intellectual Property Rights* (Queen Mary Intellectual Property Research Institute 2005) 38.

system, no statistical data regarding IPR infringements and limited cooperation between DGC and IP direct institutions. These problems are explained below and where identified from the empirical study of this research.

- (1) There are no regulations which define how the DGC should practice its legal responsibility under the IPRL<sup>666</sup> and the CNRL.<sup>667</sup> A customs officer may find it difficult to enforce IP law.<sup>668</sup> One officer stated 'Customs authorities must extract those measures from the relevant IP laws and implemented them in form of procedural regulation in which Customs officers at the frontline could apply them in a fair and equitable manner and without impeding the legitimate trade. As pointed earlier, the DGC does not have such procedural regulation.'<sup>669</sup> Thus, the DGC should accelerate the process of issuing IP regulations which define the articles necessary to take border measures under the IPRL<sup>670</sup> and the CNRL.<sup>671</sup>
- (2) The DGC suffers from insufficient IP experts who can determine the offender in cases of infringements and decide if the confiscated goods are counterfeit or pirated.<sup>672</sup> In the long term, this factor alone could lead to an increase of IP crimes and threats at the Omani border from unlawful IP trade such as counterfeit trademarks or pirated software. According to a

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<sup>666</sup> R.D. 67/2008 and its amendment under GCCUTML R.D. 33/2017.

<sup>667</sup> R.D. 65/2008.

<sup>668</sup> Interview with DGC 2 (Muscat, Oman, 27 July 2016).

<sup>669</sup> Interview with DGC 3 (Muscat, Oman, 13 March 2017).

<sup>670</sup> R.D. 67/2008 and its amendment under GCCUTML R.D. 33/2017.

<sup>671</sup> R.D. 65/2008.

<sup>672</sup> Interview with DGC 2 (Muscat, Oman, 27 July 2016); interview with DGC 3 (Muscat, Oman, 13 March 2017).

customs officer, 'there are no IP experts and a few courses for custom officers in relation IP enforcement'.<sup>673</sup>

- (3) There is no official online IP record system for the DGC.<sup>674</sup> Such a system would assist the IP owners in properly registering their rights with the customs authorities, and help customs provide assured protection and the monitoring of the rights to a greater degree. Consequently, it might be good practice to establish an IP records system to facilitate the legal responsibilities in detecting infringed goods.
- (4) In reviewing the literature, it seems there is no reliable set of critical statistics regarding industrial property and copyright infringements within the DGC. Such statistical data is important to establish whether the DGC has adopted effective strategies to fight IPR infringements and protect national companies. Moreover, the provision of statistics can deter the exporters, importers and sources of counterfeit goods and pirated goods. For example, the European Commission has established good practice and publishes reports on customs detentions related to IP infringement. It has beneficial data to support the analysis of IPR infringements which impact on the EU markets and help develop suitable preventative strategy.<sup>675</sup> Thus, introducing this practice in Oman is essential if the role of the DGC is to be enhanced by contributing to economic development, the combating of organized IP crime and protecting consumer health and safety.

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<sup>673</sup> Interview with DGC 3 (Muscat, Oman, 13 March 2017).

<sup>674</sup> Interview with DGC 2 (Muscat, Oman, 27 July 2016); see Omani customs website <<https://www.customs.gov.om/portal/en/esw>>.

<sup>675</sup> Europa Commission. 'IPR Infringement: Fact and Figures' <[https://ec.europa.eu/taxation\\_customs/business/customs-controls/counterfeit-piracy-other-ipr-violations/ipr-infringements-facts-figures\\_en](https://ec.europa.eu/taxation_customs/business/customs-controls/counterfeit-piracy-other-ipr-violations/ipr-infringements-facts-figures_en)> accessed 26 February 2017.

- (5) The cooperation between the DGC and the IPD is limited. For example, a link with IPD databases of registrable IPRs does not exist.<sup>676</sup> To the data, the DGC must send a written request to the IPD to confirm if IPR is registered. The DGC should promote cooperation with the IPD by linking the IPD databases with customs, which can help in facilitating a good service for companies and help avoid suspending infringed goods more than the time limit (10 working days, which can be extended for a further 10 working days); please refer to Table 5.4. Such cooperation might certainly be worthwhile and can be achieved by sharing experiences and best practice.

Besides the IPD and the DGC, another actor in Oman's direct IP framework is the Public Authority for Consumer and Protection (PACP), which protects the Omani market and culture from the unlawful IP trade in order to serve consumers' interests.

### **5.2.3 The Public Authority for Consumer Protection (PACP)**

The Omani government established the PACP under R.D. 26/2011. The objective of PACP is set out under Article 3 of the General Authority for Consumer Protection System (R.D. 53/2011) and is to:

- (1) protect the consumer from price fluctuations.
- (2) monitor the prices of goods and services in the markets.
- (3) ensure that the consumer has a right of freedom of choice and equality and that fair treatment, honesty and credibility rules.
- (4) raise public awareness among consumers and the use of scientific methods for giving a balanced foundational information to all sectors of society.
- (5) find solutions to consumer complaints.

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<sup>676</sup> Interview with DGC 1 (Muscat, Oman, 27 July 2016)



- (6) combat illegal trade.
- (7) encourage the establishment of associations for consumer protection and supporting them.

Therefore, various pieces of legislation have been issued which cover different aspects of the essential needs of consumers, and which seek to promote the best interest of consumers. They aim at achieving a balance between consumer interests and the need to protect the Omani market from unlawful trade. These pieces of legislation may also cover IP protection.

Two key Acts have been promulgated to provide a high level of legal protection for consumer interests. Firstly, Oman issued the Protect Competition and Prevent Monopoly Act (PCPMA),<sup>677</sup> the main purpose of which is to protect consumers from anti-competitive monopoly practices. The PACP was responsible for administering and enforcing the PCPMA, but from the beginning of 2018 this legal responsibility has been moved to the Center for the Protection of Competition and Prevention of Monopoly, which is under the supervision of the MCI by R.D. 2/2018. Secondly, the Omani government issued the Consumer Protection Act (CPA) by R.D. 66/2014, to safeguard consumer rights and interests. For the purposes of this study, the author will focus on the CPA in order to confirm the extent to which the PACP has the legal authority to enforce IPRs and provide legal protection for IP rights holders. This triad of legislation plays a significant role in encouraging national economic development and protecting Omani culture.

The Consumer Protection Act (CPA) offers further protection in terms of illegal trade practices by a variety of means including the ability to curb unreasonable market manipulation; ban the sale of sub-standard, fake or

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<sup>677</sup> R.D. 67/2014.

expired goods; monitor pricing; and raise public awareness among consumers and businesses.<sup>678</sup> The PACP is responsible for administering and enforcing the CPA, based on two procedures to protect consumer rights.<sup>679</sup> Firstly, a consumer (who may be natural or legal person) files a complaint with PACP against the provider. Secondly, the PACP may act *ex officio* and investigate on its own initiative and seize allegedly infringing goods.<sup>680</sup> In both scenarios, if the PACP is able to identify suppliers or companies that are violating the CPA, it can initiate legal action and enforce its legal authority.<sup>681</sup> Consequently, the PACP has the right to

- (1) issue a fine to the infringer;
- (2) issue a warning;
- (3) refer the matter to the public prosecutor and the court to take criminal action against the infringer.

The CPA does not make any specific reference to the enforcement of any IPRs and, according to a legal expert in PACP, 'all matters relating to IPR do not fall under the jurisdiction of the PACP'.<sup>682</sup> However, a legal expert in DGC stated that the 'CPA protect[s] IPR directly or indirectly'.<sup>683</sup> Furthermore, the language of this Act can be read as obliging the PACP to be proactive in practising this authority, as will be illustrated below. Thus, in real terms, the question remains as to what is needed to activate this direct IP enforcement policy, which directly impacts on Omani

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<sup>678</sup> R.D. 66/2014.

<sup>679</sup> See Section 5.2.3 above, which shows the number of confiscated items by the PACP in 2015 to protect consumers rights: 440,823. See PACP, 'Annual Statistical Report 2015' (PACP 2015) <<http://pacp.gov.om/getattachment/0f077174-963c-4a11-a9c2-5e974f3e3913/.aspx>> accessed 17 March 2017.

<sup>680</sup> R.D. 66/2014.

<sup>681</sup> R.D. 66/2014.

<sup>682</sup> Interview with PACP 1 (Muscat, Oman, 22 July 2016).

<sup>683</sup> DGC2 stated that the 'PACP might practice its legal responsibilities in relation to IPR under CPA': Interview with DGC 2 (Muscat, Oman, 27 July 2016).

economic development and culture, in particular Islamic legitimate IP trade.

The PACP can exercise its legal responsibilities in relation to IPRs under the CPA; for example, the CPA addresses the issue of protecting consumer rights as follows:

- (1) Articles 3 and 4 prohibit the circulation of any product or service prior to obtaining approval from the concerned authority, and so on, as shown by the regulations.<sup>684</sup> This article indicates that a trader cannot circulate any products or any IP right without obtaining official permission from the appropriate authority, which, under the Omani IP legal system, requires getting approval from the IP owner (this official form can be issued by the IPD). As a result, IP owners, as consumers, can complain to the PACP by relying on this article. But it should be noted that, according to this article, they can only complain as a consumer, not as an IP owner.<sup>685</sup>
- (2) Article 7 prohibits the circulation of any goods that are fraudulent or corrupt or counterfeit or are being distributed without authorization, and are prohibited from being advertised.<sup>686</sup> The current regulations defines the meaning of the terms such as fake or counterfeit goods or unauthorized circulation in clear language in relation to IP. However the language seems to imply that companies cannot circulate fake or counterfeit goods which can infringe protected IP, if they meet the conditions of fake or counterfeit goods stipulated in

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<sup>684</sup> CPA, R.D. 66/2014.

<sup>685</sup> See the definition of consumer under Article 1 of CPA (R.D. 66/2014).

<sup>686</sup> CPA, R.D. 66/2014.

the regulation.<sup>687</sup> Furthermore, one might ask the question whether, if companies use IPRs without prior consent, this means that the product then becomes an unauthorized product, because it is protected under the Omani IP framework, which requires a formal certificate from the concerned authority (the IPD). Consequently, this article can be an effective tool to deal with IP subject matter by allowing a consumer (or the IP owner as a consumer) to complain, or for the PACP to protect consumer rights from illegal trading.

- (3) Article 14 says that consumers' religious values, customs and traditions shall be respected by companies.<sup>688</sup> This indicates more emphasis on Article 21, which requires that companies respect religious values, customs and traditions when they circulate any goods or services to consumers.<sup>689</sup> PACP 1 stated that 'according to CPA the provider shall not supply a consumer with goods which are considered contrary and insulting in any way the Islamic religion. For example, the sale of goods shamelessly or sell products with images or signs or symbols in violation of Islamic morality.'<sup>690</sup>

The vital responsibility of the PACP is protecting consumer rights by obliging companies not to violate this right. One might ask the question

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<sup>687</sup> See the exclusive regulations of CPA N.77/2017 under Articles 3 and 5. The wording is very broad and it seems from the language that it can involve IPR issues. The meaning of fake goods is 'any change, amend, in any way in the number, amount, measured, weight, capacity, caliber, Self, what they are, nature, attributes, its components, its origin, composition, expiration date, characteristics, in the data, or quantity'. It should be noted that a new GCCUTML (R.D. 33/2017) also define fake goods as 'Goods, including covers, which carry – without a license – a mark identical to a registered trademark of such goods or a mark which can not be distinguished in terms of its essential elements of the registered trademark'.

<sup>688</sup> CPA, R.D. 66/2014.

<sup>689</sup> CPA, R.D. 66/2014.

<sup>690</sup> Interview with PACP 1 (Muscat, Oman, 22 June 2016). It should noted that the exclusive regulations of CPA issued on 9 March 2017 (2017/77) give a similar statement under Article 26.

whether, if a company infringed a protected IP right, this might also be considered a violation of Islamic values. PACP 1 stated that 'we would like to state that all matters relating to IPR does not fall under the jurisdiction of the PACP, but it is under the jurisdiction of the Ministry of Commerce and Industry (IPD)'.<sup>691</sup> This statement seems that the PACP does not have a specific standard or guideline to explain this rule.

It should be noted that Islamic law deals with consumer protection in order to encourage legitimate trade in tangible or intangible property, a matter discussed in Chapter 4.<sup>692</sup> Accordingly, Islamic law provides guidance on business and trade for enterprise to respect as part of the Islamic religious law framework. For example, Islamic law principles state that 'the mutual consent of the parties, transparency in dealings, and the fulfilment of their promises, agreements and contracts'<sup>693</sup> are important to legitimize trade. Consequently, in terms of religious values, customs and traditions, Articles 14 and 21<sup>694</sup> are similar to the concept of Islamic morality, which helps define its scope and establish a framework in which this direct enforcement agency can work. This means that the PACP should not disclaim its responsibility from protecting Omani culture from unlawful IP trade which is considered to be against Islamic values such as counterfeit trademark or fake software.

In summary, PACP has certain powers to monitor the use of IPR and to do so it should exercise its legal responsibilities under the CPA. The activation requires the following:

- (1) The PACP should rethink its interpretation of Articles 3 and 4, as has been explained above.

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<sup>691</sup> *ibid.*

<sup>692</sup> See Sections 4.2.2 and 4.2.3 above.

<sup>693</sup> Abdulla AlGhafri, 'The Inadequacy of Consumer Protection in the UAE: The Need for Reform' ((PhD thesis, Brunel University 2013) 148.

<sup>694</sup> CPA, R.D. 66/2014.

- (2) The PACP should interpret the concept of religious value or Islamic values under Article 21 in much the same way as public order and morality, explained in Chapter 4.<sup>695</sup> Using this standard as a guideline helps them to be more accurate. It can extend its influence to protect the Omani market from unlawful IP trade such as counterfeit trademarks.

In addition to the IPD, the DGC and the PACP, another performer in Oman's direct IP framework is the Omani judicial system – the role of the courts, a key body in dealing with civil and criminal IP disputes.

#### **5.2.4 The Omani judicial system – the role of the courts<sup>696</sup>**

The Omani IP framework needs to be strengthened by a strong judicial system which can deal with civil and criminal IP disputes, and operated by a sufficient number of judges with appropriate experience.<sup>697</sup> To date, Oman does not have any specialist IP judges or IP department within its courts.

The Omani legal system is based on civil law. Omani courts base their judgments on the legislation, which is the main source of law, and there is no binding precedent, as there is in common-law countries. Therefore, the court does not have to follow principles established by other courts, regardless of their levels. They are only obliged to follow what is stipulated under the Acts.<sup>698</sup>

Article 36 of the Civil and Commercial Procedures Law (CCPL) states that the court of first instance shall have jurisdiction in disputes relating to IP

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<sup>695</sup> CPA, R.D. 66/2014.

<sup>696</sup> Judiciary Affairs Management Council.

<sup>697</sup> World Intellectual Property Organization, *WIPO Intellectual Property Handbook: Policy, Law and Use* (World Intellectual Property Organization 2004) 207.

<sup>698</sup> Rami M. Olwan, 'Intellectual Property and Development: Theory and Practice' (PhD thesis, Queensland University of Technology 2011) 240.

and shall be composed of three judges.<sup>699</sup> This article demonstrates the importance of IP disputes as well as IP protection, and it can provide a fast judgment. Furthermore, the Omani administrative court has jurisdiction over cases of registration decisions of patents and trademarks and other registerable IPRs from the IP Office, so the decision can be reviewed by the court of first instance and appealed to the administrative court. The involvement of the judicial system in enforcing the IP framework indicates the future importance of IPR in the Omani economy because 'judicial involvement is an indicator of how much emphasis the business entity places on IPRs to justify litigation costs'.<sup>700</sup> In addition, an effective judiciary cannot be relied on unless it can resolve cases in a reasonable time limit and is accessible to the community. According to Dakolias, 'Many developing countries, however, find that their judiciaries advance inconsistent case law and carry a large backlog of cases, thus eroding individual and property rights, stifling private sector growth'.<sup>701</sup>

So the question is the extent to which the Omani judiciary is effective in relation to IP disputes. The researcher has confirmed that there are no statistics available to show the number of IP cases decided by the Omani courts, or to indicate the extent to which the courts have been able to resolve disputes. However, statistical data is available in relation to commercial disputes, which IP cases are part of, in Oman. Table 5.5 below shows the average percentage of cases solved per year and the cases unsolved or filed of commercial disputes in the period 2015–2016.

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<sup>699</sup> R.D. 29/2002.

<sup>700</sup> Faris K. Nesheiwat, *Misapplying Globalization: Jordan and the Intellectual Property Policy Challenge* (Cambridge Scholars Publishing, 2014) 143.

<sup>701</sup> Maria Dakolias, 'Court Performance Around the World: A Comparative Perspective' (1999) 2(1) *Yale Human Rights and Development Journal* 88

**Table 5.5 The average percentage of cases solved and unsolved of commercial disputes**

Type of court	First instance	Appeals	Higher court
2015	72%	66%	47%
2016	72.7%	67.1%	58%

Sources: compiled by author based on Omani Judiciary Affairs Management Council reports<sup>702</sup>

Table 5.5 gives an indication that there are serious challenges for enforcement effort in general, and for the enforcement of IP in particular. The courts in Oman suffer from a significant backlog in solving disputes, which can impact on IP owner in getting injunctions to prevent infringement, or other legal remedies such as the award of damages. One of the reasons for this backlog could be that there are no time limits on court action under the IP framework. In addition, the Civil and Commercial Procedures Law (CCPL)<sup>703</sup> does not set a time limit on presenting defences and responses (in IP or in other commercial issues) or on the length of the postponement of cases. This means the cases can take long time to solve.

Furthermore, a backlog exists in the implementation of verdicts in Oman, where the average percentage of implemented verdicts or unresolved cases under the jurisdiction of the court of first instance was 55% in 2015 and 43% in 2016.<sup>704</sup> This gives an indication that there are insufficient judges to deal with these cases. Omani courts need to implement the courts' verdicts and failure to do so might cause significant concern for

<sup>702</sup> Judiciary Affairs Management Council. 'Achievements of the Judicial Council in 2015' <<http://www.caaj.gov.om/haykal/Qadaa%20Book.pdf>> accessed 24 March 2017; Judiciary Affairs Management Council. 'Achievements of the Judicial Council in 2016'.

<sup>703</sup> R.D. 29/2002.

<sup>704</sup> Judiciary Affairs Management Council. 'Achievements of the Judicial Council in 2015' <<http://www.caaj.gov.om/haykal/Qadaa%20Book.pdf>> accessed 24 March 2017



companies who wish to assert their rights through judicial channels in Oman.

The ability of the Omani judiciary to ensure the protection of basic IPRs under the CNRL has been criticized by Al-balushi, who relies on the unpublished judgment in the case of *Al-Toqi v Ministry of Commerce and Industry*. Al-Toqi had exhibited all his creative work in photographs on his website, which were offered for sale in print or digital formats. He also invited commissioned work. The right holder was unhappy with the fact that his copyright work was infringed by the Ministry of Commerce and Industry without his consent. In this case, Al-balushi states that:

*Omani courts at all levels—including the Supreme Court—held that no copyright infringement had occurred for different reasons. This case demonstrates that, even though Oman has been a member of the World Trade Organization (WTO) and a United States free trade partner for over a decade, its legal system is still not capable of ensuring the protection of the most basic rights of authors under copyright law.*<sup>705</sup>

This example might demonstrate that IP knowledge within the Omani court system is open to criticism, particularly in this particular case. The Omani Supreme court did not consider photographs to be copyrightable subject matter, which contradicts Omani international obligations under the Berne Convention (Article 2(1)(1)) TRIPS (Article 12), OUSFTA (Article 15.4 (4)) and the CNRL (Article 2(h)) as presented in Chapter 3.

From an empirical study, the researcher identified that the courts suffer from a lack of specialist IP judges. A judge in the Supreme Court stated

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<sup>705</sup> Riyadh Al-Balushi. 'Through the Eyes of Omani Courts: Copyright Protection of Photographs' (2017) 12(9) *Journal of Intellectual Property Law & Practice* 734, 734.

that judges attend only one IP course in enforcement, and there are no specialist IP judges.<sup>706</sup> His statement means that judges could well have problems in determining the offender of an IP infringement, have problems trying to decide whether infringed goods are counterfeit or pirated, and have problems resolving issues related software or patent technical issues and trademarks. Furthermore, the judges suffer from expert reports in general, which can sometimes be inaccurate or not helpful in issuing judgments. The experts also take a long time to respond to court orders for report.<sup>707</sup>

Consequently, these issues might impact on IP right holder decisions to institute court proceedings to prevent infringements and seek other legal remedy. Therefore, the IP framework should introduce a time limit for court actions and on presenting defences and responses and the time limit to postpone cases. Some reform in the Omani judiciary system might help to manage the backlog in resolving disputes and the execution of judgements such as increases in the number of judges, hiring temporary judges and introducing an alternative disputes resolution mechanism. In addition, the court should include qualified IP judges by conducting IP courses and enhancing communication and collaboration with the IPD.

Finally, regarding the role of the court in protecting Omani culture, the Omani court interprets the concept of public order and morality according to Islamic law. A judge specialized in commercial cases stated that 'this provisions is very broad and should be interpreted according to Islamic law and there is no specific standard'.<sup>708</sup> Therefore, the concepts of public order and morality under Chapter 4 can be used as a guide to the

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<sup>706</sup> Interview with Supreme Court 1 (Muscat, Oman, 18 July 2016).

<sup>707</sup> Interview with Supreme Court 1 (Muscat, Oman, 18 July 2016).

<sup>708</sup> Interview with IPD 1 (Muscat, Oman, 3 July 2016).

standards which may help judges assess related cases, in particular IP disputes.

In summary, in addition to the relevant government direct institutions, such as the IPD, the DGC, the PACP and the courts (Council of Judicial Affairs). However, another performer for economic and cultural progress in Oman is the indirect institutions, and in the context of this research the religious ministry, called the Ministry of Endowments and Religions Affairs (MERA).<sup>709</sup> The MERA is concerned with linking the Muslim community with religious ethics. These ethics are result of all beliefs and worship mentioned in the Quran or the Sunnah of the Prophet Mohammed (pbuh) to interact positively with current needs, as has been presented in Chapter 4.<sup>710</sup> Consequently, these demands affect the community by interacting with new issues or any external legal system (for example, IP issues or other legal issues) according to their values and belief by using its authority. The MERA in Oman will be the subject of next section.

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<sup>709</sup> This is the equivalent of other Islamic countries' ministries which called in: Saudi Arabia's Ministry of Islamic Affairs <<http://www.moia.gov.sa/menu/pages/about.aspx>>; Bahrain's Ministry of Justice and Islamic Affairs <<http://www.moj.gov.bh/en/default94de.html?action=category&ID=127>>; Kuwait's and Qatar's Ministry of Awqaf (Endowment) and Islamic Affairs <<http://islam.gov.kw/Pages/en/ContactUs.aspx>> and <<http://www.motc.gov.qa/en/news-events/news/ministry-endowment-and-islamic-affairs>>; and the United Arab Emirates' General Authority of Islamic Affairs and Endowment <<https://www.awqaf.gov.ae/?Lang=EN>> (all links accessed 3 March 2017).

<sup>710</sup> Interview with MERA 1 (Muscat, Oman, 21 July 2016).

### **5.3 Indirect institutions that play a role in the Omani IP framework: the Ministry of Endowments and Religious Affairs (MERA)**

#### **5.3.1 Overview: the indirect institution as an agent of change in IP religious understanding**

The increased existence of religious themes that permeate the Omani legal system may be leveraged to change the understanding of IP rights among Omani enterprises and society. This means that Omani IP direct institutions (such as the national IPD, the PACP, the DGC or the courts) are not the only institutions that have a role to play in achieving the national IP policy objective of enhancing the effectiveness of the IP framework and increasing the level of IP awareness and understanding by the public. In this respect, the power of indirect institutions should not be underestimated.

Oman aspires to preserve its religious culture through strengthening its local culture.<sup>711</sup> Consequently, the main foundation of this movement, and the pillars on which the Omani government functions, are vested in the Ministry of Endowments and Religions Affairs (MERA), established in 1997 by Royal Decree 97/84. The importance of the MERA is evident by having a minister and vice-minister. It has also a Grand Mufti (Islamic scholar) at minister level and Vice Grand Mufti and Grand Mufti Secretary.<sup>712</sup>

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<sup>711</sup> See Chapter 2 on the characteristics of Omani basic law.

<sup>712</sup> The appointment of Minister and Grand Mufti and Vice Grand Mufti is by royal decree; the main requirement under the basic law is that he should hold Omani nationality and not be less than 30 years old. There are no specific qualifications for Grand Mufti under Omani legal system; however, the main requirement of mufti under Islamic law will be explained in 'The Importance of the Fatwa'.

In 1999, Royal Decree 99/167 determined the jurisdiction of the MERA in accordance with Annex 1.<sup>713</sup> The functions of the MERA (relevant to this study) are to:<sup>714</sup>

*(5) Supervise the advice and guidance, and to train and develop specialists in the relevant areas in Oman.*

*(7) Prepare studies and religious research.*

*(8) Coordinate with the competent with respect to supervise the monitoring of works and religious publications entities.*

*(10) Exchange information and experiences with various organizations and with Arab and Islamic institutions in the field of Endowments and Religious Affairs.*

*(11) Represent the Sultanate in conferences, seminars and meetings related to Endowments and Religious Affairs, in coordination with the competent authorities.*

In order to achieve the above objectives, the royal decree approved the organizational structure of the MERA, and in particular the Office of the Grand Mufti and the Directorate General of Preaching and Guidance (DGPG).<sup>715</sup> Therefore, religious and cultural factors can be shaped and controlled by the MERA and the Office of the Grand Mufti, and it may

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<sup>713</sup> R.D. 99/167.

<sup>714</sup> R.D. 99/167. According to this R.D., this ministry is responsible for administration and investment of endowments in Oman. In Arabic, an Islamic endowment is called 'Al-Waqf', which means 'the charitable endowment of an physical item for the benefit of the community at large. Al-Waqf is a form of continuing charity (As-Sadaqtu Al-Jariyah) the rewards of which continue even after the donor's death, as long as people continue to benefit from it.' See Abdulwahāb Muhammad Jāmi Elesin, 'The Role of Al-Awqāf (Islamic Endowments) in Poverty Alleviation and Community Development in the Nigerian Context' (2017) 37(2) Journal of Muslim Minority Affairs 225 <<https://doi.org/10.1080/13602004.2017.1339497>> accessed 25 May 2016.

<sup>715</sup> R.D. 99/167.

positively impact on the behaviour of individuals, businesses or policymakers.<sup>716</sup>

Clarifying the roles of these two departments, namely the Office of the Grand Mufti and the Directorate General of Preaching and Guidance (DGPG), will assist to develop a more successful model for increasing the level of IP awareness and understanding among Omani SMEs by drawing on the Islamic and religious perspective in terms of the recognition and enforcement of IP rights.

The objective of this section is to develop a theoretical framework for the understanding of how indirect institutions such as the MERA can work as instruments to modernize a religious understanding of legal IP issues or how other areas of law can be interpreted in accordance with Islamic law. At the centre of Oman's young IP framework is the concept of reviving Islamic spiritual development and applying it to the national economic development of IPR among individual members of society, which, in turn, may bring about a higher awareness and understanding of IP rights.

### **5.3.2 The Grand Mufti's Office as a way of increasing the level of IP awareness and understanding within the Omani IP framework**

The office of the Grand Mufti can be seen as a tool for adapting a Western IP framework to accord with an Islamic understanding of legal principles. The importance of the *fatwa* and its importance within Omani society will be explained, followed by a consideration of the *fatwa* experience in Oman and its potential power to shape the IP framework.

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<sup>716</sup> This issue will be examined in terms of how SMEs response to the impact from indirect institutions.

### 5.3.2.1 The definition of *fatwa*

*Fatwa* has an essential status in Islamic law and it can be classified as a key instrument in developing Islamic law.<sup>717</sup> It means 'Clarifying God's law for a problematic legal case (*nawazil*) based on some textual legal evidence'.<sup>718</sup> In Islamic law, *fatwa* is a unique process based on three elements: (1) the issue in question; (2) who to ask about a problematic legal issue – *mustafti*; and (3) who will respond to inquiries – the '*mufti*'.<sup>719</sup>

### 5.3.2.2 The importance of the *fatwa*

The *fatwa* is reflected in the provisions of Sharia law. It is documented in the Quran that Allah said: 'they ask you about women. Tell them, "God will instruct you about them".'<sup>720</sup> Accordingly, in the Quran, the *fatwa* is issued mainly by Allah as a religious legal judgement. Allah delegated the authority to communicate *fatwa* to His messenger the Prophet Mohammed (pbuh),<sup>721</sup> who was the first mufti in Islamic history, around

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<sup>717</sup> Ann Black and Nadirsyah Hosen, 'Fatwas: Their Role in Contemporary Secular Australia', (2009) 18(2) Griffith Law Review 405, 410. Fatwa means 'the issuance of nonbinding advisory opinions (*fatawa*, or *fatwas*) to an individual questioner (*mustafti*), whether in connection with litigation or not, is the separate domain of the jurisconsult (mufti)... muftis [has] specialized in handling the everyday traffic in conflicts and questions falling within the purview of Shari'a'. see Masud, Muhammad Khalid; Messick, Brinkley and Powers, David S, 'Muftis, Fatwas, and Islamic Legal Interpretation', in Masud, Muhammad Khalid; Messick, Brinkley and Powers, David S (ed), *Islamic Legal Interpretation: Muftis and Their Fatwas* (Harvard University Press, Cambridge, 1996), p. 3.

<sup>718</sup> Mohamed Abdalla, 'Do Australian Muslims Need A Mufti? Analysing the Institution of Ifta in The Australian Context', *Law and Religion in Public Life* (Routledge 2011) 216; he cited from Al-Ashqar 1976:9.

<sup>719</sup> Noor Naemah Abdul Rahman, Asmak Ab Rahman and Abdul Karim Ali. 'A Study on Students' Research related to Fatwa Submitted at Malaysian Public Universities' (2012) 2(18) International Journal of Humanities and Social Science 129; he cited from Mohd Daud Bakar, 'Instrumen Fatwa Dalam Perkembangan Perundangan Islam' (1997) 5(1) Jurnal Syariah.

<sup>720</sup> Muhammad Sarwar, *The Holy Quran, Arabic Text with English Translation* (Islamic Seminary 2001) [women: 127].

<sup>721</sup> Y.Al-Mallah, Hashim, *The Government System of the Prophet Muhammed: A Comparative Study in Constitutional Law* (Dar Al-Kotob Al-Iimiyah, Beirut, 2011). 234-39.

1439 years ago. Allah says, 'We have revealed the Quran to you so that you could tell the people what has been revealed to them and so that perhaps they will think'.<sup>722</sup>

Furthermore, Allah has forbidden indulgence in matters where the function of *fatwa* must be performed by qualified Islamic scholars; Allah says for people who ask about such matters, 'Ask those who know about the heavenly Books if you do not know about this'.<sup>723</sup> In light of the above, *fatwa* clarifies the provisions of Allah and applies them to the actions of the people; it is the words of Allah Almighty from which the mufti is able to say that a person must comply with an obligation, or that something is prohibited (*haram*) and you must not do it. The Islamic scholar classifies the mufti as interpreter of the role of Allah. Namely, from an Islamic perspective, Islamic followers, including IP institutions, can ask a mufti's advice regarding problematic legal cases (*nawazil*) in order to know about related Islamic legal judgments.<sup>724</sup>

Consequently, the impact of *fatwa* can be on an individual level and a national level. At an individual level, there is no doubt that a believer feels confident in the *fatwa* office which gave them Islamic views that encourage them to have sustained awareness in their religious worship.<sup>725</sup> Worship means to meet the guidelines of creator and avoiding His prohibitions.

Religious worship may impact on Omani society, where modern communications such as the radio, the television and newspapers are a reason for the appearance of numerous sources of modern legal *fatwas*.

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<sup>722</sup> *ibid* (An-Nahl Verse No:44).

<sup>723</sup> *ibid*, at 16:43).

<sup>724</sup> AAOIFI, *Shari'a Standards* (The Shari'a Board of Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) 2009) 400.

<sup>725</sup> Turky Al-Mutairi. 'Importance of the Institutional Ifta' <<http://site.islam.gov.kw/eftaa/MainSection/Pages/MainSection04.aspx>> accessed 30 September 2016.



Hence, the existence of relevant organizations, which provide the local community with Islamic *fatwas*, will help them, rather than *fatwas* issued by unqualified scholars who do not recognize all Islamic sources and their interpretations. Thus, a formal *fatwa* can help unite the local community and it can help the Omani government solve contemporary legal issues.<sup>726</sup> In terms of IP awareness and understanding in particular, the *fatwa* could play an important role in developing awareness of IP issues. For this reason, in Oman this indirect institution is considered to be highly influential on secular legal policy. The *fatwa* could play a significant role in assisting the enhancement of awareness of IP rights (or other legal issues) to be identified, understood and enforced via the direct institutions. The next section explains in further detail the Omani *fatwa* experience specifically in relation to IP rights.

### **5.3.2.3 The *fatwa* experience in Oman and its power in relation to IPR**

The organizational structure of the Grand Mufti's office in the Sultanate of Oman as we know it today was originally established in the 1970s and is associated administratively with the MERA, as discussed in Section 5.3.1 above. Responsibilities are distributed between its staff, and each division is liable for dealing with one aspect of society's necessities. For example, the functions of the *fatwa* office are to supervise and arrange *fatwas* and issue *fatwas* on different aspect of the needs of Islamic studies on critical issues. Other functions are to cooperate with Islamic scholars within Oman or outside of Oman, and it is also responsible for suggesting advice in matters submitted to it by national organizations.<sup>727</sup>

The Mufti's Office has a number of Islamic scholars and experts, and administrators, who assist the Mufti in the organization of the advisory

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<sup>726</sup> *ibid.*

<sup>727</sup> MERA Decision No. 99/167.

process to achieve its objectives. The Islamic experts are called upon to answer inquiries both from the public (individuals and enterprise) as well as government ministries. The inquiries relate to worship, financial transactions, personal statutes and legal issues (including IP rights). The Grand Mufti or Vice Mufti allocates an Islamic expert/scholar to research and formulate a response, which is then approved by them before it is communicated/published. They responses to inquiries by formal letter, on its website, by phone or face to face.

The Islamic doctrine of the Omani official mufti is the Ibadi (the major doctrine of the state), and the nature of the Omani Mufti in ancient times, provided that he does not prejudice Ibadi doctrine, is that he has always mentioned doctrinal differences in his *fatwas*. The enquirer has the right to rely on the Islamic scholar's views or not, even if they are from the non-Ibadi Islamic doctrine. As a result, the Omani Fatwa Office and Omani *fatwas* have several characteristics.<sup>728</sup>

In terms of the Omani Fatwa Office features, a Grand Mufti has the right to independence in issuing *fatwas*.<sup>729</sup> For example, the government cannot prevent a mufti from issuing a *fatwa* that contradicts IP law. To clarify, if the mufti criticizes the government on the issue of the sale of alcohol within the state because such sales are incompatible with Islamic law (e.g. this can extend to a trademark related to wine), the government cannot prohibit the issuance of the religious *fatwa*.<sup>730</sup> This indicates the level of independence of the Grand Mufti in issuing Islamic *fatwas* without any governmental pressure. In other words, the Grand Mufti has authority independent of the state in issuing Islamic *fatwas*. This does

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<sup>728</sup> Khalfan Al-shaili. 'Fatwa Institution and Cultural Changes in Oman from 1800–2000' (Research at Naddart website organization) <<http://www.taddart.org/?p=11709>> accessed 3 October 2016.

<sup>729</sup> *ibid.*

<sup>730</sup> <https://www.youtube.com/watch?v=fPn2KRkjaHQ>.

not mean that it is compulsory for the Omani government to implement Islamic *fatwas* in the courts – as it is in the Malaysian legal system<sup>731</sup> – but they can be taken as recommendations according to Islamic guidelines.

A Grand Mufti jurisdiction is not limited in his remit to royal decrees and ministerial decisions, rather he exercises jurisdiction according to Omani law; for example, he is member of the committee established by the Criminal Procedures Law (R.D. 99/97, Art 221) to give Islamic opinion to the court regarding the death sentence. In addition to that, under Article 5 of the structure of the Sharia Science College, the Grand Mufti is the head of the college<sup>732</sup> and the Vice Mufti is member of the board.<sup>733</sup> In addition, the Grand Mufti is a member of the Islamic Fiqh Council Conference. In other words, the Grand Mufti has jurisdiction over several cultural institutions.<sup>734</sup>

A unique feature of Omani *fatwas* is that they are based on the concept of 'religious tolerance', which relies not only on the Ibadi School

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<sup>731</sup> Magaji Chiroma and others, 'Role of Fatwa in the Fight against Terrorism: The Relevance of the Malaysian Fatwa Model to the Anti-Boko Haram Crusade' (2014) 4(1) GSTF Journal of Law and Social Sciences (JLSS) 36.

<sup>732</sup>R.D. 2014/35: mufti is an honorary president of the college and authorized to ask the board to do anything to achieve its goals.

<sup>733</sup> R.D. 2014/35, art 7.

<sup>734</sup> In Oman he occupied the following positions:

- (1) chairman of Sultan Qaboos institutes for Islamic Studies
- (2) member of the Committee on Grievances, the highest judicial body in the Sultanate
- (3) chairman of the Publications Committee and to achieve books at the Ministry of Heritage and Culture.

Outside of Oman his roles are:

- (1) member of the Islamic Fiqh Council of the Organization of the Islamic Conference
- (2) member of Al al-Bayt Foundation, the Royal Society for Research and Islamic civilization
- (3) member of the Board of Trustees of the International Islamic University in Islamabad, Pakistan.

See Khalfan Al-shaili. 'Fatwa Institution and Cultural Changes in Oman From 1800–2000' (research at Naddart website organization) <<http://www.taddart.org/?p=11709>> accessed 03 October 2016.

understanding<sup>735</sup> but on the acceptance of other Islamic doctrines. For example, the Omani Mufti will always mention in his *fatwa* the views of another Islamic school such as Shafi or Hanifi.

Another feature is that Omani *fatwas* more easily relate to contemporary reality and economic development, which can be similar to other Islamic schools. For example, in terms of the digital economy, the owner of an audio and video taped production and distribution company submitted to the mufti a question as to whether he had the right to prevent others from using his copyrighted material published on his firm's website; furthermore, he asked whether it is permissible for a third party to copyright-protect material which had been produced for commercial purposes or otherwise copy it without permission. The mufti supported the owner of the company in using his economic right to prevent others from using his copyrighted material.<sup>736</sup>

The Omani Mufti's Office has used different tools to distribute Islamic fatwas.

### **5.3.2.3.1 Online database**

The Grand Mufti's Office publishes *fatwas* or Islamic studies online. Fatwas Database Online, set up since 2010, provides a portal where an individual or business can access the Fatwa Office website. Consequently, the *fatwas* issued by the Mufti's Office are available on its website. There is also an 'ask your question' page, which allows users to submit their questions online. The types of questions submitted vary from matters of Islamic worship to business transactions, prayer and IP issues. The total of *fatwas* issued per month numbers around 1,000 and the Islamic

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<sup>735</sup> Khalid M. Al-Azri, *Social and Gender Inequality in Oman: The Power of Religious and Political Tradition* (Routledge 2013) 107.

<sup>736</sup> MERA, 'The Grand Mufti Office' <[http://iftaa.om/fatwa\\_dis-516-2602.html#content](http://iftaa.om/fatwa_dis-516-2602.html#content)> accessed 1 May 2017.

experts answer approximately 2,200 questions on the phone per month.<sup>737</sup> For example, on the website, there are only three *fatwas* regarding copyright issues, which have been viewed around 2,000 viewers.

### **5.3.2.3.2 TV**

On Omani official TV, there was a programme 'Ask a Mufti', broadcast in the afternoon during 2015. In this programme a mufti talks about the ethics of biology, clarifying, for companies, the Islamic role in this regard.<sup>738</sup> In another example, a vice mufti (Kahlan Al kharusi) gave his Islamic view with regard to using copyrighted software – noted in Chapter 5 – by stating that essentially his religious view supports the copyright law. This shows how this office can impact on society.

Regarding publication, the Mufti's Office can revise comparative Islamic studies with Western legal agreement; for example, the vice mufti revised Western human rights and Islamic law. This provides the possibility of revising Islamic study in relation to Western IP law.

There is a clear desire in Omani society and business to seek guidance from Islamic specialists. However, the question remains as to whether the Omani Grand Mufti's Office has sufficient qualified Islamic scholars or experts in different fields, e.g. science, technology, engineering and creative arts. For example, a *fatwa* related to copyright which asks 'To what extent can moral rights be transferred under Islamic law' suggests that a mufti should have experience in copyright law.<sup>739</sup> A similar situation exists when an Islamic scholar is questioned about patent-

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<sup>737</sup> MERA, 'The Grand Mufti Office' <<http://www.mara.gov.om/Fatwa.asp?Page=%C7%E1%DD%CA%C7%E6%ED>> accessed 29 September 2016.

<sup>738</sup> TV Oman. 'The Ethics of Biology' (Episode at 'Ask a Mufti' programme on Omani TV) <<http://tv.om/29623>> accessed 3 October 2016.

<sup>739</sup> This question is important for future study.

related issues, for example ethical issues in relation to animal cloning or other inventions excluded from patentability on public policy grounds.<sup>740</sup>

If a mufti does not have the appropriate experience in these matter, or if he is unable to seek guidance from relevant subject matter experts, his view should not be regarded as competent one. An accurate *fatwa* in the field of IP law should made as a result of the cooperation between Islamic scholars and subject matter experts.<sup>741</sup>

Such a collaboration would increase in the quality of *fatwas*, enabling them to be more authoritative both in Oman and in the international community. For this reason, it is recommended that it would be best practice for an Omani mufti to build a network with external and internal experts and have a specified list of subject matter experts to consult them before issuing a *fatwa*, for example in IP law a subject matter expert or, e.g., a list of qualified arbitrators – whose expertise is accredited and therefore the mufti could access them easily and lawfully.<sup>742</sup>

The above analysis will inform the results of the IP awareness survey to be reported in Chapter 6. If the survey indicates that SMEs follow their religious references and *fatwas*, then it will be important to evaluate how a *fatwa* can be better used as a tool to increase the level of IP awareness and understanding by SMEs and the public generally.

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<sup>740</sup> See Chapter 3 on the conditions of patentability and stipulations under IPRL. R.D. 67/2008 art 2(1)(2).

<sup>741</sup> Mohamed Abdalla, 'Do Australian Muslims Need A Mufti? Analysing the Institution of Ifta in The Australian Context', *Law and Religion in Public Life* (Routledge 2011)226.

<sup>742</sup> Researcher from his experience in the MERA.

### **5.3.3 The Directorate General of Preaching and Guidance (DGPG) as an indirect institution with a potential role in increasing IP awareness under the MERA**

The MERA has exercised its power in increasing Islamic awareness because Islamic followers sometime face inattention regarding Islamic views in their worship, business transactions, IP issues etc. Consequently, the role of preaching and guidance has been considered the task of the prophets and messengers of Allah, who resurrected God's missionaries. Therefore, Allah says 'God granted a great favour to the believers by sending a Messenger from their own people to recite to them God's revelations, to purify them of moral defects, to teach them the Book, and to give them wisdom. Before this they had lived in manifest error.'<sup>743</sup> This means that this task should be revived by qualified Islamic scholars or preachers. Thus, in Oman, the function of the DGPG has come to revive this task. It has a number of Islamic specialists who work according to their job description, and administrators. It associates administratively with the MERA to help a minister in achieving Islamic awareness. The responsibilities are distributed between its staff, and each division is liable for dealing of one aspect of the society's necessities. Under this Directorate General there are three departments:

**(1) The Religious Information Department:** This is responsible for preparing a variety of religious programmes and broadcasting them on media; it regulates religious censorship over publishing religious books and research within Oman, and exercises authority over programmes, soap operas, movies, dramas and religious conversations broadcast by various media.<sup>744</sup>

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<sup>743</sup> Muhammad Sarwar, *The Holy Quran, Arabic Text with English Translation* (Islamic Seminary 2001) (3:164).

<sup>744</sup> Religious Information Department.

**(2) Religious Research Department:** This researches the needs of Islamic studies on contemporary issues including IP legal issues and prepares the *Al juma* speech, which the imams are required to recite in mosques every Friday. There are a large number of imams or volunteers who have official permission to deliver this religious speech (issued weekly by the ministry) and which is distributed to all mosques in the Sultanate of Oman, estimated to number 1,415. Consequently, religious speech can be used as an instrument for addressing modern issues (it can resolve contemporary IP legal issues according to Islamic framework) because most of the audience are from the public and companies, where the Friday Islamic speech may affect their behaviour towards IP legal rights.

**(3) Preaching and Guidance Department:** This is liable for the preparation of the general plan of preaching and guidance exercised by specialists in the field of Islamic law in issues of concern to the community. For example, there are a number of employees who can deliver Islamic lectures in mosques, schools, universities or companies. There are a number of volunteers who have official permission from the MERA to deliver religious speeches by using ministry guidance in this regard. There is a possibility of including legal aspects or IP rights and guidance in accordance with their job description. Table 5.6 below sets out the total number of religious employees (preachers and supervisors) and the number of programmes that have been implemented during 2016 in the Sultanate of Oman.



**Table 5.6 Statistical data about the preaching and guidance department<sup>745</sup>**

<i>The total number of</i>	<i>Islamic guiders (males and females)</i>	<i>Religious supervisors</i>	<i>Programmes that have been implemented in of Oman in 2016</i>
	1,279	101	251,033

*Sources:* compiled by author based on a written request

The power of the DGPG in increasing religious awareness is not limited; rather, it can exercise some of its jurisdiction through jami and mosques. Table 5.7 sets out the number of imams, mosques and jami.

**Table 5.7 The total number of imams, mosques and jami<sup>746</sup>**

<i>The total number of</i>	<i>Imam</i>	<i>Mosques<sup>747</sup></i>	<i>Jami<sup>748</sup></i>
	3,742	14,355	1,415

*Sources:* compiled by author based on a written request

According to the data in Table 5.7, the DGPG publishes around 51 unified Friday speeches per year, which should be conducted by imams in jami. So, if 1,415 jami conduct Friday speeches by imams and there are 51 Friday speeches a year, the total number is around 72,000 Friday speeches per year. It should be noted that the Friday speech is attended in these mosques by around 1 million worshipers a week.<sup>749</sup>

<sup>745</sup> DGPG; all data compiled for the author upon a written request, 2017.

<sup>746</sup> DGPG; all data compiled for the author upon a written request, 2017.

<sup>747</sup> It does not conduct Friday speeches.

<sup>748</sup> It conducts Friday speeches.

<sup>749</sup> Interview with MERA 1 (Muscat, Oman, 21 July 2016).

This data gives an indication of the power of indirect institution in increasing Islamic awareness which might impact on behaviour of people in Oman. So, as has been presented, the DGPG jurisdiction is not limited to increasing religious awareness in worship, but it might include rising legal awareness according to Islamic law. The main reason is the natural impact of religious thought on Muslim behaviour or business, as has been explained by a policymaker in the DGPG, who stated that:

*Religious thought, is considered to be a major impact in shaping awareness among Muslims, since Muslim belongs intellectually and ideologically to an integrated Islamic system that is based on legislative divine sources, which are in the Quran and the Sunnah. Muslims from an early age are brought up on this Islamic framework. They are brought up on the absolute belief as stated by the text of Allah (Quran) and His Messenger Mohammad peace be upon him (Sunnah). Sultan states that based on these, there are several consequences for example.*

*1-Muslims (including companies) deal with the cataclysms (New issues) of life based upon deep moral systems to which he belongs as a part of the religion and the divine legislation.....etc.*

*2- Islam offers a unique vision for the humans in their view of the requirements of human nature and the reality of living. Islam regulates a Muslim's relationship with his Creator Almighty, and a relationship with himself, and his relationship with others, relatives, neighbours, friends and others (traders), whether they are Muslims or non-Muslims. It includes his relationship with the rest of the*

*creatures and the environment and components and the universe around him.*

*3- As a result, if any legislative system of legal status does not consider the intellectual and ideological component and legislative of Muslims, it would represent a major problem for them. For example, this external legal system will not be able to interact and deal with it because it is not acceptable to them. In addition to that, it will lead to disorder between the inner belief of Muslims, particularly if the law requires behaviour which is incompatible with their Islamic principles and belief. Therefore, compatibility of the external legal system and Islamic rules (which shape Muslim behaviour) can be considered as the basic pillar of success in any external legislation to the requirements of human life (or in the Muslim society).<sup>750</sup>*

According to empirical data in the context of this research, those who had been interviewed such as IPD 1, DGC 1, DGC 2 and PACP 1 confirmed the importance of indirect institutions which use the religious ideology to strengthen any legal system or the IP framework by enhancing the level of awareness and understanding.

Therefore, the MERA strategy in raising legal awareness has been explained by one policymaker, who stated:

*MERA has raised legal awareness to the public through events, programs and activities either on its own or by participating with other ministries. As a result, it has encouraged its religious staff to introduce legal perspectives in their lessons or various activities, for*

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<sup>750</sup> Interview with MREA 1 (Muscat, Oman, 21 July 2016).

*example, in relation to human rights or the rights of the child or the rights of women or traffic safety or the fight against drugs and psychotropic substances.*<sup>751</sup>

He stated that the future plan of the MERA in this context is that the ministry will work to take advantage of specialized religious teams who have a variety of specialized studies to make the legal culture adoptable to Muslims' needs in their various programmes and activities or Friday speeches. For this reason, the MERA publishes a guide to religious information every year. The interviewee confirmed that cooperation with the concerned authorities (direct institutions) is important to achieve this objective.<sup>752</sup>

In summary, the task of official Islamic researchers, imams or preachers is to alert Islamic followers, wake them up from their slumber and bind them to Allah again. For example, if a company infringes copyrighted material, the role of an Islamic preacher is to alert them by increasing the level of IP awareness from an Islamic perspective through different channels. The methods at the disposal of this ministry can be used in relevant departments such as media or legal research and require a *fatwa* from a mufti or a conference. The empirical data shows that IP direct and indirect institutions recognize the importance of introducing the legal perspective in MERA activities in order to cope the social changes and cooperation with concerned authorities to achieve its aims.

In context of this research, the question is to what extent Omani SMEs can respond to this Islamic ideology as new approach of increasing the level of IP awareness. Consequently, this will be the subject of the next chapter.

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<sup>751</sup> Interview with MREA 1 (Muscat, Oman, 21 July 2016).

<sup>752</sup> Interview with MREA 1 (Muscat, Oman, 21 July 2016).

Moreover, the MERA needs:

- (1) an Islamic specialist in different legal area.
- (2) Islamic sources in relation to the IP issues or other legal perspectives and reviews by Islamic specialist.
- (3) cooperation with the relevant authorities, for example IP direct institutions, to define the challenges and opportunities to achieve the effectiveness of law, for example in an IP framework.
- (4) to introduce a legal IP aspect systematically in MERA activities by using its power.<sup>753</sup>

#### **5.4 Conclusions and recommendations**

This chapter has examined the direct and indirect IP administrative framework in Oman. Oman can adopt parallel approaches, such as the direct IP approach, which is controlled by the IPD, the DGC, the PACP and the court, and other indirect approaches controlled by the MERA.

In terms of direct IP institutions, Oman should consider looking forward to the long-term benefit arising from a strong IP system rather than focusing on the short-term costs of activating such a system. Analytical and empirical analyses of direct IP institutions show that, firstly, the IPD seems not to recognize how it can support local innovation by enhancing its enforcement, raising the level of IP awareness, attracting FDI and protecting its culture from unlawful trade. Analytical data shows the inability of IPD to cope with all IP applications or exercise some legal responsibility such as enhanced IP enforcement owing to a limited number of staff and experts.

These can have an indirect effect on the Omani economy that should not be underestimated and might include issues such as attracting IP

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<sup>753</sup> See Section 7.3.4 below.

litigation, trained IP experts and management companies wishing to locate in Oman. Secondly, the inability of DGC and PACP to exercise its authority by activating the related IP articles or apply a suitable strategy can have an undesirable impact on the Omani economy. Therefore, the reduction of acts of IP infringement would have a remarkable chance of success, if they were based on experts who specialized in interpreting legal provisions, in detecting unlawful practice, and in coordination with other institutions such as the IP Office. In addition, the data shows the inability of the Omani courts in managing commercial cases, of which IP cases are a part, owing to an insufficient number of judges.

The last part of this chapter has developed a framework to conceptualize the different techniques in which MERA can use its power to change the IP legal understanding among business and Omani society. As demonstrated, the Omani Fatwa Office or a mufti capable of absorbing and evaluating issues involving IP rights, as well as the role of the Directorate General of Preaching and Guidance (DGPG), must be considered. The empirical data in the context of this research indicated that the vast majority of respondents interviewed<sup>754</sup> confirmed the significance of indirect institutions which can use religious ideology to strengthen any legal system or the IP framework. In this way, it has the potential to allow contemporary IP legal issues adaptable to Omani culture, and its inherent Islamic law adaptable to social change that is consequently needed.

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<sup>754</sup> Such as IPD 1, DGC 1 and DGC 2, PACP 1.

**Recommendations to enhance communication and collaboration between direct and indirect institutions to promote awareness, understanding and respect for IP rights**

The table below illustrates specific recommendations for these institutions for an appropriate IP administrative framework to support and enhance the management and the enforcement of IP rights. Both aspects are needed in order to make a positive impact on the IP rights at both the national and international levels.

**Table 5.8 Summary recommendations for direct and indirect institutions**

<i>Direct and indirect IP institutions</i>	<i>Recommendation</i>
IPD	<p>(1) The IPD should increase the number of IP staff to be more qualified to manage applications and conducting IP awareness courses for companies and Omani society and answering all queries.</p> <p>(2) The IPD should have two other divisions which are responsible for IP awareness and IP enforcement.</p> <p>(3) IPD should open a new IPD account on social media as a tool to increase the level of IP awareness through Twitter, Snapchat, Facebook etc.</p> <p>(4) It can be good practice for the IPD to apply both the standard of IP public order and the standard of IP morality, which can contribute towards the reconstruction of guidelines for decision-making in assessing any IP application, as has been presented under Chapter 4. To achieve this objective, the IPD should appoint an Islamic researcher who can deal with this standard.</p>

	(5) The IPD should publish an annual report, which can help IPD to enhance its position at national and international levels.
DGC	<p>(1) The DGC should accelerate issuing IP regulations which define the related articles to take border measures under the IPRL<sup>755</sup> and the CNRL.<sup>756</sup></p> <p>(2) The DGC should appoint IP experts who can determine the offender of an infringement and decide if the confiscated goods are counterfeit or pirated.<sup>757</sup></p> <p>(3) It should conduct courses for custom officers in relation IP enforcement.</p> <p>(4) It should establish an official online IP record system for DGC and link this with the IPD database.</p> <p>(5) It should publish a reliable set of critical statistics regarding IP infringements within the DGC.</p> <p>(6) It needs to enhance communication and collaboration between the DGC and the IPD, and with companies to protect their IPRs by encourage them to register their IPRs with the DGC.</p>
PACP	<p>(1) The PACP should rethink interrupting the Articles 3 and 4, as has been explained, to exercise its IP enforcement authority.</p> <p>(2) The PACP should interrupt the concept of religious value or Islamic values under Article 21, as it has been interpreted with respect to the concept of morality under Chapter 4 and use the standard as a guideline; this would help it to be more accurate.<sup>758</sup> It can extend to protecting the Omani market from unlawful IP trade such as counterfeit trademarks which are protected under Islamic law.</p>

<sup>755</sup> R.D. 67/2008 and its amendments under GCCUTML.

<sup>756</sup> R.D. 65/2008.

<sup>757</sup> Interview with DGC 2 (Muscat, Oman, 27 July 2016); interview with DGC 3 (Muscat, Oman, 13 March 2017).

<sup>758</sup> CPA, R.D. 66/2014.



Courts	<p>The courts should resolve the backlog in commercial disputes and in the implementation of the verdicts. To do so,</p> <ul style="list-style-type: none"> <li>• Omani legislators should set time limits on court action under the IP framework. In addition, the Civil and Commercial Procedures Law (CCPL) <sup>759</sup> should set a time limit on presenting defences and responses (in IP or in other commercial issues) or on the length of postponement of cases.</li> <li>• The court should increase the number of judges, hire temporary judges and introduce an alternative dispute resolution mechanism to resolve the backlog.</li> <li>• The court should train IP judges by conducting IP courses and enhancing communication and collaboration with the IPD.</li> <li>• The Omani government should appoint qualified IP experts for the courts.</li> </ul>
MERA	<ol style="list-style-type: none"> <li>(1) The MERA needs Islamic specialists in different legal areas, in particular IPR.</li> <li>(2) It need more Islamic sources in relation to IP issues or other legal aspects and reviewing it by Islamic specialists.</li> <li>(3) It should cooperate with the relevant authorities, for example IP direct institutions, to define the challenges and opportunities to achieve the effectiveness of law, for example the IP framework.</li> <li>(4) Introduce a legal IP aspect systematically in MERA activities by using its power.<sup>760</sup></li> </ol>

The next chapter will answer whether the current IPR legal framework has had a favourable impact on the level of IP awareness, especially with reference to Omani SMEs, and to what extent Omani SMEs can respond

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<sup>759</sup> R.D. 29/2002.

<sup>760</sup> See Section 7.3.4 below.

to the impact from the MERA, which can give an indication on how to use this tool as a power in increasing legal or IP understanding.

## **CHAPTER 6 THE LEVEL OF SMALL AND MEDIUM-SIZED ENTERPRISES (SMES) IPR AWARENESS IN OMAN**

### **6.1 Introduction**

As identified in Chapter 1, the fifth and sixth primary objectives of this research are:<sup>761</sup> to determine the level of IP awareness within SMEs, which will help policymakers improve IPR protection, and the identification of salient factors that can help to increase the level of IP awareness, and in particular the SME response to the impact of the MERA. Both of these aims serve economic and cultural development. The sixth objective was to conduct a descriptive analysis in order to identify general patterns in the perceptions and opinions of SMEs in IPR, and these patterns were to be identified by means of a related issues survey. The results of this survey were to be critically interpreted so that there could be a better understanding of the level of IP awareness and factors which affect their understanding.<sup>762</sup> The overall objective of this exercise was to identify criteria essential to the development of a more efficient and effective IPR awareness mechanism to combat limited IP awareness.

In this chapter, Section 6.2 will introduce some background about Omani SMEs and their contribution to the economy in relation to IPR. Section 6.3 will discuss the research methods used in this study. Section 6.4 will aim to present a descriptive analysis of the primary data collected through IP awareness survey. The final part (Section 6.5) will be a discussion and analysis of the outcomes of empirical data, and is aimed at answering the principal question.

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<sup>761</sup> See Section 1.2 above.

<sup>762</sup> The researcher will use the data collected through interviews and the IP survey.

## **6.2 Background about Omani SMEs and their contribution to the economy in relation to IPR**

Oman is a developing country which, in common with other developing countries, places particular emphasis on the private sector.<sup>763</sup> SMEs in these countries are seen by the WIPO 'as the engines of economic growth and industrialization. SMEs have particular IP requirements if they are to grow their companies and become more competitive'.<sup>764</sup>

In 2013, Royal Decree 36/2013 was issued, establishing the Public Authority for Development of SMEs, a critical step by Oman to support this sector. Omani SMEs are based on two main criteria: the number of employees and sales turnover. Firstly, companies which employ fewer than five workers and have annual sales of less than RO 25,000 are considered micro-enterprises; companies which employ five to nine workers and have annual sales ranging between RO 25,000 and RO 250,000 are classified as small companies, and medium-sized companies employ 10 to 99 workers, with annual sales ranging between RO 250,000 to RO 1.5 million.

According to the Omani Public Authority for Development of SMEs, there is no accurate number of SMEs companies in Oman, but those registered with this authority are calculated to be 4,831 micro, 1,210 small and only 189 medium-sized.<sup>765</sup> In the context of this research, SMEs are

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<sup>763</sup> United Nations, 'UN report: World Economic Situation and Prospects 2017' *National News Agency Bulletin* (18 January 2017) 155.

<sup>764</sup> World Intellectual Property Organization, *Methodology for the Development of National Intellectual Property Strategies: Tool 3: Benchmarking Indicators* (WIPO publication no. 958.3 (E), WIPO 2016) 25.

<sup>765</sup> The Public Authority for Development of SMEs; all data compiled for the author upon a written request, 13 June 2016. It should be noted that this number had increased to 32,441 SMEs by the end of January 2018. See Omani National Centre for Statistics & Information. 'SMEs in the Sultanate of Oman' <[https://www.ncsi.gov.om/news/pages/newscat\\_20180226072141034.aspx](https://www.ncsi.gov.om/news/pages/newscat_20180226072141034.aspx)> accessed 29 May 2018.

independently owned companies not owned by the Omani government. The government does however support SME capability for innovation and this is to help drive future economic growth and nurture the entrepreneurial culture in the Sultanate of Oman, thereby enhancing the socio-economic development of the country.

The WIPO has stated that 'intellectual property is a power tool for economic development and wealth creation that is not yet being used to optimal effect in all countries particularly in the developing world'.<sup>766</sup> In 2014 the Central Bank of Oman conducted a comprehensive survey regarding the role of the SME sector in the Omani economy. It found that this sector did not recognize the contribution it makes to the national economy. This report did not, however, mention the IP framework. In addition, the Oxford Business Group issued a report regarding the role of SMEs in the Omani economy and concluded that they represent 16% of GDP and 90% of economic activity.<sup>767</sup> In OECD countries, the investment in knowledge-based capital has increased faster than investment in physical capital<sup>768</sup> considered as a share of GDP. Based on these conclusions it seems that SMEs in Oman can contribute to the economy by investing in IP knowledge.

However, the problem in Oman is that SMEs may not be aware of how to access and use the IP system within their particular sector. Therefore, the direct and indirect Omani IP institutions should endeavour to be part of the partnership with the private sector and should be motivated to encourage successful SMEs to serve the Omani economy and its Islamic

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<sup>766</sup> Kamil Idris, *Intellectual Property: A Power Tool for Economic Growth* (WIPO publication no. 888 (E), WIPO 2003)

<sup>767</sup> Khalfan Mohamed Al Barwani and others, 'Towards a Growing, Competitive and Dynamic Small and Medium-Sized Enterprises Sector in Oman: Strategy and Policies' (2014) 11 <<http://www.cbo-oman.org/OccasionalPapers/SME%20Sector%20in%20Oman%20-Paper.pdf>> accessed 23 July 2017.

<sup>768</sup> Organisation for Economic Co-operation and Development, *Supporting Investment in Knowledge Capital, Growth and Innovation* (OECD 2013).

cultural development by increasing their IP understanding. Based on this background, the next part will discuss the research methods used to achieve the objectives of this chapter.

### **6.3 Data collection methods: questionnaire-related issues**

By designing and utilizing a set of data collection methods and techniques, the research can prove to be more integrated and balanced.<sup>769</sup> Numerous methods of gathering information exist in social science, including questionnaires, observations and interviews in-person or by telephone, or through online-based discussions. Therefore, and in order to establish the level of IP awareness, a survey questionnaire approach was chosen as the method of data collection for this research. By using a computer-supported program, Statistical Package for the Social Sciences (SPSS), version 23,<sup>770</sup> and code assistance, the research will develop interpretation to examine whether the IP framework has had a positive impact on levels of IP awareness within SMEs.

#### **6.3.1 Questionnaire**

The quantitative method is 'a method for collecting primary data in which a sample of respondents are asked a list of carefully structured questions chosen with a view to eliciting reliable responses'.<sup>771</sup> Questionnaires are useful instruments for collecting information that does not exist in study literature, and for this reason a questionnaire will be used to achieve the above objectives.

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<sup>769</sup> Catherine Hakim, *Research Design: Strategies and Choices in the Design of Social Research* (Allen & Unwin 1987) 61.

<sup>770</sup> This software is the most popular in social science, where it is used to organize describe and analyse the data. See Soleman Hassan Abu-Bader, *Using Statistical Methods in Social Science Research with a Complete SPSS Guide* (2nd edn OUP 2011) 2.

<sup>771</sup> Jill Collis and Roger Hussey, *Business Research* (4th edn, Palgrave Macmillan 2014) 205.

This survey method was considered suitable for following reasons. Firstly, the questionnaire is a cost-effective technique for gathering data from a large number of participants. This could help improve the quantification of information about the respondents by the use of statistical data analysis. A questionnaire can help examine the reality. Secondly, this method is valuable because it is perceived as a sensitive area largely owing to the fact that the research will gain data about levels of IP and other factors which affect the behaviour of the respondents – such as religious influence. Finally, owing to the length of the questionnaire, it can help researchers discover comprehensive information about the level of IP awareness in a limited time frame. The questionnaire will be applied to the SMEs located in Oman, and the recipients of these questionnaires had extremely limited time to complete them.

### **6.3.2 Questionnaire design**

The questionnaire was presented in four pages and was composed of 30 questions. Some of the questions have sub-questions. The survey questionnaire was identical to the UK Intellectual Property Office (UKIPO) IP awareness survey of 2006, replicated in New Zealand in 2009, in terms of assessing the level of IP awareness in these common-law jurisdictions.<sup>772</sup> The IP legal system has been harmonized in common-law and civil-law countries in term of copyright, patents, trademarks and other IPRs. According to LTC Harms, 'The differences between the substantive provisions of IP laws in common-law and civil-law countries are relatively small. The laws are all very similar in content and the result in any particular IP case, on the same evidence, ought to be the same whatever the legal system'<sup>773</sup>

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<sup>772</sup> Robert Pitkethly, Chris Lewis and Concept House, 'UK Intellectual Property Awareness Survey 2006' 11 (UK Intellectual Property Office 2006).

<sup>773</sup> Louis T.C. Harms, *The Enforcement of Intellectual Property Rights: A Case Book* (3rd edn, WIPO 2012) 10.

Replicating this UK survey in the civil legal system can be beneficial in assessing the level of IP awareness and in achieving its overall objective. For this reason, and in the context of this research, the survey was designed to accord with the Omani IP framework (a civil-law system) with the addition of a new indicator relating to cultural perspectives. The questionnaires were distributed widely through many different companies in Oman. The survey was divided into five key sets of questions: 'Business Background', 'IP Knowledge and Understanding', 'Ownership of IPRs', 'Management of IPRS by Your Business' and 'Sources of Information about IPRs and Cultural Perspective.' The original questionnaire forms were in Arabic for those who were native Arabic speakers (SMEs).<sup>774</sup>

### **6.3.3 Questionnaire population**

This questionnaire targets SMEs who deal with IPR issues and benefit from IPR protection. According to Robson, 'The principle of selection in purposive sampling is the researcher's judgement as to the typicality or interest. A sample is built up, which enables the researcher to satisfy her specific needs in a project.'<sup>775</sup> In this study, respondents, who were SMEs in selected cities, provided the specific data needed. Thus, this study utilizes the purposive sampling method. Additionally, to raise the validity of the research, an IP doctor at Sultan Qaboos University and an Islamic researcher in the Office of the Mufti – an expert in Arabic language – were requested to review the survey before it was distributed. Thereafter, between 21 May and 15 June 2016, the pilot IP awareness survey was conducted, which had been ethically approved by Nottingham Trent University (NTU). It was conducted using 20 purposive samples from the

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<sup>774</sup> See appendixes (1) 'Arabic' and (2) 'English'. It should be noted that this survey does not use the new UK IP survey 2015 as its starting point, but in the future Oman can track the UK IP survey. See the survey on the website [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/500211/IP\\_awareness\\_survey\\_2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/500211/IP_awareness_survey_2015.pdf).

<sup>775</sup> Colin Robson, *Real World Research* (Reprint. Edn, Blackwell 1999) 140.



target population. The respondents were asked to explain any difficulties they had in completing the survey in order to raise the validity of the research, and in order to avoid misinterpretation.

The next step, between 1 July and the end of August 2016, was to distribute a total of 300 surveys to selected SMEs in Oman from the 6,000 SMEs currently registered with the Public Authority of Small and Medium Enterprises Development (PASMED), as mentioned earlier.<sup>776</sup> SMEs in the context of this research are defined as independent firms not owned by the Omani government. Overall, 162 surveys were returned, however 22 of the them were incomplete and consequently not taken into consideration when analysing the data contained in Table 6.1 below.

**Table 6.1 Distribution of the questionnaires**

<i>Number of distributed questionnaires</i>	<i>Number of returned questionnaires</i>	<i>Number of analysed questionnaires</i>
300	162	140

The analysed questionnaires of the 140 of the respondent companies came from three levels: micro (74), small (46) and medium-sized (19) enterprises,<sup>777</sup> as presented in Table 6.3 in Section 6.4.<sup>778</sup>

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<sup>776</sup> In addition, the researcher distributed an online survey because some companies needed to complete its survey online. Around 73 from respondents replied online on the link <http://goo.gl/forms/w2mXZMk6bmbsBS9o1>.

<sup>777</sup> One respondent cannot be classified at a particular level.

<sup>778</sup> See Section 6.4.1, Table 6.3 below.

As stated by Saunders, Mark, Lewis and Thornhill, "*Generalizations about populations from data collected using any probability sample are based on statistical probability. The larger your sample's size the lower the likely error generalising to the population.*"<sup>779</sup> The sample used in this study is fairly representative of the population, as it is unbiased, consistent and efficient. The larger the sample size, the more unbiased and consistent. In terms of the efficiency of the study sample, the low variance and low margin of error mean that the sample is more efficient. Furthermore, the margin of error indicates the extent to which the results represent the views of the overall population. The researcher normally works to a 95% level of confidence.<sup>780</sup> In this study, the margin of error is 8%, meaning that the statistic under this study would be within 8% (-+) point of the overall population.

#### **6.3.4 Confidentiality, anonymity, security and retention of research data**

The research was conducted by using clear ethical procedures guided by NTU's code of ethical research.<sup>781</sup> The researcher took into consideration Omani law and regulations. Confidentiality and anonymity was guaranteed at each stage of the project as well as the data collected from the questionnaires. Before furthering the data, the participants were provided with information such as the aim of the study and ethical issues. They were assured anonymity and also assured that their responses would remain confidential and not made available to any third party. In addition, the survey distribution procedures were fully supervised by the

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<sup>779</sup> Saunders, Mark, Philip Lewis and Adrian Thornhill, *Research methods for business students* (5. ed. edn Financial Times Prentice Hall, Harlow 2009)p 217-218.

<sup>780</sup> Ibid, p219.

<sup>781</sup> See 'Student Guide to Ethic' on the NTU website [https://www4.ntu.ac.uk/soc/document\\_uploads/76322.pdf](https://www4.ntu.ac.uk/soc/document_uploads/76322.pdf).

researcher. The survey was accompanied by a letter that consisted of the researcher's contact details (address, email address and phone number). Participants were asked to take note of their unique number/code. This code was used to identify a unique questionnaire if the participant wished to withdraw their data.

Participants were recruited through the database of the Public Authority of Small and Medium Enterprises Development in Oman (PASMED). To have access to the SMED database, the researcher wrote to the director general of PASMED to request permission, which was confirmed by letter. Furthermore, the Nottingham Law School Director of Study provided the researcher with a letter confirming his graduate student status.

Participant involvement in this research was completely voluntary before, during and after the collection of data. A deadline of three weeks was requested by participants to give notice that they wished to withdraw the information they provided. In addition, anonymity was provided to those participants that provided data via questionnaire.

### **6.3.5 Reliability of the instrument**

According to Perry 6 and Bellamy, 'reliability refers to the consistency with which measures are used. It therefore refers to the problem that random biases may be introduced into our data because of the way we gather and analyse this data'.<sup>782</sup> It indicates 'the accuracy and precision of the measurement and absence of defences in the results if the research were repeated'.<sup>783</sup> The measure cannot be reliable unless the researcher or someone else is able to repeat the study and get the same outcome.

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<sup>782</sup> Perri 6 and Christine Bellamy, *Principles of Methodology: Research Design in Social Science* (Sage 2011) 93.

<sup>783</sup> Jill Collis and Roger Hussey, *Business Research* (4th edn, Palgrave Macmillan 2014) 217.

Cronbach's alpha coefficient is the most commonly utilized test to check reliability.<sup>784</sup>

**Table 6.2 Reliability statistics**

<i>Cronbach's alpha</i>	<i>Cronbach's alpha based on standardized items</i>	<i>N of items</i>
.739	.752	36

This study was run using the Cronbach's alpha test<sup>785</sup> utilizing the reliability command in SPSS, which calculated scores for all the variables.<sup>786</sup> The acceptable result under the Cronbach's alpha test is above 0.70.<sup>787</sup> The instrument used in this study returned a Cronbach's alpha of 0.739. This indicated the reliability of instruments which measure the level of IP awareness.

In summary, the research methodology adopted is a guide to the present research study. To achieve the objectives of the study, a quantitative approach was used. Despite the challenges that exist in adopting this method, it was considered appropriate to use the cost-effective technique of gathering data from a large number of participants, while bearing in mind the perceived sensitive issue, the length of the questionnaire and

<sup>784</sup> Ibid, at 275.

<sup>785</sup> This means that Cronbach's alpha (aka the reliability coefficient), 'originated by Cronbach in 1951, is the most common estimate of internal consistency of items in scale. Alpha measure the extent to which item responses obtained at the same time correlate highly with each other. In addition to estimating internal consistency (reliability) from the average correlation, the formula for alpha also take account the number of items on the theory that the more items, the more reliable a scale will be.' See G. David Garson, *Guide to Writing Empirical Papers, Theses and Dissertations* (M. Dekker 2001) 125.

<sup>786</sup> A variable is 'a characteristic of phenomenon that can be observed and measured'; see Jill Collis and Roger Hussey, *Business Research* (4th edn, Palgrave Macmillan 2014) 5.

<sup>787</sup> Julie Pallant, *SPSS Survival Manual* (6th edn, McGraw Hill Education 2016) 101; G. David Garson, *Guide to Writing Empirical Papers, Theses and Dissertations* (M. Dekker 2001) 125.

the extremely limited time for completion. In order to get a deeper understanding of factors which affect the level of IP awareness, the author refers to the data which has been presented and analysed in previous chapters.

The following analysis constitute the findings of the empirical information arising from the IP awareness survey.

#### **6.4 Empirical findings of IP awareness survey**

This part is the initial empirical analysis that aims to give a descriptive analysis of main data gathered for this study through the survey. A statistical analysis will be given by using six indicators to answer the main question, grouped under five subjects: 'SME background', 'IP Knowledge and Understanding', 'Ownership of IPR', 'The Management of IPRs', 'Sources of Information about IPRs and Cultural Perspective'.

##### **6.4.1 SME background**

The purpose of this section is to give the respondents' backgrounds in terms of companies categorized, the distribution of the respondents according to their position in companies, and their inventing or developing products or services in the past five years within Omani industry.

The respondent companies came from three levels: micro, small and medium-sized enterprises, as presented below in Table 6.3.

**Table 6.3 The company categorizations for financial reporting purposes**

	<i>Frequency</i>	<i>Percent</i>	<i>Valid percent</i>	<i>Cumulative percent</i>
Valid Micro (1–5 workers)	74	52.9	53.2	53.2
Small (6–25 workers)	46	32.9	33.1	86.3
Medium-sized (26–99 workers)	19	13.6	13.7	100.0
Total	139	99.3	100.0	
Missing	1	.7		
Total	140	100.0		

As seen in Table 6.3, the majority of firms (53.2%) are micro, and only 33.1% are small and 13.7 are medium-sized. This indicates that the nature of the companies categorized in Omani industry are micro-dominated.

Table 6.4 below shows the status of the respondents who completed the survey and range from the perspective of three levels: managing director/chairman, director and employee.

**Table 6.4 The role of respondents within the company**

	<i>Company category</i>			<i>Total</i>
	<i>Micro (1-5 workers)</i>	<i>Small (6-25 workers)</i>	<i>Medium-sized (26-99 workers)</i>	
Managing director/chairman	68.9%	78.3%	47.4%	69.1%
Director	21.6%	8.7%	5.3%	15.1%
Employee	9.5%	13.0%	47.4%	15.8%
Total	100.0%	100.0%	100.0%	100.0%

As Table 6.4 shows, the majority of the respondents come from managing director/chairman level, with 69.1%; respondents from director level made up 15.1% and employees (who have important knowledge and specialisms) 15.8%. This suggests that 84.2% of the participants came from the senior level who might have the authority or responsibility to develop the company. As a result of the status of those responding to the survey, it is possible to gain a clear understanding about their company strategy and clear answers to the questions.

Table 6.5 below shows how respondents rated the level of innovation within the company in which they were involved.

**Table 6.5 The level of innovation in Omani businesses**

	<i>Company category</i>			<i>Total</i>
	<i>Micro (1–5 workers)</i>	<i>Small (6–25 workers)</i>	<i>Medium-sized (26–99 workers)</i>	
Yes	48.6%	52.2%	73.7%	53.2%
No	48.6%	43.5%	15.8%	42.4%
Don't know	2.7%	4.3%	10.5%	4.3%
Total	100.0%	100.0%	100.0%	100.0%

Firms were asked whether they had invented or developed products or services in the past five years; Table 6.5 shows that 53.2% of respondents stated that they had invented or developed a product or service in the past five years. Micro and small companies were less innovation-active firms (48.6% and 52.2% respectively). This might impact on generating new IP knowledge in the Omani market.

#### **6.4.2 IP knowledge and understanding**

This section examines respondents IP knowledge and understanding, and asks a number of questions about IP law and practice.

The first question in this part, noted in Table 6.6, examined whether companies were aware of Omani IP legislation which states that the inventor cannot file an application if they had previously disclosed information about their invention.<sup>788</sup>

<sup>788</sup> IPRL, R.D. 67/2008, art 3(1). However, there is an exception to this rule; please refer to Section 3.5.1 above.



**Table 6.6 The percentage of SMEs that thought about the impact arising from the publication of an invention before filing a patent application**

	<i>How the company is categorized for financial reporting purposes?</i>			<i>Total</i>
	<i>Micro (1-5 workers)</i>	<i>Small (6-25 workers)</i>	<i>Medium-sized (26-99 workers)</i>	
Yes	41.9%	58.7%	31.6%	46.0%
No	28.4%	26.1%	31.6%	28.1%
Don't know	29.7%	15.2%	36.8%	25.9%
Total	100.0%	100.0%	100.0%	100.0%

SMEs were asked if they knew of the main requirement for gaining a valid patent. As can be seen from Table 6.6, 46.0% of SMEs know that publishing before filing would invalidate an Omani patent application, 28.1% of respondents said no, while 25.9% said they did not know. The two groups saying 'no' and 'don't know' demonstrate a significant risk to the protection of patentable innovations. There was a higher percentage of 'yes' responses among the smaller and micro businesses (58.7% and 41.9%, respectively) than medium-sized, which indicated a lesser degree of knowledge.

Table 6.7 below shows the kinds of method used by SMEs to choose a new business or product name.

**Table 6.7 Choice of new business or product name**

	How the company categorized for financial reporting purposes?			Total
	Micro (1–5 workers)	Small (6–25 workers)	Medium-sized (26–99 workers)	
(1) Trademarks by referring to Omani IP Office	48.6%	37.8%	61.1%	46.7%
(2) Company names by referring to ministry	13.5%	20.0%	22.2%	16.8%
(3) Online web search	31.1%	40.0%	5.6%	30.7%
(4) None of these	5.4%		11.1%	4.4%
(5) Other	1.4%	2.2%	—	1.5%
Total	100.0%	100.0%	100.0%	100.0%

When firms were asked about the source they would choose to check new business or product names, the majority of the respondents (46.7%) chose to search trademarks by referring to the Omani IP Office and online web search accounted for 30.7%. As Table 6.7 shows, a few companies (4.4%) admitted not searching those choices. Small firms with 6–25 employees were more likely to make some searches. The half of all firms which chose not to consult any of these sources mentioned may be an indicator that such firms need IP awareness promotion. IP awareness needs to emphasize the need for SMEs to use the online MCI service to check the commercial availability of names in Oman and the availability of trademarks to avoid blockage in the IP office.

Table 6.8 below demonstrates the best method used by SMEs to protect technical innovation.

**Table 6.8 Choice of protection for technical innovation**

	<i>Company category</i>			<i>Total</i>
	<i>Micro (1–5 workers)</i>	<i>Small (6–25workers)</i>	<i>Medium-sized (26–99 workers)</i>	
Copyright	9.5%	4.3%	42.1%	12.2%
Patent	52.7%	39.1%	31.6%	45.3%
Industrial design	14.9%	19.6%	—	14.4%
Trademark	14.9%	15.2%	5.3%	13.7%
Secrecy	2.7%	6.5%	5.3%	4.3%
Don't know	5.4%	15.2%	15.8%	10.1%
Total	100.0%	100.0%	100.0%	100.0%

Firms were asked about the methods they would choose to protect new and non-obvious technical inventions. Table 6.8 shows 45.3% of the firms said they would choose patent as a method for protecting new and non-obvious technical inventions for example, in terms of hardware patent, while 12.2% of respondents said they would choose a copyright which could be applicable in term IT sector copyright. However, around 42.5% would choose other methods. Remarkably, medium-sized and small firms were less likely to admit that they do not know the best IPR method in about (less than 16%), but micro companies are less than 6%. Consequently, such companies need IP awareness promotion.

Table 6.9 below shows how firms answered to the question 'if you pay a subcontractor to design your website would copyright exist in that material?'

**Table 6.9 Whether a copyright exists in a commissioned work (website material)**

	<i>Company category</i>			<i>Total</i>
	<i>Micro (1-5 workers)</i>	<i>Small (6-25 workers)</i>	<i>Medium-sized (26-99 workers)</i>	
Yes	61.6%	58.7%	57.9%	60.1%
No	15.1%	19.6%	15.8%	16.7%
Don't know	23.3%	21.7%	26.3%	23.2%
Total	100.0%	100.0%	100.0%	100.0%

Table 6.9 shows that firms did consider whether the copyright ownership of commissioned work would exist in their website material: 60.1% of respondents correctly thought that ownership existed, while the 'no' and 'don't knows' might indicate that they are less aware of their IPR because website material is considered copyright-protectable works under the Omani CNRL such as software, website design, written material, photographs, graphics, music and videos.<sup>789</sup>

Table 6.9A below shows what SMEs thought about in the absence of any assignment (between commissioner 'company' and subcontractor) who would own copyrighted work over commissioned work (website material) which under Omani law requires specifying their IP rights over copyrighted work in the written contract.<sup>790</sup>

<sup>789</sup> CNRL, R.D. 65/2008, art 2.

<sup>790</sup> See Section 3.4.1 above.

**Table 6.9A Ownership of commissioned copyright work**

	<i>How is the company categorized for financial reporting purposes?</i>			<i>Total</i>
	<i>Micro (1-5 workers)</i>	<i>Small (6-25 workers)</i>	<i>Medium-sized (26-99 workers)</i>	
Your company	58.9%	58.7%	68.4%	60.1%
The subcontractor	26.0%	23.9%	21.1%	24.6%
Don't know	15.1%	17.4%	10.5%	15.2%
Total	100.0%	100.0%	100.0%	100.0%

Table 6.9A shows that 60.1% of respondents incorrectly thought their companies would own the copyright in commissioned work, and 15.2% of firms admit to not knowing. In particular, 68.4% of medium-sized companies seemed less likely to be aware of this context than the other two groups. However, less than 25% of all respondents correctly thought a subcontractor might own this IP right. The above data is reflective of the level of IP awareness and seems to indicate a need to encourage firms to include their IP rights in the written contracts, as analysed in Chapter 3.<sup>791</sup>

Other issues examined in the survey asked whether SMEs thought an IP application was necessary to gain a variety of IPRs, as presented in Table 6.10 below.

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<sup>791</sup> See Section 3.4.1 above.

**Table 6.10 Need for an application**

	<i>Yes</i>	<i>No</i>	<i>Don't know</i>
Copyright	81.0%	7.3%	11.7%
Patent	84.4%	6.7%	8.9%
Trademark	87.5%	4.4%	8.1%
Industrial design	67.9%	14.2%	17.9%

Table 6.10 shows that 81.0% of firms incorrectly thought their companies would need to register their copyrighted works – a reflection of the low level of IP awareness – because copyrighted works are obtained automatically under the Omani legal system, as was discussed in Chapter 3.<sup>792</sup> In particular, 91.1% of small companies with 6–25 employees were less likely to be aware in context than other two groups.

In terms of patents and trademarks, between 84.4% and 87.5% of the respondents correctly thought that they needed an application to obtain such IPR, which suggests a high level of IP awareness in this context.

Tables 6.11 and 6.11A below illustrate the respondents' insights as to the importance of IPR to their companies.

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<sup>792</sup> CNRL, R.D. 65/2008, art 34. See Section 3.4.6 above.

**Table 6.11 SMEs' perceptions of the importance of IPR**

	<i>Copyright</i>	<i>Patents</i>	<i>Trademarks</i>	<i>Industrial design</i>	<i>Confidentiality agreements</i>
Unimportant	22.1%	24.1%	22.8%	27.2%	21.2%
Not very important	14.0%	8.8%	6.6%	12.5%	17.5%
Important	30.1%	15.3%	18.4%	25.0%	20.4%
Very important	14.7%	27.0%	23.5%	22.1%	8.8%
Essential	19.1%	24.8%	28.7%	13.2%	32.1%

**Table 6.11A Combinations of importance**

	<i>Copyright</i>	<i>Patents</i>	<i>Trademarks</i>	<i>Industrial design</i>	<i>Confidentiality agreements</i>
Combination of important, very important and essential	63.9%	67.1%	70.6%	60.3%	61.3%

SMEs' perceptions of the importance of IPR are broken down by groups in Table 6.11. The IP protection methods chosen by the highest number of firms. The most important is trademarks: 70.6% of them chose this option, as illustrated in Table 6.11A, and the fact that they selected IPRs as important, very important and essential may reflect the high level of IP awareness. SMEs' perceptions of unimportant or not very important

might be because the IPR involves more complex application procedures and an application fee.

### 6.4.3 Ownership of IPRs

This section will describe data appertaining to the ownership of IPRs within Omani SMEs by focusing on their IP creation, ownership and expenditure on IPRs and their involvement in legal disputes. Table 6.12 below shows the rate of IP creation and ownership within Omani firms.

**Table 6.12 IP creation and ownership by SME**

	Company category			Total
	Micro (1-5 workers)	Small (6-25 workers)	Medium-sized (26-99 workers)	
Copyright	10.4%	4.3%	33.3%	11.5%
Patent	10.4%	6.5%	11.1%	9.2%
Trademark	34.3%	45.7%	16.7%	35.9%
Industrial Design	1.5%	10.9%	5.6%	5.3%
Don't know	43.3%	32.6%	33.3%	38.2%
Total	100.0%	100.0%	100.0%	100.0%

Table 6.12 shows that SMEs which create or own any IPRs might be more IP-aware than those who do not. Remarkably, Table 6.12 shows that, after the 38.2% of the 'don't know' responses – the most popular answer to the question – the second most popular response (35.9%) was trademarks. This result might be a threat to Omani companies in taking legal action to protect their rights, consequently it may be that they need



more promotion awareness to encourage them as to how they can create or own such IP rights.

Table 6.13 below illustrates the approximate amount spent on obtaining and preserving IPRs each year by SMEs.

**Table 6.13 Expenditure on IPRs**

	<i>Company category</i>			<i>Total</i>
	<i>Micro (1-5) workers</i>	<i>Small (6-25) workers</i>	<i>Medium-sized (26-99) workers</i>	
Less than RO 500	26.4%	34.8%	29.4%	29.6%
RO 500-2000	16.7%	10.9%	29.4%	16.3%
Over RO 2000	1.4%	4.3%	17.6%	4.4%
Nothing	55.6%	50.0%	23.5%	49.6%
Total	100.0%	100.0%	100.0%	100.0%

SMEs were asked about their expenditure on obtaining and preserving IPRs. Table 6.13 shows that their expenditure was very limited per year, and only 29.6% of firms spent less than RO 500 (1300\$), while around 49% of respondents did not spend anything. This is perhaps a reflection of the low level of IP awareness and value they place on the subject, and re-enforces the argument for companies to recognize the economic value of IP assets.

Tables 6.14 and 6.14A below show the percentage of respondents involved in IP disputes and the location of these disputes.

**Table 6.14 SMEs involved in legal dispute**

	<i>Company category</i>			
	<i>Micro (1-5) workers</i>	<i>Small (6-25) workers</i>	<i>Medium-sized (26-99) workers</i>	<i>Total</i>
Yes	4.1%	4.3%	15.8%	5.8%
No	94.5%	91.3%	63.2%	89.1%
Don't know	1.4%	4.3%	21.1%	5.1%
Total	100.0%	100.0%	100.0%	100.0%

**Table 6.14A Countries which SMEs involved in legal dispute**

<i>Total</i>	<i>Company category</i>		
	<i>Small (6-25) workers</i>	<i>Micro (1-5) workers</i>	
100.0%	100.0%	100.0%	Oman
100.0%	100.0%	100.0%	Total

Table 6.14 shows that only 5.8% of respondents were involved in legal disputes. In addition, medium-sized companies were more likely to become involved in legal disputes compared with other companies of a different size. Table 6.14A shows that, in the legal disputes involving SMEs, most of the disputes occurred in Oman (for who answered yes). Therefore, the low level of IP awareness might be a reason for not getting involved in legal disputes.

#### 6.4.4 The management of IPRs

A high level of IP awareness can lead to increased interest in how to manage IPR. Several questions were asked that might help measure IP management practices. The tables below illustrate these practices.

Firstly, the tables below show licensing activities within Omani SMEs, and demonstrate whether their companies ever licensed IP from other parties (Table 6.15) or licensed out their IP rights to other parties (Table 6.16).

**Table 6.15 The proportion of respondents who had licensed in IP from other parties**

	<i>Company category</i>			<i>Total</i>
	<i>Micro (1-5) workers</i>	<i>Small (6-25) workers</i>	<i>Medium-sized (26-99) workers</i>	
Yes	10.8%	23.9%	10.5%	15.1%
No	87.8%	71.7%	68.4%	79.9%
Don't know	1.4%	4.3%	21.1%	5.0%
Total	100.0%	100.0%	100.0%	100.0%

**Table 6.16 The proportion of respondents who had licensed out their IP rights to other parties**

	<i>Company category</i>			<i>Total</i>
	<i>Micro (1-5) workers</i>	<i>Small (6-25) workers</i>	<i>Medium-sized (26-99) workers</i>	
Yes	13.5%	15.2%	15.8%	14.4%
No	82.4%	80.4%	63.2%	79.1%
Don't know	4.1%	4.3%	21.1%	6.5%
Total	100.0%	100.0%	100.0%	100.0%

The results of both Tables 6.15 and 6.16 show that, whatever the size of the firms, licensing activities are limited, estimated at around 15% that have licensed in and out. These practices are not common for Omani firms, and around 85% of respondents answered no or don't know to this question. This reflects the extent of IP legal understanding, which can arguably impact in the transfer of technology among national or international firms, and demonstrates the importance of investment in IPRs in return for payment.

The tables below show the percentage of SMEs which had an employee assigned responsibility for managing IPRs (Table 6.17) and which had a separate patents or IP division (Table 6.18).

**Table 6.17 Whether firms employed IP specialists to manage IPRs**

	<i>Company category</i>			<i>Total</i>
	<i>Micro (1-5) workers</i>	<i>Small (6-25) workers</i>	<i>Medium-sized (26-99) workers</i>	
Yes	23.0%	23.9%	31.6%	24.5%
No	75.7%	71.7%	47.4%	70.5%
Don't know	1.4%	4.3%	21.1%	5.0%
Total	100.0%	100.0%	100.0%	100.0%

**Table 6.18 Whether firms had a separate patents or IP division**

	<i>Company category</i>			<i>Total</i>
	<i>Micro (1-5) workers</i>	<i>Small (6-25) workers</i>	<i>Medium-sized (26-99) workers</i>	
Yes	12.2%	9.1%	42.9%	15.6%
No	81.6%	87.9%	35.7%	77.1%
Don't know	6.1%	3.0%	21.4%	7.3%
Total	100.0%	100.0%	100.0%	100.0%

As can be seen from Table 6.17, only 24.5% of respondents had an employee for managing IP rights, while around 70% of them did not. In addition, Table 6.18 shows that, of the firms which had an employee for managing IP rights, only 15.6% of them had a separate IP division. This

might reflect ignorance of IPRs within Omani companies, which might put them at risk of, for example, infringing other IPRs.

Table 6.19 below shows the percentage of companies who assess how much their IP is worth.

**Table 6.19 The percentage of SMEs which had assessed the worth of their IPRs**

	<i>Company category</i>			<i>Total</i>
	<i>Micro (1-5) workers</i>	<i>Small (6-25) workers</i>	<i>Medium-sized (26-99) workers</i>	
Yes	14.9%	10.9%	26.3%	15.1%
No	82.4%	82.6%	47.4%	77.7%
Don't know	2.7%	6.5%	26.3%	7.2%
Total	100.0%	100.0%	100.0%	100.0%

SMEs were asked whether they had tried to assess how much their IP is worth. As can be seen Table 6.19, a limited number of firms assessed their IP value: around 15%. Interestingly, the percentage of medium-sized enterprises which had valued their IP exceeded micro and small enterprises. Therefore, awareness about IP value can help companies in exploiting their IPRs through licences activities or seeking loans.

The tables below show companies that had an IP policy (Table 6.20) and that had explained or distributed their policy to their staff (Table 6.21).

**Table 6.20 The percentage of SMEs which had an IP policy**

	<i>Company category</i>			<i>Total</i>
	<i>Micro (1-5) workers</i>	<i>Small (6-25) workers</i>	<i>Medium-sized (26-99) workers</i>	
Yes	27.0%	28.9%	52.6%	31.2%
No	64.9%	62.2%	26.3%	58.7%
Don't know	8.1%	8.9%	21.1%	10.1%
Total	100.0%	100.0%	100.0%	100.0%

**Table 6.21 The proportion of SMEs which had explained or distributed their IP policies to their staff**

	<i>Company category</i>			<i>Total</i>
	<i>Micro (1-5) workers</i>	<i>Small (6-25) workers</i>	<i>Medium-sized (26-99) workers</i>	
Yes	30.0%	14.3%	46.7%	27.0%
No	58.0%	82.9%	33.3%	63.0%
Don't know	12.0%	2.9%	20.0%	10.0%
Total	100.0%	100.0%	100.0%	100.0%

Table 6.20 shows that only 31.2% of the companies had an IP policy. The majority of respondents did not explain or distribute IP policy to staff, as illustrated in Table 6.21. This indicates that companies might suffer in getting future commercial benefits because an IP policy can help in

identifying new IP traders or to know about their competitors in the market.

Table 6.22 below shows the firms who had conducted IP training for their staff.

**Table 6.22 The percentage of SMEs which provided its staff with IP training**

	<i>Company category</i>			<i>Total</i>
	<i>Micro (1-5) workers</i>	<i>Small (6-25) workers</i>	<i>Medium-sized (26-99) workers</i>	
Yes	21.9%	15.6%	47.1%	23.0%
No	75.3%	77.8%	52.9%	73.3%
Don't know	2.7%	6.7%	—	3.7%
Total	100.0%	100.0%	100.0%	100.0%

Remarkably, Table 6.22 shows that 73.3% of firms did not offer any IP training to their staff. This suggest that there is a need for IP training, which could be a role for the IP Office.

The last table in this section, Table 6.23, shows the percentages of firms who checked for IP infringements.



**Table 6.23 Checking for IP infringement**

	<i>Company category</i>			<i>Total</i>
	<i>Micro (1-5) workers</i>	<i>Small (6-25) workers</i>	<i>Medium-sized (26-99) workers</i>	
Yes	39.7%	51.1%	52.9%	45.2%
No	49.3%	42.2%	23.5%	43.7%
Don't know	11.0%	6.7%	23.5%	11.1%
Total	100.0%	100.0%	100.0%	100.0%

Table 6.23 show that only 45.2% of firms checked for IP infringement – a common feature of those surveyed. However, medium-sized and small firms were more likely to check IP infringements than micro firms. Therefore, companies might face difficulties in monitoring their IP assists, particularly in detecting infringements and avoiding infringing the IPRs of others.

**6.4.5 Sources of information about IPRs and cultural perspective**

This section of the research deals with general sources of information regarding getting advice on IPRs, the need for advice on issues involving intellectual property, and using any IPR databases to make searches. The cultural perspective has been examined.

The first question asked to SMEs in this section was whether they had ever required IP advice. Table 6.24 shows the response.

**Table 6.24 The proportion of companies that had required IP advice**

	<i>Company category</i>			<i>Total</i>
	<i>Micro (1-5) workers</i>	<i>Small (6-25) workers</i>	<i>Medium-sized (26-99) workers</i>	
Yes	34.2%	28.3%	27.8%	31.4%
No	61.6%	65.2%	50.0%	61.3%
Don't know	4.1%	6.5%	22.2%	7.3%
Total	100.0%	100.0%	100.0%	100.0%

Table 6.24 shows that most SMEs had not sought advice on IPRs: 61.3% of them responded 'no' and 7.3% 'don't know'. This shows that they are less likely to be aware how to get IP advice or do not recognize the value of these IP rights.

Table 6.24A shows the source of IP advice used by SMEs.

**Table 6.24A The source of IP advice**

	<i>Company category</i>			<i>Total</i>
	<i>Micro (1-5) workers</i>	<i>Small (6-25) workers</i>	<i>Medium-sized (26-99) workers</i>	
Omani IPD	36.0%	12.5%	20.0%	26.1%
Internal solicitor	48.0%	50.0%	80.0%	52.2%
External solicitor	—	6.3%	—	2.2%
Other	16.0%	31.3%	—	19.6%
Total	100.0%	100.0%	100.0%	100.0%

Table 6.24A shows that 52.2% of respondents preferred to get advice from an internal solicitor as a first IP source, while the Omani IP Department was the second most likely source of IP information, with 26.1% of respondents claiming that they had consulted it. This result suggests that firms are less confident in the ability of the IPD to provide IP advice, or it might be that the IPD has a poor IP service quality.

Table 6.25 below shows the extent to which SMEs may need IP external advice.

**Table 6.25 Whether firms needed external IP advice**

	<i>Company category</i>			<i>Total</i>
	<i>Micro (1-5) workers</i>	<i>Small (6-25) workers</i>	<i>Medium-sized (26-99) workers</i>	
Always	32.9%	46.7%	57.9%	40.9%
Sometimes	52.1%	44.4%	31.6%	46.7%
Never	15.1%	8.9%	10.5%	12.4%
Total	100.0%	100.0%	100.0%	100.0%

The firms were asked about the extent to which they thought their company would need external advice when considering issues involving IP. The results in Table 6.25 suggest that around 87% of respondents held a positive view. This means that there was an appropriate level of IP awareness in SMEs across all the different level of companies in requesting IP advice.

Table 6.26 below shows the percentage of SMEs who had used or searched patent, trademark or other IPR databases.

**Table 6.26 Whether patents and trademarks or other IPR databases had been searched**

	<i>Company category</i>			<i>Total</i>
	<i>Micro (1-5) workers</i>	<i>Small (6-25) workers</i>	<i>Medium-sized (26-99) workers</i>	
Yes	47.9%	57.8%	10.5%	46.0%
No	46.6%	31.1%	47.4%	41.6%
Don't know	5.5%	11.1%	42.1%	12.4%
Total	100.0%	100.0%	100.0%	100.0%

SMEs were asked if they had ever used or searched patent, trademark or other IPR databases. Table 6.26, broken down by enterprises sizes, shows that 41.6% said no and 12% said don't know, while only 46% of them had conducted such an IP search. Companies who had searched IP databases were more likely to avoid IP infringement. Remarkably, Table 6.26 shows that between 47.9% and 57.8% of micro and small firms were more likely to search IP databases, whereas only 10.5% of respondents in medium-sized companies were likely to use it.

The problem is that, if companies would like to develop new products or to register trademarks, the calculated risk of infringing a registered patent or trademark should be taken into consideration. Therefore, searching IPR databases might help to avoid infringements. This result shows that there is a need to promote the use of IP databases with Omani IPD or WIPO databases available for such a use.

Regarding cultural perspectives, Table 6.27 below shows the extent to which SMEs respond to religious references and opinions regarding IP issues.

**Table 6.27 Whether firms followed religious reference opinions regarding IP issues**

	<i>Company category</i>			<i>Total</i>
	<i>Micro (1-5) workers</i>	<i>Small (6-25) workers</i>	<i>Medium-sized (26-99) workers</i>	
Always	83.6%	66.7%	68.4%	75.9%
Sometimes	13.7%	26.7%	26.3%	19.7%
Never	2.7%	6.7%	5.3%	4.4%
Total	100.0%	100.0%	100.0%	100.0%

The most important question which needs to be assessed is how SMEs respond to their religious leader or mufti (indirect institution). From Table 6.27, it can be seen that around 96% of SMEs, when asked whether they would follow religious references that declared using others' IPRs without the consent of owner is prohibited under religion, answered in the affirmative. This indicates that religious leaders are highly respected within Omani SMEs. This supports the contention that the MERA can work as an agent of change in IP religious understanding in Omani.

Table 6.28 below shows the percentage of respondents who had read or listened to Islamic opinion on how to use IPRs.

**Table 6.28 Whether Islamic opinion was read or listened to by SMEs on how to use IPRs**

	<i>Company category</i>			<i>Total</i>
	<i>Micro (1-5) workers</i>	<i>Small (6-25) workers</i>	<i>Medium-sized (26-99) workers</i>	
Always	23.6%	33.3%	38.9%	28.9%
Sometimes	41.7%	35.6%	22.2%	37.0%
Never	34.7%	31.1%	38.9%	34.1%
Total	100.0%	100.0%	100.0%	100.0%

Firms were asked if they had read or listened to Islamic opinion on how to use IP rights. Table 6.28 shows that 28.9% of firms answered 'always' and 37.0% 'sometimes', and the remaining percentage answered 'never'. This may indicate that direct or indirect institutions (the MERA) should be more active on social media to get more effective results in increasing the level of legal awareness by using religious ideology.

Table 6.29 below shows the percentage of refusal rate of IP registration due to the violation of public order and morality.

**Table 6.29 Whether respondents had experience of IP registration being declined due to violating public order and morality**

	<i>Company category</i>			<i>Total</i>
	<i>Micro (1-5) workers</i>	<i>Small (6-25) workers</i>	<i>Medium-sized (26-99) workers</i>	
Yes	8.3%	4.4%	21.1%	8.8%
No	84.7%	93.3%	73.7%	86.0%
Don't know	6.9%	2.2%	5.3%	5.1%
Total	100.0%	100.0%	100.0%	100.0%

SMEs were asked whether they had applied to register IPRs but had been rejected by the Omani IP Department on the grounds that their application was against public order and morality (for the Islamic rules see Chapter 4). Around 90% of respondents answered 'no' and 'don't know'. This result indicates that firms might be affected by Islamic philosophy and ethics, which require them to invest in IPRs that are consistent with Islamic rules. This means that a high level of IP religious awareness within these SMEs might affect them in applying for an IP application which might be considered contrary to their culture.

Table 6.30 shows the percentage of SMEs that used others' IP rights without the owner's consent.



**Table 6.30 Whether respondents would use another’s IP right without the IP right holders’ consent**

	<i>Company category</i>			<i>Total</i>
	<i>Micro (1-5) workers</i>	<i>Small (6-25) workers</i>	<i>Medium-sized (26-99) workers</i>	
Yes	11.0%	9.1%	15.8%	11.0%
No	79.5%	86.4%	68.4%	80.1%
Don’t know	9.6%	4.5%	15.8%	8.8%
Total	100.0%	100.0%	100.0%	100.0%

SMEs were asked whether they would use IP rights without the right holder’s consent. The results in Table 6.30 show that 80.1% of respondents answered that they would not. The positive responses reflect favourable values within these companies. This can reflect a high level of religious IP awareness based on Islamic philosophy – analysed in Chapter 4. It requires companies to respect the ownership of others’ intellectual labour (other companies’ IPRs) and requires that they practise legitimate IP trade, which prohibits the use of others’ IP rights without consent.<sup>793</sup>

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<sup>793</sup> See Section 4.2 above.

**Table 6.31 Whether IP infringement would be notified to the competent authority**

	<i>Company category</i>			<i>Total</i>
	<i>Micro (1-5) workers</i>	<i>Small (6-25) workers</i>	<i>Medium-sized (26-99) workers</i>	
Yes	56.9%	44.4%	52.6%	52.2%
No	25.0%	24.4%	26.3%	25.0%
Don't know	18.1%	31.1%	21.1%	22.8%
Total	100.0%	100.0%	100.0%	100.0%

Firms were asked whether they would notify the competent authority if they found that a company had infringed IP rights or a registered trademark (for example, the Public Authority for Consumer Protection (PACP) as a direct institution). The results in Table 6.31 show that 52.2% of SMEs answered positively, while 25.0% said 'no' and 22.8% said 'don't know'. The negative responses reflect unfavourable values within these companies, which can be important in the fight against IP infringement. This again demonstrates a continuing need for IP awareness promotion among such companies. Consequently, the MERA might work as an instrument to enhance these values from an Islamic perspective by condemning such unfavourable behaviour by using its power as has been analysed.<sup>794</sup>

Table 6.32 below shows the participant's satisfaction of the services provided by the MCI or the IPD regarding improving level of IP awareness.

<sup>794</sup> See Section 5.3 above and Section 6.5.6 below.

**Table 6.32 Whether SMEs are satisfied regarding IP Office efforts to improve IP awareness**

	<i>Company category</i>			<i>Total</i>
	<i>Micro (1-5) workers</i>	<i>Small (6-25) workers</i>	<i>Medium-sized (26-99) workers</i>	
Yes	16.4%	15.6%	47.4%	20.4%
No	58.9%	68.9%	36.8%	59.1%
Don't know	24.7%	15.6%	15.8%	20.4%
Total	100.0%	100.0%	100.0%	100.0%

Table 6.32 shows that a majority of SME were not satisfied (59.1%), while only 20.4% were satisfied and 20.4% didn't know. This suggests that the IPD need to be more active in increasing the level of IP awareness.

In summary, overall the survey showed that there was a low level of IPRs knowledge and understanding, with SMEs less aware of the cost/benefit in obtaining and preserving IPRs. In addition, management within Omani firms might create impediments to using the IP framework. SMEs suffer from a low level of IP knowledge and in seeking advice regarding IP issues and using IP databases to avoid infringements. In addition, the IP awareness survey paints a picture of a new approach to improving levels of IP awareness – particularly from a religious perspective – an angle which has significant application potential in Oman. Consequently, the Ministry of Endowments and Religious Affairs (MERA) can act as an agent of change in providing a religious understanding of IP principles in Oman by using its religious authority (this legal analysis is discussed in Chapter 5).

The outcomes of the survey will be discussed and analysed in the next section.

## **6.5 Discussions and analyses**

This section aims to combine some of the issues which result from the empirical findings to answer the significant issues of the research. This part deals with six issues: SME background, IP knowledge and understanding, ownership of IPRs, IP management, IP information, and cultural perspective.

### **6.5.1 SMEs background and their status in generating new knowledge**

The majority of firms who responded to the survey (53.2%) were micro, 33.1% were small and 13.7% medium-sized. This indicated that the nature of the company categorizations in Omani industry are micro-dominated. Of the respondents, 85.1% came from a senior level.<sup>795</sup> As a result of the status of the respondents to the survey, it is possible to gain a clear understanding about their company strategy and clear answers to the questions.

SMEs should be encouraged to innovate and understand that new knowledge carries substantial financial value, which can be generated by these companies when they produce a new product and process<sup>796</sup> Consequently, the national IP framework is important to protect new knowledge to serve the market economy, which is well regulated in Oman, as noted in Chapter 3.<sup>797</sup> Unfortunately, the survey shows that

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<sup>795</sup> See Section 6.4.1 above.

<sup>796</sup> Emmanuel Hassan, Ohid Yaqub and Stephanie Diepeveen, 'Intellectual Property and Developing Countries: A review of the literature' (2010, RAND Corporation, Santa Monica ) 18, <[http://gateway.proquest.com/openurl?url\\_ver=Z39.88-2004&res\\_dat=xri:policyfile&rft\\_dat=xri:policyfile:article:00124149](http://gateway.proquest.com/openurl?url_ver=Z39.88-2004&res_dat=xri:policyfile&rft_dat=xri:policyfile:article:00124149)> accessed 11 November 2017.

<sup>797</sup> See Section 3.3 above.

over half of Omani SME respondents represent less innovative firms, which reflects a low level of IP understanding (Table 6.5). As a result, low production of new products and process within Omani SMEs can negatively impact in generating new knowledge. This factor alone is important for the Omani market economy and to encourage an optimal investment in R&D and innovation. Therefore, innovation and creativity cannot be promoted unless the user of IP frameworks have a general knowledge of different IP-related issues. These include legal issues, ownership of IPR, good IP management and a good quality of IP sources and information, which will be discussed below. In addition, the culture perspective should not be underestimated.

### **6.5.2 Increasing SMEs legal IP knowledge and understanding**

An essential understanding of the IP framework and how it can be applied in practice is crucial. Such an understanding will make IP assets more valuable. As indicated earlier in this study, the overall survey showed that there was a limited level of IPR IP knowledge and understanding within Omani firms, which might be an impediment to using the IP framework more effectively.<sup>798</sup>

Omani legislation states that the inventor cannot file the application if they previously disclosed their invention.<sup>799</sup> The outcome of the SME survey shows a low level of IP awareness among Omani firms regarding their thoughts about publication of an invention before filing a patent application, which would prevent a valid Omani patent from being obtained. Overall, 28.1% of Omani SMEs incorrectly thought it would not and 25.9% of Omani SMEs didn't know (Table 6.6). In addition, only 45.3% of the SMEs would choose patents as a method for protecting new

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<sup>798</sup> See Section 6.4.2 above.

<sup>799</sup> IPRL, R.D. 67/2008, art 3(1). However, there is an exception to this rule; please see Section 3.5.1 above.

and non-obvious technical inventions. Therefore, this might demonstrate a significant risk to the protection of patentable innovations which need more IP awareness promotion as a duty of IP office. This is a matter examined in Chapter 5.<sup>800</sup>

Furthermore, choosing a commercial name can be considered the first step to building a brand, which can help a company to formulate a strong identity in market. Therefore, it is worth companies making checks to avoid legal disputes in future. For this reason, in Oman the MCI provides its users with a service which allows them to check the commercial name availability in Oman and trademark availability in the 'international ROMARIN Trademark Register' (managed by the WIPO) but not Omani trademark databases in the IP Office, as identified in Chapter 5.<sup>801</sup> The results of the survey in Table 6.7 show the low percentage of Omani SMEs (30.7%) that preferred to check on internet search engines for company names. It is recommended that the Omani government, in particular the MCI, should establish a national trademark database in the IP Office that allows companies to find if a name is registered as an Omani trademark. This can help to avoid blockages in the IP Office, identified in Chapter 5. Moreover, such a move would enable the IP Office to answer all company enquiries because a higher proportion of companies refer to the IP office as a main source (46.7%).<sup>802</sup> In addition, there is a need for more promotion to raise awareness to check in the MCI website.

An invention is a basis of innovation which is a new solution to a technical problem and it is protectable under patent law.<sup>803</sup> Omani IP law regulates how companies can protect their technical inventions, as discussed in

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<sup>800</sup> See Section 5.2.1 above.

<sup>801</sup> See Section 5.2.1 above.

<sup>802</sup> See Table 6.7 above.

<sup>803</sup> Alan Davidson, *Social Media and Electronic Commerce Law* (CUP 2016) 278.

Chapter 3.<sup>804</sup> It specifies the main requirements to obtain a patent, which should be that it is new (novel),<sup>805</sup> useful<sup>806</sup> and non-obvious<sup>807</sup> to a skilled person in that field. Therefore, if companies consider a patent as the 'most powerful offensive and defensive weapon'<sup>808</sup> to protect new and non-obvious technical inventions, this means that they can control the commercial use of their invention by preventing others from making, selling, retailing or importing a technology which is regulated under the IPRL.<sup>809</sup> The outcome of the questionnaire shows that 45.3% of firms said that they would choose a patent as a method for protecting new and non-obvious technical inventions, which suggests these respondents considered it a powerful tool under the Omani legal system.<sup>810</sup> However, around 54.5% would choose other methods. For example, 12% of respondents said they would choose a copyright which can be applicable in IT-sector copyright, but the problem is that 'copyright protection extends only to expressions, and not to ideas, procedures, methods of operation or mathematical concepts as such. Although copyright protects the literal expression of computer programs, it does not protect the ideas underlying the computer program, which often have considerable commercial value.'<sup>811</sup> In addition, copyright is an automatic right which starts as soon as the work is created. Therefore, companies need IP awareness promotion to consider the effective tools to protect their new and non-obvious technical inventions.<sup>812</sup>

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<sup>804</sup> See Section 3.5.1 above.

<sup>805</sup> IPRL, R.D. 67/2008, art 3(1).

<sup>806</sup> IPRL, R.D. 67/2008, art 11(1), (2)(a)(b).

<sup>807</sup> IPRL, R.D. 67/2008, art 11(1), (2)(a)(b).

<sup>808</sup> Alan Davidson, *Social Media and Electronic Commerce Law* (CUP 2016) 278.

<sup>809</sup> R.D. 67/2008, art 11(1), (2)(a)(b).

<sup>810</sup> See Table 6.8 above.

<sup>811</sup> World Intellectual Property Organization. 'Patenting Software' <[http://www.wipo.int/sme/en/documents/software\\_patents\\_fulltext.html](http://www.wipo.int/sme/en/documents/software_patents_fulltext.html)> accessed 10 October 2017.

<sup>812</sup> See Section 3.5.1 above.

Furthermore, firms can use their websites as great tools for fostering commercial business online and for making sales. Consequently, it is important to protect their IP material on their website, which is possible under Omani IP law. For example, search engines or other technical internet tools can be protected by patent; a company song or logo can be protected by trademark; website material is considered copyright-protectable; and works under the Omani CNRL include software, website design, written material, photographs, graphics, music and videos.<sup>813</sup> The survey outcomes show that there is a low level of understanding regarding whether copyright exists on website material, with around 40% of respondents answering 'no' or 'don't know', as shown in Table 6.9. The risk is that these companies may be suspected of illegal use of other IP assets. These companies might suffer from taking some precautionary measures to protect their website from abusive use, such as avoiding losing their legal rights in them by using a copyright notice (the © symbol, the word 'Copyright' or abbreviation 'Copr.'<sup>814</sup>) and depositing their copyright material at the Omani IP Office.

In addition, and according to Verbauwhe, a typical website has different components usually owned by more than one person. For example, one enterprise may have the right over the navigation software; others may own copyright material (text, photographs, video etc.); another person may have a copyright in the design of site. It may not be compulsory for companies to have IP rights over all features of the website, but they should know what their IP rights are and to what extent they can use them.<sup>815</sup> The SME survey shows that Omani firms suffer from a low level of IP awareness regarding their thoughts about copyright ownership over commissioned work in cases where the absence of any assignment on

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<sup>813</sup> CNRL, R.D. 65/2008, 2.

<sup>814</sup> L. Verbauwhe. 'Intellectual Property and E-Commerce: How to Take Care of Your Business' Website' (2004) 9 Journal of Intellectual Property Rights 2.

<sup>815</sup> *ibid*, at 4.



who will own copyrighted work (their company or subcontractor). As shown in Table 6.9A, 60.1% of respondents incorrectly thought their businesses would own copyrighted works and 15.2% of firms admitted to not knowing. Their IP awareness in this regard was not in line with the analysis of Omani copyright law in Chapter 3.<sup>816</sup> Therefore, Omani SMEs should be encouraged to specify their IP rights over copyrighted work in the written contract.<sup>817</sup> This can help them enjoy economic IP rights under Article 5(3) of the CNRL,<sup>818</sup> where the author of a work has the exclusive right to act, prevent or permit the actions under this article (see Chapter 3).

As mentioned in Chapter 3, IP frameworks commonly require IP applications as a first step in the granting of exclusive rights for IP owners, in particular for patent or trademark applications;<sup>819</sup> however, in terms of copyrighted work, the Omani legal system does not require an application because it protects automatically.<sup>820</sup> The outcomes of the SME survey revealed a similar level of IP awareness among Omani SMEs, whatever their size, in term of a need for IP applications to get IP right. For example, in terms of patents and trademarks, around 85% of the respondents correctly thought that they needed an application to obtain such IPR. These results suggest a high level of IP awareness in this context.

However, 81.0% of firms incorrectly thought that their companies would need to register their copyrighted work, which under the Omani

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<sup>816</sup> See Section 3.4.1 above.

<sup>817</sup> According to Verbauwheide, 'It is highly advisable to enter into a clear, written agreement with the website developer that spells out who owns IP rights in each element of the site'. See L. Verbauwheide. 'Intellectual Property and E-Commerce: How to Take Care of Your Business' Website' (2004) 9 *Journal of Intellectual Property Rights* 5.

<sup>818</sup> R.D. 65/2008; please refer to Chapter 3.

<sup>819</sup> See Sections 3.5.1 and 3.5.2 above

<sup>820</sup> See Section 3.4.6 above.

CNRL<sup>821,822</sup> is an incorrect assumption because copyrighted works are covered automatically and the copyright's owner has the right, after depositing a copy of the work performance or phonogram, at their own expense, at the IP Office.<sup>823</sup> This can have a negative effect on companies in commercially exploiting their copyrighted work, for example in preventing third parties from reproducing their work or distributing by sale, rental or lending performing or displaying the work to the public. This reflects the low level of IP awareness within SMEs in term of needing an application for copyrighted works.

The growing realization of the importance of IP assets within companies can encourage them to protect their IP rights and prevent other parties free-riding on their success. Furthermore, when firms give essential importance to IP assets and have an understanding of the available, IP protection can help in using 'their IP in a variety of ways to improve their competitive position, generate revenue and improve their access to financing'.<sup>824</sup> The survey shows that SMEs' perceptions of the importance of IPRs (copyright, patents and trademarks) for their companies was very limited, with only around 65% understanding the significance (Table 6.11). The IP protection method chosen by the highest number of firms was the trademark, with 70.6%, as illustrated in Table 6.11A). However, SMEs' perceptions of 'unimportant' or 'not very important' IP assets might bring a negative effect on their competitive position and not increase their revenue. Consequently, there is a need for more promotion to increase the understanding of the importance of IP assets, which can differ from one company to other according to their priorities.

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<sup>821</sup> R.D. 65/2008, art 34. See Section 3.4.6 above.

<sup>822</sup> See Table 6.10 above.

<sup>823</sup> See Section 3.4.6 above.

<sup>824</sup> Shigeki Kamiyama, Jerry Sheehan and Catalina Martinez, *Valuation and Exploitation of Intellectual Property* vol 5 (Organisation for Economic Co-operation and Development, Paris 2006) 7.

### **6.5.3 Creating entrepreneurial incentives and encouraging SMEs to own IPR**

IP ownership and creation garner an exclusive right for IP right holders as it is regulated at the international and national levels.<sup>825</sup> Thus, IP ownership would increase firms' revenues, which serve national economic development. The outcome of the survey shows that Omani SMEs were not active users of the IP framework: 38% of respondents, when asked whether they owned or created any IPR, answered that they did not know. This was particularly true in micro firms. The 38.2% of 'don't know' responses constituted the most popular answer to the question. The second most popular 'don't know' response was to the trademark question, with 35.9% of these respondents not knowing.<sup>826</sup> This low level might be a reason for a low number of national IP applications – as discussed in Chapter 5, Table 5.2.<sup>827</sup> Consequently, there is a need for more promotion to increase IP awareness and to encourage firms to create or own such IP rights and increase the number of IP applications to support national economic development.

In addition, the expenditure of Omani SMEs on obtaining and preserving IPRs was very limited, with 29.6% of firms spending less than 500 Omani Riyals (1300\$) and around 49% of respondents not spending anything.<sup>828</sup> This might mean these companies do not recognize the economic value of IP assets. The main reason for SMEs' lack of spending might be the cost of IP applications. So as has been presented, there are no available IP service by IPD for SMEs such as providing them with inexpensive and fast protection for innovations.<sup>829</sup>

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<sup>825</sup> See Sections 3.3 and 3.4 above

<sup>826</sup> See Table 6.12 above.

<sup>827</sup> See Section 5.2.1 above.

<sup>828</sup> See Table 6.13 above.

<sup>829</sup> See Section 5.2.1 above.

Even though involvement in legal disputes is not a recommended course of action, it might be the best way to increase the level of IP awareness.<sup>830</sup> However, in Oman, Table 6.14 shows that only 5.8% of respondents were involved in a legal dispute and 89.1% of companies were not. In addition, medium-sized companies were more likely to be involved in legal disputes than companies of other sizes. This data shows these companies might not be aware what their IPR rights are and how they can obtain IP damages.

Limited awareness on IP practice in SMEs, and an ignorance of governmental IP strategy, is evident in Oman. Increasing IP knowledge can be seen as the first step to removing IP illiteracy and encouraging businesses to own and create IPRs. The second step is the integration of IP assets into IP management policy, which will be discussed in the next section.

#### **6.5.4 Necessary criteria for successful IP management for SMEs**

A product or services can be protected by different forms of IP rights, and companies should consider the best practice available according to their national framework and its IP suitability for the management of their own companies. It may be good practice for SMEs to have a policy on 'IP exploitation', 'IP valuation' and 'IP monitoring' to support national economic development.<sup>831</sup> Overall, the survey showed that there was poor IP management within Omani firms, which might be seen as a

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<sup>830</sup> Robert Pitkethly and Chris Lewis, 'UK Intellectual Property Awareness Survey 2006' (2006) 11 UK Intellectual Property Office; Owen Morgan and Basil Sharp, 'Review of the New Zealand Intellectual Property System' (2010, Auckland Uniservices Ltd).

<sup>831</sup> World Intellectual Property Organization, *Methodology for the Development of national Intellectual Property Strategies: Tool 3: Benchmarking Indicators* (WIPO Publication no. 958.3 (E), WIPO 2016).

barrier to using the IP framework more effectively and to fully benefit from it.<sup>832</sup>

The exploitation of IP assets does not restrict the commercialization of IP-protected products or the services or sale of IP assets to other companies. But one of the active methods that IP can be exploited is through the process of licensing, whereby companies share their IP assets with other firms in return for royalty payments.<sup>833</sup> As a result, a policy of IP exploitation is important for companies as the strategic management of intellectual property. The Omani IP framework provides the legal right for the IP holder to license IP rights from other parties, or license their IP right to other parties.<sup>834</sup> This service has been practised by the Omani IP Department, which provides the official letter for IP licences. However, these practices were limited across Omani SME firms, and not common because only around 15% of respondents licensed an IP right from other parties or licensed out their IP right to other parties. This might be a reflection of the fact that SMEs did not know about the options which were available under the Omani IP framework. The fault here lies with the role of the IP Department to increase awareness.

Furthermore, IP management clearly requires a knowledge about the value of IP assets.<sup>835</sup> It is defined as 'the action of "estimating" or fixing the monetary or other value of something, especially by professional evaluator. An instance of this is real estate estimated monetary value,

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<sup>832</sup> See Section 6.4.4 above.

<sup>833</sup> William W. Fisher and Felix Oberholzer-Gee, 'Strategic Management of Intellectual Property: An Integrated Approach' (2013) 55(4) *California Management Review*; World Intellectual Property Organization, *IP Asset Development and Management: A Key Strategy for Economic Growth* (WIPO publication no. 896 (E), WIPO 2006).

<sup>834</sup> See Sections 3.4.1 and 3.4.2.

<sup>835</sup> Kelvin King. 'The Value of Intellectual Property, Intangible Assets and Goodwill' (2002) 7 *Journal of Intellectual Property Rights*.

worth or price...'<sup>836</sup> The valuation of an IP asset is considered an essential issue.<sup>837</sup> Therefore, an assessment of the financial value of different types of IP within companies is a part of IP valuation vital for financing and marketing IP assets and their exploitation. It represents the value of the future commercial benefits which can be brought to the company. The main reason of IP valuation is that it might open the door for using IP as collateral when SMEs seek loans to develop a new product and services,<sup>838</sup> or for financial reporting. Firms can use this IP value report as an economic performance indicator to attract investment.<sup>839</sup> Furthermore, as discussed in Chapter 2,<sup>840</sup> the Omani legal system is based on Islamic law and the survey results show in Table 6.27 that Omani companies are affected by the Islamic religion, so IP valuation can help companies in calculating *Zakat*,<sup>841</sup> 'one of the fundamental pillars of Islam that has direct economic bearing upon others'.<sup>842</sup> This is defined as:

*the process where a certain amount of property or money is collected from those who are sufficiently endowed and then given to needy group of people, with donor, recipients*

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<sup>836</sup> Weston Anson, Donna P. Suchy and Chaitali Ahya, *Intellectual Property Valuation: A Primer for Identifying and Determining Value* (American Bar Association 2005) 28.

<sup>837</sup> Jow-Ran Chang, Mao-Wei Hung and Feng-Tse Tsai, 'Valuation of Intellectual Property' (2005) 6(3) *Journal of Intellectual Capital*.

<sup>838</sup> European Commission, 'Intellectual Property and Access to Finance for High Growth SMEs' (Brussels, 14 November).

<sup>839</sup> World Intellectual Property Organization, *Methodology for the Development of National Intellectual Property Strategies: Tool 3: Benchmarking Indicators* (WIPO publication no. 958.3 (E), WIPO 2016) 43.

<sup>840</sup> See Section 2.3.1.1 above.

<sup>841</sup> It should be noted that there are two Islamic views regarding paying *Zakat* for IP rights. The first view is that it should be paid annually for trademarks but not for other IP rights. According to Islamic researcher Ali, it is not compulsory until the IP owner has sold their IP rights (they should then pay *Zakat* according to its value) or traded in their IP rights. See Ali Mohieddin Karra Dagih, 'Moral Rights, Disposition and Zakat' (1999) *Journal of Faculty of Sharia, Qatar University* 455 <<http://hdl.handle.net/10576/9430>> accessed 10 October 2017.

<sup>842</sup> Zamir Iqbal and Abbas Mirakhor, *Economic Development and Islamic Finance* (Directions in Development, World Bank Publications 2013) 212.

*and the proportion of required donation being clearly specified in both the Qu'ran and Sunnah.*<sup>843</sup>

Unfortunately, the survey shows that there was an ignorance of IP value in Oman, because only 15% of firms assessed their IP value.<sup>844</sup> This reflects the low level of understanding of IP valuation's advantages for companies for their future economic and cultural development.

In addition to the IP policy for IP exploitation and valuation, a further policy area is important – the IP monitoring policy, which helps identify new licensing traders, new market opportunities<sup>845</sup> and the need to train staff. Remarkably, more than half of companies do not have an IP policy and the majority of SMEs that do have a policy did not explain it or distribute it to staff.<sup>846</sup> Furthermore, as a matter of policy, it is important for companies to educate their workforce in terms of identifying possible IP infringement. With such training and foresight, 'it is possible to turn these constituencies into an early warning system'.<sup>847</sup> Remarkably, only 23% of Omani SMEs were conducting IP staff training, a reflection of the low level of IP management awareness.<sup>848</sup>

Furthermore, an IP monitoring policy is important to constantly evaluate competitors' behaviour, detect possible infringements and avoid infringing others' IP rights. A company can detect IP infringement by using an active method which aims to search for potential

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<sup>843</sup> Omer Faruk Senturk, *Charity in Islam: A Comprehensive Guide to Zakat* (Tughra 2007) 3–4.

<sup>844</sup> See Table 6.19 above.

<sup>845</sup> World Intellectual Property Organization, 'Managing the Intellectual Property Assets of Your SME' <[http://www.wipo.int/sme/en/ip\\_business/managing\\_ip/managing\\_ip.htm](http://www.wipo.int/sme/en/ip_business/managing_ip/managing_ip.htm)> accessed 5 June 2017.

<sup>846</sup> See Tables 6.20 and 6.21 above.

<sup>847</sup> John Crawford and Robert Strasser, 'Management of Infringement Risk of Intellectual Property Assets' (2008) 20(12) *Intellectual Property & Technology Law Journal* 7, 10 <<http://search.proquest.com/docview/227135531>> accessed 5 June 2017.

<sup>848</sup> See Table 6.22 above.

misappropriations and examine other party's products or services for IP issues related to the firm.<sup>849</sup> As has been previously explored, there are no online patent and trademark databases which might help SMEs to identify such infringements.<sup>850</sup> Consequently, SMEs might struggle to monitor their IPRs. In addition, as indicated earlier, the IP owner has the right to submit a written notice to the DGC to request that it monitor and notify relevant authorities of suspected infringing goods that enter Oman. But fewer than 10 applications were submitted to DGC in this regard.<sup>851</sup> The consequences of a lack of an IP database and the limited number of IP applications can impact on IP owners and prevent them from enjoying the IP protection available and from monitoring their IP assets. For this reason, it is not common for Omani SMEs to check for IP infringements: only 45.2% had checked.<sup>852</sup> Consequently, this again suggests a continuing need for IP awareness promotion among companies to detect an infringer and benefit from IP protection through the DGC. It also confirms that there is a need for an IP database in Oman and that it should be open and free to companies.

### **6.5.5 Increasing IP service quality for SMEs**

The appropriate use of an IP framework and IP advice services can increase the chance of success of an IP application in particular trademark and patent applications and other related IP issues.<sup>853</sup> Over half of SMEs had not required advice on IPR, the percentages were similar across all size of companies.<sup>854</sup> Seeking IP advice might help SMEs in successfully

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<sup>849</sup> *ibid*, at 9.

<sup>850</sup> See Section 5.2.1 above.

<sup>851</sup> See Section 5.2.2 above.

<sup>852</sup> See Table 6.23 above.

<sup>853</sup> Organisation for Economic Co-operation and Development (OECD), 'Networks, Partnerships, Clusters and Intellectual Property Rights: Opportunities and Challenges for Innovative SMEs in a Global Economy' (2004) 48.

<sup>854</sup> See Table 6.24 above.



applying for IP and resolving IP issues; moreover, there are benefits to be gained from awareness of IP legal rights. In addition, the primary source of information concerning the different sizes of SMEs and their awareness were from internal solicitors as a first IP source, while the Omani IPD was the second most likely source of IP information.<sup>855</sup> This reflects that Omani IPD might have a poor IP service quality because, as has been mentioned, there is no IP service provided for SMEs such as IP courses or IP information. There is a need to establish an IP information division within the Omani IPD to support companies, in particular SMEs.

In addition, there was an appropriate level of IP awareness in SMEs across all the different sizes in requesting IP advice, particularly if their IPRs had been infringed by a third party.<sup>856</sup> However, it might be that SMEs face difficulties in getting a good quality of IP services: it is evident from the empirical study in Chapter 5 that there are a limited number of IP staff in the IP Office, who struggle to answer all companies' queries.<sup>857</sup>

SMEs suffer from low levels of IP knowledge in using IP databases to avoid IP infringement, and only 46% of SMEs used IP databases. Remarkably, the survey shows that micro and small enterprises were more likely to search IP databases than medium-sized companies.<sup>858</sup> Consequently, there is a need for more promotion in using IP databases, and this may be done through, for example, WIPO databases or Omani IPD databases (which do not exist online but requests for information can be submitted manually to the IPD). The problem is that the IPD might take a long time to respond owing to the blockage. So it is good practice to establish an online IP database within the IPD to be available for companies.

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<sup>855</sup> See Table 6.24A above.

<sup>856</sup> See Table 6.25 above.

<sup>857</sup> See Section 5.2.1 above.

<sup>858</sup> See Table 6.26 above.

Finally, the satisfaction of IP services, and in particular IP awareness, is an important factor for national economic and culture development. It is the role of the IPD to improve its IP services and encourage related institutions according to their legal responsibilities, as indicated earlier in this study. Unfortunately, the survey shows that the majority of SMEs were not satisfied with the IP awareness services which should be exercised by the MCI, in particular by the IPD.<sup>859</sup> This was an issue confirmed by one member of the IPD, who stated that they did not provide any training to companies at all.<sup>860</sup> Therefore, the low quality of IP service from the IPD might dissuade companies from investing and it might prove to be a barrier to entering the market, because of the many legal difficulties in how to resolve legal disputes or avoid such infringements. Consequently, there is clearly a need to be more active in increasing the level of IP awareness to serve Omani national and cultural development by cooperating with direct and indirect institutions.

#### **6.5.6 Using Islamic ideology as a new approach to increase the level of IP awareness within SMEs<sup>861</sup>**

It has previously been mentioned in Chapter 5 that the MERA can impact on Muslim society in Oman. The power of the MERA in Omani culture should be seen as a mechanism for growth and change in Islamic law and

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<sup>859</sup> See Table 6.32 above.

<sup>860</sup> See Section 5.2.1 above.

<sup>861</sup> The WIPO has published a number of tools and services documents, which focused on formulating national intellectual property (IP) strategies within a group of member states, of which Oman is one. This project has been completed by Algeria, the Dominican Republic, Mali, Moldova, Mongolia and Tanzania but Oman has not yet responded. This project considers the role of government institutions for example in increasing the level of IP awareness, what the level of IP awareness is within domestic businesses and what factors help the government to use the IP framework, with particular reference to SMEs, which are the subject of this study. In addition, the role of indirect institutions isn't identified in the WIPO project or mentioned within the report published in 2016. See World Intellectual Property Organization, *Methodology for the Development of National Intellectual Property Strategies: Tool 3: Benchmarking Indicators* (WIPO publication no. 958.3 (E), WIPO 2016).

IP awareness.<sup>862</sup> This theoretical understanding of the power of the MERA in impacting on firms has been confirmed by the IP awareness survey, which shows that religious reference are highly respected within Omani SMEs. Around 96% of respondents answered affirmatively to the question whether they would follow their main religious reference which stated that using others' IPRs (without the consent of owner) is prohibited under religion.<sup>863</sup> Therefore, a new approach to increasing the level of IP awareness – from a religious perspective – can be applied in Oman. Consequently, the MERA can work as an agent of change in IP religious understanding in Oman by using its power, and, as found in the empirical study,<sup>864</sup> there is a need for a clear religious IP strategy to increase the level of awareness of IP and other areas of law. The MERA should be more active in this context.

Moreover, a matter explored earlier shows that the philosophical Islamic system is built on two key concepts – 'divine' and 'humanitarian' – which impact on Muslims' or companies' behaviour.<sup>865</sup> As a result, it is important for cultures and firms that accept Islam as a religion to adapt their systems or behaviour according to philosophical Islamic systems. This means that companies' Islamic marketing ethics will enjoy freedom within the limits of what is permitted by Islamic law and should aim to maximize this value for the benefit to society rather than maximizing the profit value (which differs from its secular counterpart). Therefore, as Omani culture has been explored by this IP awareness survey, the outcome shows that there is a high level of IP awareness within SMEs regarding the use of IPRs which is consistent with Islamic rules. For example, companies were asked whether they had applied to register IPR

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<sup>862</sup> See Section 5.3 above.

<sup>863</sup> See Table 6.27 above.

<sup>864</sup> See Section 5.3 above.

<sup>865</sup> See Section 4.3.4.1 above.

but had been rejected by the Omani IP Department on the grounds that their application was against public order and morality (which means Islamic rules; see Chapter 4). Around 90% of respondents answered 'no' and 'don't know'.<sup>866</sup> This result indicates that SMEs might be affected by Islamic philosophy and ethics, in which it is obligatory to invest in such IP rights that are consistent with Islamic rules.

Furthermore, Chapter 4 noted that Islamic law required respect for the ownership of others' intellectual labour, and promoted the practice of legitimate IP trade, which prohibits the use of others' IP rights without consent.<sup>867</sup> The results of the survey confirm these values, because 80.1% of respondents answered that they would not use others' IP rights without the IP right holder's consent.<sup>868</sup>

However, there is a need to enhance such Islamic and legal IP values and rules which can be important to fight IP infringement. For example, SMEs were asked whether they would notify the competent authority if they found a company that infringed IP rights or a registered trademark. Table 6.31 illustrates that SMEs answered negatively: 25.0% said 'no' and 22.8% said they did not know. Therefore, the MERA can work as a tool to enhance these values from an Islamic perspective, as stated in Quran: 'The believers, both male and female, are each other's guardians. They try to make others do good, prevent them from committing sins.'<sup>869</sup> This basic principle means that it is recommended for companies to notify cases of infringement to the infringer or the direct IP institution about any unlawful practice. This again suggests a continuing need for IP awareness promotion among such companies to fight IP infringement.

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<sup>866</sup> See Table 6.29 above.

<sup>867</sup> See Section 4.2 above.

<sup>868</sup> See Table 6.30 above.

<sup>869</sup> Muhammad Sarwar, *The Holy Quran, Arabic Text with English Translation* (Islamic Seminary 2001); Al-tawbah, verse (9:71), which means 'enjoining what is good and forbidding what is evil or wrongful'.

The next is how religious IP awareness can be activated in practice by analysing of the power of indirect institutions.

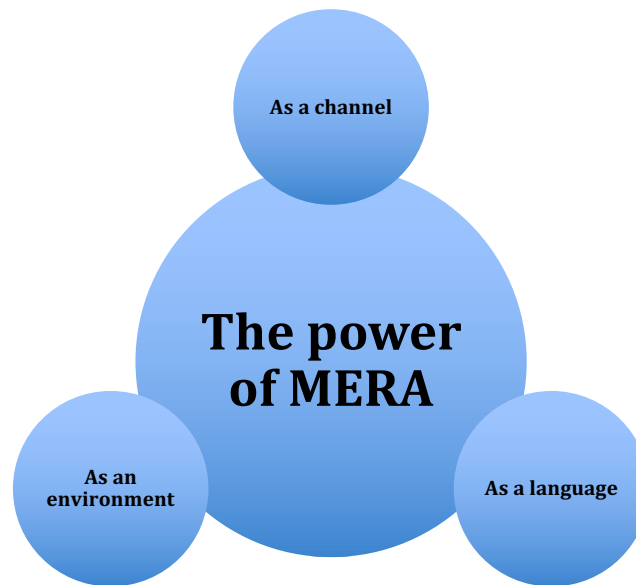
### **6.5.7 Critical analysis of the power of indirect institutions in sensitizing stakeholders and inculcating religious IP ideology**

The theoretical framework showed in Chapter 5 that indirect institutions can work as instruments for the religious underpinning and modernization of legal IP issues or other areas of law, according to the requirements of Islam.<sup>870</sup> At the centre of this framework is the concept of reviving Islamic spiritual development in the national economic development of IPRs among individual members of society. Therefore, in the light of understanding the role of the MERA *vis-à-vis* related departments in Chapter 5, and the outcome of the questionnaire, it is reasonable to suggest that the MERA has three useful kinds of power or roles which can work as channels for language and the environment. Diagram 6.1 below sets out the MERA's three kinds of power.

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<sup>870</sup> See Section 5.3 above.

**Diagram 6.1 The power of MERA as channel, environment and language**



*Sources:* compiled by author

In Diagram 6.1, the power of MERA as a channel draws attention to the fact that it can change religious legal ideas by using its authority to transmit its message through Omani society and SMEs. This means that the MERA should focus on the content of religious ideas, the topics of the MERA schema.<sup>871</sup> Next, the MERA can act as a distributor of religious legal IP messages. The Mufti's Office has a website, a TV programme and influence in the mosques. It may have special columns in the newspapers which can announce religious legal information in relation to IP. It can also use official channels such as television, radio, Twitter, Facebook etc. This means that the MERA, in the sense of direct institutions,<sup>872</sup> can be seen as a very powerful channel for the distribution of legal texts that originate from Islamic law.

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<sup>871</sup> Stig Hjarvard, *The Mediatization of Culture and Society* (Routledge 2013) 82.

<sup>872</sup> This has been confirmed by interviewers; see Chapter 5.

Secondly, if the power of the MERA is considered as a language, it uses various ways to format religious ideas to frame the relationship between its staff, contacts and audiences. The choice of genre has an impact on essential features like 'narrative construction, reality status and mode of reception of particular messages'.<sup>873</sup> As a result, the MERA can adapt a religious understanding of IP to comply with Islamic law by using the specific genre in question. In Oman, the power derived from the MERA which can work as language means that it can construct religious duties consistent with the genres of Islamic culture. This culture has always respected religious references, as noted in the outcomes of the questionnaire, and those who use different methods to impart them, so the MERA (through mosques and media systems) can become an integrated part of Omani culture. Through the language of culture on social media, the MERA can push religious legal understanding in accordance with an Islamic framework by increasing the level of legal awareness, for example through religious lessons, lectures and Friday speeches, which are conducted by preachers and guides (imams and preachers). These lessons estimating 251,033 in various aspects of life (religious awareness) in 2016.<sup>874</sup> As another example, the MERA has organized intellectual seminars and scientific meetings or asked its employees or any member of society to submit a paper to compare Islamic law with other law (external law).<sup>875</sup> In addition, the MERA conducts around 72,000 Friday speeches a year: it could increase companies' religious awareness about the rules which are consistent with their principles and culture.

Finally, when the power of indirect institutions has taken into consideration the environment in which they are working, they will be

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<sup>873</sup> Stig Hjarvard, *The Mediatization of Culture and Society* (Routledge 2013) 82.

<sup>874</sup> See Table 5.7 above.

<sup>875</sup> Interview with MERA 1 (Muscat, Oman, 21 July 2016).

able to focus on facilitating their power and duties.<sup>876</sup> The role of the MERA can expand from its current jurisdiction to all parts of society. In this way it can permeate to related IP formal institutions, and consequently be reconciled to a widespread network among countries through its institutional properties. Such an idea involves the involvement of 14,355 mosques and the delivery of a weekly *juma* speech (Friday speech) to the around 1,415 jami, and the use of modern communication.<sup>877</sup> Weekly Friday prayers cover all governorates of the Sultanate of Oman and are attended by approximately 1 million worshipers of all ages.<sup>878</sup>

In summary, according to empirical data in context of this research, the outcomes of the survey and those who have been interviewed confirm the importance of indirect institutions which use religious ideology to strengthen the IP framework by enhancing the level of awareness and understanding. This means that the MERA has become the most important supplier of religious information, and for the legitimate ethical orientation of society, including companies. As a resource, the MERA can become the main source of religious legal ideas, and as a language its involvement can promote the genres of Omani and Islamic culture. The MERA, as an institution, can facilitate an environment which revives Islamic spiritual development and applies it to national economic development and awareness of IPR among individual member of society. Today, indirect institutions clearly have a responsibility for increasing the level of legal awareness, and in particular IP awareness.

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<sup>876</sup> Stig Hjarvard, *The Mediatization of Culture and Society* (Routledge 2013) 82.

<sup>877</sup> See Table 5.8 above.

<sup>878</sup> Interview with MERA 1 (Muscat, Oman, 21 July 2016). See Section 3.3.3 above.



## **6.6 Conclusion**

Omani direct and indirect IP institutions should be seen as being in partnership with the private sector and should have a motivation for the successes of the (SMEs) sector to serve the Omani economy and its Islamic cultural development by increasing their IP understanding. Consequently, determining the level of IP awareness within SMEs will help policymakers improve IPR protection as a nation and identify the salient factors that can help to increase the level of IP awareness, in particular how some SMEs respond to the impact from MERA.

The research methods used in this study, listed in Section 6.3, were based on a questionnaire to achieve the above objective. In Section 6.4, an analysis of the questionnaire was given by using SPSS software.

The outcomes of IP awareness statistics were explored in this part of the research. Furthermore, an interpretative attempt of empirical findings was given to create more meaning to the empirical results. Overall IP awareness used six indicators to achieve the objective of this study, grouped under five subjects: SME background, IP Knowledge and Understanding, Ownership of IPR, the Management of IPRs, Sources of Information about IPRs and Cultural Perspective

Consequently, to present the outcomes in a more systematic method, the findings of IP awareness were presented in Table 6.33, which illustrates that Omani SMEs suffer from a low level of IP knowledge, limited ownership of IP, poor IP management and limited use of IP information, and that Islamic values can affect companies' behaviour.

**Table 6.33 Summary of the findings**

	<p>The role of IP framework in particular direct institutions negatively affects the level of IP awareness within Omani SMEs, which can impact on Omani economic development. There were no significant differences in the level of IP awareness among Omani SMEs.</p>
(1)	<p>There has been a low production of new products and processes within Oman SMEs in the last five years, which has an effect in the generation of new IP knowledge. There is a need for an Omani innovation mindset and discussion on how to support these firms to create a space for innovation matters.</p>
(2)	<p>There was a low level of IP knowledge and understanding within Omani firms, which might be impediments to using IP framework more effectively.</p> <ul style="list-style-type: none"> <li>• There is a significant risk to the protection of patentable innovation, which need more IP awareness promotion.</li> <li>• There is a need for more promotion of IP awareness for Omani companies, and these companies need to check on the MCI website if they want to search for company name.</li> <li>• There is a need to consider the best method to protect new and non-obvious technical innovations within Omani SMEs.</li> <li>• There is confusion within Omani SMEs as to whether copyright exists over website material.</li> <li>• There is confusion within Omani SMEs about copyright ownership over commissioned work in the absence of any assignment.</li> <li>• There is good knowledge in needing IP application for patents and trademarks, but the confusion within Omani SMEs exist in terms of the need for an application for copyrighted work.</li> <li>• The participants acknowledged the importance of IPRs such as copyright and patents and trademarks for their firms.</li> </ul>

(3)	There was an ignorance of important to own or create IP rights within SMEs because ownership of IPRs within Omani SME is very limited. In addition, the participants' perceptions of the expenditure in obtaining and preserving IPRs within their companies were very limited. So there is a need to create entrepreneurial incentives which encourage them to own and create their IP rights such as inexpensive IP applications for SMEs.
(4)	There was poor IP management within Omani SMEs, which might be seen as a barrier to using the IP framework more effectively and fully benefitting from this framework because of the very limited number of SMEs which had a policy on IP exploitation, IP valuation and IP monitoring. So there is a need to create sound IP management systems for SMEs.
(5)	There was an ignorance over obtaining advice on IPRs, which can reduce the chance of success in an IP application, in particular trademark and patent applications
(6)	SMEs use the IPD as a second source of IP information, which might be due to the IPD having a poor IP service quality, as was presented in Chapter 5.
(7)	There was a low level of IP knowledge in using IP databases to avoid IP infringement
(8)	The Omani government should pay attention to the Islamic spiritual aspect of individuals and companies, which is derived from Islamic law. These values can affect companies' behaviour when they conduct business because there is a desire among companies to bring their businesses within the Islamic framework. The theoretical understanding of power of the MERA in impacting on firms has been confirmed from empirical findings, interviews and the IP awareness survey, which show that religion can affect their behaviour and is highly respected. Therefore, SMEs can be highly responsive to religious leaders (muftis) regarding IP issues, so the MERA can work as an agent of change in IP religious understanding within Omani SMEs by using its power, as was analysed in Chapter 5, for example through religious muftis or mosques.

(9)	There is a need to enhance some Islamic and legal IP values and rules, which can be important to fight IP infringement and should be clearly introduced in the MERA strategy plan by collaborating with direct institutions.
(10)	The IPD needs to be more active in increasing the level of IP awareness by conducting IP courses for SMEs to serve Omani national economic and cultural development by cooperating with direct and indirect institutions.

The aim of the interpretative attempt in this chapter was to achieve the purposes of the study, which indicates that the role of IP framework, in particular direct institutions, negatively affect the level of IP awareness within Omani SMEs. This in turn can impact on Omani economic development owing to a limited IP awareness. A new approach to increasing the level of IP awareness – from a religious perspective – can arguably be applied in Oman, therefore there is a need for further development in relation to IP-related issues in Oman to serve its cultural and economic development.

## **CHAPTER 7 CONCLUSION AND RECOMMENDATIONS**

### **7.1 Introduction**

The essence of this thesis has been to explore, from a number of different perspectives, the development of an effective intellectual property system in Oman, taking account of cultural factors in adapting the approach taken in the 'West'. In compliance with its international treaty obligations, Oman has implemented a comprehensive legal framework appertaining to intellectual property rights, but some of the issues that have been raised in this thesis suggest that the success of this system may be less than optimal unless it is designed to support and enhance Omani cultural perspectives. This cultural awareness can in itself lead to important economic benefits.

It is the analysis and juxtaposition of these key elements – culture and religion – to its future economic development that mark an important and fairly unique analysis of the subject from an Omani perspective, insofar as they fill the lacuna in subject literature and present a country-specific analysis of the impact of IPRs in Oman.

To develop this theme a little further, this thesis and its research looks at IP in terms of culture and religion and seeks to assess the socio-legal and economic benefits that can arise from a sympathetic understanding of these different factors. In this respect, the research addresses weaknesses in the current literature by raising the issue of how the scope of Western IP rights can be positively regulated under Islamic law and culture. In particular, it suggests a standard in relation to public policy and morality which can contribute towards establishing guidelines for IP administrative institutions (or for any similar Islamic legal system or any culture depending on their cultural arrangements). It can be used in the decision-making process of assessing any IP application requiring registration, for judges in assessing related cases, in particular IP

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disputes or monitoring the use of IP rights. Additional improvement of the model can satisfy the Omani IP framework under international agreements together with serving the concept of Islamic economic development in Oman.

A second major theme of this thesis concerns doctrinal and empirical approaches, which have been used to develop concrete arguments for legal and administrative reforms to address present weaknesses in the Omani IP framework. These methods have analysed the strengths and weaknesses of the current IP legislation to optimise the role of direct institutions and enhance culture and economic development. In particular, they have reviewed the efforts undertaken by IP bodies in managing IP rights in areas of protection and enforcement, with the overall aim of increasing the level of IP awareness within Omani businesses.

In this way, the research has made a unique contribution aiming at increasing the level of IP awareness from an Islamic perspective particularly within SMEs. It suggests how IPRs can be activated as an instrument for growth and change in Islamic law and awareness and how, theoretically, it can be applied in any Islamic culture depending on their national arrangements.

This approach helped identify shortcomings in the system and suggested reforms. The results of the survey which was undertaken have potential to help policymakers improve the use of IPR domestically (in particular, increasing the level of IP awareness within SMEs), with the aim of bringing about a more efficient and effective mechanism.

Additionally, the survey identified that Islamic ideology regarding IP issues can impact on those SMEs that have not introduced reforms under the Omani national plan or IP international strategy such as the WIPO.

<sup>879</sup> Overall, the research suggests that a new approach to increasing the level of IP awareness – from an Islamic perspective – can be applied in Oman and can be supported by the WIPO.<sup>880</sup> Moreover, the research suggests that the current IP legal system and the Islamic religion could be compatible. However, this would be activated by direct and indirect institutions working in tandem to bring the whole subject of IP rights law closer to society, which have a positive impact on Omani’s economic development.

There now follow some reflections on the main findings of this research in terms of theoretical (Section 7.1) and empirical (Section 7.2) analyses. What is considered to be the most effective and efficient IPR system appropriate to Oman is set out in Section 7.3.

### **7.1 Reflecting on Part I: The positive aspects of Islamic law in regulating and adapting the Western IP framework to Oman**

This research examined the legal and regulatory framework for IPRs in Oman, while taking into account Omani culture and religion and its socio-legal importance for the development of the national economy. Chapter 2 evaluated how domestic culture had a critical impact on the Omani legal system, and noted that its impact could not be seen as independent of the complex issues which arise from the domestic religious practices in the country. The official religion of Oman is Islam, and contextually Islam is able to fully recognize tradition Western justifications to defend the

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<sup>879</sup> See Footnote, 850 above.

<sup>880</sup> As has been mentioned in the footnote ‘850’ ,above, WIPO has published a number of tools and services documents which help its member states of which Oman is one or other Islamic countries in formulating their national intellectual property (IP) strategies. WIPO project ignored the role of indirect institution in increasing IP awareness. As a result, It might be a good practice to identify the role of indirect institutions in the WIPO project or mentioned within the forthcoming report. See World Intellectual Property Organization, *Methodology for the Development of National Intellectual Property Strategies: Tool 3: Benchmarking Indicators* (WIPO publication no. 958.3 (E), WIPO 2016).

protection of IPRs, such as economic theory, natural theory, reward theory, personality theory and utilitarian justifications.<sup>881</sup> However, Chapter 2 demonstrated how important cultural norms in relation to IPR are nonetheless able to facilitate social growth within the state by aligning justice and culture, enhancing the role of law and create a sense of respect for authority.<sup>882</sup> This demonstrates a characteristics of Omani Basic Statute, which can facilitate the process of regulating or implementing IP international and regional agreements according to its cultural and religious nature. Oman is a signatory to many international and regional agreements with regard to IP rights, and IPR legislation has been amended several times in order to comply with international requirements, especially in terms of copyright and patents and trademarks.<sup>883</sup> As a consequence of these legislative developments, Chapter 3 defined the IP framework in Oman, whose purpose has been to provide guidance aimed at defining policy recommendations in support of cultural and economic development. It concluded that the national IP system aimed to support growth by creating exclusive rights for right holders of copyrighted work, patents and trademarks.

Therefore, if the Omani IP legal system (copyright, patents and trademarks law and institutions) is to benefit from an international IP framework, a national IP strategy underpinned by appropriate polices are needed to support the growth scenario. For this reason, Chapter 4 explored the power of positive aspects of Islamic law in regulating and adapting the Western IP law framework towards a positive and beneficial impact in Oman. This chapter found that Islamic law considers a creator's or inventor's right to have their invention rights balanced against the public use of the invention, and emphasized the necessity for lawful IP

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<sup>881</sup> See Section 2.2.1 above.

<sup>882</sup> See Section 2.2.2 above.

<sup>883</sup> See Sections 2.3 and 3.2 above.



trade that aims to safeguard IP from harmful practices and for an Islamic 'preservation of wealth' principle through its circulation. Nevertheless, nations practising Islamic law support the protection of Western-style IP systems in general. Thus, based on the Islamic philosophy of IP rights it is strongly arguable that they are adaptable and can be used to enforce the Western IP system.<sup>884</sup>

The chapter also considers the role of Islamic law culture in regulating the scope of Western IPR by identifying whether and how Omani culture or Islamic law principles can be applied to reconstructing a standard and providing guidance for Omani IP systems. It also considers the extent to which Islamic law can contribute to clarifying the scope of the concept of public order and morality provisions.<sup>885</sup>

The framework also allows the Omani IP Office to consider and balance the interests of IP right holders and the objectives of Omani culture. The chapter found that the existing IP system can interact positively with Islamic law by respecting Omani culture. This chapter proposed a model which could be used as guide for the Omani government in the decision-making process of assessing any IP application requiring registration. This includes, for example, trademarks, patents or dissemination of copyrighted work which could be restricted/censored, and provides a standard for the courts in deciding whether to invalidate or restrict the use of such IP rights according to Islamic doctrine.<sup>886</sup>

Furthermore, this thesis has identified the real impact of applying these standards, which might serve the concept of Islamic economic development from three perspectives; individual self-development, physical resource development (which can extend to non-physical

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<sup>884</sup> See Section 4.2 above.

<sup>885</sup> See Section 4.3 above.

<sup>886</sup> See Section 4.3.4.5 above.

resources) and the development of human collectivity, as noted under Chapter 4. These three perspectives help to create a framework of justice to protect five interests under Islamic law – human life, mind, religion, human dignity and property – through compliance with rules. Consequently, this standard seeks a shift towards maximizing the issue of value in Omani society rather than the common Western pattern of thinking of maximizing profit.<sup>887</sup> It aims to create circumstances in which IP protection, from beginning to end, is compatible with Islamic law. Therefore, this standard may impact on the ethical behaviour of firms which refine their actions to generate a positive image of the business in the eyes of present or potential customers together with the Omani culture wherein the firm operates. It is clear that Islamic law and IP legal systems have an essential role to play in companies to enhance more sustainable business practices. Thus, it is recommended that there is a need for a sustainable management consideration within foreign companies where future investment in Oman is concerned.<sup>888</sup>

## **7.2 Reflecting on Part II: Omani IP administrative framework and IP awareness within SMEs**

As a consequence of Omani legislative and administration development, Oman has established a direct IP administrative framework that governs IP rights as a part of its international requirements. Omani government institutions forming a direct administrative framework are the Intellectual Property Department (IPD), the Directorate General of Customs (DGC), the Public Authority for Consumer Protection (PACP) and the courts. Chapter 5 examined the role of the IP administrative framework in Oman in serving cultural and economic needs, with particular reference to their impact in increasing the level of IP awareness within SMEs. Subsequently,

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<sup>887</sup> See Section 4.4 above.

<sup>888</sup> See Section 4.4 above.

an empirical analysis was conducted and it is useful to reflect on the findings of this research.

The impression given overall indicates that, despite the fact that some improvements have taken place in the harmonization of TRIPS and TRIPS-plus standards, they remain far away from the realities of related Omani IP institutions, where persistent deficiencies continue to exist in term of the role of direct institutions. The Intellectual Property Department (IPD) appears not to recognize how it can support local innovation by enhancing its enforcement and raising of the levels of IP awareness within SMEs, which attract FDI and help protect Omani culture from unlawful trade. The data arising from this research indicates the failure of the IPD to handle all IP applications and the inability to activate some legal responsibility such as enhanced IP enforcement owing to a limited number of staff and experts. These factors may create an indirect adverse impact on the Omani economy, which should not be underestimated, and may even lead to compromising situations which attract IP litigation and fail to attract trained IP experts and management companies wishing to locate to Oman.<sup>889</sup>

Other deficiencies relate to the inability of the DGC and the PACP to fulfil their legal responsibilities by activating the related IP articles or by applying a suitable strategy, which can result in an unfavourable impact on the Omani economy. Consequently, the reduction of IP infringements would be remarkably improved if they were monitored by experts who specialized in interpreting legal provisions, in detecting illegal practice and in coordinating other institutions such as the IPD.<sup>890</sup> Furthermore, the data shows that the inability of the Omani courts to manage commercial cases, of which intellectual property is a part, leading to

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<sup>889</sup> See Section 5.2.1 above.

<sup>890</sup> See Sections 5.2.2 and 5.2.3 above.

backlogs of cases. This backlog is due to there being no time constraints for resolving cases (CCPL)<sup>891</sup> and an insufficient number of judges. These problems present a legitimate concern for firms who wish to litigate in order to assert their rights.<sup>892</sup>

Another performance indicator for economic and cultural progress in Oman is the indirect institutions, including the Ministry of Endowments and Religions Affairs (MERA). As noted in Chapter 5, the MERA introduced a new method aimed at increasing the level of IP awareness in SMEs from an Islamic religious perspective.<sup>893</sup> This was added to the limited IPR-related literature in terms of the key IP rights, namely copyright, patents and trademarks. This method is important to support cultural and economic development in Oman. It was noted that there was an attempt to develop a framework to conceptualize the different methods in which MERA can use its authority to change the IP legal understanding among businesses and society. This was demonstrated by the Fatwa Office or a mufti capable of absorbing and evaluating issues involving IP rights,<sup>894</sup> in addition to which the role of the Directorate General of Preaching and Guidance (DGPG) must be considered.<sup>895</sup>

These theoretical and empirical findings demonstrate that the role of the MERA in Omani culture should be seen as an instrument for growth and change in Islamic law and IP awareness as well as economic growth. It is strongly suggested that by applying this method the government will allow contemporary IP legal issues to become adaptable to Omani culture, and its inherent Islamic law to become adaptable to the social change that is consequently needed. In addition, the empirical data in

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<sup>891</sup> R.D. 29/2002.

<sup>892</sup> See Section 5.2.4 above.

<sup>893</sup> See Section 5.3 above.

<sup>894</sup> See Section 5.3.2 above.

<sup>895</sup> See Section 5.3.3 above.

the context of this research showed that the vast majority of respondents interviewed<sup>896</sup> confirmed the importance of indirect institutions which use religious ideology to strengthen any legal system or the IP framework. But this cannot be achieved without cooperation with direct IP institutions. The empirical data shows that there is insufficient cooperation between direct and indirect institutions.<sup>897</sup>

### **7.2.1 Reflection on IP awareness survey**

It should be noted that, without adequate IP awareness of how intellectual property can be protected, the system of protection cannot operate properly and is therefore to the detriment of those who may be in most need of such a system. It is reasonable to reflect that, at an SME level, IP knowledge is considered to be a substantial source of competitive advantage in business and a main engine of competitive strategies.<sup>898</sup>

For this purpose, Chapter 6 achieved its objectives by gathering primary data to determine the level of IP awareness within SMEs, followed by conducting an analysis to identify general patterns in the perceptions and opinions of SMEs. In particular, it critically interpreted the results in order to develop a better understanding in relation to level of IP awareness and factors which affect their understanding, with particular emphasis on how SMEs respond to the impact from MERA. Both of these aims will serve cultural and economic development. The IP awareness survey was collected from 140 companies and used six indicators to achieve the objective of this study, grouped into five subjects: SME background, IP

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<sup>896</sup> Such as IPD 1, DGC 1 and DGC 2, PACP 1.

<sup>897</sup> See Section 5.3.3 above.

<sup>898</sup> Karri Sankara Rao, 'IPR, IPR Awareness among MSMEs in India' (2013) 15(2) IOSR Journal of Business and Management 13.

Knowledge and Understanding, Ownership of IPR, the Management of IPRs, Sources of Information about IPRs and Cultural Perspective.

Chapter 6 used SPSS software to achieve an analysis of the questionnaire.<sup>899</sup> The overall outcomes of the survey demonstrate that the role of IP frameworks, and in particular those of institutions, negatively affect the level of IP awareness within SMEs. This in turn can impact on Omani economic development owing to a limited IP awareness. It might be that the main reason for this, as suggested in an earlier chapter, is that institutions do not seem to recognize how they can support local innovation by raising the level of IP awareness within Omani society and the private sector.<sup>900</sup> This failing may well be due to an unclear strategy concerning IP on the part of the government. Additionally, with some creative use of the positive aspects of Islamic law in regulating and adapting the Western IP legal framework, there is every chance of avoiding the negative impact on growth scenario. This part gives reflection on the empirical findings of the IP awareness questionnaire.

The survey found that the nature of companies categorized in Omani industry are micro-dominated and the number of new products and new processes was low, a factor which might negatively impact in generating new knowledge. This issue alone is significant for the Omani market economy and to support an optimal investment in R&D and innovation.<sup>901</sup> The survey showed that innovation and creativity (which are important for cultural and economic development) cannot be promoted unless the handler of the IP right has a general knowledge of different IP-related issues. These include legal issues, ownership of IPR, good IP management and a good quality of IP sources and information, which will

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<sup>899</sup> See Sections 1.4 and 6.3 above (research methodology).

<sup>900</sup> See Sections 5.2 and 5.3 above.

<sup>901</sup> See Sections 6.4.1 and 6.5.1 above.

be discussed below. In addition, the cultural perspective should not be underestimated.

In terms of IP knowledge and understanding,<sup>902</sup> the survey result shows that there was a low level of IP knowledge and understanding within Omani firms, which might be seen as an impediment to the use of an IP framework. The main issues which were focused upon were patent and copyrights and trademarks. The outcomes of the SME survey showed a low level of IP awareness among Omani firms that their awareness of the publication of an invention before filing a patent application would prevent a valid patent being obtained. This might demonstrate a significant risk to the protection of patentable innovations. The survey found that Omani SMEs suffered from confusion regarding copyright ownership over commissioned works and the need to register their copyrighted work, as noted in an earlier chapter. Therefore, it is recommended that the IPD should have a division which is responsible for IP awareness and the IPD should open new IPD account on social media as a tool to increase the level of IP awareness through Twitter, Snapchat, Facebook etc.

In terms of creation and ownership of IP rights,<sup>903</sup> the survey found that there was an ignorance of important factors related to owning or creating IP rights within SMEs because generally there was a lack of knowledge of IPRs within SMEs. In addition, only a limited number of people had spent time obtaining and preserving IPRs within their businesses, and they indicated that they did not recognize the economic value of IP assets. The main reason for the lack of spending among SMEs might be the cost of IP applications. This suggests that there is a need to create entrepreneurial incentives which encourage them to create IP rights

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<sup>902</sup> See Sections 6.4.2 and 6.5.2 above.

<sup>903</sup> See Sections 6.4.3 and 6.5.3 above.

which are not available for some SMEs from the IP department, partly because of the costs involved. Otherwise, some of their innovative work will not be protected.

Regarding IP management,<sup>904</sup> the findings of Chapter 6 show that there was poor IP management within Omani SMEs, which might be seen as an impediment in the use of an IP framework more successfully. Three main areas were identified and analysed: policies on IP exploitation, IP valuation and IP monitoring. The practice of IP exploitation were limited across SMEs. This could be because licenced activities are uncommon. The vast majority of respondents did not license an IP right from third parties or license out their IP right to others. It may be that this indicates that they did not know about the options available under the IP framework system. Furthermore, the survey showed the importance of IP value, such as collateral when SMEs seek loans, or for financial reporting. At a cultural level value might help businesses in calculating *Zakat*.<sup>905</sup> This suggest that there is a need for understanding the importance of 'IP value' advantages for companies for their future economic and cultural development. Finally, the survey found that a vast majority of SMEs did not have a policy in IP monitoring, which is important to constantly evaluate competitors' behaviour, detect possible infringements and avoid infringing others' IP rights. Therefore, the findings of Chapter 6 suggest that there is a need to create sound IP management systems for SMEs in terms of policy on IP exploitation, IP valuation and IP monitoring. The Omani government can use a specialized company to design IP management policy focused on these three areas as a guide to support Omani national plan to serve growth scenarios.

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<sup>904</sup> See Sections 6.4.4 and 6.5.4 above.

<sup>905</sup> See Section 6.5.4 above.



With regard to IP information and advice,<sup>906</sup> the survey found that respondents were generally ignorant of the process for obtaining IPR advice. Appropriate IPR advice could increase the chance of making successful patent and trademark applications. This might reflect low numbers of patent applications. Indeed, the outcome of the survey showed that a vast majority of SMEs were not satisfied with the IP awareness services, the remit of the Omani IP Department. This issue may also be due to the blockage of applications and the small number of staff employed to process applications. Therefore, it recommended that the IPD should be more active in increasing the level of IP awareness by conducting IP courses for SME to serve national and cultural development by cooperating with direct and indirect institutions.

Finally, regarding the cultural perspective,<sup>907</sup> the survey found that the vast majority of respondents preferred to follow their main religious reference regarding IP issues: they would avoid applying for IP applications against their culture or religious norms and the use of third IP rights without consent. As a result, this suggests that a new approach to increasing the level of IP awareness – from a religious perspective – can be applied in Oman. In this way, Oman can adopt this approach and actually enhance the chances of an economic growth scenario. Such an indirect approach could be carried out by the MERA with a view to improving the community’s awareness of the Omani IP framework and, importantly, by emphasizing religious and ethically sound principles of behaviour in relation to IP rights ownership and enforcement. In particular, the role of the MERA in sensitizing stakeholders and inculcating IP awareness can be applicable in other legal areas where capacity building is necessary. This study found that this method is not recognized

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<sup>906</sup> See Sections 6.4.5 and 6.5.5 above.

<sup>907</sup> See Sections 6.4.5 and 6.5.6 above.

by the international community such as the WIPO in its publications of the tools and services documents, which are focused on formulating national IP strategies within member states.<sup>908</sup> So it is suggested that international organizations might support IP protection by using this method in particular Islamic countries and encourage them to introduce it in their national IP strategies.

In addition, the survey found that there is a need to enhance Islamic and legal IP values and rules, and that these are important to reduce IP infringements. For example, around half of the respondents answered negatively to the question of whether they would notify the competent authority if they found a company infringing IP rights or a registered trademark. Therefore, this suggests that the MERA might work as an instrument to enhance these values from an Islamic perspective by condemning such unfavourable behaviour. Therefore, it is strongly recommended that direct and indirect institutions should be more active to get more effective results in increasing the level of legal awareness by using religious ideology.

In conclusion, as the discussion shows, the research findings provide a valuable insight into IPR-related issues and determine the level of IP awareness within Omani SMEs and elements which should be taken by Omani policymakers in serving the growth scenario and inculcating IP awareness in particular, taking into account the power of the Islamic religion.

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<sup>908</sup> See World Intellectual Property Organization, *Methodology for the Development of National Intellectual Property Strategies: Tool 3: Benchmarking Indicators* (WIPO publication no. 958.3 (E), WIPO 2016). See Section 5.1 above.

### **7.3 Recommendation policy for Omani government**

The outcomes of this study could be a guide for future IPR innovations to improve and serve Omani national culture and its economic development policy. Therefore, the following recommendations are based on the finding of this research.

#### **7.3.1 A need for activation the Islamic standard of IP public order and morality**

The Omani government should take into consideration a standard in relation to public policy and morality which would contribute towards establishing guidelines for decision-making in assessing any IP rights application, or for judges in assessing related cases, in particular IP disputes. Furthermore, the PACP should interpret the concept of religious value or Islamic values under Article 21 in much the same way as morality, considered in Chapter 4.<sup>909</sup> Using this standard as a guideline helps them to be more accurate. It can extend its influence to protect the Omani market from unlawful IP trade such as counterfeit trademarks. To activate the role of direct institutions and enhance cultural and economic development, they should appoint an Islamic researcher with IP law expertise who could adjudicate matters arising from the application of religious principle to IP applications or related issues.<sup>910</sup>

#### **7.3.2 Towards enhancing the role of direct IP administrative institutions in cultural and economic growth**

In addition, IPD should appoint adequate IP staff to deal with current blockage, in particular a qualified patent examiner to examine

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<sup>909</sup> CPA, R.D. 66/2014; see Section 5.2.3 above.

<sup>910</sup> They should take into consideration to what extent the IP right is protected under the Islamic framework as examined in Section 4.2, such as the status of legitimate IP labour, unfair IP trade practices and the preservation of property through its circulation (*rawaj*).

applications and provide strategic policy advice in the field of technical innovation. Regarding trademarks, they should appoint adequate IP staff who can solve the failure to examine trademark applications domestically or internationally within the Madrid Protocol mandated time limit. The IPD should develop a comprehensive strategy, specifically focusing on human resources, training and technical assistance, establishing an IP awareness division and publish annual reports, which might help IPD to enhance its position in at national and international levels. The MCI should exercise some of its IPR enforcement duties stipulated under Royal Decree 2017/11.<sup>911</sup>

Besides this, the DGC should not only rely on the Unified Customs Law (UC Law) to take measures to prevent the entry and exit of any prohibited or restricted goods, but should also activate such IP articles under the IPRL<sup>912</sup> and the CNRL.<sup>913</sup> To do so, the DGC should accelerate the issue of IP regulations explaining the articles and border measures under IPRL<sup>914</sup> and CNRL,<sup>915</sup> and should appoint an IP expert on the subject of identifying and responding to IP infringements. DGC should conduct IP training for customs officers in relation to IP issues and for companies to protect their IP right by encouraging them to register their IPR in the DGC. It is worth establishing an official online IP record system associated with the IPD database, which can help in facilitating a good service for enterprises and help avoid suspending infringed goods more than the time limit (10 working days, which can be extended for a further 10 working days: see Table 5.4).<sup>916</sup>

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<sup>911</sup> Appendix No. 1(6)(10) and, in particular, a clear trademark enforcement under GCCUTML (R.D. 33/2017); see Section 5.2.1 above.

<sup>912</sup> R.D. 67/2008.

<sup>913</sup> R.D. 65/2008.

<sup>914</sup> R.D. 67/2008.

<sup>915</sup> R.D. 65/2008.

<sup>916</sup> See Section 5.2.2 above.

Furthermore, the PACP should rethink its interpretation of Articles 3, 4 and 7, which can be an effective tool to deal with IP subject matter by allowing consumers (or IP owners as consumers) to complain, or for the PACP to protect consumer rights from illegal trading.

The court should resolve the backlog in commercial disputes including IP disputes and the enforcement of the verdicts. To do so, Omani legislators must set time limits on court action under the IP framework. In addition, the Civil and Commercial Procedures Law (CCPL)<sup>917</sup> should set a time limit on presenting defences and responses (in IP or in other commercial issues) or on the length of postponement of cases. The court should increase the number of judges, hire temporary judges and introduce an alternative dispute resolution mechanism to resolve the backlog. The court should qualify IP judges by conducting IP courses and enhancing communication and collaboration with the IPD. The Omani government should appoint qualified IP experts for the courts in order to produce accurate IP reports in some cases which help them in issuing the judgments, in particular in the field of technical innovation.<sup>918</sup>

### **7.3.3 IP Training programmes for Omani SMEs**

A training programme on IPRs should be introduced by the Omani government and integrated into prevailing corporate education and training conferences for SMEs. These courses should cover the importance of IPRs and the main issues under copyright, patents, trademarks and the application procedure within direct institutions. In addition, it should define government strategies on the commercialization of IP rights, in particular patented technologies. This programme should aim to improve IPR awareness among SME employees and directors to explain how they can take advantage of the IP legal system to use IPRs

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<sup>917</sup> R.D. 29/2002.

<sup>918</sup> See Section 5.2.4 above.

as a core business asset. This programme should provide IP management sessions for SMEs such as a policy on IP exploitation, IP valuation and IP monitoring.

#### **7.3.4 Developing Islamic ideological strategy within the MERA as a new approach to increase the level of IP legal awareness.**

Government policy programmes should take into consideration the power of the MERA in increasing the level of legal awareness by using religious ideology.

To do so, the MERA needs to develop a strategy of increasing a religious awareness of IP framework, and adopt a methodology which can help in developing this strategy.

This notion has been developed throughout the thesis, and its aim is to propose and consider a realistic and working standard within the contextual framework of Islamic law, which may in the future include the areas of land law, labour law, human rights, tax law, investment law, commercial law, environmental law, medical law and insolvency law – the list is not exclusive.

In order to achieve this objective, the new process will comprise a series of stages with a view to forming the framework for developing a modern national IP strategy for the Sultanate of Oman. These stages are based on tools published by the WIPO to develop any national IP strategy as whole including IP awareness in member states.<sup>919</sup> Therefore, the author adopts these processes in developing the ministry's strategy of increasing the

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<sup>919</sup> This study found that the role of the MERA is not recognized by the international community such as the WIPO. See World Intellectual Property Organization, *Methodology for the Development of National Intellectual Property Strategies: Tool 1: The Process* (WIPO publication no. 958.1 (E), WIPO 2016); see Section 5.1 above.

religious awareness of IP and other legal framework, as set out in Diagram 7.1.

**Diagram 7.1 The process steps to developing the ministry's strategy of increasing the religious awareness of IP and other legal frameworks**



### **(1) Introduction to the assessment mission (within one month)**

The assessment mission should be undertaken by the MERA, which can use its power to change the IP legal understanding among business and Omani society.

This process is intended to formulate the strategy for the ministry to aim at increasing a religious awareness of IP and related legal issues. Such a process could include liaising with the IP administrative institutions and other legal bodies responsible for the formulation of legal policy at the domestic level. It also involves meeting with Islamic researchers with IP or legal expertise who could adjudicate on matters arising from the application of religious principles to related legal issues. Such meetings assist in clarifying the formulation of a successful ministry strategy. This initial stage could help in ensuring governmental commitment at the highest levels and help to identify a team of experts (Islamic and legal specialists).

### **(2) Assembly of project team (within two weeks)**

A project team will be asked to conduct a preliminary fact-finding exercise, to define the challenges and opportunities needed to achieve effectiveness of an IP framework, and develop a scheme document and action proposals. The team may involve Islamic and legal experts who work within the MERA or it can recruit these experts from universities or international consultants. Thus, it can ensure that the process is applied by specialists who have adequate knowledge of the state's legal and Islamic circumstances.



### **(3) Initial desk research (within one month)**

The aim of carrying out the desk research is to review existing laws from a legal and Islamic approach in order to identify how to bring the national IP legal framework into line with the requirements of Islamic law by relying on Islamic sources. Thus, desk research may enhance the rule of law and strengthen the prestige of the state in the eyes of society for Omani national development.

### **(4) Expert panel discussion (within two months)**

The desk research will be finalized by conducting expert panel discussion. The aim of the discussion is to get an overall picture of Islamic views regarding the IP legal system and other legal aspects and to identify its weaknesses, strengths and possible reforms. It should be noted that this strategy will use only the legal provisions which agree with Islamic views, but if there is conflict then this is the opportunity to suggest and promote legal reform in other related institutions. From this position, the team project will evaluate what issues should be taken into consideration during the formulation of ministry's strategy, *vis-à-vis* religious awareness, IP and other legal issues.

### **(5) National user consultations (within two weeks)**

The aim of undertaking domestic consultation is to allow business and society to participate in the validation of Islamic reviews findings and in the formulating ministry strategy.

The purpose of this exercise is to enhance the sense of involvement of a wide range of participants in developing a ministry religious awareness strategy and making it relevant to society as a whole.

### **(6) Drafting the national Omani IP strategy (within one month)**

The project team will eventually draft a proposed strategy based on the findings of the wide consultations. The next stage is for the team to draft the ministry's religious awareness strategy and its schedule plan.

### **(7) Validation of the national Omani IP strategy (within two weeks)**

The validated strategy should then be put out to consultation and seek the opinions of wider Omani society. The project team should take into consideration any recommendations raised during the consultations before the final draft is submitted to the Omani government for approval.

### **(8) Implementation**

The progress of a legal-religious awareness strategy should be well defined under an implementation agenda. These agenda should involve implementation structures and how it can use the MERA's power strategy, as presented in Diagram 6.1, and it should introduce monitoring and valuation instruments.

The MERA can use its resources to communicate to a widespread religious network throughout the country. Such an idea involves the involvement of 14,355 mosques and the delivery of a weekly *juma* speech (Friday speech) to the around 1,415 jami, and the use of modern communication. Weekly Friday prayers cover all governorates of the Sultanate of Oman and are attended by approximately 1 million worshipers of all ages.

## **7.4 Future research**

This thesis has examined the impact of the legal IP legal framework in the context of Omani cultural perspectives. It has examined the role of IP administration institutions and SMEs' IP awareness, which are considered the main vehicles for cultural and economic development.

However, this thesis is limited in terms of copyright, patent and trademark law.<sup>920</sup> As a result of this study, some issues have occurred which are in need of further study. For example:

(1) The existing Omani IP system can interact positively with Islamic law by respecting Omani culture, and it can serve the concept of economic development in Oman in particular, when the IPR framework can support the wider national goal of economic diversification away from oil-based industry. As a result, the standards of IP public order and morality can contribute towards the reconstruction of guidelines for decision-making in assessing any IP application which requires registration, e.g. trademarks and patents or whether the dissemination of copyrighted work can be restricted/censored by this standard. Further study is needed to examine to what extent this Islamic standard can limit the scope of protectable subject matter in terms of copyright and related rights, trademarks, patents, and whether it can be extended to include industrial design by providing extensive contemporary examples.<sup>921</sup> It should aim to produce a written Islamic model guide for a direct institution based on the Islamic standard which has been presented in this thesis. It should be noted that this study should be conducted by an Islamic specialist with a high level of IP law knowledge who can adjudicate on matters arising from the application of religious principle to IP applications or related issues.

(2) The results of the above-mentioned IP awareness strategy, which could be undertaken by the MERA, could be used as a foundation to potentially enhance further studies to develop a new IP Islamic approach. For example:

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<sup>920</sup> There are many other IP issues that Oman will need to study further such as designs, plant variety, geographical indications and the layout design of integrated circuits.

<sup>921</sup> See Chapter 4 for some examples in terms of copyright, patents and trademarks.

- The extent to which Islamic loans may be granted by Islamic banks to invest in IP projects such as patent projects to develop a product or to create copyrighted work such as films.
- As was presented in Chapter 5, the MERA is responsible for the administration and investment of Islamic endowments – *Al-Waqf*, in Arabic. *Al-Waqf* is defined as ‘the charitable endowment of an physical item for the benefit of the community at large. Al-Waqf is a form of continuing charity (*As-Sadaqatu Al-Jāriyah*) the rewards of which continue even after the donor’s death, as long as people continue to benefit from it.’<sup>922</sup> Further study is needed to confirm the extent to which the Islamic charitable endowment of physical assets can be extended to intangible (IP) assets as presented under the Omani IP framework.

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<sup>922</sup> Abdulwahāb Muhammad Jāmi Elesin, ‘The Role of Al-Awqāf (Islamic Endowments) in Poverty Alleviation and Community Development in the Nigerian Context’ (2017) 37(2) *Journal of Muslim Minority Affairs* 223, 225 <<https://doi.org/10.1080/13602004.2017.1339497>> accessed 25 May 2016; see Section 5.3.1 above, which explained the jurisdiction of the MERA in accordance with Annex No.1 of R.D. 167/99.

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## Appendix

### Appendix 1 Survey questionnaire Arabic



رقم الاستبيان:

بسم الله الرحمن الرحيم

الفاضل الأخ العزيز  
السلام عليكم ورحمة الله وبركاته،  
الموضوع/ طلب المشاركة في الاستبيان

تلعب المؤسسات الصغيرة والمتوسطة دورا مهما في النمو الاقتصادي والثقافي داخل الدولة، وتقوي فرص نجاح تلك المؤسسات بزيادة وعي الأشخاص القائمين عليها بحقوق الملكية الفكرية؛ لذا فإن هذه الدراسة تهدف لمعرفة مستوى ذلك الوعي والعوامل التي تساعد في نجاحه.

وعليه فإن مشاركتكم في هذه الدراسة وذلك بالإجابة على الاستبيان المرفق سوف يساعد الباحث في الوصول إلى المقترحات وذلك بتحديد الآلية المناسبة لدعم هذه المؤسسات، علما بأن هذا الاستبيان شبيه بالنموذج المطبق بالمملكة المتحدة بواسطة مكتب الملكية الفكرية في عام ٢٠٠٦ مع إجراء بعض التعديلات اللازمة من حيث مضمون الأسئلة بما يتناسب مع الوضع الحالي بالسلطنة.

#### تعليمات عامة

- يرجى الإجابة على جميع الأسئلة، وفي حال عدم وجود خيار يناسب وجهة نظركم، فإنه يمكنك اختيار الإجابة الأقرب.
- يرجى التكرم وضع دائرة أو علامة صح على الإجابة المناسبة.
- البيانات التي تقوم بتوزيع الباحث بها سيتم التعامل معها بشكل سري بحيث لا يمكن استخدامها إلا من قبله، ولا تستخدم إلا لأغراض هذا البحث العلمي فقط. ولك الحرية في قبول المشاركة في الدراسة، أو الانسحاب منها دون إبداء الأسباب خلال ثلاثة أسابيع من تاريخ إرجاع الاستبيان.
- يمكنك إكمال الاستبيان خلال أربعة عشر دقيقة.
- نتائج هذه الدراسة سوف تستخدم في رسالة الدكتوراة التي تقدم لجامعة نوتنجهام ترنت بالمملكة المتحدة.
- في حال رغبتكم معرفة نتائج هذه الدراسة يرجى التكرم كتابة البيانات الخاصة بكم في الصفحة الأخيرة من الاستبيان المرفق.
- يرجى إعادة الاستبيان خلال أسبوع من تاريخ التسليم.

والسلام عليكم ورحمة الله وبركاته.

محمد بن يحيى الخروصي

طالب دكتوراة بجامعة نوتنجهام ترنت

[mohamed.alkharusi2014@my.ntu.ac.uk](mailto:mohamed.alkharusi2014@my.ntu.ac.uk)

٠٠٤٤٧٧٤١١٧٦٩١٥

٠٠٩٦٨٩٨١٠٠٠٠٩

(١) معلومات عامة عن الشركة

(١) ما هو تصنيف الشركة ؟

١. مؤسسة صغيرة (٥-١) عامل
٢. مؤسسة صغيرة (٢٥-٦) عامل
٣. مؤسسة متوسطة (٩٩-٢٦) عامل

(٢) يرجى الإشارة إلى دوركم داخل الشركة

١. الرئيس التنفيذي
٢. مدير
٣. موظف

(٣) هل قامت شركتك بابتكار أو طورت خدمة أو منتجاً جديداً في السوق خلال خمس السنوات الماضية؟

نعم / لا / لا أعرف

(٢) الوعي والفهم بحقوق الملكية الفكرية

(٤) في حالة نشر لفكرة مبتكرة قبل تقديم طلب تسجيلها إلى الجهة المختصة، هل نشر الفكرة قد تمنعك من الحصول على براءة الاختراع؟

نعم / لا / لا أعرف

(٥) إذا قمت باختيار تجارة جديدة أو اسم منتج ، أي اختيار من الخيارات التالية ستقوم من التحقق منها ؟

١. العلامات التجارية بالرجوع إلى الوزارة المختصة
٢. اسم الشركة عن طريق الوزارة المختصة
٣. البحث بواسطة الإنترنت
٤. لا شيء
٥. أخرى (يرجى التحديد).....

(٦) كيف تقوم بحماية ابتكار جديد أو غير معروف في مجال التقنية؟

١. حقوق المؤلف
٢. براءات الاختراع
٣. تسجيل التصميم
٤. العلامات التجارية
٥. السرية
٦. لا أعرف

(٧) إذا قمت بدفع مبالغ مالية لشركة أو فرد لتصميم موقع إلكتروني لشركتك، هل حقوق المؤلف ستكون موجودة في هذا الموقع؟

نعم / لا / لا أعرف

(٨) إذا لم يتم الاتفاق لأي طرف تكون ملكية هذه الحقوق إن وجدت ، من الذي يملك هذه الحقوق؟

شركتك / المصمم / لا أعرف

٨ هل يجب تقديم طلب تسجيل إلى الجهة المختصة للحصول على حماية لحقوق الملكية الفكرية المشار إليها أدناه؟

لا أعرف	لا	نعم	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	١. حقوق المؤلف
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	٢. براءات الاختراع
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	٣. العلامات التجارية
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	٤. التصميم الصناعي

٩ ضع علامة صح حول مستوى أهمية الاساليب التالية لحماية الابتكارات داخل شركتك؟

أساسي	مهم جدا	مهم	غير مهم جدا	غير مهم	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	١. حقوق المؤلف
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	٢. براءات الاختراع
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	٣. العلامات التجارية
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	٤. التصميم الصناعي
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	٥. السرية

### ٣ امتلاك حقوق الملكية الفكرية

١٠ هل قامت شركتك بابتكار أو تملك واحد من الحقوق المشار إليهما أدناه؟

١. حقوق المؤلف ٢. براءات الاختراع ٣. العلامات التجارية ٤. التصميم الصناعي  
٥. أخرى

١١ كم تبلغ المبالغ التي تقوم بصرفها الشركة للحفاظ أو الحصول على حقوق الملكية الفكرية سنويا؟

١. أقل من ٥٠٠ ريال  
٢. من ٥٠٠ الي-٢٠٠٠ ريال  
٣. أكثر من ٢٠٠٠ ريال  
٤. لم يتم صرف أي مبلغ

١٢ هل شركتك تعرضت لمسألة قانونية باعتمادها على حقوق الملكية الفكرية مملوكة لشركة أخرى؟ (داخل أو خارج السلطنة)

نعم / لا / لا أعرف

إذا كانت الإجابة نعم، في أي دولة، ١. عمان ٢. أخرى (يرجى التحديد.....)

٤) إدارة حقوق الملكية الفكرية في شركتك

١٣) هل سبق وان حصلت الشركة على إذن او رخصة باستخدام حق من حقوق الملكية الفكرية من قبل شركة أخرى؟

نعم / لا / لا أعرف

١٤) هل قامت شركتك بإعطاء رخصة لشركة أخرى لاستخدام حقوق الملكية الفكرية التي تملكها الشركة؟

نعم / لا / لا أعرف

١٥) هل يوجد شخص مختص للتعامل مع حقوق الملكية الفكرية داخل الشركة؟

نعم / لا / لا أعرف

١٦) إذا كان الجواب نعم، هل يوجد قسم خاص مختص بالملكية الفكرية داخل شركتك؟

نعم / لا / لا أعرف

١٧) هل سبق لشركتك أن قيمت مقدار حقوق الملكية الفكرية التي تملكها؟ (علي سبيل المثال، قيمة العلامة التجارية ١٠٠٠ ريال عماني)

نعم / لا / لا أعرف

١٨) هل لشركتك إستراتيجية أو خطة عامة لإدارة حقوق الملكية الفكرية؟

نعم / لا / لا أعرف

١٩) إذا كان الجواب نعم، هل هي مشروحة وتم توزيعها على الموظفين؟

نعم / لا / لا أعرف

٢٠) هل تقوم الشركة بتدريب موظفيها على التعامل مع قضايا الملكية الفكرية؟

نعم / لا / لا أعرف

٢١) إذا كانت شركتك تمتلك حقوق الملكية الفكرية ، هل تقوم الشركة بالتأكد فيما إذا تم الاعتداء عليها من قبل الآخرين؟

نعم / لا / لا أعرف

٥) مصدر المعلومات عن حقوق الملكية الفكرية والجانب الثقافي

٢٢) هل سبق وان حصلت شركتك على مشورة قانونية في كيفية حماية حقوق الملكية الفكرية؟

نعم / لا / لا أعرف

٢٢.أ) إذا كانت الإجابة نعم، من مصدر المعلومة؟

١. دائرة حقوق الملكية الفكرية بوزارة التجارة والصناعة او موقع الوزارة

٢. محامي داخل السلطنة

٣. محامي من خارج السلطنة

٤. أخرى (يرجى التحديد).....



٢٣) إلى (اي) مدى تعتقد ان شركتك تحتاج إلى مشورة قانونية في حالة وجود نزاع يتعلق بالحقوق الملكية الفكرية التي تملكها الشركة؟

١. دائما ٢. أحيانا ٣. أبدا

٢٤) هل سبق لشركتك البحث في قاعدة البيانات (عن طريق الإنترنت) عن براءة إختراع او علامة تجارية أو أي حق من حقوق الملكية الفكرية؟

نعم / لا / لا أعرف

٢٥) إذا وجدت فتوى شرعية على سبيل المثال تفيد بأن استخدام حق من حقوق الملكية الفكرية المملوكة لدى الآخرين "لا يجوز شرعا إلا بعد الحصول على إذن من مالكيها"  
هل تقوم باتباع هذه الفتوى؟

١. دائما ٢. أحيانا ٣. أبدا

٢٦) هل سبق لك أن قرأت او استمعت إلى فتوى شرعية تتعلق بكيفية استخدام حقوق الملكية الفكرية؟

١. دائما ٢. أحيانا ٣. أبدا

٢٧) هل سبق لك التقدم بطلب تسجيل حق من حقوق الملكية الفكرية وتم رفض الطلب من قبل الدائرة المختصة بسبب ان طلبك مخل بالأداب العامه والنظام العام ؟ ( على سبيل المثال تقدمت بطلب تسجيل علامة تجارية وتم رفض الطلب بسبب انه مخل بالقيم الدينية او العادات والتقاليد داخل السلطنة)؟

نعم / لا / لا أعرف

٢٨) إذا وجدت أن استخدام حقوق الملكية الفكرية المملوكة لشركات أخرى بدون موافقتهم سوف يساعدك في الحصول على أرباح،(على سبيل المثال: أن تقوم باستخدام علامة تجارية مملوكة لشركة أخرى في منتجات شركتك بدون موافقة المالك الأصلي ) هل ستقوم باستخدامها؟

نعم / لا / لا أعرف

٢٩) إذا وجدت شركة تقوم بتقليد علامة تجارية مسجلة، هل ستقوم بإبلاغ الجهة المختصة (هيئة حماية المستهلك ) ؟

نعم / لا / لا أعرف

٣٠) هل أنت راض عن الخدمات التي تقدمها وزارة التجارة والصناعة فيما يتعلق برفع الوعي في مسائل حقوق الملكية الفكرية؟

نعم / لا / لا أعرف

شكرا جزيلاً على اهتمامكم وتعاونكم معنا لخدمة البحث العلمي

## Appendix 2 Survey questionnaire English

**Questionnaire Number:**



**Dear participant,**

### **Request to participate in the questionnaire**

Small and medium-sized enterprises play an important role in economic and cultural growth within the country, and the chances of success for these enterprises can be enhanced by increasing their IP awareness, so the main objective of this study is to find out the level of awareness and factors that help in their success.

In addition, your participation in this study by answering the attached questionnaire will assist the researcher in reaching the proposals by identifying the appropriate mechanism to support these institutions. This questionnaire is similar to the model applied in the United Kingdom by the Intellectual Property Office in 2006 with some necessary modifications in terms of content questions to suit the current situation in the Sultanate.

General instructions:

- Please answer all questions, and if there is no option that suits your point of view, you can choose the closest answer.
- Please circle or mark the correct answer.
- Data supplied to the researcher will be treated confidentially so that it can only be used by him and will only be used for the purposes of this research. You have the right to accept or withdraw from the study without giving reasons within three weeks from the date of the return of the questionnaire.
- You can complete the questionnaire within 14 minutes.
- The results of this study will be used in a PhD thesis which will be submitted to Nottingham Trent University in the UK.
- If you wish to know the results of this study, please write your email on the last page of the attached questionnaire.
- Please return the questionnaire within one week from the date of delivery.

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0096898100009

**Part 1 Your business**

1. How is the company categorized?
  - a) Micro (1–5 workers)
  - b) Small (6–25 workers)
  - c) Medium-sized (26–99 workers)
  
2. Please indicate your role within the company:
  - a) Managing director/chairman
  - b) Director
  - c) Employee
  
3. Has your company invented or developed products or services which are significantly improved or completely new to the market in the last 5 years?

Yes / No / Don't know

**Part 2 IP Knowledge and understanding**

4. Does publication of an invention before filing a patent application for it prevent a valid patent being obtained?  
Yes / No / Don't know
  
5. If you were choosing a new business or product name, which of the following would you check?
  - 1) Trademarks by referring to the competent ministry
  - 2) Company names by referring to the competent ministry
  - 3) Online web search
  - 4) None of these.
  - 5) Other (Please specify) .....
  
6. How would you protect a completely new and non-obvious technical invention?
  - 1) Copyright
  - 2) Patent
  - 3) Industrial design
  - 4) Trademark
  - 5) Secrecy
  - 6) Don't know
  
7. If you paid a subcontractor to design your website would copyright exist over that material?

Yes / No / Don't know

7a. In the absence of any assignment, who would own any copyright created?

Your company / The subcontractor / Don't know

8. Is it necessary to file an application (register) in order to obtain a legal right to any of the following IPRs?

	Yes	No	Don't know
1-Copyright	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2-Patents	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3- Trademarks	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4-Industrial design	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

9. Please indicate the importance to your business of each of the following methods to protect innovations:

	Unimportant	Not very important	Important	Very important	Essential
1-Copyright	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2-Patents	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3-Trademarks	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4-Industrial design	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5-Confidentiality agreements	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

### Part 3 Ownership of intellectual property rights (IPRs)

10. Does your company create or own any of the following IPRs:

- a) Copyright
- b) Patents
- c) Trademarks
- d) Industrial design
- e) Other

11. Approximately how much does your company spend each year on obtaining and maintaining IPRs it owns?

- a) Less than 500 OR
- b) Between 500 and 2000 OR
- c) Over 2000 OR
- d) Nothing

12. Have you or your company ever been involved in a legal dispute involving IPRs? (in or outside Oman)

Yes / No / Don't know.

If yes, in which countries?

a) Oman

b) Other (please specify) .....

**Part 4 The management of the intellectual property rights in your company**

13. Has your company ever licensed in IP from other parties (to allow your company to use IP owned or controlled by others)?

Yes / No / Don't know

14. Has your company ever licensed out IP to other parties (to allow others to use intellectual property owned or controlled by your company)?

Yes / No / Don't Know

15. Is anyone in your company specifically assigned responsibility for managing IPRs?

Yes / No / Don't know

16. If yes, does your company have a separate intellectual property division(s)?

Yes / No / Don't know

17. Has your company ever tried to assess how much your intellectual property is worth (for example, the worth of a trademark is 1000 OR)?

Yes / No / Don't Know

18. Does your company have an IP policy?

Yes / No / Don't know

19. If yes, is it explained or distributed to staff?

Yes / No / Don't know

20. Is any training in IP issues provided by your company to its staff?

Yes / No / Don't know

21. If your company owns IPRs, does it actively check for potential infringements?

Yes / No / Don't know

**Part 5: Sources of information about IPRs and cultural perspective**

22. Has your company ever sought advice on IPRs?

Yes / No / Don't know

22a. If yes, from whom (please circle all that apply)?

- a) Omani Intellectual Property Office
- b) Internal solicitor
- c) External solicitor
- d) Other (please specify)

23. Please indicate on the following scale to what extent you think your company would need external advice when considering issues involving IP:

- a) Always
- b) Sometimes
- c) Never

24. Has your company ever used or searched patent, trademark or other IPR databases?

Yes / No / Don't know

25. If your main religious reference declared that using others' IPRs without the consent of owner are prohibited under your religion, would you follow this opinion?

- 1) Always
- 2) Sometimes
- 3) Never

26. Have you ever read or listened to Islamic opinion on how to use intellectual property rights?

- 1) Always
- 2) Sometimes
- 3) Never

27. Have you ever applied for registration of IPR and it was rejected by the IP Office because it was violated public order and morality? (For example, an application for registration of a trademark was rejected for this reason)?

Yes / No / Don't know

28. If you found that the use of the intellectual property rights owned by other companies without their consent will assist you in obtaining profits (for example, the use of a registered trademark in your company products without the owner's consent), would you use it?

Yes / No / Don't know

29. If you found a company that infringed IP rights or a registered trademark, would you notify the competent authority (for example, the Public Authority for Consumer Protection)?

Yes / No / Don't know

30. Are you satisfied with the services provided by the Ministry of Trade and Industry regarding improving the level of IP awareness?

Yes / No / Don't know

Thank you