

# Developing intellectual property regimes in the Gulf



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## • Introduction

- COUNTRY: UK
- SCHOOL: Law, Intellectual Property and Sharia Law
- POSITION: Researcher
- Thesis: **Utilising intellectual property for positive economic growth**

# Gulf Economic Growth and Intellectual Property



## • Overview

- The relationship between economic growth and Intellectual Property
- Ascension to World Trade Organization (WTO) in 1994 and international treaty obligations (such as those provided by TRIPs)
- Trade is hugely important and the link between trade and the provision of an effective intellectual property system is fairly easy to find: Countries are reluctant to trade with other countries who do not respect intellectual property.

# Meaning of TRIPS



- Agreement on Trade Related Aspects of Intellectual Property Rights - With the accession to WTO membership, TRIPS compliance was a minimum requirement.
- What this resulted in was a rapid transformation of intellectual property national law from virtually non-existent or minor laws to Western style statutory regulation in the Gulf.
- The main areas of improvement were on length of protection and enforcement mechanisms.
- The legislative transformation to date has been at an exponential rate. The current state of affairs stands with the GCC states displaying an unequivocal level of compliance to TRIPS standard to gain credence with their WTO status.

# Impact of TRIPS



- TRIPs covers : Copyright and related rights (i.e. the rights of performers, producers of sound recordings and broadcasting organizations); trademarks including service marks; geographical indications including appellations of origin; industrial designs; patents; the protection of new varieties of plants; the layout-designs of integrated circuits; and undisclosed information including trade secrets and test data.
- TRIPs has a powerful enforcement mechanism. States which do not adopt TRIPs compliant intellectual property systems can be disciplined through the WTO's dispute settlement mechanism, which is capable of authorising trade sanctions against nonconformist states

# The Intellectual Property Dichotomy



## Developed Countries

- Main players in International IP standard settings
- Better IP protection leads to increase in Foreign Direct Investment (FDI)
- EU/US agreements are contingent upon stronger IP protection
- Major influence behind a push for TRIPS plus standards

## GCC Countries

- Similar political systems based on autocratic monarchies
- Dramatic legislative changes in a short space of time
- Significant development in enforcing IP with Kuwait now the only GCC country on the US Special 301 Report Watch List
- Under increasing pressure to foster TRIPS Plus regimes

# The TRIPS Plus standards



- TRIPS Plus calls for stronger obligations in the following intellectual property areas:
- data exclusivity
- extension of patent terms
- restrictions on use of compulsory licensing
- minimum protection for industrial rights
- trademark protection
- relinquish transition period privileges granted from WTO
- **enforcement against intellectual property violation particularly criminal sanctions**



## Gulf States Software Piracy

The statistical analysis of intellectual property infringement shows that the Gulf States have improved their IP enforcement in areas such as software piracy as the rates of infringement are falling. However the pressure to incorporate TRIPS plus standard will require the States to adhere to stricter enforcement action when they are barely managing to maintain current improvements.

Gulf State	Piracy Rates 2000	Piracy Rates 2006	Piracy Rates 2010	Change from 2000 to 2006	Change from 2006 to 2010
Oman	78%	62%	62%	16%	0%
Qatar	81%	58%	49%	23%	9%
Saudi Arabia	59%	52%	52%	7%	0%
UAE	44%	35%	36%	9%	-1%
Kuwait	80%	64%	60%	16%	4%
Bahrain	80%	60%	54%	20%	6%



# For and Against TRIPS Plus in GCC



## FOR TRIPS Plus

- Bring GCC countries on par with international counterparts
- TRIPS Plus will help bilateral agreements with EU/US reach a conclusion
- Economic growth prospects, tax breaks and fiscal benefits
- Strong message to Developed countries that GCC countries are taking IP seriously and therefore encourage FDI
- Investment by firms can be more likely when host countries have strong IP protection

## AGAINST TRIPS Plus

- Too much too soon
- With the example of Piracy rates the GCC states have shown marked improvement from Pre TRIPS to TRIPS but the current stagnant growth indicates that the countries are barely meeting their current obligations
- Risk of a negative impact on IP development to date
- Many western countries have similar levels of IP violation yet TRIPS Plus is embedded in many bilateral/multilateral agreements

# Intellectual Property and Sharia



- Islamic Law is an added dimension to the Gulf region as all states have some level of Sharia compliance
- Sharia Law makes no direct reference to IP therefore IP development in GCC countries has been relatively conflict free
- What the future now holds for the influence of Sharia Law is three possibilities: further erosion, maintenance, or re-assertion
- Given the recent Arab Spring; there is an undercurrent of political unrest that requires the Arab States to review their internal infrastructures and in terms of IP do more than pay lip service to Sharia influences

# Marrying Sharia Law and Intellectual Property



- There has been a limited amount of work in the understanding of Islamic Law to provide support for the protection of intellectual property law.
- Intellectual property rights are not specifically regulated by any source of Sharia law in that IPR's do not fall under the main five types of conduct namely: mandatory, recommended, permitted, recommended against or prohibited.
- A common analogy is to attribute Islamic principles of property to the protection of intellectual property.

# Tangible property v Intangible Property



- Legal reasoning in property law have formed the basis of Sharia approval for intellectual property protection.
- Islamic law on proprietary rights is the most obvious example of established law that can be manipulated to support intellectual property.
- Quranic verses make explicit references to proprietary rights.
- The common theme of the Quranic verses is to strive with your efforts in your property and has formed a basis for a similarity to the Lockean labour theory e.g An-Najm, Verse 39, states: “And that man hath only that for which he maketh effort”.
- Examples from the Sunnah include: “no person's property is lawful to be taken except by his consent” and “he who cultivates barren land is entitled to the ownership of that land”. The barren land can equate to the idea in intellectual property which in itself is not protected, the cultivation of the barren land represented the expression of the idea and it is this expression that makes the inventor entitled to intellectual property protection.
- **There is a significant distinction between tangible assets and intangible assets. How the two are measured can vary significantly - how the value of intangible assets can be assessed and protected can have a profound effect on economic growth potential.**

# Islamic Finance and Intellectual Property



- Concepts of Sharia play a significant role in IP products in Islamic Finance. The rationale for riba comes from the concept of unjust enrichment.
- The argument against IP protection therefore lies within the definition of unjust enrichment and links with the length of time an IPR holder is awarded a monopoly right over the invention (Beltrametti 2009).
- The quality and quantity of patents is an indicator for innovation in a knowledge-based economy.
- Patents for Islamic Finance products need to be a growth area for the Gulf States as this is an emerging market. For example there has been an increase in licensing agreements between the GCC and Malaysia as well as negotiations for a FTA. The Malaysian trading agreement can set the precedent for incorporating Islamic Finance in other negotiations.
- Currently the GCC Malaysian FTA is still incomplete however one of the main contributions from Malaysia is in the field of Islamic Finance. Malaysia also trades with the GCC States particularly Qatar.

# Religious loyalty index



- El Bialy and Gouda (2011) developed a religious loyalty index finding Muslim countries have the highest level of religiosity to Islam than other religions.
- Empirical research has found that Muslim developing countries have a high level of both IPR piracy as well as a high level of religiosity to Islam.
- There is an anomaly between how Islamic law supports intellectual property and how citizens of Islamic countries with a high religiosity are high intellectual property infringers.

# Intellectual Property and Public Perceptions



- IPR's are seen as foreign products and their infringement is not taken seriously by the public.
- The reason for this is because the public are unaware of the amount of investment and skill that is consumed in producing the product and as a result have become accustomed to the label of economic free riders.
- Promotion of IP products relating to Islamic Finance has the potential to be a win-win situation. Islamic Finance is a field of business that the public already recognise and is an expanding market with economic growth potential.
- By promoting the IPR's attached to Islamic Finance, IPR's can then be given a new platform to demonstrate their Sharia compliant existence.

# Concluding Remarks



- GCC States are aware of the benefits of a knowledge driven economy where intangible assets are becoming much more invaluable than physical assets.
- Intellectual property rights are the way forward as a driving force behind economic growth.
- Therefore for the Gulf States intellectual property protection is a vital lever to business success. There needs to be a reinvention in how intellectual property law is projected in the public arena.
- The main TRIPS plus criteria that the GCC will struggle with is the increased enforcement requirements.
- Efforts to reduce intellectual property infringement since TRIPS have been met with lukewarm success at best as seen in areas such as software piracy which are stagnant and therefore the Gulf States need to do more than simply make legislative changes.



# Questions



- Thank you for listening
- Questions
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