



Comparative study of the rights of intellectual achievements caused by artificial intelligence in the laws of Iran and the United States of America

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Abstract

The purpose of this research is to compare the rights of intellectual achievements caused by artificial intelligence in the laws of Iran and the United States of America. In Iranian law, the issue of abuse of intellectual property rights has not been studied much, and the legal solutions to this issue lack theory and classification, and are only considered as an executive guarantee for some instances of abuse of rights, such as Article 17 of the Patent Law of 2006, which, by discussing the granting of compulsory licenses, has placed an obstacle in the way of the abuse of some exclusive rights of the holder that are against the public interest. In the jurisprudence of Western countries - especially the United States of America - more attention has been paid to the abuse of intellectual property rights, and the theory of dirty hands was first proposed to justify and regulate patent abuse, and then it spread to other areas of intellectual property. Of course, the debate about the abuse of intellectual property rights, especially its criteria and examples, continues to this day in the mentioned countries, and no legal consensus has been reached. However, it seems that the title of abuse of intellectual property rights can be used both in the form of defense of the violators of these rights before the court, and as one of the exceptions to the owner's exclusive rights.

Keywords: rights of intellectual achievements, artificial intelligence, intellectual property, rights of Iran and the United States of America

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Introduction

Intellectual property rights refer to the rights arising from human inventions and mental creations, which require recognition and legal protection due to their economic value and ability to be valued after their emergence and external manifestation. However, it should be noted that everything that is nurtured in the mind is not necessarily eligible for legal protection, and everything that is classified as intellectual property is not necessarily included in the realm of intellectual property rights.

Legal systems, both in Iran and in international documents and rules, in order to systematize and organize these mental outpourings, have provided specific criteria and mechanisms so that only the works that qualify for legal conditions are protected.

In Iranian law, Article 2 of the Law on Patents, Industrial Designs and Trademarks approved in 2006 stipulates that an invention can be registered and recognized when it "contains a new innovation and has an industrial application". This article further defines the new innovation as "that which did not exist in the previous art or industry and is not known and obvious to the holder of normal skill in the mentioned art".

In this way, the Iranian legislator has considered the two basic criteria of "newness" and "industrial applicability" as a condition for having legal protection in the field of inventions.

Such an approach shows that the protection of intellectual achievements is not absolute and unconditional, but depends on meeting the terms and conditions that are foreseen in domestic laws and international documents.

Following the definition of "new initiative" in Article 2 of the Law on Patents, Industrial Designs and Trademarks approved in 2006, it is specified that an invention is considered new when it "does not exist in the previous art or industry". In this way, the criterion of innovation and lack of background in prior knowledge is one of the basic pillars of protection in the field of inventions.

Also, in Article 16 of the Law on Protection of the Rights of Creators of Computer Software approved in 1379, the condition for the protection of works subject to this law is that "the subject has been produced and distributed for the first time in Iran". In addition, Article 22 of the Law on the Protection of the Rights of Authors, Writers and Artists approved in 1348 stipulates: "The material rights of the creator will be protected by this law when the work is printed, distributed, published or performed for the first time in Iran and has not been printed, published or performed in any country before.

The totality of these provisions shows that in Iran's legal system, in addition to essential elements such as novelty and innovation, the condition of "first publication" or a kind of territorial link is also foreseen as a condition of legal protection in some areas.

In the laws of the United States of America, the basis for intellectual property protection is provided in Article 1, Section 8, Clause 8 of the Constitution of this country (Intellectual Property Clause). This clause authorizes Congress "to make such laws as may be necessary to promote the progress of science and the useful arts, by granting to authors and inventors exclusive rights over their works and inventions for a limited period." This ruling forms the basis of the patent and copyright system in the United States.

Examining Iran's domestic laws, the United States' constitution and federal laws, as well as international treaties related to intellectual property, show that in order to identify and protect intellectual property, the presence of elements such as novelty, innovation, and in some cases practicality is necessary. Only if these conditions are met, a work or invention can be protected within the framework of intellectual property rights.

However, contemporary technological developments, especially rapid developments in the field of artificial intelligence, have raised fundamental questions in this traditional framework. Artificial intelligence, as one of the branches of computer science, is based on the combination and processing of complex algorithms that are capable of analyzing data, learning from patterns and even making independent decisions at advanced levels. Today, this technology can produce works whose production was thought to be the sole responsibility of humans, and the intellectual property rights system was basically formed with the assumption of "human being the creator".

As a result, the expansion and deepening of artificial intelligence capabilities has created serious and fundamental challenges in various dimensions of intellectual property rights. Fundamental questions are raised: Are works produced by artificial intelligence eligible for protection? If the answer is positive, who owns the right? Programmer, user, system owner or intelligent system itself? Also, how will traditional criteria such as innovation and initiative be interpreted in the face of algorithmic productions? These questions show that the entry of artificial intelligence into the field of creativity has revealed the necessity of rethinking the theoretical foundations and legal frameworks of intellectual property more than ever.

The entry of artificial intelligence into various fields of creation, including trademarks, inventions, industrial designs, as well as literary and artistic fields such as painting, music and other creative works, has faced serious challenges to the traditional concepts of intellectual property rights. Today, artificial intelligence-based systems are able to create works of art such as paintings; Works that have the

characteristics of creativity and innovation in appearance, but in the process of their formation, the role of man as a direct creator has been dimmed or even removed.

Such a situation raises fundamental questions; Among other things, to whom should the material and spiritual ownership of these works be awarded? Does the programmer, user, system owner or someone else deserve exclusive rights? In addition, how can it be justified to examine the condition of "originality" in intellectual achievements caused by artificial intelligence, when many advanced algorithms are trained based on the analysis and processing of previous raw data? Is the use of past data an obstacle to the realization of innovation and initiative or should it be?

Research method

This research is done using the library method; This means that the required data and resources will be collected through the study of domestic and foreign laws, judicial and administrative procedures, international documents, books, scientific articles and authentic reports. The method of analysis in this research is descriptive-analytical; In such a way that the existing situation in each of the legal systems of Iran and the United States of America is described first, and then with a critical approach, the concepts, basics and challenges related to supporting the achievements caused by artificial intelligence are examined and analyzed. In addition, the current research has a comparative nature and by comparing the structures, concepts and support mechanisms in the two studied legal systems, it evaluates the capacities, differences and the possibility of providing suitable solutions for the legal system of Iran.

Definition of intellectual property and its types

Intellectual property is a set of legal rights that allow a person or a group of people to protect the results of their mental creations and prevent them from unauthorized use. These rights generally protect works and inventions created by humans. In Iran, as in many other countries, intellectual property laws are divided into four main categories: copyright, inventions, trademarks, and trade secrets.

1. Copyright: Copyright generally belongs to the rights of authors, artists and other creators of artistic, literary and scientific works. These rights protect human-created works from unauthorized reproduction, distribution, and display. In Iranian law, according to the Copyright Law of Author, Author and Artist (1384), only humans can be recognized as the author or creator of a work (Saeidi, 1400, p. 54). Therefore, if artificial intelligence produces new works, these works will not be protected by copyright unless humans are recognized as creators (Jaafari, 1401, p. 102).

2. Inventions: Inventions are new and practical inventions that are used in various fields such as engineering, medicine and technology. Patent rights allow the inventor to prevent unauthorized use of his invention and obtain the exclusive right to exploit the invention for a certain period of time (usually 20 years). In Iranian law, according to Article 1 of the Patent Law (1386), inventions can only be registered in the name of a natural person and only natural persons are recognized as inventors (Akbari, 2019, p. 85).

Therefore, inventions produced by artificial intelligence cannot be directly protected by this law.

3. Trademarks: These rights belong to signs, symbols, words, or combinations thereof that are used to identify the goods and services of a company. In fact, trademarks help companies differentiate their products from those of their competitors. According to Iran's Trademarks Law (2010), these rights are registered in the name of natural or legal persons and are recognized as one of the important commercial rights (Dehghani, 2018, p. 115).

4. Trade secrets: Trade secrets refer to information that has commercial value and their publication is prevented in order to maintain a competitive advantage. These rights typically pertain to information such as formulas, processes, plans, and business strategies. In Iranian law, this type of rights is protected by the Law on Combating Illegal Competition (1388) and their unauthorized disclosure is prevented (Mousavi, 1400, p. 1137).

Challenges of intellectual property rights related to artificial intelligence

With the dramatic advances in artificial intelligence (AI) technology, intellectual property is facing new and complex challenges. These challenges are mainly seen in the areas of copyright and inventions, especially when AI products are created independently without direct human intervention. In this section, the main legal challenges in the field of intellectual property and artificial intelligence will be discussed.

Challenges related to copyright and artificial intelligence

One of the most important legal challenges in the field of intellectual property and artificial intelligence is the issue of copyright and works produced by artificial intelligence. Copyright, as a legal system to protect the rights of creators of artistic, literary and scientific works, has faced new problems and questions in the digital world and with the presence of artificial intelligence. In fact, in the world of artificial intelligence, self-learning systems and automated content generation are capable of creating new works independently, while existing laws typically support humans as creators of works. This issue leads to serious challenges in determining ownership and identifying the creator.

Inability to identify the creator

Under current laws, only humans can be recognized as creators of works. According to Iran's Copyright Law (Author, Author and Artist Law), these rights are directly assigned to the person who created the work. But in the works produced by artificial intelligence, identifying the creator has become a complex issue. The question whether artificial intelligence should be considered as the creator of works or not is still unanswered. For example, in many countries, lawyers believe that because artificial intelligence is a non-human system, it cannot be recognized as the creator of works, and therefore the works produced by it are not protected by copyright.

Problems in identifying ownership

Another main problem is the issue of ownership of works produced by artificial intelligence. While in existing systems, the creators of the works are usually recognized as the copyright holders, in the case of works produced by artificial intelligence, the ownership is not clearly defined. This issue becomes a challenge especially when artificial intelligence systems are involved in creative processes independently and without human supervision. In particular, in some cases, artificial intelligence products may be trained directly from existing data or works, which itself causes issues related to copyright infringement and plagiarism (Zare, 1400, p. 89). For example, if AI uses unlicensed data in the content creation process, this can lead to infringement of intellectual property rights.

Differences in definitions of "producer" in international law

At the international level, there are different definitions and laws for creators. Many countries, including the United States and the United Kingdom, have not provided specific laws for the protection of artificial intelligence works, and as a result, the legal ownership of such works mainly belongs to the people and organizations that designed and programmed the artificial intelligence. However, in some countries such as Australia, decisions have been made regarding the possibility of granting copyright rights to works produced by artificial intelligence, in which the decision is based on the abilities and capabilities of artificial intelligence (Mahmoudi, 1401, p. 141). These issues show that the need to establish international coordination in this field is very necessary.

Legal implications for the use of artificial intelligence works

Another challenge is the legal implications of using works produced by artificial intelligence. Because copyright law generally protects works created by humans, these works may not be protected by copyright when they are produced by artificial intelligence systems. This issue can lead to the unrestricted use of these works and cause individuals and organizations to use these products illegally (Jaafari, 1400, p. 118). On the other hand, it is very easy to copy and reproduce works produced by artificial intelligence, especially in the digital world, and therefore, this issue is considered a serious threat to intellectual property rights.

The need to review copyright laws

In response to these challenges, many lawyers have emphasized the need to revise and update copyright laws. These updates could include changes to the definition of "creator" and "ownership" to include artificial intelligence and works produced by it. Some lawyers suggest that artificial intelligence systems should be recognized as "tools" or "collaborators" in the creative process, and that copyright rights should still go to the humans who designed them. In this case, the issue of ownership and rights of creators will still be maintained, but new processes must be established to determine the responsibilities and rights of works produced by artificial intelligence (Ahmadi, 1401, p. 122).

Challenges related to inventions and artificial intelligence

Challenges related to inventions and artificial intelligence are one of the most complex and important issues in intellectual property rights. Artificial intelligence, as an advanced technology, is capable of producing new inventions automatically and independently of humans. This feature of artificial intelligence creates new problems and questions in the field of identifying inventions, registering patents and determining their ownership. Currently, patent and invention laws in many countries are still unable to fully respond to the complex issues that artificial intelligence creates.

Artificial intelligence as a legal entity

The latest solution in determining the responsibility system for artificial intelligence is the granting of legal personality to artificial intelligence by the European Parliament, which is interpreted as an electronic person (Delvaux, 2016), and thus artificial intelligence has the ability to have rights and duties, including payment and compensation for damages caused by itself.

Considering artificial intelligence as a legal entity, its actions will be independent of the user and owner, and with the condition of having an independent asset for artificial intelligence, compensation for possible damages will also be on its shoulders (Beck, 2016). Although this theory has the ability to solve the problem in terms of evidence, it is also difficult to prove it. In other words, there are considerable theoretical grounds for considering legal personality for artificial intelligence. But on the one hand, the features of a legal entity cannot be completely adapted to the features of artificial intelligence. Because it is faced with challenges such as the difficulty of describing the eligibility of Stifa, determining residence, citizenship, and property (Gandemkar et al., 1400: 261) and on the other hand, on the assumption of proving a legal personality for artificial intelligence, one of its major drawbacks is that by assigning responsibility to artificial intelligence regarding its harmful behavior, the producer, user, and owner are exempted from possible responsibility, and perhaps the behavior of artificial intelligence is due to defects in production and commercialization or improper use of the owner and be a user Also, simply holding artificial intelligence responsible is not enough, but compliance with the requirements of proportionality of rights and duties requires that the possibility of compensation commensurate with its responsibility is provided; While the amount of acquisition of artificial intelligence assets is unclear (Hakmat Nia et al., 2018: 237 and 238; Malekzadeh, 2017: 35-30). In addition, creating legal personality for artificial intelligence algorithms requires legislation (Rajabi, 2018: 462-463). The impact of Ward's criticisms on this theory was such that the United States Court of Appeals recently ruled that artificial intelligence does not have standing to file a lawsuit, and the legal personality of algorithms was strongly disputed (Solove & Cirton, 2021).

In response to these criticisms, and especially that artificial intelligence does not own property that can compensate for the damages it has caused, and also that considering artificial intelligence to be responsible isolates the deterrence of civil liability, it must be said that there is no need for artificial intelligence to pay for damages in order to achieve the goals of civil liability; Manufacturers, developers, or users can be held responsible for compensation. Even in this case, compensation for the damage seen by the language from "deep pockets" will be done more easily. Also, assuming strong self-awareness, artificial intelligence can be programmed to consider the potential consequences of its negligence or carelessness as part of the parameters it measures before making a decision (Changal, 2018: 46).

Abuse of intellectual property rights

The theory of abuse of rights is discussed in various legal fields, especially contract law. Regarding the fact that the abuse of the right is the same as the illegitimate right or the improper use of the legitimate right has been disputed. The realm of abuse of rights is also a subject of debate and some people think that to fulfill the title of malice and the purpose of harming others, it must exist; However, legitimate secondary purposes may exist. Of course, later theories (for example, the theory attributed to French scholars, Stark, Ronald, and Boye) believe that "unusual damage" is the criterion and it is not necessary to prove malice. Therefore, if someone causes conventional damage to another while performing his act, he is not subject to the rule of negation of harm and is not prohibited from performing his act. But if it causes unusual damage to another person, it is forbidden according to the rule of no harm.

It has already been mentioned that the legal protection of intellectual creations, which is provided in the form of granting exclusive rights to the creator, has many advantages. Among them, we can mention creating motivation for experts, researchers, inventors, scientific research centers as well as people of art and literature, preventing the hiding of intellectual and technological findings, accurate and correct publication of new technologies, preventing repetition in research subjects and wasting time and capital, and facilitating the transfer of technology. On the other hand, granting such rights also faces many disadvantages, including preventing the copying of technology, monopolization of knowledge, and increasing the price of goods, services, and technology due to monopoly.

It was said that in the field of intellectual property, the rights holders are somehow in a superior position due to their legal privileges, and they can direct the use of their rights to the detriment of others. Therefore, there is a platform for the abuse of intellectual property rights.

Regarding whether exploitation of intellectual property rights will be an example of abuse of rights or not, there are three points of view: First, the application of exclusive rights is not an example of abuse, because the superior position is the result of intellectual property rights with the permission of the law and not due to market power. Second, exclusive rights are a reward granted by the government to the right holder to make maximum use of the protected subject, which leads to high pricing and the imposition of unfair terms. And thirdly, the application of intellectual property rights for the purpose of maximum exploitation is not an example of abuse of the right, but the unfairness and unfairness of the exploitation must be proven.

In the writer's opinion, what is discussed about the basis of the abuse of the right is that there must not be any intention and motivation for the abusive act of the author of the work, rather, as it was mentioned, the mere occurrence of an unusual loss, without committing a violation, is sufficient for the implementation of the theory of abuse of the right.

Of course, the theory of abuse of right is more considered in the Roman-Germanic systems and based on the rules of civil responsibility, and in contrast to this theory, there is the doctrine of dirty hands, which is the basis of common law (mainly the United States of America) for judging the abuse of rights in intellectual property rights, especially inventions. According to this doctrine, infringing behavior should be established with bad intent, while in the theory of abuse of rights, a violation should not necessarily be established, but as soon as the owner of an intellectual work prevents the implementation and use of others in general or in part, the theory becomes feasible. According to the aforementioned theories regarding the criterion of abuse of rights, the title of abuse is realized in case of non-conventional loss.

For example, in the opinions of some jurists, it is stated that when the damages inflicted on individuals are tolerated beyond the limit that is naturally established in social life, we will believe that the exercise of rights is no longer allowed in the territory.

The rulings and conditions related to the abuse of intellectual property rights are very different in the two main areas of these rights, i.e. literary and artistic property rights and industrial property rights. The general approach of international documents and regulations and the allocation of various theories and cases to this category, and on the other hand, Iran's joining the Paris Convention and other international documents supporting inventions and assigning a part of domestic law to anti-competitive regulations, has

caused the industrial property section of intellectual property rights to have a more fruitful literature regarding the abuse of rights.

On the other hand, in literary and artistic property rights, on the one hand, due to the fact that the material aspects are weaker, attention is weaker in the international arena, and on the other hand, in domestic law, by not joining the Berne Convention and other documents in this field, less literature and cases are observed. Therefore, according to the importance and need to direct the research in this direction, in this part of the article, the examples of abuse of literary and artistic property rights will be examined first, and then the examples of abuse of industrial property rights will be discussed. For this purpose, the types of rights raised in the field of literary and artistic property and industrial property will be stated and how the misuse of these rights will be realized.

The positive capacities of instrumentalism in Iran's legal system

There are provisions in the Law of Patents, Industrial Designs and Trademarks of 2006 that can be positive for instrumentalism in Iran's intellectual rights system. The regulations regarding the hoarding of the trademark, the existence of formal and skillful conditions in order to recognize the intellectual right, and the forty-fourth principle of the constitution, which allows the recognition of private property if it leads to economic and social development, are of this kind. In addition to this possibility, it is also possible to refer to the jurisprudential rule of maintaining the system and the al-Faragh region.

Legal capacities

In the patent law..., there are provisions regarding the guarantee of the non-use of a trademark for a certain period of time, as well as conditions regarding the creation and effects of intellectual property rights. In addition, some principles in the constitution indicate the implicit approval of instrumentalism.

Trademark hoarding

Trademark hoarding means that a person does not use that mark in commercial activities after registering a trademark (Kirim, 2017: 28). In this situation, due to the exclusive right of the trademark registrant, others cannot use that mark either. In the last part of Article 41 of the Law on Patents, Industrial Designs and Trademarks, the legislator has stipulated that "... any beneficiary who proves that the owner of the registered trademark personally or through a person authorized by him, has not used that trademark for at least three full years from the date of registration to one month before the date of the beneficiary's request, can request its cancellation from the court...".

This section of Article 41 of the Marqom Law shows that, in the opinion of the legislator, a trademark is a tool that merchants use to market their goods or services and, while benefiting from this action, helps the consumer in choosing and buying products; Therefore, if a person after registering a trademark does not use it intentionally, the legislator has considered every beneficiary to be right in requesting the cancellation of that trademark. This is despite the fact that if the right to the trademark was a completely personal right (Brown, 1994, pp.2141-2217) and as a traditional property, not using it in a short period of time would not lead to its deterioration, except in the case of proof of symptoms.

Existence of formal and substantive conditions for the formation of rights and support

Although the calculation of substantive and formal conditions for intellectual rights in the regulations governing it in Iran was done in accordance with foreign and international regulations (Najafi, 1396: 15-16), it still shows that the instrumental role of intellectual rights has been accepted by the Iranian legislature. For example, the main condition for identifying a subject as an invention is the presence of an innovative step in it. Because it is only in this way that it is possible to use the invention as a tool to improve the welfare of the society as a whole; Therefore, if someone tries for a long time and invents something new, but that matter is found to lack the necessary progress (innovative step), the patent has not been formed (for the study of the evaluation method of the condition of innovative step in Iran and America, see: Shabiri Zanjani and Najafi, 1390: 36-52), and the person does not become the owner of the right. This is despite the fact that if the patent was a completely personal right, based on the traditional rules such as the

right of justification etc., it would be possible to recognize the right for a person who tried and created something new. The same analysis can be presented regarding other conditions such as distinguishing the trademark, patent disclosure, etc.

Constitution and economic development

In Islamic law, the primary principle is shared ownership, and departure from this principle requires a reason. According to the theory of natural rights, which is also applied in the laws of Islam and Iran, work and effort are the most important reasons for departing from this principle (Pilwar, 2010: 69-70). Therefore, whoever combines his work and effort with commonalities, he will be the owner of what has been achieved. In this regard, Article 46 of the Constitution stipulates that "everyone is the owner of the results of his legitimate business...". However, according to Article 44 of the Constitution, ownership in the private sector is supported to the extent that "... causes economic growth and development of the country...".

This principle shows that despite recognizing the right to property and respecting it in the constitution as a universal principle, its protection depends on the effect of such a right on the economic growth and development of the country; In other words, according to the framers of the constitution, private property is a tool that can lead to the country's economic growth and development, and if a property does not have this feature, it will not be supported.

This analysis clearly shows that the principle of instrumentalism has been paid attention to in the Iranian constitution.

The nature of civil liability of artificial intelligence in EU member states

The comparative study shows that in the regulations of the countries, special responsibilities are presented in four groups: damages caused by objects, damages caused by dangerous activities, damages caused by animals, liability caused by non-action (vicarious liability) (Evas, 2020: 13).

Member States' regulations are analyzed depending on the substantive area and, in particular, the flexibility to accommodate new situations of AI-related damage claims. In each of the four analyzed categories, countries can be classified into three groups. The first group, "open" and "flexible", includes systems that rely on broad principles. Therefore, they have the possibility of legal adaptation to the new conditions. The second group, "mixed", includes systems that provide a comprehensive list of situations. The third "closed" and "narrow" group covers systems that either do not provide and provide regulations for any of the four categories of pure responsibility or apply very limited responsibility for a specific group, in very specific circumstances (Evas, 2020:13).

In the absence of special provisions related to the liability of artificial intelligence, the domestic laws of the EU member states, as the case may be, provide different platforms in the field of the nature of artificial intelligence and the liability arising from it. According to the legal potential of accepting artificial intelligence as an object of dangerous activity, and animals, and naturally, the legal mechanism of responsibility for damage caused by objects of dangerous activity, animals, and vicarious liability.

A) Damage caused by objects: the question is whether pure responsibility is accepted for objects? If so, does it include intangibles such as software and artificial intelligence? (Evas, annex 1: II).

European national laws have brought the most cases of responsibility regarding "things"; which includes all cases where damage is caused by a specific item (other than defective items). The laws and procedures of countries are different in relation to the concept and nature of things. Some consider concreteness as a condition; However, some countries include intangible items in the realm of the concept of things. Another point of dispute in this regard is whether the "dangerousness" of the object is a condition of responsibility?

Countries with open and flexible regulations in this area (such as France, Croatia, Estonia, the Netherlands, Romania) do not limit the issue to defective goods and manufactured objects; Intangible objects are also considered. The characteristics of the regulations of such countries cause, despite the lack of provision in

the current regulations, if in the future cases of damage caused by software or algorithm or other elements and functions of the artificial intelligence system are raised, they will adopt the appropriate solution and include pure responsibility; Although some are of the opinion that in many cases of this kind, for example, regarding software, the responsibility arising from "objects" and "activities" is confused in terms of definition. (Evas, annex 1:14-19)

In the first paragraph of Article 1242 of the French Civil Code, we read "A person is responsible not only for the damage caused by his own actions, but also for the damage caused by the actions of the persons to whom he must answer or the things in his possession".

Of course, the French legislator has proposed specific objects separately from this article (building subject to damage, article 1244; defective products, article 1245; land motor vehicles: special law). The principle of the custodian's responsibility against the damage caused by the things under his control and custody is very general and includes movable and immovable objects and assets; whether they are considered dangerous; Whether they are not dangerous, whether they are defective or not, whether they are used by someone or not.

Article 1045(3) of the Civil Obligations Law of Croatia foresees liability for damage caused by objects that are a strong source of danger for the environment. The Supreme Court of this country considers dangerous objects that, according to their purpose, characteristics, location, location, method of use, etc., have the risk of increasing damage to the environment, and therefore must be used and monitored more carefully. Croatian jurisprudence has so far dealt with "traditional dangers" and defined inherently dangerous objects (weapons, explosives, motor vehicles, etc.) as well as objects that are not normally considered dangerous, but can become dangerous under certain circumstances (animals, defective construction, etc.). (Evas, annex 1:19 & 23). Some countries consider liability arising from dangerous objects and activities based on risk (Articles 1056 to 1060 of the Law

conclusion

Regarding the exclusive protection of the rights of the creators of intellectual creations, there is a long-standing dispute. In the meantime, despite all the statements of the opponents of the exclusive support of intellectual property rights, the lack of exclusive support for the holders of intellectual property rights significantly reduces the progress of literature, art, knowledge, innovation and invention in the society.

At the same time, such exclusive support faces the challenge of not having public access to inventions, technology, literature, art, and even in more important cases, with the risks of depriving society of medical and pharmaceutical achievements. Therefore, the need to take appropriate measures to create a balance between public interests and individuals becomes more prominent. This importance will be ensured by setting boundaries for the rights holders in order to benefit from the rights granted to them.

In Iranian law, the issue of abuse of intellectual property rights has not been studied much, and the legal solutions to this issue lack theory and classification, and are only considered as an executive guarantee for some instances of abuse of rights, such as Article 17 of the Patent Law of 2006, which, by discussing the granting of compulsory licenses, has placed an obstacle in the way of the abuse of some exclusive rights of the holder that are against the public interest.

The legal defect of Iran's law can only be justified in the assumption that the legislator considered the theory of abuse of virtue to be equal in concept and criteria to this jurisprudential rule, without mentioning the harmless rule and its aspects, and considered the harmless rule to be more extensive in terms of territory. In this case, the suspicion of the legislator's tolerance and inattention to the phenomenon of intellectual property rights abuse will be removed. In the meantime, joining international trends, such as specific conventions on literary and artistic property rights or industrial property rights, as well as the World Trade Organization and consequently the TRIPS Agreement and other similar documents, in any case, will not be without benefits.

In the jurisprudence of Western countries - especially the United States of America - more attention has been paid to the abuse of intellectual property rights, and the theory of dirty hands was first proposed to justify and regulate patent abuse, and then it spread to other areas of intellectual property. Of course, the debate about the abuse of intellectual property rights, especially its criteria and examples, continues to this day in the mentioned countries, and no legal consensus has been reached.

However, it seems that the title of abuse of intellectual property rights can be used both in the form of defense of the violators of these rights before the court, and as one of the exceptions to the owner's exclusive rights.

Intellectual property is not a "problem" or an "action" but is basically a "response" and "reaction" to socio-economic and industrial developments, and for this reason, regardless of the effort to justify its legitimacy by referring to jurisprudential sources, attention must be paid to the same developments in extracting its rulings and works, because otherwise, the "intellectual property system" will become an arena of "contradictions". There is no doubt that it is necessary to try to justify the sharia of intellectual phenomena and its effects, but this does not seem to be enough because examining the nature, rulings and effects of intellectual property requires knowledge of its philosophy. In the sources of Islamic law and jurisprudence, knowledge of the philosophy of intellectual property has received less attention, and the existing discussions in this regard, except in special cases, are limited to the efforts of jurists in adapting intellectual property to traditional property rules. The result of this is obvious; When the end of the matter is proved, in general, the ownership in its traditional sense is legitimized for the right holder and it is obvious that in this situation, all the rulings, effects and details of the matter are also derived from this traditional ownership and its rules. For example, a trademark has value to the extent that it is "distinct" from other signs and can identify goods and services from each other, save the consumer from confusion and reduce his search costs; Therefore, unlike traditional ownership, in intellectual property, there is a link between property, ownership, owner and consumer, and for example, many rulings on the trademark system have been formed on this basis (Sadeghi and Shamshiri, 1393, pp. 78-102). However, in the judicial procedure (for a review of the judicial procedure on trademarks, see: Kasnavi, 1395: 93-119), regardless of the role of the consumer in the trademark system, everywhere If it turns out that someone used a trademark in the past (similar to Tahjir), but did not register it, in any case, he is considered to be the owner of it, and if someone else subsequently registered the same or similar trademark and has been doing business with it for a long time, the registered trademark will be completely and unconditionally canceled by filing a cancellation lawsuit by the previous user. When there are institutions in Islamic jurisprudence and law that pave the way for changing the view of intellectual property and make it possible to identify its correct foundations and act accordingly, it seems that it is possible to adjust and modify traditional positions by using these capacities when necessary.

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