

3rd International Conference on
SOCIAL SCIENCE, HUMANITIES & EDUCATION
6 - 8 MARCH 2020 BUDAPEST, HUNGARY

Intellectual Property Forms for Art and Crafts Sectors: Investigating PACI's Tools of Protecting Omani Crafts

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Abstract:

Protecting intellectual property of the intangible values associated with traditional crafts objects, has received the most attention in international contexts (e.g. UNESCO, WIPO etc.) and in national (e.g. Oman: Ministry of Commerce and Industry, the PACI etc.) instruments, but these instruments (protection tools), need deeper investigation to identify the tools that are more appropriate to Omani cultural, social and economic circumstances regarding traditional craftsmanship. As established in the found data, the need to develop crafts people's awareness about intellectual property (IP), became an essential element toward developing the crafts industry in general. This research would have been more relevant if an applicable intellectual property protection forms had been explored and investigated within Omani crafts case.

Keywords: Crafts, Intellectual Property, PACI.

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Introduction: Intellectual Property in Art and Crafts Sectors:

In his work '*Cultural Relics, Intellectual Property, and Intangible Heritage*', Peter K. Yu (2008) stated that, "indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions" (p.435). Beside widening coverage to include 'intangible cultural heritage'; the 2003 UNESCO Convention has presented three extra challenges, and the most important of them is that of the difficulty in protecting intangible cultural heritage, which is manifested in tangible forms (Peter K. Yu, 2008), and crafts category is included in this challenge. In other words, because crafts have tangible and intangible characteristics/features, then protecting this form of creative industries required a comprehensive endeavor which includes protecting crafts objects (tangible heritage) and skills and knowledge (intangible heritage) associated with crafts objects.

According to the PACI, the most identifiable issue that concerned crafts business and marketing, is protecting craftsmen's rights by intellectual property laws (the PACI, 2004). Kamil Idris (2003), whose seminal study, looked closely at practical strategies for protecting crafts and arts through "intellectual property" law, describes the absence of intellectual property considerations in crafts as the 'real challenge' and he argues that "Given today's instant information and communication facilities, coupled with the ease and speed of copying and imitation, the market can simply get flooded with look-alike products or downright copies, which are also known as 'counterfeits' or 'forgeries'"

(Idris, 2003, p.4).

The World Intellectual Property Organization (WIPO) considers that "crafts and visual arts overlap in that they both produce essentially hand-made products, often culturally rooted; whose distinctive quality or inherent character has primarily an aesthetic appeal" (UNISCO, 2003, p.5). According to the head office of the World Intellectual property Organization, Oman became a member of WIPO in February 1997 (UNISCO, 1997). This membership includes subsidiary memberships that powerfully support

Omani crafts' protection against copyright, trademark and marketing infringements (the PACI, 2009). On 21 April 2009, the PACI has registered 21 Intellectual Property Certificates through the Intellectual Property Department in the Ministry of Commerce and Industry; these were the first positive steps to protect tangible Omani cultural items (Ministry of Commerce And Industry, 2009). But the question that then arises is : are these memberships valid and practical where Omani crafts are protected perfectly?

Difficulty arises, however, when an attempt is made to implement the strategy of registering crafts items (memberships). Many crafts workshops owners, established illegal workshops, without registering them in the PACI and the ministry of commerce (PACI, 2007). In fact registering crafts

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items was a worthy step toward protecting crafts in Oman, but this strategy requires more investigation through this research.

Andrew Rae (2009), resident partner of ‘Trowers and Hamlins Company’, confirms that, “an author's copyright and related rights are protected in Oman under Royal Decree 37/2000. This sets out the types of works that may be protected by copyright, which authors can be protected, what rights are given to these authors and penalties for non-compliance” (Sangar, 2010). Rae’s argument shows that even the government is establishing official laws for intellectual property, but there are some weaknesses in these laws especially in the penalties parts.

Rather than registering crafts certificates, the ‘trademark’ also plays an important role in protecting crafts and pottery designs (WIPO, 2003). In 2003, in the article *‘Why Are Trademarks Relevant for Crafts and Visual Arts?’* the International Trade Centre and the WIPO (2003) discussed the purposes of artisans’ use of trademarks: “trademark allows consumers to distinguish the products of an artisan or visual artist from those of the competition and to make them readily recognizable” (Idris & Bélisle, 2003, p. 12). In Oman, the law of trademarks was updated in 2000 by Royal Decree 38/2000, which sets out specific rules to register trademarks and provides a list of permitted trademarks (Ministry of Legal Affairs, 2000).

Royal Decree 38/2000 also gives commercial enterprises all rights for securing their ‘trade secrets’. The decree states that: “the disclosure of trade secrets has been made a criminal offence by article 34 of Royal Decree 38/2000” (Rae, 2005). The WIPO definition of trade secrets for artisans and visual artists says “any confidential business information which provides an artisan or visual artist with a competitive edge can qualify as a trade secret”. However, there are limits to how far the method of ‘trade secrets’ can be used in the Omani case. One of the most important limits is that just a few of Omani crafts types, used sophisticated technologies and techniques, such as ceramic glazing and firing.

In 2000 Oman became a member of Commercial Law in its principle of “legal competition” (Digital Oman organization, 2009). Andrew Rae asserted this when he says, “Under Royal Decree 38/2000 and Articles 47 to 50 of the Commercial Law there is an overriding principle that it is illegal to engage in competitive business” (Digital Oman Organization, 2009). In their paper *‘The Relationship Between Intellectual Property Law and Competition Law: An Economic Approach’*, Pierre Régibeau and Katharine Rockett (2004) stressed that “the main function of competition law is to regulate the use of (intellectual) property rights when these rights are sources of market power” (p.3). Régibeau and Rockett, emphasized that the main goal of competition law should be to minimize the adverse consequences of monopoly power (2004). One major problem of the legal competition approach is that the crafts authority cannot use it, unless intellectual property rights play major role in the market, and if these rights play minor role, there is no need to implement legal competition approach.

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Among all royal decrees, Royal Decree 39/2000 of crafts intellectual property in Oman, 'industrial drawings and patterns' was the most important one to protect Omani crafts and their designs (Ministry of legal affairs, 2000) so, many countries around the world have signed "copyright of drawings and patterns" agreements. Perhaps the most serious disadvantage of this method is that some people, organizations and researchers believed that a "pattern itself isn't copyrightable" because it is used in "useful items" such as clothing .

The last intellectual property issue addressed is that of "geographical indication", which is defined as "a sign that indicates that a product originates from a country, region or locality and the desirable quality, reputation or other characteristics of the product essentially depend on its place of origin" (UNESCO, 2003). To illustrate, "Talavera Pottery", which is a kind of hand-made ceramic, created by potters of the town called Puebla in Mexico, has an official geographical indication registered in the WIPO (WIPO, 2003). Omani pottery, especially that made in the town of Bahla (in the Aldakhliya region), should be classified in this way, where the pottery history of the city is well-known by citizens and tourists (PACI, 2003): "To be Bahla born means to enter a world where the ancient art of vessel making is the way of life" (*Oman Today*, 2001). The Geographical indication method could present difficulties in practice. For example, many of the Omani crafts industries products are made in different places, inside and outside the country, and that will make it hard to register them using 'geographical indication' laws (Almamari, 2014).

To conclude this part, the UNESCO and the WIPO published in 2003 a valuable guide titled '*Marketing Crafts and Visual Arts: The Role of Intellectual Property: A Practical Guide*' which explains all methods and approaches to protect art and crafts. By using this guide's valuable contribution in this research, it was worthy to study Omani crafts (as tangible and intangible cultural forms) protecting methods and approaches.

Research Methodology and Primary Findings:

This part is dedicated to questioning the intellectual property protections tools/methods and their contribution to Omani crafts, this will be investigated with selected participants. Research data regarding intellectual property and crafts have two resources: secondary (documents and statistics) and primary (interviewing intellectual property executives at the PACI). It was essential, for face-to-face interviews with executives at the PACI, that the interviewer, had a good grasp of the study's objectives, and of the information that is to be collected, regarding intellectual property in the field of the crafts industry. The objectives as shown in this research, were questioning participants about the best methods/tools of protecting crafts using the UNESCO laws. A single in-depth interview involved a heavy time commitment, especially on the issue of examining intellectual property tools/methods to identify their strengths and weaknesses. This was held with an executive PACI in the Department of Marketing, where intellectual property issues are considered as part of marketing

This interview was conducted in the executives' office, where all documents and computer data were available to backup the interviewees' claims. Regarding this subject in the fieldwork interviews, some participants counted on the laws of intellectual property to protect Omani crafts industries and their markets. In fact, during the research's interviews, the craftspeople participating showed a lack of knowledge and awareness of intellectual property and its elements, which help to protect crafts as a type of tangible material culture. The researcher found that very few participants are aware of the role of trademarks, trade secrets, competition law, copyrights of drawings and patterns and geographical indication methods to protect crafts. These methods are considered as the main tools of the World Intellectual Property Organization (WIPO), to protect crafts and visual arts (WIPO, 2003) as explained in the literature review.

Through interviewing the executive (PACI), it seemed that the PACI and its Committee for Intellectual Property (belonging to the Department of Marketing at the PACI headquarters) had sufficient connections with the Ministry of Commerce and Industry (especially the intellectual property department in the ministry), and this was regarded as positive progress from the time of the establishment of the PACI. However, the data provided by the participant asserted that there was a "quality" shortage, in understanding the mechanisms of using the intellectual property methods, in the case of Oman in particular.

In fact the PACI conducted conferences for 'crafts intellectual property' in 2009 and 2011 (Muscat), and among the papers of these conferences it is very important to evaluate intellectual property methods regarding crafts as creative industries. So, regarding the suggested forms of intellectual property, it was clear that the paper's presenters (mostly experts working for the WIPO and they are in contact with PACI) suggested forms of trademarks, industrial design, Geographical Indication, copyright and trade secrets, to be used to protect crafts in general and Omani crafts in particular. In fact, through interviewing the executive (PACI), his understanding of protection methods such as 'geographical indication' and 'copyrights of drawings and patterns' was very limited. Also, he concentrated on reminding the researcher that the PACI had achieved the registering of more than 60 of its crafts products, in the Ministry of Commerce and Industry. When the researcher mentioned the "*Marketing Crafts and Visual Arts: the Role of Intellectual Property: a Practical Guide*", it was a disappointment that the participant did not know anything about that guide. This, in fact, makes it harder for the researcher to go further in investigating protection methods and tools with this participant.

The overall response to the intellectual property subject (questions) was to some extent negative. The absence of valuable primary data (through interviews) may be reasonable, because the subject of intellectual property is somewhat complicated for non specialists and especially for craftspeople participating in the research. Consequently, 'secondary data' will be applied to cover this gap in the discussion stage.

As a result of the literature review, a large and growing body of literature has investigated the issue of intellectual property in crafts industries, such as the studies of Kamil Idris (2003), the WIPO (2003) and the contributions of the PACI in the 2009 conferences. These studies asserted the importance of intellectual property methods of protection, specifically in Omani crafts industries. Both the literature contributions and primary data (interviews) asserted the importance of these methods, but still it is crucial to investigate them and their qualities further to identify the most applicable methods regarding Omani crafts industries.

To conclude the intellectual property subject's findings, the task in the discussion part will be to examine these forms of protection, using the UNESCO official guide of *"Marketing Crafts and Visual Arts: the Role of Intellectual Property: a Practical Guide"* to clarify their effectiveness regarding Omani crafts exclusively.

The PACIs' Awareness Level of Intellectual Property:

The contribution of interviewees (especially craftspeople), was limited because of their limited background knowledge of this issue, as shown in the findings. In contrast, the PACI conducted conferences specifically on crafts intellectual property in 2009 and 2011 (Muscat), which showed more details on this issue. So, regarding the literature, the participants contributed in this part of the discussion to answer a very fundamental question, about the need of intellectual property laws to protect traditional crafts, more than developed crafts. On the other hand, this part of the discussion will take advantage of analyzing intellectual property tools, as they were presented in the PACI special conferences, through different academic papers (both conferences were supported by the WIPO). The discussion will include the advantages of using the intellectual property system to protect Omani crafts, through the tools of trademarks, trade secrets, copyrights of drawings and patterns, industrial designs and geographical indication.

The need for intellectual property laws in the crafts industry seemed to be, for interviewed craftspeople, compulsory only for traditional crafts and optional for developed crafts. This argument could have come about because they believed that developed crafts are classified in the same status of normal modern goods, that are available in the market (mass-production). So, these developed crafts will take advantage of normal intellectual property laws, provided by the Ministry of Commerce and Industry (department of intellectual property) directly, without the need to establish special laws to protect developed crafts by the PACI. If this prediction is right, it will be logical to accept the participants' argument of concentrating on protecting traditional crafts, by intellectual laws, more than developed crafts. This group of participants who support the argument that concentrates on traditional crafts, had been supported by many studies, at least in terms of the quantity of studies that advocated using intellectual laws in protecting indigenous crafts, such as the study of, *'Poor People Knowledge: Promoting Intellectual Property in Developing Countries'* (Finger & Schuler, 2004). It seemed to be as an equation, if the PACI is satisfied that the general intellectual property laws in Oman can protect developed crafts as part of the country's protection

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of traditional goods that it will be important to concentrate on providing real protection to 'traditional crafts' to guarantee the work efficiency.

Finger and Schuler (2004), investigated the issue of protecting traditional crafts with special concentration, but the most useful contribution was their interpretation of 'cultural perspectives regarding creativity', when they investigated protecting Indian traditional crafts (p.61). They think that craftspeople believed that 'aesthetic forms' of crafts are universal, and because of this, 'copying' crafts objects became not to be a negative act in western societies thought systems (p.61). The consequences of this viewpoint toward protecting traditional crafts, led Indian craftspeople to give less respect to 'design ownership', and the line between innovations and copying became very thin in their traditional craft industry (ibid). In other words, they classified the intellectual property protection as a cultural issue, and its grounds came from the craft society more than anything else, where their unconstructive understanding of 'ownership' was the real reason for ignoring the intellectual property system.

Ownership of traditional designs in local villages, could move from house to house, village to village, by the social exchange system within crafts people's usual life. Finger and Schuler (2004), gave an example, when they asserted that "a woman from one craft community may marry into another, bringing her own group's traditional designs, which will be enthusiastically accepted, and used, in her new village" (p.62). This can happen in any similar society including Oman, especially when the type of craft is made in a "family style" (crafts made in the house by the family members) (Almamari, 2015).

Protecting intellectual property of *Traditional Craftsmanship* (as UNESCO intangible heritage domain), can be achieved not only by providing "protection of handicrafts, particularly against imitation of their style" (p.100) as declared by Wend Wendland (2004) in his article, '*Intangible Heritage and Intellectual Property: Challenges and Future Prospects*'. What is surprising is that even protecting the Intangible Heritage of

Traditional Craftsmanship, supposes to concentrate on protecting 'skills and traditional knowledge' that is associated with crafts making in workshops, it is not acceptable to focus on crafts objects styles only, as Wend Wendland suggested in his study. In fact, what is mentioned in Wendland's study, is like the PACI vision, when they concentrated on protecting styles of traditional crafts by fighting the imitation (prototyping) matter. Protecting IP of traditional crafts as intangible heritage in application, is very complex so it needs greater efforts locally in Oman. Protecting crafts' needs co-operation with international organizations (e.g. UNESCO, WIPO etc), providing political and legal laws, and dealing with international economical and commercial agreements, which provide free markets for all goods, including creative cultural commodities (e.g. crafts, art etc). Even though it is complicated to use the instruments of IP in preserving the rights of *Traditional Craftsmanship's* intangible cultural heritage, because of the aforementioned international obstacles, it is possible to take advantage IP instruments locally, between regions and provinces. In other words, whatever Oman cannot do to protect the intangible heritage of local traditional craftsmanship because of

should focus on Omani local crafts etc). A similar reaction to this, happened in Canada, when the country ignored intangible heritage protection tools of cultural industries, but the local government of the province of Québec activated the instruments to manage intangible heritage in 1994, as pointed out by Harriet Deacon (2003), in his work ‘*Legal and Financial Instruments for Safeguarding our Intangible Heritage*’.

In application, the intention of protecting *Traditional Craftsmanship* intangible heritage forms (e.g. styles, traditional ways of making, traditional materials preparation, inherited associated knowledge etc.), cannot be achieved practically, without using protections tools (instruments). Consequently, this led to discussing the tools that can help to protect Omani crafts, with consideration of the country’s social, cultural and consumption status.

The intellectual property tools of protecting traditional Omani crafts as mentioned above, differ from each other, in terms of each tool’s efficiency in the field of crafts. Secondary data, as mentioned in the literature, provided different opinions about these tools and their abilities, where some papers’ presenters preferred one tool more than the other. But to be more unbiased in evaluating these tools’ efficiency, the researcher compared their arguments with the official proceeding book ‘*Marketing Crafts and Visual Arts: The Role of Intellectual Property: a Practical Guide*’, published by the WIPO in Geneva in 2003.

‘Trademarks’ can be used in protecting Omani crafts (designs, materials etc.) for some special contributions of this form of IP laws, over the other forms, such as patents and copyrights. Trademarks can contribute to ensuring customer loyalty and help consumers to distinguish products, by making them recognizable (WIPO, 2003, p.73). Moreover, trademarks are eligible to “facilitate customer decision-making” when customers choose crafted products among duplicated crafts in the local markets (ibid). Also, when trademarks are registered, “it is easier to oppose the deliberate, unauthorized use of trademarks (infringement), as well as to proceed against ‘grey market’ products (parallel imports)” (WIPO, 2003, p.74). Furthermore, the name of any craftsman can be registered as a trademark (p.75), and that can guarantee increasing a craftsman’s selfesteem in the country. Finally, this form of IP laws cannot be registered unless “it has been used by its owner” (ibid, p.79).

‘Trade secrets’, on the contrary, can play a small role in crafts industries in Oman, or at least they can be described as less important than other IP forms, especially in traditional crafts. Because of that, the PACI in its published materials, often tried to show all the details about produced crafts through documentaries, books, flyers, conference participations, exhibitions and the crafts centers opened their doors for visitors (secondary data collection, field work notes). This does not mean that there was not any ‘confidential business information’ in the Omani crafts field to be qualified as trade secrets. In pottery, for example, glazing chemical recipes, clay mixtures percentages and kilns firing temperatures and diagrams (plans), should be considered as trade secrets. Another

competition from the frankincense collectors and mixers usually have special ways of classifying the types of products and percentages of mixing, and these should also be considered as confidential making information.

Unlike the trade secrets role, the PACI must give more attention to the form of

“Industrial Design” forms of IP protection tools. The WIPO itself defined this form as “the aesthetic aspects or outward appearance of a product” (WIPO, 2003, p.66), and this is required especially in visual art and crafts areas, where the artistic themes of these products are considered a main pillar in creative industries marketing. The first negative of this form of IP system, was that it is usually more eligible to protect individual artisans and artists (ibid), so it could be less useful for crafts enterprises. The second negative was that some countries did not consider crafts design as products that can be protected by Industrial Design law, because these types of crafts are not “made by industrial means” (p.67). This led to reinvestigating the position of Oman, to see if it is included in this category of countries that excluded crafts from this privilege of protection. The answer was that the Ministry of Commerce and Industry (department of Intellectual Property), has registered more than 60 types of crafts, including their designs, materials and cultural description (Oman News Agency, 2007). In other words, analyzed results confirmed that the PACI was very responsive toward this form of IP laws.

Regarding the use of ‘copyright’, the WIPO considered that artisans can use copyrights in crafts industries as two independent rights (WIPO, 2003, p.56). These two rights are, the right of material form of craft object (physical property) and its copyrights (intellectual property) (ibid). In other words, crafts copyrights should include both the crafts object and its designs (on paper or software). In fact, when analyzed what the WIPO included in their further explanation about the use of copyright in crafts under the subtitle of “Why is copyright relevant for artisans and visual artists?” (ibid, pp.56-57), the organization provided five rights, but all of them were designed for visual artists more than craftspeople and their enterprises. These five rights concentrated on copyrights of photography, filming, scanning, painting, collage, television and the Internet (pp.56-57). This led to understanding that copyright does not contribute to protecting crafts as much as its contribution to protecting visual art, and that means it is very important to concentrate on other forms of IP systems when it comes to protecting crafts in Oman.

The ‘geographical indication’ form of IP, can provide more protection for crafts than regular visual arts (WIPO, 2003, p.86), and this is considered a significant privilege, because geographical indication requires that crafts must have a special “recognizable place” of making, and the characteristics of the produced objects should be connected with the “place of making” as well (ibid). These two requirements can be found in the frankincense lands in the south of Oman (*Dhofar* region), and in the pottery industries of Bahla (north of Oman). These two places provide “certain qualities” for their crafts production in one hand, and rich historical heritage regarding their traditional productions (Almamari, 2017). Also, they are both still the only Omani traditional crafts

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that tradition their Conference (supported) completely, and this gives them more sustainable qualities to continue into the future.

As shown above, IP forms of protections can contribute to protecting crafts at different levels. The WIPO system in their official guides, gathered crafts and visual arts in the same documents and that led to investigating its arguments more carefully, especially in this part of the discussion that is dedicated to protecting traditional crafts only. To conclude, the previous discussion proved that trademarks, industrial design and geographical indication, as forms of protection, should be used predominantly to protect traditional crafts in Oman. These three forms were more appropriate to tangible /intangible art (crafts), than copyright and trade secrets, which seemed to be more eligible to protect other types of visual art. As a result, trademarks, industrial design and geographical indication forms, could be classified as primary protection forms and in contrast, copyright and trade secrets could be classified as secondary protection forms, to protect Omani’s traditional crafts. The diagram (1) below shows specifically all the protection forms regarding the Omani crafts case:

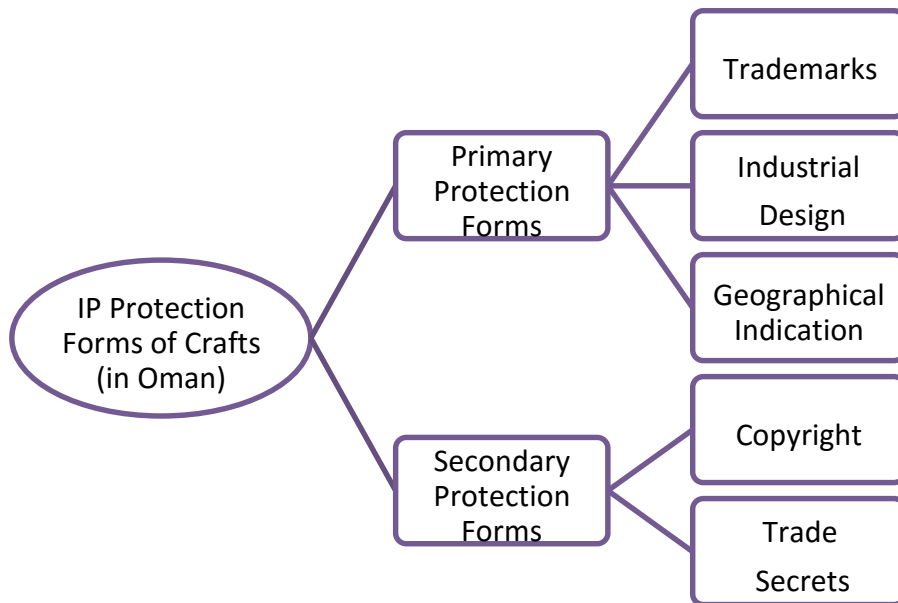


Diagram (1): The types of the IP protection forms regarding the Omani crafts case

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