

Enforcement of intellectual property rights in Iran in the light of TRIPS agreement

Alireza Milani and Amir Ahmadi

Abstract

In recent years, the Iranian government has tried to develop its national intellectual property (IP) law in order to engage with the international IP system, prepare for membership of the World Trade Organization (WTO), and fulfil its obligations under the Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement.

Iranian IP rights (IPR) contain provisions on civil and administrative procedures and remedies, provisional measures, and special requirements related to border measures and criminal procedures, which specify the procedures and remedies that must be available so that rights holders can effectively enforce their rights.

This study examines the underlying concepts and reasons for IPR infringement and enforcement, and the criminal and civil remedies regarding IPR. Recommendations are provided in the conclusion of this study.

1. Introduction

The TRIPS agreement codifies the international IP standards that are prerequisites to accession to the WTO—indeed, TRIPS is a significant component of the foundation upon which the WTO is established (Broadbent & McMillian, 1997). Developing nations, in their haste to enjoy the benefits of membership of the WTO, are thus bound by an agreement, the full implications of which are not largely understood. Even though most developing countries are net importers of IP and are unlikely to become net exporters (Drahos, 1997), senior policy workers from many such countries have expressed support for the globalisation of IP (Simons, 1999).

Part III of TRIPS outlines the provisions that members must follow to enforce IPRs. Members must adhere to obligations such as ensuring effective enforcement and fair and equitable procedures. The agreement also outlines the civil and administrative remedies that members must provide, including injunctions, damages and—under certain circumstances—the removal from commerce or destruction of the infringing goods. Part III also contains enforcement provisions regarding provisional measures, special requirements related to border measures, and criminal procedures (Blakeney, 2005).

Section 5 of Part III requires members to provide criminal sanctions for, at the very least, cases involving ‘wilful trademark counterfeiting or copyright piracy on a commercial scale’ (Article 61) and that remedies be sufficient to ‘provide a deterrent consistent with the level of penalties applied for crimes of a corresponding gravity’ (Article 61) (Blakeney, 2005).

There is a wide range of obligations to provide for enforcement of IPR (Article 41, TRIPS Agreement). Such enforcement procedures must ‘not be unnecessarily complicated or costly, or entail unreasonable time limits or unwarranted delays’ (Article 41.2, TRIPS Agreement). However, Article 41.5 makes clear that there is no ‘obligation with respect to the distribution of resources as between enforcement

of IPRs and the enforcement of laws in general' (Article 41.5, TRIPS Agreement). Thus, the enactment of a legislative IPR framework in compliance with TRIPS is not an end in itself: 'Enforcement is more difficult than it seems, and is often taken for granted by the mere existence of a law or a treaty' (Gakunu, 1989; Simons, 1999).

What seems to be a fairly comprehensive outline of civil, administrative and criminal remedies may be severely limited by virtue of Article 41.5. Narrowly read, the provision merely states that members are not required to put in place a system of judicial enforcement entirely distinct from that state's already existing court system. However, the language that emphasises that a member state's autonomy in distributing resources between IP enforcement and general law enforcement may have a significant impact in developing countries, where governments have limited resources to dedicate to enforcement of IP laws (Simons, 1999).

The TRIPS agreement contained some of the principles of the General Agreement on Tariffs and Trade (GATT), namely that the nationals of countries party to the agreement should accord the same treatment to the nationals of other countries that are party to the agreement: the most favoured nation's concept. The national treatment gives the party to the Marrakesh convention the right to retaliate in another domain of the agreement if the party's IPRs are infringed in a member country if that country hasn't taken any measures against the infringer.

Here we are faced with the anomaly of how to harmonise the national laws with the international agreements. In this sense, we can mention two types of agreements: the self-executing agreement, which should be implemented in its entirety; and the non-self-executing agreement, which needs to be enacted in the national laws with a margin of flexibility in adapting the international provisions to the national legislations.

The TRIPS agreement contains elements that reflect both types of international instruments. Specifically, it contains the imperative part of its provisions (such as the national treatment and the provision of Article 14 concerning the protection of performers, producers and broadcasting organisations), and other provisions, which need to be elaborated and construed in the national laws in a manner more appropriate to them. Of course, the TRIPS agreement excluded Article 6 (bis) of the Berne Convention from its provisions, which concerns the moral rights, and thus it leaves the door open to parties that are not members of that convention to deal with matters in the manner that suits them.

In this regard, the process of joining the WTO, even at the same level of obligation as existing members, may require a substantial adjustment in national law and corresponding industrial policy. The impact of bringing national law into baseline or 'normal' TRIPS agreement compliance should not be underestimated. Iran is required to conform its domestic laws on IP to this agreement. Naturally, this accession would give rise to some rights and commitments for that country.

For any country that has not been a member of the WTO, there is a strong possibility that the national regime governing IPRs in place prior to the commencement of accession negotiations will be inconsistent with the requirements of the TRIPS agreement.

Accession of TRIPS agreement is necessary for the WTO membership, which ensures Iran's entry into the multilateral trade regime. Hence a country that wishes to join the WTO, like Iran, has to implement the TRIPS agreement.

Iran is not an exception regarding the abovementioned trends. The need to revamp the IP system of the country has been fuelled by WTO membership aspirations as well as internal debates. However, a study that paints a coherent picture of the IP landscape and takes stock of the latest debates is still missing. This paper attempts to achieve this end by drawing on diverse sources of information, including extant literature, legislations, policy documents, official statements and expert commentaries.

Iran joined the Paris Convention in 1959, which protects agricultural, industrial and commercial property. Though Iran has not yet joined to the Berne Convention, by approving different laws regarding the property of authors, composers, artists, software designers and inventors, Iran protects them. In the history of Iranian law, protection of industrial property takes precedence over literary and artistic property. There is dispute among Islamic jurists and scholars about the legitimacy of moral rights and that is the main reason of Iran for not joining to the Berne Convention.

Member states of the WTO must ensure that their national IP legislations comply with the TRIPS agreement. In this regard, the majority of the WTO members have revised their national IP laws within the framework of the TRIPS agreement. However, taking into account that the enforcement of any law is an important part of any regulation that comes about in the society and is accepted by the people, the question thus arises: How much is the international IP law consistent with Iran law?

Here, we are faced with the core questions of this paper: How can the states' parties deal with the provisions of the TRIPS agreement? Do they adopt or adapt these provisions to their national laws? How can they strike a balance between the national interests and the international obligations dictated by the Marrakesh Agreement? Here we explain how the Iranian legislators dealt with the TRIPS provisions—that is, the paper explains how they adapted their laws to the general principles of TRIPS. It is important to highlight the relationship between the national legislation and the norms of globalisation triggered by the Marrakesh Agreement of 1994, which concluded the Uruguay Round.

Therefore, of great importance to this research is the connection between the implementation of the TRIPS requirements and other laws, and in particular, how the Iran legislators dealt with the TRIPS provisions. In this paper, a case study of the Islamic Republic of Iran IP law will be reviewed. This case study will show how Iran developed their IP laws and consequently prepared their national IP system for enforcing the TRIPS agreement.

On this issue, little discussion and study has been done so far. Once a proper study has been conducted, a proper answer to this question will facilitate the enforcement of the TRIPS agreement provisions by both government and the people. It will also pave the way for further IPR research and new developments in the subject.

This study will analyse and evaluate current Iran's legislation, including trademarks, copyrights and patents. The methodology adopted in this study is reflective of traditional Iran IPR laws and international IPR conventions. This study aims to illustrate the current state of IPRs in Iran in light of certain international agreements, specifically TRIPS, that have informed the Iran legislature in its creation and handling of IP matters.

Thus, this paper describes in detail how enforcement of IPRs should be handled, including rules for obtaining evidence, provisional measures, injunctions, damages and other penalties in Iran's IPR system. It covers the need to have a strong judicial system for dealing with both civil and criminal offences. Further, to deal with such cases the courts have to have an adequate number of judges. The courts should have the right, under certain conditions, to order the disposal or destruction of pirated or counterfeit goods. Wilful trademark counterfeiting or copyright piracy on a commercial scale should be criminal offences. Government should make sure that IPR owners can receive the assistance of customs authorities to prevent imports of counterfeit and pirated goods. Further, Iran sees technology transfer as part of the arrangement in which they have agreed to protect IPRs. The IPRs of Iran include a number of provisions on this. For example, it requires government to provide incentives for their companies to transfer technology to Iran.

This paper deals with domestic procedures and remedies for the enforcement of IPRs. IPRs of Iran contain provisions on civil and administrative procedures and remedies, provisional measures, special requirements related to border measures and criminal procedures, which specify the procedures and remedies that must be available so that right holders can effectively enforce their rights.

The research methodology used in this study is qualitative, using mostly documents and publications. This study utilised many different sources, including books, journal articles, websites and various convention documents and written laws concerning IP and Islamic law. The scholarly publications were used to explore the emerging legal trends in the international context.

Such publications may have revealed things that have taken place before this study started. It was anticipated that the qualitative approach to the study would allow the researcher to do a thorough analysis of written laws and texts of various countries and conventions to evaluate how they are implemented in different contexts.

2. Measures to control abuse of intellectual property rights

2.1 Copyright

The fourth chapter of the Act on the Protection of the Rights of Authors, Composers and Artists (1970) addressed the issues of infringement and punishment, and provided for a punishment of corrective imprisonment for a period from three months to three years.

In accordance with Article 23 of the Act, if a person publishes, broadcasts or communicates to the public, wholly or partially, another person's work which is protected by the Act, in their own name or in the name of the author without authorisation thereof, or in the name of a person they know to be other than the author, they shall be condemned to imprisonment for a period from six months to three years. Further, pursuant to Article 24 of the Act, if a person prints, distributes or publishes another person's translation in their own name, or in the name of a person other than the author without authorisation thereof, they shall be liable to imprisonment for a period from three months to one year. And, by virtue of Article 25 of the Act, the following cases of infringement shall be subject to imprisonment from three months to one year (Azizi, 2003):

1. To make use of the name, title and special hallmark of a work for another work of the same or similar kind in a misleading manner.
2. Failure to mention or introduce the author's name, title or special hallmark of a work along with the work or on the original copy or printed or reproduced copies thereof, on the part of transferees, publishers and those authorised, under the law, to use, refer to, or adapt the work for commercial purposes.
3. Any alteration, distortion or mutilation of the works protected by the law and the publication thereof without the author's permission.
4. Failure, on the part of printing offices, recording companies, workshops and persons in charge of printing, publishing, distributing, recording or reproducing the works protected by the law, to mention the number of printing, recording, reproducing, distributing and publishing as well as the number of printed copies, serial number of phonograms, date and the name of concerning printing office, company or workshop on all copies to be distributed (Naseri, Toorang, & Sheikmoradi, 2016).

The judicial consideration of infringements shall be terminated by the waiver of the private plaintiff. Furthermore, according to Article 13 of the Act on the Protection of Computer Programs (2000), in case of infringement of the rights protected by the Act, the infringer shall, in addition to payment of the right holder damages, be liable to imprisonment from 91 days to six months, as well as payment of monetary fines from 10 to 50 million Rials.

Pursuant to Article 19 of the Act, buying and making use of illegal textual programs by governmental entities and their affiliated agencies whose subjection to laws and regulations requires mentioning their names are prohibited (Naseri et al., 2016).

Under Article 29 of the regulations, the High Council of Informatics and the Ministry of Culture and Islamic Guidance shall protect copies of programs that are given to them for approval and registration with a view to preventing the access of third parties to their content without the consent of the owners of the economic rights of the programs. In cases where a complaint is lodged by the owner and infringement is established, the case shall be heard by administrative or disciplinary panels and the appropriate administrative punishments shall be imposed (Jalilian, 2015; Shekarchi, 2003).

2.2 Trademarks

There are provisions in the Islamic Penal Code (1996) regarding penalties for illegal uses of the marks of public and private entities. In accordance with Articles 525–530 of the code, if a person forges seals, stamps or marks of public entities or companies, or uses or imports them while cognisant of the forgery or deceit, they shall, in addition to payment of the damages suffered by the rights holder, be subject to imprisonment from one to 10 years; if a person forges seals, punches or marks of non-governmental public entities such as municipalities, or uses them while cognisant of the forgery, they shall, in addition to payment of the damages caused to the rights holder, be condemned to imprisonment from six months to three years; and if a person forges seals, punches or marks of duly established non-governmental companies, or uses them while cognisant of the forgery, they shall, in addition to compensation of the damages sustained by the rights holder, be sentenced to imprisonment from three months to two years. Pursuant to Article 18 of the Trademarks and Patents Registration Act (1931), any beneficiary enjoys the right to file a lawsuit in the courts of Tehran and request the cancellation of a registered trademark (Goodarzi & Bagheri, 2006).

As it is not binding to register a trademark, by virtue of Article 1 of the Act, persons with a priority right based on the continued prior use of a trademark the registration of which has been applied for by another person, can have recourse to the court and restore, subject to the establishment of their continued prior use, their rights with respect to the trademark. If the trademark has not yet been registered, the court shall accord the priority right to the person claiming continued prior use. And if it has already been registered, the court shall order that the former registration is cancelled, and the trademark is registered in the name of the person claiming continued prior use.

Furthermore, pursuant to Article 40.12 of the Customs Affairs Act (1971), a good which, or the wrapper of which, bears an address, the name of an enterprise, a mark or other characteristic which misleads buyers or consumers as to its producer, place of production or main characteristics or qualities, shall not be importable (Soleimani, 2012).

2.3 Patents

According to Article 29 of the Trademarks and Patents Registration Act (1931), the person who first applies for the registration of an invention shall be presumed to be the inventor, unless the contrary is proved in competent courts. And, in accordance with Article 37 of the Act, in following cases, any beneficiary enjoys the right to have recourse to the court and request the cancellation of a patent when:

- the relevant invention is not a new invention
- the patent has been issued without due regard to the provisions of Article 28 of the Act with respect to the items excluded from patentability
- the invention is of a purely scientific nature and not capable of industrial or agricultural application
- no practical use has been made of the invention for five years as of the date of issuance of the patent (Ministry of Commerce, 2009).

3. Enforcement

One of the objectives of regimes putting IPRs on the agenda of the Uruguay Negotiation was the lack of effective enforcement in the existing international IP regime before the TRIPS agreement. For an evaluation of the enforcement of international regulations, one should consider this matter from national and international perspectives (Yu, 2009).

The international dimension of enforcement of the TRIPS agreement is usually discussed under the settlement of the dispute mechanism of WTO, use of trade sanctions or the threat of trade sanctions for the enforcement of the TRIPS provisions (Yu, 2009).

On the other hand, there is the aspect of national enforcement dealing with the subject of the possibility of private individual action before courts of the member states. This aspect is in direct relation to the legal conditions of the member countries of the TRIPS agreement.

The national aspect of the enforcement subject is more important and, in fact, complements the international enforcement mechanisms. International IP laws are insignificant without effective enforcement mechanisms in national law.

Most of the enforcement mechanisms provided in the international IP treaties, including the TRIPS agreement, rely on their members' own judicial systems to enforce their regulations (Cychosz, 2003).

Taking into account the importance of the subject of enforcement, we see that the World Intellectual Property Organization (WIPO) member states decided in 2002 to establish an advisory committee on enforcement to deal with issues such as the coordination among the public and private sectors on combating infringement of IPRs and improving public awareness of IP enforcement issues among the member states. In this regard, Part III of the TRIPS agreement establishes a comprehensive enforcement system (Knapp, 2000). It allocated a large part of its regulations regarding the measures which should exist in the legal system of the WTO members for enforcement of the IPR. It asked its member states to ensure that enforcement procedures as determined in the agreement are made available in their national laws; *inter alia*, 'expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements'. Members to the TRIPS agreement, therefore, have an obligation to specify measures under their national laws to permit effective action against infringement (Article 41.1).

The judicial and administrative procedures concerning IPRs should be 'fair and equitable' and not unnecessarily complicated (Article 41.2), and the decisions of the courts and administrators should be based on evidence. However, the required procedure must be 'applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse'. The procedure should also be fair and equitable. They must not be unnecessarily complicated or costly (Article 41).

The TRIPS agreement also requires that WTO members provide civil and administrative procedures for the enforcement of the IP provisions (Blakeney, 1996). The document also requires, in Articles 51–60, for its member states to take some special border measures (Reichman, 1996). Iranian IP system also had great developments in enforcement—under the new Iranian IP system, both the administrative and judicial procedures for enforcement of the IP law have been developed.

3.1 Civil judicial procedures and remedies

Pursuant to Article 46 of the Trademarks and Patents Registration Act (1931), civil and criminal actions concerning patents or trademarks shall be considered by the courts of Tehran. As provided by Article 48 of the by-law of the Act, the following documents shall be annexed to the petition lodged by the applicant for registration of a trademark or invention, in case their application is rejected under Article 7 of the Act:

- original or certified copy of the decision rejecting the application for registration
- applicant's complaints against the said decision
- receipt of the deposit as per Article 47 of the by law of the Act with respect to making a deposit to cover the defendant's losses in the event of applicant losing the case
- power of attorney, in case the petition has been submitted through an attorney (Bagherpour, 2013).

According to Article 49 of the by-law, the court shall fix the date of the hearing and notify the plaintiff as well as the officer in charge of the branch office mentioned in Article 6 of the Act to be present on the said date. On the day of hearing, the court shall hear the arguments of both parties and give a verdict (Azizi, 2003). The absence of either party at the hearing shall not stop a verdict being delivered, and the verdict against the absent party shall be deemed as pronounced in their presence.

With regard to complaints about the rights of authors, composers and artists, the plaintiff may bring an action in court, and the court will set the date of hearing and invite the parties to attend (Soleimani, 2012).

The new Iranian IP law simplified the issue of infringements by providing that any use of patent and other exclusive rights which was accounted for under Article 15, including the 'making, importing, offering to the market, selling and storing the goods for selling; and when the patent relates to a process, use of that process and all the abovementioned rights regarding the product as a result of that process', constitutes an infringement of the patent rights. Accordingly, the patent owner has the right to take legal action against the infringer before a special branch of the Public Court of Tehran (Article 59).

The ability to refer all IPR litigations to a branch or branches of the Public Court of Tehran is important from the point of specialty.

The most important difference between the previous Patent and Trademark Law (1931) and the new IP law is that the new law provides extra compensation. Under the new law the infringer may be sentenced to payment of 10,000,000–50,000,000 Rial or three to six months in jail, or both (Article 61).

The second most important difference between the previous patent law and the new law is that under the new law, the judiciary is obliged to allocate a special branch or branches of the Public Court of Tehran for processing the claims relating to IPRs (Article 36). Whereas under the previous IP law, IPR claims proceed only under the general Tehran Public Courts, not a special branch of them (Article 46 of the Trademark and Patent Registration Law 1931).

Another important point is the period of proceedings and expenses. Internationally, IP litigation is a very time-consuming and expensive process—it usually takes several years and at least several thousands of dollars (Cychosz, 2003). However, the IP litigation under the Iranian judiciary system is not so different from other types of litigation and is not a time-consuming and expensive process.

3.2 Provisional measures

In accordance with Article 63 of the by-law of the Trademarks and Patents Registration Act (1931), the owner of a trademark, as well as the owner of a patent, or their legal representative may, upon order of the local court of the place the contested goods are located, make a detailed list of such allegedly counterfeit goods.

The execution of the said order shall be carried out by customs officials, if the goods are still in customs, or else by a bailiff. The attachment of the goods may only be affected if the court expressly so orders (Bagherpour, 2013). If the owner of the trademark or patent petitions for the attachment of the said goods, they shall give sufficient security for the recovery, if necessary, of all damages suffered by the other party, including loss of prospective profits.

By virtue of Article 64 of the by-law, the plaintiff may, at any time, petition the judicial authorities considering the case to issue an injunction to secure the evidence, or to attach the counterfeit goods, or to prohibit the manufacture, sale or importation of those goods. The judicial authorities shall agree to these petitions.

Pursuant to Article 29 of the Act on the Protection of the Rights of Authors, Composers and Artists (1970), whilst considering the private plaintiff's case, the judicial authorities may, as appropriate, order bailiffs to prevent publication, distribution and communication to the public and seizure of the works in question. Such orders shall be issued based upon the recommendations of relevant experts (Soleimani, 2012).

3.3 Any administrative procedures and remedies

The Ministry of Culture and Islamic Guidance is in charge of affairs concerning literary, artistic and scientific works. The relevant disputes are considered there on a conciliatory basis. The procedures of the Commission of Dispute Settlement at the Ministry are as follows: after communicating the petition to the defendant and receiving their reply, the parties to the dispute are invited to participate in a session to consider and determine the commitments of each party. If a compromise is reached in the session, consideration of the case comes to an end; otherwise, further sessions will be held with a view to arriving at an agreement between the parties. If these efforts fail, the case would be referred to the court (Moeini, Bayanati, Givi, & Soheili, 2013).

As regards computer programs, in accordance with Article 46 of the by-law of the Act on the Protection of Computer Programs, the Provincial Disciplinary Council shall consider natural and legal persons' petitions concerning professional, disciplinary and order-related offences. In case the offences are criminalised in penal laws, the Council shall refer the cases to the courts to consider their criminal aspects (Goodarzi & Bagheri, 2006).

Under Article 50 of the by-law, the Provincial Disciplinary Council shall hear all received petitions. In the event that a complaint is deemed irrelevant or beyond the jurisdiction of the Council, the irrelevancy or lack of jurisdiction shall be declared. Otherwise, having heard the defences, the Council shall decide. As per Article 51 of the by-law, the Council may issue an oral warning, written reprimand and/or provisional prohibition of activity. Further, order-related and disciplinary offences and their respective penalties have been enumerated with regard to their conditions, frequency and grades in Article 52.

According to Article 54, decisions of the Disciplinary Council can be appealed within one month. Pursuant to Article 55, every province shall have an Appellate Council to consider all appeals. All judgments and punishments up to grade no. 4 rendered by the Council shall be final and binding, but punishments of grade no. 5 shall, subject to the request of defendant, be reviewable by the General Disciplinary Council. As provided in Article 56, this Council has five members and its decisions shall be valid and binding by three positive votes (Soleimani, 2012).

3.4 Special border measures

Articles 51–60 of Section 4 of the Enforcement Part of the TRIPS agreement makes specific requirements regarding border measures for IPRs. Under this section of the TRIPS agreement, the national customs of the WTO members have an obligation to enforce border control. They should choose the methods that would enable them to protect foreign and national IPRs in a practical way. In relation to this subject, Article 51 of the TRIPS agreement requests that members of WTO provide procedures and systems that enable the owners of the IPRs to request that the judiciary or administrative authorities suspend the release into free circulation a counterfeit trademark, pirated copyright or other IPR infringements by customs authority when they have valid reasons for suspicion. The role of customs staff in the enforcement of these provisions is therefore very important. In this regard, the member countries of WTO also need proper national customs laws to enable their customs authorities to fulfil their obligations (Kumar, 2004).

As noted above, in accordance with Article 40.12 of the Customs Affairs Act (1971), a good which, or the wrapper of which, bears an address, the name of an enterprise, a mark or other characteristic which misleads buyers or consumers as to its producer, place of production or main characteristics or qualities, shall not be importable.

Under Articles 51 and 52 of the Act, the authority responsible to examine disputes arising from enforcement of the customs regulations and general export-import regulations is the Commission for Customs Disputes. In case an appeal is made to the Commission's decision, the decision shall be reviewed by the Revision Commission the ruling of which shall be final and binding (Bagherpour, 2013).

In other cases, customs authorities shall, upon the issuance of provisional injunctions by competent courts, take appropriate measures to prevent the importation of the goods in question and to make a list thereof (Amoli & Shamsavari, 2006).

The new customs law of Iran, ratified by Parliament in 2011, replaced the custom law of 1971. Under the previous custom law only the importation of counterfeit trademarks was forbidden and there was no regulation for the rest of the IPRs. The new customs law was prepared in accordance with the Model Law of the International Customs Organization (Banyi, 2004).

The new customs law provided a way to respond to the country's obligations to the TRIPS agreement in the case of WTO membership.

3.5 Criminal procedures

Petitions concerning trademarks and patents shall be heard only by the courts of Tehran. As to criminal cases, if the crime or infringement takes place or is discovered or the accused is arrested outside Tehran, the preliminary investigation shall be carried out in the place of occurrence or discovery of the crime, or the arrest of the accused, and the records shall be sent to the Court of Tehran for adjudication.

With respect to trademarks and patents, the plaintiff may resort to both civil and criminal procedures. Pursuant to Article 49 of the Trademarks and Patents Registration Act (1931), damages claimed in civil or criminal cases concerning patents and trademarks shall include damages inflicted on the right holder as well as his loss of prospective profits.

In case of a serious and evident infringement of copyright, such as piracy, the right holder may also have recourse to criminal procedures. And, in case of invoking both civil and criminal procedures, criminal case must be instituted and adjudicated first (Rezapour et al., 2007).

4. Conclusion

The case study of the Iranian IP system indicated that there was enormous development in the Iranian IP law. In this regard, a new patents, industrial design and trademark law, within the framework of the TRIPS agreement, was approved by Iranian Parliament in 2008. International IP conventions are the basic tools for harmonising the national IP law of different countries (Sarkissian, 2008).

Iran, in order to facilitate nationally and internationally the protection of IPRs and to prepare the national economic and industrial sectors for the implementation of the international IP law, especially TRIPS agreement and for the purpose of accession to WTO, must meet some prerequisites; among the measures for satisfying those requirements, currently, the issue of Iran's membership in the WIPO is being discussed in the Islamic Consultative Assembly, the Islamic Republic of Iran Parliament. Upon accession to WIPO, Iran will be admitted to many conventions relating to this organisation, inter alia, the TRIPS Madrid and Bern Conventions (Riasi & Amiri Aghdaie, 2013).

Such accessions are important for national and international intellectual property owners because they provide and accelerate protection of all national and foreign IPR in Iran and abroad. The Iranian IP system has also seen great development from the point of the enforcement; the Iranian government has undertaken great steps in this regard. Under the new Iranian IP system, both the administrative and judicial procedures for enforcement of the IP law developed.

The new customs law of Iran, ratified by Parliament in 2011, replaced the custom law of 1971. The new customs law was prepared in accordance to the Model Law of the International Customs Organization and in a way to respond to the country's obligations under the TRIPS agreement in the case of WTO membership.

Merely having IP laws is not enough—they must be enforced in a proper way. The extent of protection and enforcement of IPRs varies widely around the world, and as IP becomes more important in trade, differences crop up between nations, especially in economic relations. Internationally acceptable trade rules for IPRs are a way to introduce more international order and predictability, and for disputes to be settled more systematically.

Enforcement of IPRs is covered under of conventions of IPRs. These conventions say governments have to ensure that IPRs can be enforced under their laws, and that the penalties for infringement must deter further violations. The procedures must be fair and equitable, and not unnecessarily complicated or costly. They should not entail unreasonable time limits or unwarranted delays. Parties involved should be able to petition a court to review an administrative decision or to appeal a lower court's decision. They must be able to take action against infringers in order to prevent further infringement and recover the losses incurred from any actual infringement.

However, there is a change in the attitude in many countries, mainly in view of the alarming growth of piracy activities. A number of countries have introduced heavy penal sanctions for certain kinds of infringements of copyright, in particular such which would be considered as piracy. Penal sanctions should, and in most countries do, include both fines and imprisonment, the maximum of which may be up to several years. If penal sanctions are to work satisfactorily, the objective criteria for the infringement must be clearly defined. This means that the rights should be framed and described in a clear and unequivocal way so that it is obvious which the act or acts are which must not be undertaken without the authorisation of the author or other rights owner. Also, the so-called subjective criteria must be determined clearly. At least in some national laws the penal provisions for copyright violations apply not only to acts that are committed wilfully, but also to those committed with gross negligence. The sanctions should be applicable not only to the person who directly committed the violation but also to those who contributed to it, for instance by providing equipment used for unauthorised reproduction with full knowledge of the intended use of that equipment (World Intellectual Property Organization, 1997).

Due to the importance of the protection of IPRs as one of the necessary infrastructures for supporting and promoting innovation in society, policy makers in different countries are trying to prepare the required backgrounds for promotion and development of IPRs assets at a national level. Therefore, Iranian policy makers should adopt strategies for promoting the protection of IPRs as well as the management and development of IP assets. These strategies are categorised in four main categories (Cowan & Harison, 2001): developing national IPR strategy; formulating and enforcing necessary laws; providing good infrastructures; launching proper educational and training programs; awareness building on different aspects of IPRs; promoting maximum use of worldwide patent information.

References

- Amoli, H. S., & Shamsavari, A. (2006). Modernisation of national intellectual property legislation in IR Iran and its effect on technology transfer through foreign direct investment. *World Review of Science, Technology and Sustainable Development*, 3(3), 223–234.
- Azizi, M. (2003). *Joining the copyrights, wipes the theft accusation from the publications*. Paper presented at the Conference on Art & Literary Property, Monday 24 February, Tehran.
- Bagherpour, M. (2013). The enforcement of intellectual property rights in digital environment based on ACTA. *Mediterranean Journal of Social Sciences*, 4(11), 615–620.
- Banyi, R. (2004). Ghvanen va Moghararat Gomrok (Persian), Customs Law and regulations. Tehran: Sherkat Chap va Nasher Bazargani.
- Blakeney, M. (1996). *Trade related aspects of intellectual property rights: a concise guide to the TRIPS Agreement*. London: Sweet & Maxwell.
- Blakeney, M. (2005). *Guidebook on enforcement of intellectual property rights*. London: Queen Mary Intellectual Property Research Institute.
- Broadbent, C. L., & McMillan, A. M. (1997). Russia and the World Trade Organization: Will TRIPS be a stumbling block to accession? *Duke Journal of Comparative & International Law*, 8, 519–562.
- Cowan, R., & Harison, E. (2001). Intellectual property rights in a knowledge-based economy. *MERIT-Infonomics Research Memorandum series*. Maastricht, The Netherlands: Maastricht Economic Research Institute on Innovation and Technology.
- Cychosz, A. (2003). The effectiveness of international enforcement of intellectual property rights. *John Marshall Law Review*, 37, 985–1016.
- Drahos, P. (1997). Thinking strategically about intellectual property rights. *Telecommunications Policy*, 21(3), 201–211.
- Gakunu, P. (1989). Intellectual property: Perspective of the developing world. *Georgia Journal of International & Competitive Law*, 19, 358–365.
- Goodarzi, M., & Bagheri, S. K. (2006). *Intellectual property system of Iran: A comparative study*. Paper presented at the PICMET 2006 Conference: Technology Management for the Global Future. Vol. 2. 8–13 July 2006, 547–553, Istanbul, Turkey.
- Jalilian, F. (2015) Material and moral rights of the author and sanctions violations. *Science Road Journal* 3(3), 119–140.
- Knapp, I. L. (2000). The software piracy battle in Latin America: Should the United States pursue its aggressive bilateral trade policy despite the multilateral TRIPS enforcement framework? *University of Pennsylvania Journal of Internal Law*, 21, 173–210.
- Kumar, H. (2004). Border areas for the protection of intellectual property rights: An analysis. *Journal of Intellectual Property Rights*, 9, 43–50.

- Ministry of Commerce (2009). *The Memorandum of the foreign trade regime of the Islamic Republic of Iran*. Retrieved from <https://library.aqr.ir/Portal/File/ShowFile.aspx?ID=d90effef-c1d3-46fb-9104-7f574c8500a7>
- Moeini, E., Bayanati, M., Givi, S. B., & Soheili, S. (2013). Individual social responsibility a platform for intellectual property rights: Iranian users of CDs case. *Advances in Environmental Biology*, 709–717.
- Naseri, A., Toorang, H. A., & Sheikhmoradi, V. (2016). Restrictions on the right to private property in the Iranian legal system. *International Journal of Humanities and Cultural Studies ISSN 2356–5926*, 2155–2171.
- Rezapour, M., Bagheri, S. K., Rashtchi, M., & Bakhtiari, M. R. (2007). The Iranian patenting system: An introduction. *World Patent Information*, 29, 250–254.
- Reichman, J. H. (1996). Enforcing the enforcement procedures of the TRIPS agreement. *Virginia Journal of International Law*, 37, 335–356.
- Riasi, A., & Amiri Aghdaie, S. (2013). Effects of a hypothetical Iranian accession to the World Trade Organization on Iran's flower industry. *Cosilience: The Journal of Sustainable Development*, 10(1), 99–110.
- Sarkissian, A. (2008). Intellectual property rights for developing countries: Lessons from Iran. *Technovation*, 28(11), 786–798.
- Shekarchi, M. (2003). *Iran's inability to attract international publishers*. Paper presented at the Conference on Art & Literary Property, 26 February, Tehran.
- Simons, J. J. (1999). Cooperation and coercion: The protection of intellectual property in developing countries. *Bond Law Review*, 11(1), 57–97.
- Soleimani, H. (2012). Intellectual property law: Islamic law approach, with the case study of the Iranian intellectual property law. *AALCO Journal of International Law*, 1(1), 61–88.
- World Intellectual Property Organization. (1997). *Introduction to Intellectual Property, Theory and Practice*. Geneva, Switzerland: Kluwer Law International.
- Yu, P. K. (2009). The objectives and principles of the TRIPS Agreement. *Houston Law Review*, 46, 980–1046.

Dr Alireza Milani



Dr Alireza Milani is Assistant Professor in the Islamic Azad University, Islamshahr Branch. Alireza has a PhD in Criminal Law and Criminology from the Shahid Beheshti University of Tehran in Iran. His work is focused on criminals, penalties and offences and he has published papers and books focused on criminal penalties and offences.

Amir Ahmadi



Amir Ahmadi holds degrees in law and industrial management and is an academic adviser with over 15 years of management, educational and law experience. Since 2010 he has assisted authors and teachers to achieve clarity, meet publication guidelines and improve the overall quality in the journal publication. Amir's research interests are in law, intellectual property law, management and customs enforcement; he has published papers about intellectual property rights and international law and has presented his findings at national and international conferences.