

The role of the Algerian judiciary in resolving intellectual property disputes



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Abstract:

The protection of intellectual property is of great importance in the development of societies, considering that technological progress is closely linked to ensuring the protection of individuals and all their creative and intellectual works, to ensure their continuity and protect their intellectual and scientific achievements from counterfeiting and theft. Especially since modern copying methods expose creators to the loss of the fruits of their labor and the loss of their rights. Algeria is among the countries that have not hesitated since its independence to establish laws and regulations that protect intellectual property in both its industrial and literary aspects.

This study aims to establish a precise concept of intellectual property, and to understand its legal nature. It also seeks to examine the role of the judge and their contribution to reducing the phenomenon of assault, violation, and theft that affect literary, artistic, industrial, and commercial works.

Keywords: Intellectual property; Technological development; Assault and theft; Infringement and forgery; Protection of intellectual rights; Algerian judiciary.

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Introduction:

Protecting intellectual property is of great importance in the development of societies, as technological progress is closely linked to ensuring the protection of individuals and their creative and intellectual works to ensure their continuity and protect their intellectual and scientific achievements from counterfeiting and theft. Modern copying methods expose creators to the loss of the fruits of their labor and the loss of their rights. Algeria is among the countries that have not hesitated since its independence to establish laws and regulations that protect intellectual property in both its industrial and literary aspects.

This study aims to establish a precise and comprehensive concept of intellectual property, and to understand its legal nature. It also seeks to examine the role of the judiciary in reducing the phenomenon of assault, violation, and theft that affect literary, artistic, industrial, and commercial works, which are expressed as intellectual property. The study will also evaluate the Algerian legislative strategy for protecting intellectual property and identify areas of success, failure, and shortcomings in resolving disputes related to intellectual property in all its forms. As part of addressing the issue revolving around the role of Algerian judicial authorities in resolving intellectual property disputes in its various fields, the role of Algerian judicial authorities is to resolve these disputes?

Therefore, it is necessary to be familiar with all of this importance and strive to achieve the objectives by answering and clarifying the issue, using scientific research methods that simplify and analyze the terms mentioned in our study, in addition to analyzing the legal materials that refer to it, by following the descriptive and analytical method, which is suitable for examining the Algerian legislator's position and exploring the various provisions of the laws issued to protect intellectual property rights in all of its forms. This research's goal is to reach a descriptive understanding of legislative texts, interpret and analyze their contents, and determine the extent of the Algerian legislator's serious efforts to protect all aspects of intellectual property rights, whether industrial and commercial or literary and artistic, and to combat various forms of infringement such as theft, impersonation, and imitation.

Understanding the requirements of our study requires following a plan that aligns with the problem at hand. Our study is divided into two axes that achieve the study's objective and cover its various dimensions. The first axis addresses the conceptual framework of intellectual property, while the second axis focuses on resolving intellectual property disputes through the judiciary.

1. Conceptual Framework of Intellectual Property:

In this axis, we will discuss the most important concepts related to intellectual property, starting with deconstructing the term into its linguistic and terminological definitions. Then we will define the Islamic Sharia definition of intellectual property and examine the definition provided by jurisprudence, followed by a legal definition of intellectual property. We will also dedicate the last part of the first axis to the different categories of intellectual property.

A. Definition of Intellectual Property:

Below, we will discuss the definition of intellectual property from a linguistic, terminological, Sharia, and legal perspective.

- Definition of Property in Language:

In language, property is defined as "the right to something, and ownership is the containment of something and the power to exercise control over it. Whoever owns something has complete control over it and can dispose of it as they wish. (Al Batsh, Al Atrash, 2020, p 355).

- Definition of Thought in Language:

The term "thought" is a Latin term, "Intellectuelle," meaning non-material and non-tangible. (Barichi, 2018, p 63).

In Al-Mu'jam Al-Waseet, "thought" means using one's mind in a matter and arranging some knowledge to arrive at an unknown result. "Thinking about a problem" means using one's mind to find a solution, and a "thinker" is someone who is most preoccupied with their thoughts. "Thinking" is the use of the mind to gain knowledge of the unknown, while "thought" means using the mind to understand something that was previously unknown. It is also said, "I have thought about the matter," Al-Raghib Al-Isfahani said: "Some scholars have said that...thought is used in meanings, which means to examine and investigate matters in order to arrive at their true essence. (Samarah, 2005, p 147).

- Definition of Property in Terminology:

Jurists have differed in defining the technical meaning of property due to their different understandings of ownership, including:

Considering property as a legal reality or a ruling established by Sharia, with effects and necessary benefits attached to it.

This is the most common perspective among scholars in defining property. (Al Aybi, Kinoua, Doudi, 2018, p 63).

Defining it as the exclusive right to something, which guarantees the complete control of its owner over it, the exclusive authority to dispose of it without the permission of others, and preventing others from interfering with it without the owner's permission.(Al Batsh, Al Atrash, p356).

-Definition of "Thought" technically:

has been defined as "the use of the mind in an unknown matter, arranging things in the mind, and arriving at a real or imaginary knowledge." (AlAybi, Kinoua, Doudi, p 63).

-Defining intellectual property in Islamic law:

The Quran contains numerous verses that emphasize the importance of thought and contemplation in arriving at correct judgments and attaining true guidance and righteousness in accordance with Allah's command. Additionally, several verses indicate that disbelievers are deprived of the blessings of reason, perception, and contemplation. For example, Allah says, "Verily, the worst of living creatures with Allah are the deaf and the dumb, who do not understand." Another verse asks the rhetorical question, "Say, "Are the blind and the seeing equal? Then will you not reflect". And yet another verse urges the telling of stories in order to encourage people to reflect and contemplate.

Therefore, all of these verses clearly indicate that the meaning of thought and contemplation is complete reflection in order to achieve understanding in the mind. (Samarah, p 148).

Intellectual property is a modern term in Islamic jurisprudence, where the idea of intellectual property rights emerged in the form of copyright and authorship rights, which became clear with the spread of printing presses and copying machines, a phenomenon that began in the West. Hence, Western thought was ahead in the issue of authorship and intellectual property rights in general.

Therefore, we do not find the rulings of intellectual property and its issues in the main books of Islamic jurisprudence, but modern scholars of jurisprudence dealt with it under the general rulings and principles of Islamic law. They have different terminologies for it, such as some calling it "innovation rights," while others call it "mental rights." The Islamic Fiqh Academy chose the term "moral rights," while many kept the term "intellectual property.

Despite differences in terminology, the Islamic Jurisprudential Council has kept pace with various legislations in their general concepts, including their principles and regulations that govern specific relationships, aimed at protecting the products of human thought and creativity in all their forms, whether they are ideas, artistic works, or industrial inventions. (Boucetla, 2016, p 607-608.).

-Terminological definition of intellectual property:

Intellectual property in its traditional general concept refers to "the right of the author or creator of literary or artistic works to enjoy complete protection that preserves them from material exploitation or abuse."

It can also be considered in its two branches, whether referred to as literary and artistic property or copyright and related rights, or referred to as the right of the inventor or industrial property. They are all intellectual rights, the products of the mind, creation, and innovation, and yet each type of property has its own development stages, appearance, and specificity. (Lafkih, karim, 2018, p03).

Abdul Fattah Murad defined intellectual property as "the property of a person over something intangible such as literary works, with accompanying rights that benefit each person according to their effort." Intellectual property is divided into two main categories of rights:

- author's rights and related rights or literary and artistic property.
- industrial property, which includes several types of rights.

In terms of protection sources, intellectual property rights are protected by national legislation and international agreements. In Algeria, intellectual property is managed by both the National Copyright and Related Rights Office and the Algerian National Institute of Industrial Property. At the international level, the World Intellectual Property Organization, which is headquartered in Geneva, is responsible for intellectual property issues and matters worldwide. The organization aims to manage and support effective intellectual property protection across the world, encourage innovative activities, and provide technical services to countries that request assistance. (Ben Zine, 2018, p 91-92).

The rights of intellectual property include two fundamental elements:

- The exclusive use of resources by their owners, as long as this use does not violate the property rights of any other person.
- The ability of individuals to transfer, modify, or exchange these rights on a purely optional basis, as they wish. Therefore, the greater the protection of intellectual property, the greater the allocation of resources and funds by individuals, and their use in the same society in a more efficient manner. This is because the creation of wealth goes hand in hand with the effective allocation of resources and funds. (Taharat, 2012, p 147).

-The definition of intellectual property in the law:

The Algerian legislator, they recognized the right of intellectual property as a category of rights, and gave it various names. Sometimes it is referred to as "intangible property" in Article 17 of the Civil Law, while at other times it is referred to as "non-material things" in Article 687 of the same law, which states that "special laws regulate the rights that pertain to non-material things."

It can be understood from this that the Algerian legislator recognized the characteristics of these rights, but did not define their nature or fully comprehend their concept. In accordance with these provisions, the Algerian legislator issued legal provisions specifically related to intellectual property rights, primarily represented by Law of Literary and Artistic Property and Related Rights, where it mainly consists of:

- Law N 03-05 - July 19, 2003 concerning author's rights and neighboring rights.
- Law N 03-06 - July 19, 2003 concerning trademarks.
- Law N 03-07 - July 19, 2003 concerning patents.
- Law N 03-08 - July 19, 2003 concerning the industrial design of integrated circuits.
- Law N 66-86 - April 28, 1966 concerning industrial designs and models.
- Law N 76-65 - July 16, 1976 concerning origin labels. (Al Jawzi, Gouri, 2017, p 07).

2. Intellectual Property Categories:

Intellectual property is divided according to legal practices, and even in recent times, the approach adopted in most countries of the world has been to divide intellectual property rights into two main categories:

The first category includes industrial and commercial intellectual property rights, while the second category is related to literary and artistic intellectual property rights, or copyright as it is commonly called. Industrial and commercial intellectual property rights are defined as the rights that pertain to mental creations in the industrial field, while intellectual property has begun to take various forms and shapes, especially after the developments that have occurred in both the types of creativity and the means of transmitting them to the public.

The following is a detailed explanation of the above. (Al Aybi, Kinoua, Doudi, p64).

A. Industrial Property:

Industrial property is defined as the rights that pertain to movables, or those rights that come with certain intellectual movables. It is an exclusive industrial right that allows the holder to monopolize the exploitation of a new invention or a distinctive trademark. The rights that belong to an individual, known as industrial property, are based on investment exclusivity, where they depend on the desire to determine free competition by recognizing their rights. These rights become part of the commercial establishment, although they can be separated from it and have independent value. Industrial property is further divided into:

- Patents:

Patents hold a prestigious position in the economic life due to the multiple effects resulting from their exploitation. A patent is a certificate granted by the relevant authorities in exchange for an invention that provides a solution to a specific problem in the field of technology, after fulfilling a set of objective and formal conditions. For example, the National Institute of Industrial Property in Algeria grants this certificate. (Ouannoughi, 2017, p 199).

- Trademarks:

Despite the many legal definitions of trademarks, they can be defined as "any sign or symbol that a merchant puts on their goods to allow the buyer to know the origin of the goods. They are also considered a means of attracting customers, and grant the owner the right to monopolize their use, and any use without the owner's consent is considered an infringement of that trademark." As for the Algerian legislator, the regulation of trademarks is governed by Law No. 66-57, which deals with factory marks and trademarks, as well as Decree No. 66-57, which implements the aforementioned law.

- Trade names and geographical indications:

A trade name is the commercial name that a merchant gives to their store to distinguish it from other similar or identical stores, as well as to distinguish it from other stores. Geographical indications, on the other hand, are regulated by Law No. 76-65 of July 16, 1976, which defines them in Article 01 as "the geographical name of a country, region, part of the region, district, or named place that identifies a product originating from it. The quality or characteristics of the product are exclusively or essentially attributable to a specific geographical environment, including natural and human factors. A trade name that is registered as being associated with a specific geographic area for the purpose of some products is also considered a geographical indication." (Barichi, p 66).

- Industrial designs and models:

An industrial design or model is defined as "an ornamental or aesthetic form of a useful article" that is embodied in the article or surface or in a flat shape, such as patterns, lines, or colors. Unlike trademarks, industrial designs do not require distinctiveness. The subject of protection for industrial designs or models is primarily the appearance of the article and not its technical or industrial application, as is the case with patents. The duration of protection varies depending on the legislation, but the minimum duration specified by the TRIPS agreement is ten years. (Al Jawzi, Gouri, p 08).

- Integrated circuit layout designs:

According to electronics science, integrated circuit layout designs are "miniature electronics that operate with semiconductors. These circuits are divided into two types: linear integrated circuits, which perform the function of transmitting electronic charges, and digital integrated circuits, which perform the function of operating and storing information in digital systems such as computers." The legal definition of integrated circuit layout designs is not different according to Algerian legislation, which is governed by Order No. 03-08.

- Plant varieties:

Plant varieties are a new type of intellectual property rights that involve the appropriation of previously unknown plant varieties. They are enhanced varieties that help improve food production and are considered an intellectual property right because they are a mental product of the importer who spends financial and material resources on them.

The owner is entitled to ownership and exclusive exploitation of the plant variety, and the period of protection is up to 25 years for trees and vines and 20 years for other plants. (Al Jawzi, Gouri, p 09).

B. Intellectual property and artistic property:

Intellectual property and artistic property are also known as author's rights and neighboring rights, and the author's right is a legal attribute that refers to the rights granted to creators for their literary and artistic works. It is divided into two types: moral rights and economic rights, As for neighboring rights, they are granted to performing artists, sound recording producers, television and radio institutions. These rights are granted to those who contributed to bringing the works of authors into existence through various means of expression. (Barichi, p 67).

-Author's Rights:

is a legal term that describes the rights granted to creators in their literary and artistic works, including books, novels, poetry, plays, musical compositions, dance designs, computer programs, databases, technical drawings, maps, and architectural works. These rights generally include literary, artistic, or scientific production that is recorded in a tangible form, and these things are owned by their owner, which gives the author's right a nature other than ownership rights. It is the fruit of human thought. (Ouannoughi, p 198).

-Neighboring Rights:

are those rights granted to a category that is not classified within the category of authors, but contributes to the transfer of works to the public, such as performing artists, sound recording producers, and radio and television broadcasting institutions. The duration of protection for neighboring rights is estimated at twenty years according to the Rome Convention, with the TRIPS agreement specifying the minimum duration of protection for twenty years, starting from the end of the year in which the broadcast took place. (Al Jawzi, Gouri, p 09).

3. Intellectual property disputes settlement through the judiciary:

Countries have been interested in strengthening intellectual property rights by signing international agreements. Perhaps the most important agreement regarding the protection and enforcement of intellectual property is the TRIPS agreement, where Article 42 requires WTO member states to provide civil judicial procedures for intellectual property rights holders to access the judiciary. These procedures cover all intellectual property rights mentioned in the TRIPS agreement. (Alseghir, 2004, p 05).

Algeria has sought to provide the necessary protection for intellectual property rights through both civil and criminal litigation, as it is the primary guarantor of all rights, including constitutional rights for everyone. In the field of intellectual property rights, any infringement or violation of these rights in all their elements is under the jurisdiction of the judiciary, which considers intellectual property disputes through civil protection of intellectual property rights through civil compensation lawsuits, and criminal protection of intellectual property rights through imitation lawsuits, which we will discuss in more detail below.

A. Civil protection of intellectual property rights through civil compensation lawsuits:

The Algerian legislator has given great attention to the issue of intellectual property rights and has regulated their protection through a set of laws, including: The Algerian legislator has given great attention to the issue of intellectual property rights and has regulated their protection through a set of laws, including:

- Order No. 03-07, which relates to patents and determines the conditions for protecting inventions through the means available for this purpose. It grants the right to exploit the patent monopoly for a period of 20 years to the owner of the patent. As for civil protection of this right, it mainly consists of a lawsuit for unfair competition to claim compensation for the damages suffered due to the infringement of this right.

- Order No. 03-06, which relates to trademarks and their protection. If the trademark is registered, the owner is entitled to civil protection only through a

lawsuit for compensation for damages resulting from the imitation or distortion of the trademark.

- Order No. 66-86, which relates to industrial designs and their temporary protection for a period of ten years.

- Order No. 03-08, which grants protection to the layout designs of integrated circuits from the date of application for registration. This protection generally consists of preventing others from copying the physical design of the integrated circuit, either wholly or partially, as well as importing, selling, distributing or engaging in any commercial transaction involving a protected physical design of an integrated circuit. Civil liability arises from engaging in these behaviors and requires compensation.

- Order No. 03-05, which relates to copyright and related rights, (Farha Zraoui, 2006, p 515). Article 02 specifies the rights that are subject to protection, including literary or artistic authors, performers, producers of sound recordings, broadcasting organizations, and the special rules for collective management of rights and the protection of traditional cultural heritage and national works in the public domain.

For civil liability in a compensation lawsuit, which is filed by the intellectual property rights holder for damages suffered, the three elements of fault, damage, and causality must be present.

-Error:

It is a legal duty violation by a distinguished person, and it takes several forms, such as mixing between the competing products and his colleague by imitating the distinctive mark of the products. The competitor may resort to false or misleading advertisements that have a psychological impact on customers in order to make a profit. The falsehood or deception may be directed towards the nature, identity or truth of the products. As for proving the error, it is the responsibility of the rightful owner without requiring proof of the competitor's malicious intent. (Beljebel, 2017, p 612).

-Damage:

Compensation for material damage is based on general rules, covering the owner's losses and missed profits. Meanwhile, compensation for moral damage aims to satisfy the injured party for the harm caused to their personality and reputation. In this case, the damage caused by the infringement of the moral right is presumed because, for example, an author has discretionary authority over their work, allowing them to conclude that the slightest infringement on their work may cause them moral harm. Therefore, they may resort to legal action seeking compensation. (Beljebel, p612).

It should be noted that the Algerian legislator has given jurisdiction in civil suits to specialized civil bodies until their establishment, where jurisdiction is

transferred to the court of the council's headquarters, the domicile of the defendant. (Law No. 08-09, Article 32).

-Causality link:

The existence of a mistake on the part of the responsible party and harm to the victim is not enough to establish civil liability. There must also be a causal link between them. If all three elements are present, the rightful owner can file a lawsuit for unfair competition.

Regarding the civil penalties for infringement of intellectual property rights, they consist of ceasing the imitation activities and compensating the owner for the resulting damage.

B. Criminal Protection of Intellectual Property Rights through Imitation Lawsuit

Criminal protection is considered the most effective and serious means of combating all types of infringement and crimes committed against the exclusive rights granted by law to owners of intellectual property rights. Civil protection alone is not sufficient to deter such infringements. Therefore, resorting to strong measures is necessary to quickly put an end to such attacks. This can only be achieved through an "imitation lawsuit," (Beljebel, p 614, Ouannughi, p 206). in addition to other appropriate criminal lawsuits as penalties for such infringements.

Elements of the Imitation Lawsuit:

To constitute the crime of imitation, two essential elements must be present:

The legal element: There is no crime or punishment without a legal provision, which is established according to the principle of the legitimacy of crimes and punishments, as recognized by the Algerian Constitution. Accordingly, laws on intellectual property, whether related to literary or industrial property, define the crime, specify its material and moral elements, and determine the appropriate penalties. Therefore, exploitation of a patent, trademark, or copyrighted work cannot be considered imitation unless it is unlawful, meaning that the infringement is illegitimate. (Presidential Decree No. 20-442, Art 43).

-The material element:

As soon as the act of imitation is committed, public confidence is lost. The following conditions must be met for this element to be present:

- The thing that has been imitated must be protected by law.
- The infringed right must be related to the property of another person.
- The actual direct or indirect infringement must occur through imitation of the protected thing.

Penalties and Punishments for the Crime of Imitation:

The penalties and punishments for the crime of imitation depend on the type of infringement committed. Generally, the punishment for the crime of imitation involves imprisonment or fines and civil compensation, which affect the offender's financial liability and freedom, respectively. The Algerian legislator follows this approach in the crimes specified in the Penal Code, and the penalties are divided into primary and subsidiary penalties, which are related to crimes that carry the description of a felony (not relevant to the crime of imitation), and complementary penalties.

The primary penalties for intellectual property crimes are often determined according to the seriousness of the infringement, whether it affects the owner or the society as a whole, through the impact on the economy of the country, where the national economy is closely linked to intellectual property rights. (Ouannoughi, p205).

According to Article 05 of the Penal Code, which deals with misdemeanors, imprisonment for a period of more than two months up to five years and a fine exceeding 2,000 Algerian dinars may be imposed. The laws on intellectual property specify the penalties for infringing on these rights, as follows:

-Regarding patents:

The Algerian legislator has established deterrent penalties for infringement and piracy crimes related to patents. These penalties include a fine ranging from 2.5 million to 10 million Algerian dinars and imprisonment for a period of 6 months to 2 years. (Order No. 03-07).

-Regarding trademarks:

Infringements on trademarks, such as imitation or distortion of a trademark, or the use or sale of a counterfeit mark, are punishable according to Article 32 of Order 03-06 related to trademarks. (Barichi, p 68).

The penalties include imprisonment for 6 months to 2 years and a fine ranging from 2.5 million to 10 million Algerian dinars.

-Regarding industrial designs and models:

The primary penalty for anyone who infringes on proprietary rights granted to the owner of designs and models is a fine ranging from 5,000 to 15,000 Algerian dinars. In case of recurrence or if the offender works for the affected party, in addition to the financial penalty, the offender can be sentenced to imprisonment for 1 to 6 months. (Order No. 66-86).

-Regarding integrated circuit layout designs:

Infringements on integrated circuit layout designs are punishable according to Articles 35, 36, and 37 of Order No. 03-08 with a fine ranging from 2.5 million to 10 million Algerian dinars and imprisonment for 6 months to 2 years.

-Regarding literary and artistic intellectual property rights:

Infringements on literary and artistic intellectual property rights are generally considered a crime of imitation. This includes the production, display, or broadcast of any protected intellectual product. Articles 151 to 155 of Order No. 03-05 related to copyright and neighboring rights specify the actions that are considered infringing on these protected rights. These actions include the unauthorized disclosure of the work, the performance by an artist or musician, reproduction of the work or performance in any form of imitation, recovery or export of counterfeit copies of the work or performance, sale, lease, or putting counterfeit copies of the work or performance on the market.

Offenders who violate these protected rights and notify the copyright owner or performer via any audio, visual, or computer system are considered to have committed a crime of imitation. The perpetrators of this crime can be sentenced to imprisonment for a period ranging from 6 months to 3 years and a fine ranging from 500,000 to 1 million Algerian dinars. (Order N.03-05, Article 153).

Supplementary penalties:

For trademarks, the Algerian legislator has added the penalty of seizure of the objects and means used in counterfeiting and their destruction when necessary, in addition to the temporary or permanent closure of the establishment and the seizure of objects and means used to commit the offense.

Regarding patents, the legislator did not provide for supplementary penalties or tightening in case of recurrence. However, for design and industrial model fees, the supplementary penalties consist of affixing the verdict in the places designated by the court and seizure of objects in case of acquittal, while in case of conviction, the tools specifically used to manufacture the items in question are seized and delivered to the aggrieved party. It should be noted that the return and delivery of items to the aggrieved party is at the discretionary power of the judge. (Order No. 66-86, Art. 33).

The Algerian legislator also added supplementary penalties for the offense of infringement of the rights of origin labels, which consist of the possibility of affixing the verdict in the places designated by the court at the expense of the convicted person, according to Article 30, Paragraph 02 of Order No. 76-65. The same applies to the offense of counterfeiting the design of integrated circuits, for which the legislator established supplementary penalties, including suspension of the verdict or destruction of the products.

As for supplementary penalties related to copyright and neighboring rights, they may consist of seizure of amounts equal to the revenues or installments resulting from the illegal exploitation of a protected work or performance, destruction of all equipment specifically created for the illegal activity, and all copied copies.

The verdict of conviction may be published in the newspapers designated by the court and affixed. The equipment or copied copies, or their value, may be delivered to the author or any other rights holder as compensation for the harm suffered. (Order No. 03-05, Arts. 157-158).

Conclusion:

It can be said that combining civil and criminal protection will significantly contribute to protecting the rights arising from intellectual property. The supplementary penalties attached to these rights are capable of ensuring non-recurrence and preventing the return to committing acts of infringement and unfair competition. Therefore, we recommend the following:

-The Algerian legislator should keep up with the ongoing development and digital revolution.

-Legal awareness of all segments regarding intellectual property rights should be increased, and all forms of theft and impersonation that undermine intellectual property rights in all their forms and types should be rejected.

-Intellectual property rights should be included in secondary and university education, in all majors and specializations, to serve as a reference for gaining scientific knowledge built on the ethics of scientific research.

-New mechanisms for protecting intellectual property rights should be introduced.

The infringement of intellectual property rights should be deterred, and even prevented before it occurs, given the significant importance of these rights in achieving the economic development of the country.

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