

Chapter 3

Pre-TRIPS and Intellectual Property Protection

in the GCC States



3.1 Introduction

The legal systems of the GCC states have undergone dramatic, radical and progressive change and development over the last thirty years or so, and that change is continuing. The major trend has been a greatly increased codification of law and administered regulation which entail increasing substitution of institutionalised procedures for the traditional informal, discretionary and often arbitrary exercise of authority.¹

The pre-TRIPS history of the progressive formulation of intellectual property legislative regimes in the GCC states illustrates a remarkable cycle of developments over an equally remarkably short period of time.² A generation or so ago, the level of effective intellectual property protection in the GCC states was virtually non-existent. None possessed any laws in respect of copyright and neighbouring rights or subscribed to any international or regional convention in respect of protection of literary works or author's rights. The position in respect of trademarks, patents or other areas of industrial property was hardly brighter, although some limited legislation was in place in a few states.

Concern and consequent legislative activity in respect of the protection of intellectual property rights existed primarily in relation to trademarks and trade descriptions, and then only in respect of a state's commercial dealings with expatriate and foreign traders and businesses. There was little, if any, concern in respect of patent protection, and nil concern or activity in respect of

¹ Nicholas Angell, "An Overview of Legal Structures in the GCC States", Legal500 Research Paper No. 3 (March 2002), 1; available at www.legal500.com/devs/emirates/cc/uacc_010.htm, last accessed 30 June 2005.

² For an excellent background to the state of pre-TRIPS intellectual property protection in the Gulf region, see Alastair Hirst, "Developing IPR in the Gulf: Current Coverage, Problems, Post-Uruguay Round Trends" (1994) 17(2) *Middle East Executive Reports* 9-14.

author's rights, and other areas of intellectual property such as plant varieties, geographical indications and the like.

Three distinct phases can be observed in the development of the GCC states intellectual property laws:

- laws enacted before independence or during a period of effective foreign control, and which are an extension of or subordinate to those foreign sources – the prime example being Bahrain's 1955 omnibus patents, industrial designs and trademarks of 1955, and Kuwait's intended equivalent 1958 regulation;³
- laws which were developed as part of a post-independence codification of commercial and civil laws, led by Kuwait as the first of the British protected states in the Gulf to achieve independence;
- more recent legislation, generated by the states' recognition of the necessity to become part of the international trade community, and the obligations on compliance with international protection benchmarks that accompanied such membership.

The hallmark of the pre-independence laws was a subordination to, or transplantation of, laws or regulations already in existence in other jurisdictions. The Bahraini 1955 regulation providing protection for patents, industrial designs and trademarks, for example, borrowed much from the

³ Strictly speaking, none of the then Trucial States (Bahrain, Kuwait, Qatar, and the seven emirates that subsequently became the UAE – Abu Dhabi, Dubai, Ras al-Khaimah, Sharjah, Ajman, Fujairah, Umm al-Quwain) were ever colonies, or even protected territories of the UK, although they were on occasion referred to as such in some laws (see Bahrain's Patents, Designs and Trade Marks Regulation of 1955, for example). Instead, they were recognised by the UK as sovereign states which, by virtue of various Agreements of Friendship, sought the protection of the UK against unfriendly intentions or acts by other countries, and which were accordingly deemed by the UK to be "Protected States". However, since their foreign relations and disposal of their lands were subject to prior UK approval, since resident UK subjects, foreigners and non-Muslims were subject to English law and authority under British extra-territorial jurisdiction, the states were subject to effective UK control. Hence the use of the term 'independence' to describe their newly acquired status in 1961 (Kuwait) and 1971 (Bahrain, Qatar and the seven emirates) is appropriate.

Indian pre-independence equivalent statute, and was generally dependant upon UK laws and processes to be valid and operable.⁴ The laws or regulations were not really directed towards purely domestic operation at a local level, except to the extent that they impacted on foreigners and expatriates relations with the local populace.

By contrast, the post-independence laws were largely developed by the respective GCC states with domestic needs and applications to the fore. However, they were still subject to external influences – but the influences were becoming more regional in nature and possessing a greater degree of Arabic character. Sources of laws were also becoming increasingly regionalised – partly as a consequence of the states taking advantage of the opportunities to interact with their fellow Arab countries through their memberships of regional Arab bodies such as the League of Arab States and the GCC. Kuwait's constitution and early laws, particularly its commercial code which incorporated provision for trademark protection, were largely based on Egyptian statutes, which in turn were based on French legal codes.⁵ And since Kuwait's codes and laws were already in Arabic and had already undergone a period of extended testing in the context of common usage, it is not surprising that many of them became models for the equivalent laws required by the other GCC states. The inconsistencies that could be observed in the equivalent laws across the other states largely arose as the states adapted the Kuwaiti models for their own particular perceived needs and use.

As the legislative regimes of the GCC states became increasingly codified, secularized and sophisticated, and as the states themselves moved at their own separate pace towards membership of the international trade community, they were obliged to address the standards

⁴ Bahrain, Patents, Designs and Trade Marks Regulation, No. 1 of 1955. The Regulation was derived from the British Indian patents statutes; see also below n 49.

⁵ The Kuwaiti constitution and the civil and commercial codes secular codes were drawn up largely under the guidance and influence of the eminent Egyptian jurist Abdul al-Rizzaq Al-Sanhouri; see Susan Rayner, *The Theory of Contracts in Islamic Law* (1991), 51.

and obligations relating to intellectual property protection required of by these bodies. New laws were introduced and enhancements were made to laws already in place, presaging the pending creation of the WTO and the introduction of TRIPS - for which WIPO was arguably the major source of influence by virtue of the legislative and other technical assistance it provided to the states. The suite of intellectual property laws enacted by Oman in 2000 is a prime example of this assistance. However, the developed countries with commercial interests in the Gulf region also endeavoured to bring considerable influence to bear upon the GCC states to conform to international standards of protection, particularly in respect of trademarks and copyright and neighbouring rights.

3.2 Early Regional Initiatives on Intellectual Property

Protection

As the following table so succinctly illustrates, the early 1970's saw little specific provision in place for the protection of intellectual property rights *per se*. Saudi Arabia had introduced a trademark protection law over thirty years earlier, in 1939. But Kuwait was setting the regional benchmark in respect of protection standards, with the introduction in the early 1960s of its patent and industrial design statute, and with its civil, commercial and penal laws which also gave some measure of intellectual property protection. By the mid 1970s Kuwait and Bahrain had already introduced and upgraded trademark protection laws, and Qatar had set plans in motion to introduce its own trademark law. Oman and the UAE, on the other hand, lacked any specific intellectual property legislation, and had little else by way of civil or commercial codes. None of the GCC states had any copyright protection provisions, although, as is discussed later,

other laws regulating publications and printing, and legal deposit of works, did enable some degree of protection – albeit by association rather than by design.

Table 1: Intellectual Property Laws and International Conventions in the GCC States up to the mid 1970s

		Bahrain	Kuwait	Oman	Qatar	Saudi Arabia	UAE
National Laws	Copyright	-	-	-	-	-	-
	Trade Marks	1955/1977	1961	-	1978	1939	- ⁶
	Patents		1962	-	-	-	-
	Industrial Designs			-	-	-	-
	Plant Varieties	-	-	-	-	-	-
	Geographical indications	-	-	-	-	-	-
	Integrated Circuits	-	-	-	-	-	-
	Undisclosed Information	-	-	-	-	-	-
	Legal deposit of works	1975	-	-	-	-	-
Printed matter	-	1961	1975	1968	-	1973	
Commercial codes	1971	1961	-	1971	-	-	
Bodies	League of Arab States	1971	1961	1971	1971	1945	1971
	GATT	-	1963	-	-	-	-
	WIPO	-	-	-	1976	-	1974
	WIPO Conventions	-	-	-	-	-	-
	- Berne	-	-	-	-	-	-
	- Paris	-	-	-	-	-	-
	- Rome	-	-	-	-	-	-
- Others	-	-	-	-	-	-	

Source: compiled by the Author

The Gulf states were also conspicuously absent from the signatory lists of the major international bodies and the conventions on intellectual property rights. Kuwait became a signatory to the WTO's precursor, the General Agreement on Tariffs and Trade (GATT), soon after independence, and remained the sole signatory from the Gulf region for over thirty years until Bahrain, Qatar and the UAE also became signatories just prior to the creation of WTO. Qatar and the UAE joined WIPO in the 1970's, again, soon after they each gained independence. Yet

⁶ The emirate of Ras Al-Khaimah introduced a trade mark registration statute in 1974.

none of the GCC states were signatory to any of the international treaties and conventions administered by WIPO, and in particular the Berne, Paris and Rome conventions. Nor had they utilised any of the model laws for the protection of intellectual property rights that WIPO had devised specifically for developing countries and which encompassed:

- inventions and know-how;
- marks, trade names, and acts of unfair competition;
- industrial designs;
- appellations of origin and indications of source.

All GCC states were members of the League of Arab States, Saudi Arabia joining in 1945 as a foundation member, and the other states joining progressively as they achieved independence. The League, with the assistance of WIPO, had sponsored the development of two model laws for League members, one in 1972 addressing patent protection, and the other in 1975 on trademarks, trade names, commercial indications and unfair competition.⁷ Again, none of the GCC states had taken advantage of the availability of this set of model laws to introduce or update their legislative regimes, although some of the other Arab countries, which were also members of the Arab League, had done so.

⁷ The Model Law for Arab Countries on Patents (1972) and the Model Law for Arab Countries on Trade Marks, Trade Names, Commercial Indications and Acts of Unfair Competition (1975) were devised by the Industrial Development Centre for Arab States (IDCAS), the organisation within the League of Arab States responsible for industrial property matters. The model laws were drafted with assistance from WIPO.

