

**Infidels at the Gates:
The Development of Intellectual
Property Protection Regimes in the
Arabian Gulf States, and the External
Forces that Shaped Them**

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Declaration

I hereby declare that the work herein, now submitted as a thesis for the degree of Doctor of Philosophy of the Charles Darwin University, is the result of my own investigations, and all references to ideas and work of other researchers have been specifically acknowledged. I hereby certify that the work embodied in this thesis has not already been accepted in substance for any degree, and is not being currently submitted in candidature for any other degree.



The Arabian Gulf

and the

Member States of the Gulf Cooperation Council

and their neighbours



“Infidels at the Gates”

Abstract

This thesis examines the performance of the Arabian Gulf Cooperation Council member states in protecting intellectual property rights, in the context of their accession to World Trade Organisation (WTO) membership, and compliance with the requirements of the WTO’s Agreement on the Trade-Related Aspects of Intellectual Property Rights and the international conventions upon which the Agreement has been built.

In the span of a single generation, the legal systems of the GCC states have undergone dramatic change and development - and that change is continuing. The change has been characterized by a major trend towards codification of laws, entailing increasing substitution of institutionalised procedures for the former discretionary exercise of personal authority largely based on local application of *Shariah* law. Nevertheless, the states’ intellectual property laws still contain idiosyncrasies peculiar to themselves and to the GCC, such as the status of *Shariah* law.

The driving force for the development of each state’s intellectual property regime has been primarily external, and hence a dichotomy has arisen between the formal expression in the legislation and its practical application through the enforcement efforts. The dichotomy arises because of the external pressures to adopt laws for which the states do not yet have the expertise, infrastructures or cultural mores to effectively execute to the level of satisfaction sought by the more demanding developed countries.

Even though the GCC states have regimes that are largely TRIPS-compliant, and have demonstrated a general willingness to address the complex issue of enforcement – albeit with mixed success - they now face additional pressures from developed countries, notably the United States, to adopt even higher standards of protection - TRIPS-plus standards. These standards are primarily aimed at protecting the particular interests of intellectual property rights holders from these developed countries. The pressure is applied through bilateral investment treaties and free trade agreements, which are then being promoted by the developed countries as representing the new international consensus on intellectual property protection standards.

There are some contentious areas of intellectual property rights of particular concern within the region that are not yet adequately protected, such as traditional knowledge and cultural heritage, and indigenous biodiversity. Accordingly, intellectual property protection in the Gulf region is still, in essence, “work in progress”, and future developments may hopefully change its character more in favour of the GCC states’ interests themselves. The question arises whether the states continue to succumb to the pressures, or whether they will be able to at least hold their own ground and perhaps to some extent outmanoeuvre the developed countries.



Acknowledgements

During the year 2000, the Sultanate of Oman embarked on the ambitious venture of enacting a full suite of intellectual property laws and attaining membership to the World Trade Organisation, an account of which appears in the following pages.

At the same time, I enjoyed the good fortune to be living in the Sultanate and being able to follow this ambitious venture at close quarters. I also experienced first hand the exciting challenge of working in an area of national development that was breaking new ground. Issues of intellectual property, particularly in the areas of copyright and trademarks were everyday challenges. I shall be forever beholden to the Sultanate and the Omani people for providing such tremendous experiences which acted as the catalyst for this project, and such wonderful memories.

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