

# DIREITOS DE PROPRIEDADE INTELLECTUAL NO ESPORTE E SEU SUPPORTO PARA HABILIDADES ESPORTIVAS COM ÊNFASE NO KUNG FU TOA-21

## INTELLECTUAL PROPERTY RIGHTS IN SPORTS AND ITS SUPPORT FOR SPORTS SKILLS WITH EMPHASIS ON KUNG FU TOA-21

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**Resumo:** Desde que várias ciências diferentes entraram no domínio do desporto, resultando na comercialização do primeiro, o desporto é hoje referido como a indústria do desporto. Nesse sentido, as relações entre as pessoas se tornam mais complicadas e essas relações sociais causam certas necessidades comuns cuja satisfação estará vinculada a certos direitos e deveres. Assim, regras e regulamentos, juntamente com seus requisitos de aplicação, entrarão no domínio dos esportes com o objetivo de apoiar os indivíduos e criar ordem. Estas regras consideram certos direitos materiais e espirituais (IP) para as pessoas na sociedade de esportes, envolvendo as indústrias esportivas. Entre os exemplos de direitos de propriedade intelectual no esporte, esses direitos incluem os dois temas de movimentos esportivos e métodos esportivos. No entanto, em relação ao estabelecimento de esportes especiais, ambos os fatores acima mencionados desempenham papéis efetivos. O objetivo do presente estudo foi investigar a maneira pela qual os direitos de propriedade intelectual entraram nestas instâncias e apoiá-los; além de especificar as regras que cobrem esses direitos no Irã, bem como a inclusão do Kung Fu Toa-21 pelas regras anteriores.

**Palavras-chave:** Esportes (Indústria Esportiva), Propriedade Intelectual, Habilidades Esportivas, Esportes Especiais (Kung Fu Toa-21)

**Abstract:** Since various different sciences have entered the domain of sports resulting in commercialization of the former, sports are nowadays referred to as the industry of sports. In this sense, the relationships between people become more complicated and these social relationships cause certain common needs whose satisfaction will be bound to certain rights and duties. Hence, rules and regulations along with their enforcement requirements will enter the domain of sports with the aim of supporting the individuals and creating order. These rules consider certain material and spiritual rights (IP) for the people in the society of sports, involving the sports industries. Among the instances of intellectual property rights in sports, these rights include the two subjects of sports moves and sports methods. However, regarding the establishment of special sports, both of the aforementioned factors play effective roles. The aim of the present study was to investigate the manner through which intellectual property rights have entered these instances and support them; in addition to specifying the rules that cover these rights in Iran as well as, the inclusion of the Kung Fu Toa-21 by the former rules.

**Keywords:** Sports (Sports Industry), Intellectual Property, Sports Skills, Special Sports (Kung Fu Toa-21)

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## Introduction

Human civilizations have constantly been familiar with the phenomenon of sports; however they have adopted different approaches towards it. Some of these civilizations proudly considered sports and athletes as the symbols of their military preparedness. Some other civilizations considered sports as instruments of entertainment and some others, viewed sports as suitable methods for both physical and spiritual excellence.

In the current era, in addition to considering sports as symbols of spiritual and physical excellence, tools for entertainment and, as signs of military preparedness; nations also use sports to export their culture and civilization to other countries.

The expansiveness of the domain of sports and its technical variability, professionalization and generalization of sports and, envisaging sports as a constitutional public right in most countries have faced sports with a great revolution to the extent that sports is currently referred to as the industry of sports. In many countries, this industry has been able to play a significant role on the level of gross domestic production (GDP).

Since in a similar way to other fields of science, the field of sports has been growing in a chain form, the innovative figures of the domain of sports have made several new achievements through making use of the antecedent knowledge. Providing sport innovations with legal support not only persuades the initiators, but also results in smoother flows of creativities and ultimately, in growth of sports, employment and profitability. In addition, respecting their work and activities would be a desirable and nice thing to do.

After pulling through the inflicted war, the Islamic Republic of Iran has constantly been trying to reduce government involvement and to run its industries through investing in the private sector; however there has always been one basic issue in this path which is the necessity of existence of economic motives for investment plus the boundaries of the former. Unfortunately, in the past few years and due to the lacking of the required infrastructures, the process of privatization is proceeding slowly. As a result, the industry of sports too, has been facing the mentioned issues because of lack of sports specific laws; whilst in the midst of the global evolutions, our sports fields have sufficed to a merely superficial change, being mere carriers of the title of professional.

The present paper considers lack of existence of legal infrastructures (Sports Specific Laws) as the most important reason regarding the field of sports and investigates intellectual property rights in sports and its support for sports skills with emphasis on the field of Kung Fu Toa-21.

The present study aims to investigate the process of movement of sports towards the science of law in addition to the investigation of the place of intellectual property rights in sports. In other words, if we tend to use the support provided by intellectual property rights for making progress towards the goals of the industry of sports, first of all we should dissipate the ambiguity regarding the parts of the industry of sports that can be supported by intellectual property rights; so that specific legal requirements are taken into consideration on this basis.

Hence, among the instances of intellectual property rights in the industry of sports, the subject of the present study is chosen to be the sports skills (sports moves and methods) in the establishment of special sports fields with emphasis on the field of Kung Fu Toa-21.

It is worthy of mentioning that although intellectual property rights have instances in the side industries of the industry of sports such as the industries of sports tools and equipment, the author of the present study has chosen to investigate the upper-mentioned instances in a particular area of the industry of sports.

The main method applied in the conduction of the present study was library studies through which the required research data have been collected through studying and reviewing various books, theses, articles, public courts' verdicts and those of the administrative justice tribunal available in libraries and on the internet.

## Review of Literature

The first research regarding providing support for sports skills, sports moves in particular was published in 1996 in the National American Journal by Robert Constant. From this point on, lawyers became more courageous and entered this domain; as they still are there. Nader Shokri (2012) in his book titled as "sports rights – investigation of the order governing Iranian Sports Rights", on

the page 181 states: safeguarding intellectual property in sports and being aware of the various aspects of authorized use of others' intellectual property are the main mechanisms involved with the progression of modern businesses in the industry of sports. This is because providing support for intellectual property is a tool for development.

In spite of the high importance given to the place of intellectual property (IP), many practitioners of the field of sports and even many of the athletes are either unaware of their ownership of their IPs or, are uneager to provide their IPs with a strict support.

Hekmatnia Nia, Mahmoud & Khoshnevis (2009) published an article under the title of "instances of intellectual property rights in the industry of sports". In this article they have stated: sports moves are referred to as the movement of the whole or part of the body of athletes in the field of competition or in showoffs both in individual and team forms (Weber, 2000: 32). In order to be able to envisage sports moves in intellectual property rights, we must divide them into routine and creative moves based on the index of existence of innovation and creativity in every move. Sports methods are also invented by sports experts and are then exposed to the athletes. Providing legal support for sports methods can be taken into consideration as a specific area of legal support for sports skills.

### First Word: IP in Sports

Considering the definitions provided for physical education, sports, playing, sports events, skills and kinesiology and the views of intellects, philosophers, poets and scientists including Moein, Firdausi, Sousanis, Ohadi, Hussein Ibn Ali, Bihaghi, Molina, Vaez Kashfi, Rabi Ibn Ahmed, Avicenna, and Seyed Ismail Jorjani, Ibn Khaldoun, Imam Khomeini, Dr. Beheshti, martyr Bahonar and Dr. Seyed Reza Pak Nejad, it is concluded that all of these concepts and figures emphasize on the enforcement of physical and spiritual potentials with reliance on skills and mechanical and physical moves of human body. On the one hand, the influence of science on sports and specialization of sports and ultimately industrialization of sports and consequent markets and employments, make it necessary to provide certain rules and laws for the industry of sports. Since no specific laws have been envisaged for the domain of sports, there are very few studies that elaborate on laws in sports. The first article published related to the provision of legal support for sport skills was the 1996 article published in the National American Journal by Robert Constant. From this point on, lawyers became more courageous and entered this domain; as they still are there.

By taking a look at the definition of IP provided by the World Intellectual Property Organization (WIPO) (Mir Hoseini, quoted from WIPO), which follows French Civil Code, we will find out that IP covers actions, creativities and scientific, industrial, literary and artistic creations. In the country of Iran, intellectual property rights have been envisaged with two primary aims:

- 1 - Legal expression of intellectual rights and economic rights of creative individuals relating to what they create, as well as the public rights of access to these achievements.
- 2 - Development and propagation of creativities and application of the results of these creativities as well as promotion of fair trade, as something that would be effective on both economic and social growth.

Provision of this support is followed by the following consequences for the society:

- Creation of incentive for innovation and resultantly, creation of a context in which innovation is rewarded.
- Persuasion towards exploration of methods for production and distribution of the existing products with less costs
- Persuasion towards provision of products, technical knowledge and new services that are less risky and more effective
- Creation of incentives for the domestic markets through acceptance and optimization of products and existing technologies; as well as persuasion towards transferring individual technical knowledge
- Entrepreneurship in both basic and supporting industries at all levels
- Provision of higher quality work forces who are made more familiar with technics through in-service training
- Increase of new capitals that can be put in motion with the aim of achievement of

further economic development

National laws that have been passed regarding provision of support for intellectual property rights:

- 1 - Law of patents and trademarks (1931); the amendment of the regulation of enforcement of law of patents and trademarks (1958).
- The regulation of mandatory installation and registration of industrial signs (1949).
- The law of registration of plant varieties (2003).
- The law of preservation of geographical signs
- The law of preservation of rights of authors and artists (1969).
- Criteria of obtaining a license for herbal medicines
- Criteria of production of new medicines; driven from the Islamic Punishment Law passed in the same year as the regulation of medicine production
- Regulation of production of biological products for humans
- Regulation of producing and importing medicine (1987)
- Patent, industrial designs, logos and trademarks application

Conventions Iran has joined in the domain of intellectual property rights include the Lisbon Agreement on preservation of geographical signs, Madrid Agreement (geographical signs), Madrid Agreement (trademarks), Paris Convention and, the World Intellectual Property Organization (WIPO).

One of the instances of legal support is the article 2 of the law of preservation of rights authors and artists. The §10 of this article is the point of interest of the present paper, being comprised of provision of support for creative works that are based on the folklore or cultural heritages and or the national arts.

Since this law has not provided any specific definition for the word Folklore, we must seek for the definition of this term in the views and theories of experts and researchers of this field. In Iran, the word Folklore has always had an extensive range of meaning while also pointing to traditional knowledge. Folklorists of Iran still use this word with all its traditional conceptual extensiveness. Nonetheless, the definition of Folklore provided in international documents has helped with the dissipation of this conceptual ambiguity.

### **Characteristics of Folklore**

Several characteristics have been pointed out regarding the instances of folklore. Some of these include:

- a) It is transferred from a generation to another, either in oral form or in form of texts and or through mocking;
- b) It reflects a society's social and cultural identity
- c) It is comprised of special elements of heritages of a society
- d) It is created by anonymous creators, the members of society and those who have been privileged by their societies
- e) Instead of commercial goals, most of them are expressed for cultural and religious goals
- f) It is continuously developing, expanding and recreating within the society

### **Concepts Similar to the Instances of Folklore**

Other than the folklore, there are also two other similar terms that some people consider them as equal to folklore.

- a) Folklore Driven Work: it is a work that is due to a folklore instance but is not the folklore itself. Such as anthologies of folklore instances
- b) Folklore Inspired or Folklore Based Work: it is a work created by a creator in which the form of folklore instance is no longer the dominant factor and is only considered as the background of the effect. Here, the creator uses his/her talents and abilities to create an original work that possesses the spiritualities of a folkloric work. As it was mentioned before,

these two types of work are different from the folklore instances, however in some cases they have been considered as instances of folklore. For example, in the meeting of “committee of experts of UNESCO regarding provision of legal support for instances of folklore” (1997) that took place in Paris, it was believed that folklore is comprised of the real instances of folklore and folklore driven works and folklore inspired works and the modern public and folkloric ballads.

### **First Word: the Kung Fu Toa-21 Sport Field**

Kung Fu Toa-21, a special set of skills and moves in martial arts based on the science of physical education and in some cases, based on myths, philosophies, social traditions, cultures and religions, was created by Dr. Ahmad Salami Khan Shan. The executive statute of this field of sports was approved by the federation of martial arts and once the Kung Fu federation was formed in between 2003 and 2005, Kung Fu Toa-21 became one of the constituent fields of the federation of martial arts.

In 2006, the Kung Fu Toa-21 association of the ministry of interior formed the Kung Fu Toa-21 association of the ministry of science while also obtaining the license for education of coaches of Kung Fu Toa-21. The former sports field has over 2000 coaches and in the global scenes, some achievements of this sports field include the establishment of the Kung Fu Toa-21 association and registration of it in the patents center of the country of Finland; obtaining a dedicated scientific sports journal; registration in EC and registration in UNESCO.

### **Kung Fu Toa-21 and sciences of physical education and sports**

Considering for 7 scientific principles in the statute of the Kung Fu toa-21 and establishment of a major in the University of Applied Sciences, establishment of the Kung Fu Toa-21 association in the ministry of science, obtaining a global scientific sports journal for Kung Fu toa-21, holding scientific seminars and explanation of the scientific basics embedded in the principles of this field of sports as well as execution and institutionalization of the findings and conclusions of the held seminars. In the rest of this section of the present paper, we will focus on the following principles:

- 1 - Physiology;
- 2 - Medicine;
- 3 - Psychology;
- 4 - Science and history;
- 5 - Philosophy;
- 6 - Spirits;
- 7 - Zen

Section 1: Physiology; physical activities based on 73000 technics, integration and reaction creation

Section 2: Medicine; physical and chemical realization of the body, based on mathematics, science of neurology and acupuncture

Section 3: technologic psychology; known as identification of moves and the pace of thought between self and divinity

Section 4: Science and history; referring to physics, mathematics and chemistry. Exploration of antecedent science and cultures

Section 5: Philosophy; intellectual views. The philosophy became the creator of human thinking in order to make the human aware about the instances of life

Section 6: Spirits; the realization of the levels of perfection of the psyche

Section 7: Zen; exploration of the secrets of the unknown, intellectual maturity in the field of finding a way to the hidden world and the realm of meaning

### **Considering these Sciences as Fundamentals:**

The body is considered as the base of thinking while giving to it a perceptive characteristic regarding the geometric secrets, energy production and touching of waves in the huge laboratory of human body. The body academy of Kung Fu Toa-21 is based on 73000 technics, in addition to the

integration and reaction creation and, wavelike influences on the self and planets to the extent of creating physical and physiological powers in human body. This field of sport has always sought to understand the secrets of human physics. In addition, it looks for the best suited physical or bodily powers in the world with emphasis on compassion and mercy. It also tries to perceive the conditions of living things in addition to trying to think about the evaluation of the body through acupuncture, neurology, physiology, and both physical and chemical characteristics based on mathematical calculations. Nevertheless, the basics of the academy of Toa also include a new exploration in the reflection of the material world and psychosis on the principles of this academy. On this basis, 21 skilled movement levels are designed and executed. Each level is referred to as a line and there are philosophical, cultural and, religious attitudes entangled with each line. Due to lack of space, the following points out only two of these issues in brief.

## Phoenix



The phoenix is a mythical bird which has been in a high place in the views of literati and philosophers since the very beginning of its emergence. In the religion of Zartosht and the works remaining from Iranian Sufis, it has been regarded as the most perfect being. In addition mystics such as Sheikh Faridodin Attar Neishabouri consider the phoenix as the source of grace and human beings' life. In fact many of the past philosophers and theologians made efforts to realize the entire aspects of phoenixes' being.

In Iranian culture, phoenix is the symbol of wisdom and similarly, in Kung Fu Toa-21 which is driven from the same rich Iranian culture, the image of phoenix has been used. In this sense, after obtaining the green scarf, the symbol of phoenix would be attached to the left side of the torso while the fist logo is removed from the torso and moved to the left arm. The logo of phoenix with a sword is driven from Firdausi's Shahnameh. As one interpretation, this sword is a symbol of the fighting power of Iranians while also being considered as the symbol of preservation of values of Toa. The fact that the sword is elongated over the head of the phoenix and goes all the way past its feet shows the insatiableness in ascension towards wisdom. The most important thing is that in this symbol, the phoenix holds the sword with its beak and claws; so that the fighters will always remember that the Iranian martial art of Kung Fu Toa-21 must preserve with their teeth and grip. This sword is interpreted to be the same as the pariah that was given to Zale by Phoenix; however it is a pity that the phoenix and its feathers have long been forgotten...

## Yin and Yang in Kung Fu Toa-21

Nothing static can be found in the world. Every action is followed by a reaction and every form in this world has seeds of evolution inside it. The search for an answer for the infrastructural secret of the motion of the world and its constant evolutions cover both the physical and supernatural worlds. The symbol of Tao talks about the law of metamorphosis. When a seedling grows, there is death and destruction hidden in between its beautiful leaves, since it surely will dry out and die at some point. The world is an endless beginning and an ending without a start. Every second the world adopts a more beautiful face and shows the greatness of the life. The symbol of Tao is an expression of day/night, cold/warm, winter/summer, positive/negative, black/white, leader/follower and etc. if there was no night, no one would become aware of the greatness of the dat.

And in case of our breathing, if there was no inhaling, there would have been no exhaling either. The small circles in the white and black sides of the Tao symbol are symbols of seeds of evolution.



Darvima philosophy in Kung Fu Toa-21 has a symbol that is attached to the right arm side. It means perception and understanding of spiritual and physical effects through principles, relationships, technics and reaction-creation for skills and moves. In Kung Fu Toa-21, it is in expression referred to as Darvima (Ideality). It was around the year 677 when Sheikh Shahaboddin Abolfotooh Yahya Ibn Habashi in his epistle titled as The Sound of Gabriel's Wings wrote: Gabriel has two wings; one on the right side which is the mere lightness; a righteous one. It also has another wing on its left side which is the symbol of darkness like a shadow on the moon. It is similar to a peacock's feet. It is a sign of being, which contains some sort of destruction within. This is the sign of the two different senses of the two wings.

## Conclusions and Suggestions

- 1 - The Kung Fu Toa-21 field of sport can have a positive effect on the folklore. In addition, considering the genuineness of the work and its principle of supporting with no formalities, the principle of lack of importance of the characteristics of the work will be supported by the intellectual property rights law.
- 2 - Kung Fu Toa-21 is a skill and movement based work that is based on the basic knowledge of the science of physical education in addition to philosophies, stories, myths, religious cultures and beliefs of societies and most important than all, based on the knowledge and expertise and experiences of the creator of this work. In addition, when compared to other fields of sports, the specialness and distinction of Kung Fu Toa-21 becomes evident.
- 3 - Having an NGO in the UN that is registered in the patents system of the country of Finland, and having obtained an NGO license from the country of Iran, the association of Kung Fu Toa-21 has obtained the necessary licenses for its activities and therefore, the rights of the coaches and trainers of this field of sports are envisaged in verdicts of public courts. In other words, any person who is somehow related to this field of sports can ask for his/her rights from the WIPO no matter what his/her nationality is or if he/she is a member of the WIPO.
- 4 - Since the latest achievement of the Islamic Republic of Iran in the context of IP was the establishment of a national academy in this context, whose license was issued in 2015 after several negotiations between the I.R.I and WIPO, the council of ministers, according to the decree number 161756/T52479H (2015), identified the ministry of justice as the national reference for the academy of intellectual property. Some of the tasks of this academy are making efforts towards creating culture and institutionalization of intellectual property as well as reinforcement of public collaboration in the domain of IP. Hence the public association of Kung Fu Toa-21 can ask for registration of this spiritual work through the aforementioned committee.
- 5 - One supportive organization that is independent from the organization of physical education and the ministry of sports and youths, which has the potentials for having activities in the form of a national federation due to the numerous innovations and creativities that have been offered regarding it, is the national committee of Olympics which is undertaking activities in order to spread this field of sport to other countries as well.
- 6 - Iranian active federations are divided into two types of supportive and executive organizations based on their manner of formation and their athletic activities.

- Supportive organizations play a supportive role for the innovations and creativities that are brought by the activists of specific fields of sports.

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