

## *A Short History of Copyright in the West, in the Ottoman Empire and in Turkey*

### **Batı Dünyası, Osmanlı İmparatorluğu ve Türkiye’de Telif Hakları Tarihçesi**

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#### **Abstract**

*The legal regulations concerning copyright came into existence as a result of certain historical developments. One of the most important agents in the historical process of copyright was the introduction of printing press. The advent of the printing press, which has been a magnetic topic in the discussions about the “history of the book”, played a crucial role in the development of copyright on the global scale. Therefore, in order to understand the historical process, it would be worthwhile to look at the evolution of copyright in Europe, in the Ottoman Empire and finally in Turkey.*

**Keywords:** Copyright; printing press; Europe; Ottoman Empire; Turkey.

#### **Öz**

*Telif hakları ile ilgili yasal düzenlemeler bazı tarihi olaylar sonucunda ortaya çıkmıştır. Telif haklarının tarihi gelişiminde en önemli etkenlerden birisi matbaanın bulunması olmuştur. ‘Kitabın tarihçesi’ ile ilgili tartışmalarda çekici bir konu olan matbaa, uluslararası arenada telif haklarının gelişmesinde çok önemli bir rol oynamıştır. Bu sebeple telif haklarının geçirdiği tarihsel süreci anlamak için, bu sürecin gelişimini Avrupa, Osmanlı İmparatorluğu ve Türkiye ekseninde ele almak uygun olacaktır.*

**Anahtar Sözcükler:** Telif hakları; matbaa; Avrupa; Osmanlı İmparatorluğu; Türkiye.

#### **History of Copyright**

Today’s copyright laws are the result of certain social events that took place throughout the history. It is generally acknowledged that the history of copyright starts with the introduction of the printing press. In the ancient times or middle ages the concept of copyright did not yet take shape, although there were certain regulations even before the concept of copyright emerged. In ancient Roman law, for instance, there were no regulations about copyright. During the middle ages most of the works of art were still anonymous and texts were still copied by hand; accordingly, only a limited number of texts were produced. Besides, the number of literate people were limited. Therefore, cases concerning intellectual property seldom arose. Copying in great numbers was only possible with the advent of printing press. It caused to produce copies of texts in large numbers. It also resulted in the increase of literacy. Hence, it seems that the evolution of copyright is strongly linked to the introduction of printing press. As a result, books became more common and cheaper. A market for books came into existence and it enlarged day by day. Eventually, some form of regulation was needed in order to protect the rights of people

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who contributed to the creation of wealth of art and knowledge.

The printing press was first introduced into Europe in the fifteenth century, by Johannes Gutenberg in 1450. It was then introduced into England by William Caxton in 1476, 234 years before the *Act of Anne*, the first legal statute about copyright, came into force. The introduction of the printing press enabled the printing of copies in large numbers. The immediate result was the widespread circulation of knowledge and a tremendous increase in the number of literate people (Legat, 1995).

The first legislation concerning copyright came into force in England in 1710. *Statute of Anne 1710*, “An Act for the Encouragement of Learning, by Vesting the Copies of Printed Books in the Authors or Purchasers of such Copies, during the Times therein mentioned”, was the first statute accepted by a government in the world. When the *Statute of Anne* came into force, the act granted a 14 years of protection (Torremans, 2008).

In the early history of copyright law, granting privileges and monopolies to printers and publishers was a commonplace activity. Until the introduction of Statute of Anne there were certain privileges and monopolies in England. For instance, in 1518 a copyright privilege was given to the King’s Printer, Richard Pynson who was the successor to William Caxton. The privilege meant a two years monopoly. As printing became more and more common, a guild, Stationers’ Company, was established. The organisation held the monopoly to press books. That means, in order to be able to press a book, one has to be a member of the said organisation. The Licensing of the Press Act 1662 gave the Stationers’ company the power to control the printing presses. However, the monopoly held by the members of the organisation ceased to exist in 1694, as a result of the action taken by the English Parliament. Furthermore, after the *Act of Anne*, which came into force in 1710, booksellers lost an important power they had previously. As Patterson (1968) states;

*Autorship came of age in eighteenth-century England as a respectable profession, and it would be fitting to think that the first English copyright statute was enacted in 1709 to benefit such authors as Pope, Swift, Addison, Steele and Richardson. Fitting perhaps, but hardly accurate. The Statute of Anne was a trade regulation statute enacted to bring order to the chaos created in the book trade by the final lapse in 1694 of its predecessor, the Licensing Act of 1662, and to prevent a continuation of the booksellers’ monopoly* (Patterson, 1968, pp. 146).

Watt (2007) states that in the eighteenth century, booksellers, especially in London maintained a very strong financial and social position. Up to the time the *Act of Anne* came into force, the booksellers owned the rights of books they published forever, but after the *Act of Anne* their monopoly was limited. As Stern (2012) discusses,

*For the booksellers perpetuity was the key. Until 1695, they had enjoyed a perpetual right, and so they regarded the limited term of protection in the 1710 statute as illegitimate. Their preferred approach was to show that copyright had existed at common law before the*

*statute was passed* (Stern, 2012, p. 39).

The copyrights issued by the *Statute of Anne* started to expire in 1731. As a result of this, the booksellers in London applied to Court of Chancery in order to continue to hold the rights of the books they had been printing. A copyright law suit known as *Midwinter v. Hamilton* (1743-1748) signalled the beginning of a period known as the “battle of booksellers” which lasted 30 years. The booksellers first applied to the Parliament. When their plea to extend the length of copyright was rejected, they tried their chance with the court. Their argument built on the fact that copyright existed before the Statute of Anne and it was perpetual, not for a limited time.

In a law suit known as *Donaldson v Beckett*, Lord Camden rejected common law copyright, which dictated perpetual copyright, and he warned the lords that “all our learning will be locked up in the hands of the Tonsons and the Lintons of the age”. Moreover he warned that booksellers would then set upon books whatever price they pleased “till the public became as much their slaves, as their own hackney compilers are”. He stated that “Knowledge and science are not things to be bound in such cobweb chains”. A similiar lawsuit known as *Wheaton v Peters* took place in the USA in 1814. It was also the first legal case about copyright held at the United States Supreme Court (Saunders, 1992).

One of the publishers in London, Andrew Millar bought the rights to Thomson’s *The Seasons* in 1729. When the term of copyright protection granted by the *Statute of Anne* expired, Robert Taylor, another publisher, started to publish the copies of the Seasons himself. Then, Millar sued Taylor. The court’s decision was that a perpetual copyright existed under the common law. Although Millar won the case, it did not last long. After Millar, Thomas Becket purchased the right to print. When Alexander and John Donaldson started to produce unlicensed edition of the *Seasons*, it was not difficult to get an injunction to hinder the Donaldsons from publishing the afore said book. However, House of the Lords eventually concluded that there was no copyright under common law or a perpetual copyright.

Jacob Tonson, an eighteenth century English bookseller and publisher, a phenomenon as Christianson (1968) describes him, and “the greatest wheeler-dealer British bookselling has ever produced” (Gaba, 1976, p. 15), is best known for purchasing the copyright on Shakespeare’s plays. Tonson and his family published editions of the collected works of Shakespeare. Gaba (1976) discusses that Tonsons’ efforts in publishing Shakespeare paved the way for the growth of Shakespeare’s popularity and the critical study of his work. By the second half of the century, Shakespeare had become Britain’s national poet. Saunders (1992, p. 41) relates the fact that Shakespeare had not been an important enough writer to be pirated before Tonsons’ efforts made him famous.

In retrospect, when Shakespeare was producing his literary works, there were none of the legal legislations we have today. Therefore, writers were free to use sources without bothering about copyright infringement. Shakespeare, for instance, is known to use existing sources for his plays. To give an example, for one of his plays, *Othello*, he made use of *Hecatommithi*,

a novel by an Italian author, Giraldi Cinthio (1504-1573). The novel was published in 1565 and Othello was first performed in the early 1600s. Given that Cinthio died in 1573, when Othello was performed it was more or less 25 years since the author was dead. If we apply the current copyright law, which states that a work has copyright protection for author’s lifetime and 70 years after his death, it was possible for the heirs of Cinthio to sue Shakespeare. Even if Shakespeare was producing work of art in keeping with his time’s conventions and laws, today the matter is totally different. Under the given conditions, it is obvious that Shakespeare was infringing on Cinthio’s work from today’s point of view. In the light of all the facts introduced here, we can reach the conclusion that with the laws concerning copyright, other writers of his time could have been able to take Shakespeare to the court with the claims of infringing on their works. Put another way, a contemporary writer is not provided today with the same means to produce literary texts as in the age of Shakespeare.

Saunders (1992, p. 106) notes that piracy was a ‘German phenomenon’ as printing once had been. Indeed, Brantingham (2001, p. 369) emphasizes the fact by saying that ‘In Goethe’s day, pirated editions were as common as leaves on trees’. The fact that Goethe’s works were pirated took Goethe by surprise as he did not expect to be so popular as to be pirated.

With the Copyright Act of 1842 in UK, authors received a protection of lifetime and seven years after death. Another English law, Copyright Act of 1911, repealed all previous copyright legislation that had been in force in the United Kingdom. The Act also introduced changes in accordance with the first revision of the Berne Convention for the Protection of Literary and Artistic Works in 1908. Copyright Act of 1956, brought the copyright law in UK in line with the international copyright law and technological developments.

While Copyright, Designs and Patents Act which originated in UK in 1988 introduced some new legal concepts, it preserved some other legislations accepted by previous conventions. On the one hand, new legal concepts such as moral rights entered into the copyright legislations. As a result, the authors obtained the right to protect their work against derogatory and offensive treatment. On the other hand, the act in question did not change the fifty year period of protection given to authors previously (Legat, 1995).

Even though the copyright is for a limited period of time, there are some exceptions. The Authorized King James Version of the Bible in the UK has a perpetual copyright. Although the copyright protection for J.M. Barrie’s Peter Pan expired, royalties are still to be paid for performances in UK to Great Ormond Street Hospital as Barrie gave his work’s right to the hospital. Another exceptional case might have to do with the sentimentality of a printer toward the heirs of a writer. In France, La Fontaine’s maiden granddaughters were granted an exclusive privilege on their great-grandfather’s Fables, which in fact was at the time, in 1761, in public domain. Malesherbes gave a permission to the heirs of La Fontaine because they were very poor. This act of Malesherbes, of course, created a great unrest among Communauté printers and booksellers (Saunders, 1992, p. 90).

After discussing the historical progress of copyright in the West, we can turn to east, or the Ottoman Empire and the contemporary situation of Turkey.

### Copyright in the Ottoman Empire

The printing press was introduced into the Ottoman Empire by İbrahim Müteferrika (1674-1745) who was of Hungarian origin. He was a printer, publisher, writer and translator. He is known to be the first to found a publishing house and publish a Turkish book. However, the printing press had already been introduced to Ottoman Empire by Spanish immigrants David and Samuel İbn Nahmias in 1493, 234 years before İbrahim Müteferrika. Novelties such as italics, page design, using capitals were introduced by an Italian family, Sonsino, who settled in Istanbul in 1530. Yet, the latter two probably referred to minorities, whereas since Müteferrika published a book in Turkish, it might be more convenient to assume that he introduced the printing press into the empire as his publications addressed to the Turkish-speaking majority.

In the Ottoman Empire religious law and a secular legal system coexisted. Islamic Law, which was developed out of Qu'ran, the Hadith and customs, was in force for the muslim subjects of the Empire. There was also non-muslim religious law systems in existence. Although non-muslim subjects were free to use their own religious laws, they also sometimes preferred to go to Islamic law. In the nineteenth century the Ottoman legal system went through a reform based on the French models. The introduction of a legal system in the European sense took place after *Tanzimat* (1839-1876), which means reorganization, a period of modernization. Copyright is acknowledged by the Islamic Law. However, the first document to endow copyright upon writers is in the year of 1850 with the *Statute of Encümen-i Daniş*. *Encümen-i Daniş* (1851-1862) was a scientific organization which sought to increase the cultural level of the society, translate scientific texts into Turkish and prepare books. In 1857, *Matbaalar Nizamnamesi*, a set of rules governing printing offices, came into force, which provided writers with a lifetime copyright protection and included regulations concerning censorship.

Although copyright as a term was first mentioned in written documents in *Encümen-i Daniş*, the concept was recognized by Islamic law. Karaman (2003) states that in Islamic law copyright was recognized, yet it is not a property that can be sold. The concept of copyright as a tangible good was not seen to be in keeping with the Islamic law. The intellectual property was regarded differently than tangible goods. However, after the *Tanzimat*, as a result of the modernisation, the purchasibility of copyright was interpreted again to be in keeping with the European models.

### Turkey

In Turkish Republic, The Turkish Civil Code, which takes Swiss Civil Code as a model, came into force in 1926. When legal regulations concerning copyright is taken into consideration, we can say that Turkey recognizes international treaties addressing copyright.

In today's world, although copyright laws are territorial, there is a certain standardization

through international conventions. One of the international agreements concerning copyright law is Berne Convention, which was accepted in Berne, Switzerland in 1886. Berne Convention gives authors a protection of lifetime and 50 years after their death. The convention has gone through revisions many times over the years. Initially there were only nine signatory countries; namely, United Kingdom, Belgium, France, Germany, Italy, Spain, Switzerland, Tunis and Haiti. Today, the number of signatory countries is many times more than the original nine. In Turkey, Berne Convention Berlin Act 1908 and Berne Additional Protocol 1914 came into force in 1931, Brussels Act 1948 in 1952 and Paris Act 1971 came into effect in 1996. Today, Turkey is one of the 168 states that are parties to the Berne Convention. Another international agreement is the Universal Copyright Convention, which originated in 1952. The symbol used for copyright was introduced by UCR. Although the utilisation of the symbol is not necessary today, it is still used partly out of habit, partly as a warning. World Intellectual Property Organization, WIPO, was founded in Stockholm in 1967. The latest convention accepted by WIPO in 1996 is also signed by Turkey and came into force in 2007.

In conclusion, the laws concerning copyright were not always in existence as we know them today. They were shaped through the historical developments. The history did not flow in one direction in each and every country and, therefore, the laws about copyright today are territorial, changing from country to country, or in the case of USA, from state to state. Yet, a substantial amount of progress has been made since the invention of printing press. However, copyright is an area about which arguments still go on. Earlier in this century, Chaffe (1945, p. 503) described the state of copyright in an interesting way:

*Copyright is the Cinderella of the law. Her rich older sisters, Franchises and Patents, long crowded her into the chimney-corner. Suddenly the fairy godmother, Invention, endowed her with mechanical and electrical devices as magical as the pumpkin coach and the mice footmen. Now she whirls through the mad mazes of a glamorous ball.*

It is obvious that the problems encountered during the age of printing press are nowhere to compare with the problems we face today in the age of internet. The history of copyright which is said to commence with the introduction of printing press has reached to present day with developing technology always adding new concepts, arguments and problems into the field.

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