Copyright in Islamic Law Project*

İslam Hukukunda Telif Hakkı Projesi

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In 2020, a group of researchers—led by Ali Ekber Cinar and including team members Eyüp Kun, Mustafa İnce, Mücahide Engin, and Yavuz Selim Kol[1]—initiated the "Copyright in Islamic Law Project" under the auspices of the ISAR Research Center.[2] The project was launched in response to growing interest in the concept of copyright within the framework of Islamic law. The project aimed to explore the meaning of copyright in the context of Islamic law, uncover its historical origins, understand its justifications, and identify the issues it addresses. The project has been expanded into several phases, including a reading group, a series of workshops, guest lectures, and a symposium.

1   In the early stages of the project, İsmail Dönmez also contributed to the team.
2   The ISAR Research Center's website can be accessed at https://arastirma.isar.org.tr/.

1. Reading group: Legal, Philosophical, and Historical Foundations of Copyright (December 2021-December 2022)

The first phase of the Copyright in Islamic Law Project involved the formation of a reading group, the "Reading Group on the Legal, Philosophical, and Historical Foundations of Copyright." Comprising researchers from various fields, the group carried out an in-depth study of how copyright law has evolved in the Western world and looked at the concept from intellectual, legal, and historical angles.[3]

More specifically, this stage involved a detailed examination of how copyright law developed in both Anglo-Saxon and Continental European legal systems. By analyzing court rulings, legislative milestones, and scholarly research, the participants mapped out the growth and changes in copyright legislation over time.

Following that, the group's monthly meetings focused on exploring different theories of copyright law. They delved into various concepts to deepen their grasp of the core principles behind copyright. The group compared theories such as the labour theory and personality theory, which highlight the value of creative work and authors' inherent rights, with utilitarianism, which stresses the economic and societal advantages of copyright protection. They also examined how copyright law intersects with broader issues such as monopolistic power, public welfare, and human rights.

As they explored how to balance public access to creative works with protecting authors' rights, the participants carefully considered the impact of monopolistic practices and the broader societal implications. The end of these discussions in December 2022 was a significant milestone for the group. The year's discussions had deepened their understanding of the theoretical and historical aspects of copyright law. Additionally, these efforts laid a strong foundation for future studies on how copyright law applies today, its adaptability to technological advances, and its alignment with evolving cultural norms.

2. Workshop series: Copyright in the Islamic Legal Tradition (February 2023-March 2024)

In the second phase of the project, the "Copyright in Islamic Legal Tradition Workshop" brought together researchers focused on exploring the legal, philosophical, and historical dimensions of copyright within the context of Islamic law. This year-long workshop series featured regular meetings where participants from various fields delved into the complex nuances of how copyright is interpreted in Islamic legal thought.[4]

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3   Some of the readings included Dreyfuss, Rochelle - Justine Pila (eds.). *The Oxford Handbook of Intellectual Property Law*. Oxford University Press, 2017; Deazley, Ronan et al. (eds.). *Privilege and Property: Essays on the History of Copyright*. Open Book Publishers, 2010; Boyle, James. *The Public Domain: Enclosing the Commons of the Mind*. New Haven: Yale University Press, 2008; Seville, Catherine. *The Internationalisation of Copyright Law: Books, Buccaneers and the Black Flag in the Nineteenth Century*. Cambridge University Press, 2006.

4   Some of the readings included Lowe, Julie. 'Ḥanafī Approaches to Copyright'. *Islamic Law and Society* 30/3 (2022), 249–275; Elmahjub, Ezieddin. *An Islamic Vision of Intellectual Property: Theory and Practice*. Cambridge University Press, 2018; Malkawi, Bashar H. 'The Alliance Between Islamic Law and Intellectual Property: Structure and Practice'. *University of St. Thomas Law Journal* 10/3 (2013), 618–649.

Participants in the program had in-depth conversations based on a variety of academic disciplines, including history, philosophy, law, and religious studies. This multidisciplinary approach made it possible to comprehend copyright's significance and ramifications in Islamic thought in a wide and thorough manner. The workshop sought to identify the unique ideas and viewpoints that impact copyright in Islamic law by concentrating on important ideas associated with knowledge, expression, and copyright. Furthermore, the participants delved into the continuing discussions about copyright in contemporary Islamic legal literature, acquiring knowledge about the changing discourse and range of perspectives in this area. In an effort to shed light on the intellectual and moral precepts that underpin intellectual property rights, the group conducted a critical analysis of the theoretical underpinnings of copyright in Islamic law.

The program also examined the historical evolution of copyright laws in the Muslim world, with a focus on how state-led copyright policies have evolved over the past 200 years. This historical perspective provided participants with a deeper understanding of the sociopolitical factors that have shaped copyright registration and protection in Islamic countries.

The collaborative spirit of the workshop series extended beyond its core group, inviting diverse perspectives from participants with various backgrounds, which enriched the discussions. This open exchange of ideas led to a more nuanced understanding of copyright within the Islamic legal system. Ultimately, the workshop became a platform for developing new insights and innovative approaches to addressing copyright in the context of Islamic law. By encouraging relevant discussions and multidisciplinary collaboration, it broadened scholarly understanding and deepened collective knowledge of copyright's role in the modern technological era, particularly within the framework of Islamic legal tradition.

3. Guest lectures: Copyright Talks (May 2023-November 2023)

The third phase of the project, "Copyright Talks," kicked off in 2023 as a guest lecture series. This series brought together renowned scholars from different academic fields and regions, all with expertise in the intersection of copyright and Islamic law. These engaging discussions aimed to deepen the understanding of this complex topic and to foster meaningful intellectual exchange. Among the distinguished guests were the following:

Date	Lecturer	Title
May 1, 2023	Hasan Hacak	Telif Hakkı İslam Hukuk Geleneğinde Haklar Teorisinin Neresinde? (Where Does Copyright Fit within the Theory of Rights in Islamic Legal Tradition?)
May 23, 2023	Julie Lowe	Copyright and Islamic Law: Approaches of Hanafi Jurists
June 19, 2023	Mohamed Ali Ahdash	Author talk on the book "Copyright in Islamic Law"
August 21, 2023	Ezieddin Elmahjub	A Philosophy for Copyright in Islamic Ethical Discourse
August 23, 2023	Tabrez Ebrahim	Islamic Intellectual Property

| September 25, 2023 | Ahmad Atif Ahmad | Copyrights in Islamic Law & An Opportunity to Reflect on Ideas as Property |
| November 29, 2023 | Hacı Mehmet Günay | Fikri Mülkiyet Haklarının Fıkhi Niteliği Üzerine Bazı Düşünceler (Some Thoughts on the Islamic Legal Nature of Intellectual Property Rights) |

4. Symposium: Symposium on Copyright in Islamic Legal Tradition (June 2024)

To make a concrete impact in the field, the project's final step was an international symposium held in Istanbul, Turkey on June 28–29, 2024. This event aimed to provide a robust platform for engaging with key themes and questions, and to serve as a central point for exploring the specifics of copyright under Islamic law. The symposium gathered experts and researchers from around the globe to foster critical discussions and examine these important issues.

The symposium kicked off with the opening session titled "Meta Questions," which was moderated by Julie Lowe (Western University). Following the welcome address, Mücahide Engin (Marmara University) delivered the opening presentation, providing an overview of the current research on copyright in Islamic law. Engin's analysis included a review of both English and Arabic literature to explore the concepts, frameworks, and questions addressed in the field. Her presentation also covered contemporary Turkish writings on intellectual property in Islamic law. Afterward, Ali Ekber Cinar (McGill University) assessed the ongoing relevance of Islamic law by examining copyright law as a case study. He argued that despite considerable efforts, structural constraints have hindered Islamic law from developing a functional copyright system.

The second panel, titled "Approaches," was chaired by Mürteza Bedir (Istanbul 29 Mayis University). Julie Lowe (Western University) opened the discussion by exploring how knowledge was transmitted in pre-modern Muslim societies and its relevance to current debates on copyright and Islamic law. She noted that while some aspects of these historical practices align with copyright principles, many do not. However, understanding these practices in their historical context suggests they might not be the best fit for today's needs. Following that, Necmeddin Güney (Necmettin Erbakan University) identified three main views among contemporary Muslim jurists regarding the Islamic legal heritage: a) a *salafī* perspective that rejects the heritage; b) a view that respects the heritage but does not adapt it to modern contexts; and c) an approach that both respects and updates the heritage, considering contemporary realities and the broader objectives of Islamic law (*maqāṣid al-sharīʿa*). He noted that most scholars discussing intellectual property rights favor this third approach.

The first day of the symposium wrapped up with a keynote address by Ahmad Atif Ahmad (University of California, Santa Barbara), titled "Protecting Knowledge, Literature, and the Arts by Legal Means." Ahmad offered insights into historical methods of safeguarding intellectual products within Islamic law and highlighted how these differ from today's protection models.

He also examined how modern notions of monopoly and ownership could be assessed from an Islamic legal perspective. Ahmad posed several critical questions: How will Islamic legal concepts that clash with contemporary intellectual property regimes be adapted? What solutions can be found for the ethical and practical challenges of intellectual property in areas crucial to human life, like military technologies and vaccines? How should Islamic law address the intellectual property protection models prevalent in capitalist societies? Finally, he stressed the importance of critically evaluating the fairness and effectiveness of current intellectual property systems in dealing with these issues.

The second day of the symposium began with the session titled "Shia & Arab World," moderated by Bilal Aybakan (Ibn Haldun University). In this session, Javad Fakhkhar Toosi (University of Toronto) examined why some Shia jurists resist copyright, analyzing their views from both anthropological and theological perspectives. Toosi's research revealed that the fatwas of Shia jurists opposed to copyright reflect various underlying principles. He argued that copyright, like other modern norms and constructs, requires a deep theological and epistemological examination. Toosi emphasized that without addressing these foundational assumptions in juristic reasoning, a resolution on copyright issues remains elusive. He thus called for a re-evaluation of these assumptions to reform jurisprudential discussions on copyright. Following this, Amr Osman (Qatar University) reviewed contemporary Arab scholars' views on the legitimacy of copyright from an Islamic legal standpoint. Osman observed that while some scholars outright reject copyright, the majority finds it compatible with Islamic law. He criticized the discussions for being often uncritical, failing to address problematic aspects of copyright or utilize the rich normative traditions of Arab scholarship to contribute effectively to debates on the legitimacy, utility, and future of copyright.

The penultimate session, titled "Case Studies," was moderated by Necmettin Kızılkaya (Istanbul University) and featured a presentation by Mohamed Ali Ahdash (independent researcher). Ahdash explored the debate over the duration of copyright within Islamic law, contrasting two main perspectives: permanent versus temporal copyright. He reviewed various arguments and proposals from Muslim scholars and assessed which perspective aligns more closely with Islamic law. He concluded that there is insufficient evidence to definitively establish the question of duration.

The symposium concluded with a final session of "Closing Remarks," where the discussions and evaluations of the two-day event were summarized. This concluding session marked the end of the symposium's sessions.

I hope that this symposium, together with the other activities of the Copyright in Islamic Law project, will provide a solid foundation for further discussions and give scholars a starting point to engage more critically with various aspects of Islamic law, copyright law, and intellectual property in general.