

The Big Picture from Turkey: Copyright and Digitization Issues

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Abstract:

This study evaluates the current state of accessing and digitization of manuscripts and rare works through examples of institutional practice by examining legal arrangements in Turkey. This study is performed by document analysis of qualitative research methods and those examined catalog records and digital documents were obtained from the digital platforms of Manuscripts and Rare Books Presidency, Turkish Language Association, Presidency of Religious Affairs, Marmara University Library, National Library and General Directorate of State Archives.

As a result of the study, it was determined that there is no specific legal regulation on accessing and digitization of manuscripts and rare works, and that the copyright of such works is protected by the Intellectual and Artistic Works Act which is also in force for all other works. Benefitting of manuscripts within the institutions and organizations is made in accordance with the Regulations for Benefitting from Ministry of Culture Manuscript Libraries Working, Manuscript and Old Alphabet Printed Works. The regulations considered and their restrictive approaches prevent these works, which can be accepted as cultural heritage, to be accessed and known widely. While those works are belong to Turkey in the meantime they belong to all humanity, and any undergoing problems may be solved by making these works accessible to anyone, restricting writer / creator rights for the public weal and presenting aforementioned works in digital forms on open access in institutional applications. In this context re-assessing concerning regulation, storing digitized manuscripts and rare works in institutional archives and putting them on an open access may provide solutions.

Keywords: Copyrights, Manuscripts and rare works, Digitization, Manuscripts and rare works in Turkey, Copyright issues in Turkey

INTRODUCTION

Developments based on the World Wide Web, along with creating numerous advantages such as easier exploration for cultural memory institutions like libraries, archives and museums, simultaneous providing services to a large number of users, long-term preservation and access to cultural heritage; they also make it easier to recognize the contradictory practices of such institutions with the public mission. In other words, information access services on digital platforms by cultural memory institutions, in addition to all the benefits it offers, also allow users to question "which restrictions effect available resources, how much cost and in what form" (Wallach, 2001, p. 42). Undoubtedly, one of the main reasons preventing access to writing and rare works is copyright-related issues. The process starting with the choice of manuscripts and rare works for digitization in cultural memory institutions and ending up with the user access takes place under the copyrights. These works are legally digitized in 3 ways:

- Direct digitization of unprotected works
- Allowed re-productivity by copyrights or related legal regulation
- Digitization / digital protection made by copyright holder or his/her permission (Besek et al, 2004, p.105).

There are also other rights generated by digitization products. These are generally grouped as:

- Scanning, photographing, indexing digital objects,
- Forming meta data,
- Data base right,
- Rights related to digitization personnel
- Third party intellectual proprietary rights (Dietrich and Pekel, 2012, p. 8; Öztemiz, 2016).

Abovementioned four rights are belonged to cultural memory institution itself. However, concerning the last bullet, in order to solve issues based on third party intellectual proprietary rights, some terms have to be fixed. These terms can be listed as follows:

- Copyright payment of works on the institutional levels and not reflecting any possible costs due to this payment,
- Direct permission from the owner of the work,
- Using open access agreements protecting writer rights (Öztemiz, 2016).

LEGAL SITUATION REGARDING THE DIGITIZATION AND ACCESS TO MANUSCRIPTS AND RARE WORKS IN TURKEY

There is no legal regulation for accessing and digitizing of manuscripts and rare works in Turkey and the copyrights of the said works are regulated in accordance with the Law of Intellectual Property Rights which is accepted for all other works. Benefitting of manuscripts within the institutions and organizations is made in accordance with the Regulations for Benefitting from Ministry of Culture Manuscript Libraries Working, Manuscript and Old Alphabet Printed Works.

This regulation covers main provisions in manuscript work libraries Ministry of Culture and Tourism General Directorate of Libraries and Publications and in public libraries which contain manuscript and old alphabet printed works in their collection. Studying these regulations within the scope of the provisions covering manuscripts and rare works may be beneficial for recognizing obstacles and other copyright problems when digitizing and accessing manuscripts and rare works in Turkey.

Elements that come to the fore when evaluated in the context of the Intellectual and Artistic Works Act and the articles concerning with manuscripts and rare works:

- Literary and artistic works, either they are formed in printed or electronic media or subsequently digitized, they all have same copyrights without any discrimination
- For science, literature, photography, art and cinema works, copyrights are valid for 70 years after the death of holder.
- Copyright holder is decision maker on works to be published and their durations.
- Works considered to be important for national culture can be made publicly available by taking into consideration their copyrights.
- All works in the context of cultural heritage are subject to Law of Intellectual Property Rights.
- For every violation of the copyrighted works, sanctions shall be imposed by the Chief Public Prosecutor.
- Provisions between 32nd and 35th items of Law tend to restrict writer / creator rights due to general interests. One of the factors of these restrictions is representation liberty of works for purposes of education and training.

According to a change in law in 2014, copyrights on works considered to be important for national culture, without prejudice to the provisions of claiming proper prices, can be made publicly available after the death of copyright holder and before the end of protection time, by a decision of Council of Ministers. In order to make a decision on this issue, concerning works have to be created by Turkish citizens (Law of Intellectual Property Rights, 2014).

Some works have their owners, who are neither known nor found and authorities are unable to reach them. Even if these “orphan works” are still under copyright protection, there exists gaps in the regulation. “Regulations for Benefitting from Ministry of Culture Manuscript Libraries Working, Manuscript and Old Alphabet Printed Works (2003)” which is another regulation concerning access to manuscripts and rare works, is evaluated in the frame of general specifications and some topics come into prominence:

Those who wish to benefit from manuscripts and rare works found in publicly-funded institutions apply to that public institution or organization with a petition indicating the purpose, the way of utilization, the place of work and the duration of the work to be done. The application is made to ministries for works in their respective and affiliated institutions and to their supervisors for works found in other institutions and organizations.

Works that are not copied in the library are served in the private reading room and under the supervision of the staff. Photographs/CD/DVD/microfilms of manuscripts and old print works that may be physically damaged are given to the user. For manuscripts and old print works that are already being repaired or listed to be repaired, CD/DVD/microfilm and photographs are provided.

Those who wish to benefit from manuscripts in their own articles or books, have to indicate in their application that they shall deliver three copies of their works to public institution and organization of the utilized manuscripts and one copy to library. Warrants are only given by acknowledged authorities. Manuscripts are only copied as microfilms, microfilm prints, photography and CD/DVD media. Those who do not comply with these rules shall not be allowed to research and investigate again.

If approved by relevant library administration, up to 5 pages of microfilm/photograph/CD-DVD requests can be met without asking the Ministry.

Manuscripts and rare old alphabet printed works and other old alphabet printed works which are vulnerable to damages cannot be replicated.

Requests are replicated primarily from copies in the archive. Copies will be collected if library specialists determine that works cannot be found in the archive are free from damage in terms of physical condition and value.

Two copies of microfilm/CD/DVD are prepared and one copy goes to requesting user, other copy goes to library archive. Unless necessary, to avoid works to be harmed, no more than one copying process is allowed for CD/DVD/microfilms.

Foreign researchers and those who apply on behalf of foreign researchers shall make their applications to local office by directly or fax/e-mail etc. where work to be performed. There should be information about the topic and duration of research-investigation, research location and application owner. Applications are finalized within five days at the latest. If the unit of application or its supervisor deem it appropriate, they are allowed to work. Every month library informs General Directorate about allowed foreign researchers in library, their nationality, area and duration of study.

Allowed foreigners or researchers working on behalf of foreigners, provide their scientific reports and one copy of published articles to authority. Those foreigners or Turkish citizens working on behalf of foreigners, who wish to benefit from works commercially, shall make their payments in Turkish Liras (Regulations for Benefitting from Ministry of Culture Manuscript Libraries Working, Manuscript and Old Alphabet Printed Works, 2003).

Evaluating the functioning of the aforementioned regulation within the scope of institutional applications will provide an insight to the current status of the accessing process to manuscripts and rare works in Turkey.

METHODOLOGY OF THE RESEARCH

This study is performed by document analysis of qualitative research methods. Document analysis method providing data by analyzing written documents containing information about related phenomena and events examined in the scope of the research (Karataş, 2015, p. 72). Examined catalog records and digital documents were obtained from the digital platforms of Manuscripts and Rare Books Presidency, Turkish Language Association, Presidency of Religious Affairs, Marmara University Library, National Library and General Directorate of State Archives. These digital documents examined according to their descriptive features and accessing state. The assessments were made under the digital images of the relevant documents.

INSTITUTIONAL APPLICATION SAMPLES FOR MANUSCRIPTS AND RARE WORKS FROM TURKEY

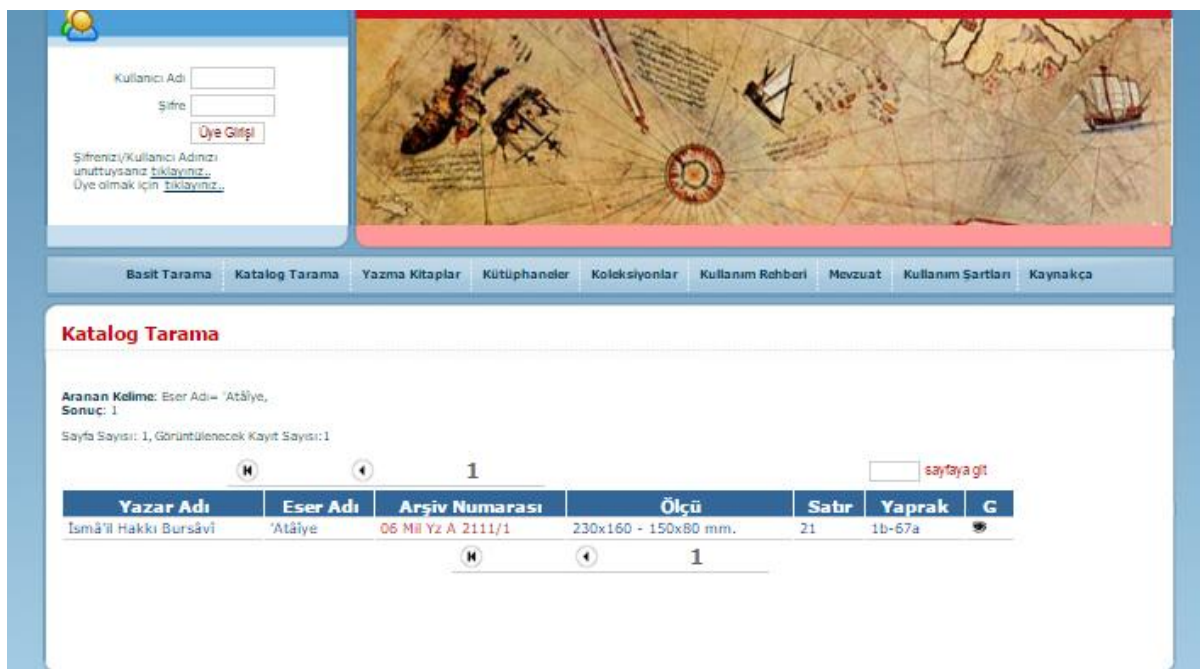
Law of Intellectual Property Rights and Regulations for Benefitting from Ministry of Culture Manuscript Libraries Working, Manuscript and Old Alphabet Printed Works regulate digitizing and access to manuscripts and rare works in Turkey.

Access to manuscripts over digital platforms is possible under the condition that creating membership and paying necessary fees to the digital platform created by Turkey Manuscripts and Rare Works Institution Authority. Picture 1 reflects catalogue scanning screen of Turkish Manuscripts web site.



Picture 1: Turkish Manuscripts Catalogue Screen
Source: Turkish Manuscripts Web Site (<http://www.yek.gov.tr>)

It's likely to see plenty of supplementary objects like writer and work name, collection, location, subject and copyright date on the catalogue screen.

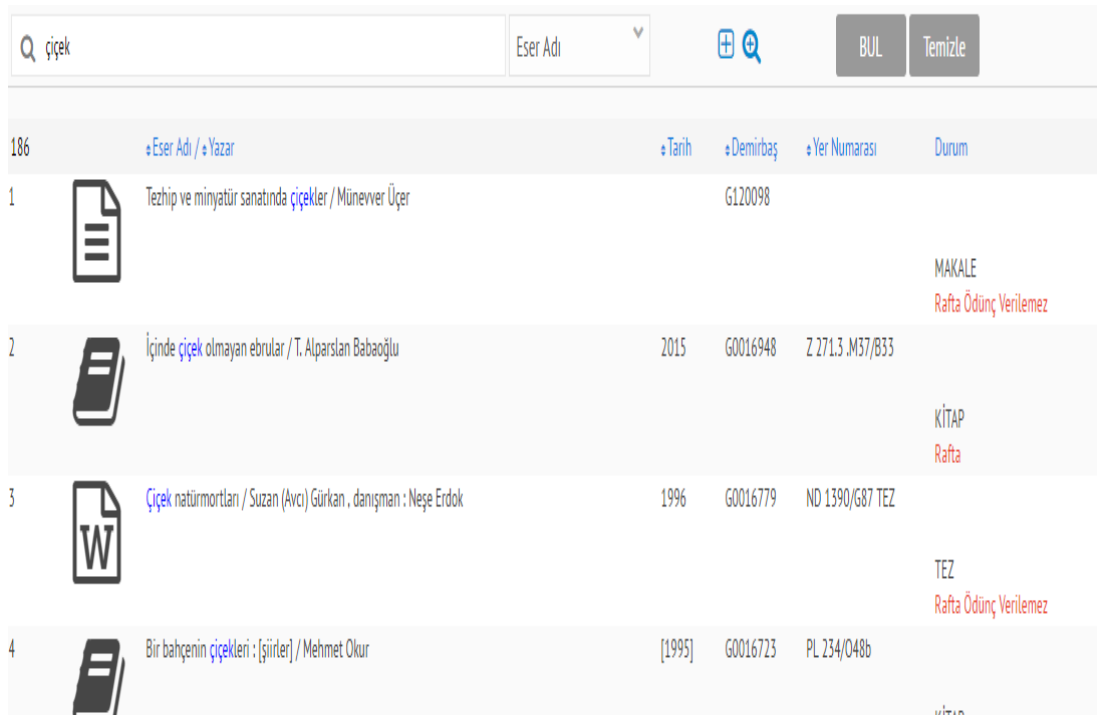


Picture 2: A Catalogue Scanning Result Sample on Turkish Manuscripts Web Site
Source: Turkish Manuscripts Web Site (<http://www.yek.gov.tr>)

Picture 2 shows a catalogue scanning result which has the work name (“Ataiye”) on the same web site. It’s seen on the catalogue log that information of work is only limited to name of writer and work, archive number, dimension, line and page details (Turkish Manuscripts, 2017). If you click archive number information given on Picture 1 shows up. Accessing and using the work is only possible upon having membership to Turkish Manuscripts website and paying necessary fee.

Another institution examined in the scope of study is Marmara University. University made its digital collection publicly available which is consisting a total of 1.721.000 pages of publication including 1964 Manuscripts, 6781 Old Alphabet Printed Works, 581 Latin Alphabet Rare Works, 715 Volumes of Periodical (Marmara University Digital Rare Works Collection, 2017).

Resources, which are accessible to library members in .pdf format over rare works collection, can be downloaded, printed and saved. Picture 3 shows a scanning result in Marmara University Digital Rare Works Collection.




	Eser Adı / Yazar	Tarih	Demirbaş	Yer Numarası	Durum
186					
1	Tezhip ve minyatür sanatında çiçekler / Müniver Üçer		G120098		MAKALE Rafta Ödünç Verilemez
2	İçinde çiçek olmayan ebrular / T. Alparslan Babaoğlu	2015	G0016948	Z 271.3 .M37/B33	KİTAP Rafta
3	Çiçek natüromortları / Suzan (Avcı) Gürkan , danışman : Neşe Erdok	1996	G0016779	ND 1390/G87 TEZ	TEZ Rafta Ödünç Verilemez
4	Bir bahçenin çiçekleri : [şiirler] / Mehmet Okur	[1995]	G0016723	PL 234/048b	KİTAP Rafta

Picture 3: A Scanning Result sample on Marmara University Digital Rare Works Collection **Source:** Marmara University Digital Library

When you click scanning result “Bir demet çiçek”, you see the result reflected in Picture 4.

çiçek Eser Adı BUL Temizle

54 < >

 Bir demet çiçek / Faik Esad Andalib

Yayın Bilgisi : [İstanbul : Alem Matbaası - Ahmed İhsan ve Şürekası. 1314](#)
 Fiziksel Nitelik : 17 s. : 18 cm.
 Konu Başlıkları : [Türk şiiri](#) -

Kütüphane
 Bölüm
 Durum
 Demirbaş
 Yer Numarası
 Kopya/Cilt
 Sağlama Şekli

Çevrimiçi
 RE13167
 T811.31 FA1.B
 k.1
 Protokol

[Yayın için tıklayın](#)

[Kitap] [Elektronik : HardDisk]
 [Arap : Osmanlıca]

Picture 4: Chosen work from Marmara University Digital Rare Works Collection

Source: Marmara University Digital Library

(<http://katalog.marmara.edu.tr/nadireser/index.html>)

Descriptive field information is only limited to physical notes and subject headings related to the work “Bir demet çiçek”. On the right hand side there is access information of the work. This means there is on-line access to the work. It’s seen that descriptive fields of digitized rare work are consisted by ISBN, ISSN, publication info, physical description, subject headings and notes.

Thanks to the user friendly open access application of the institution Picture 5 reflects downloaded work.



Picture 5: A Chosen Book Sample from Marmara University Digital Rare Works Collection

Source: Marmara University Digital Library

(<http://katalog.marmara.edu.tr/nadireser/index.html>).

The scanned image of the work can be downloaded, printed and saved by the user with the condition of membership. However, the digital rare work is far from being descriptive. Realizing the open access process of rare works is not limited to enabling them to be digitally transformed and viewed, recorded, or printed via the web platform. This collection is not

publicly understandable, as the items for which the standards are not defined and therefore the visibility is not sufficient. Moreover, no information is available on the open access platform regarding which open license agreement the access process is based on, or on which policy the open works are presented with open access.

The copyright of the works in the collection of Presidency of Religious Affairs is regulated in accordance with the Law of Intellectual Property Rights. Presidency provides access to digital rare works in return of membership and fees. Accordingly it can be said that a restrictive approach is adopted on accessing to rare works in Presidency collection. The Presidency of Religious Affairs provides access to digital rare works by forwarding users to the Manuscript Works Presidency through its website.

Genel Bilgiler	Özellikleri	Notlar
Arşiv Numarası	DİB. Küt. Yaz. D. No: 33	
Eser Adı	Tefsir-i Aynel-Hayât	
Yazar Adı	Necm ed-din el-Kübrâ Ahmed b. Ömer el-Hayvaki (540-618/1145-1221)	
Müstensih		
Konu	İslâm Dini-Tefsir Tercüme ve Teviller	
Dili	Türkçe	
Telif Tarihi Hicri (Miladi)	0 (0)	
İstinsah Tarihi Hicri (Miladi)	847 (1443)	
İstinsah Yeri		
Bulunduğu Yer	Diyanet İşleri Başkanlığı-Ankara	
Koleksiyon	Diyanet İşleri Başkanlığı Kütüphanesi Türkçe Yazmaları	
Dvd Numarası		
	Boyut (Dış-İç)	263x180-185x110 mm.
	Yaprak	457
	Satır	17
	Yazı Türü	Çok güzel-harekeli-nesih
	Kağıt türü	Krem rengi, saykallı abadi
		Baş kısmı eksik olması nedeniyle, Sebe Süresinin 7. ayetinden başlar. Şirazesi bozulmuş, koyu vişne rengi meşin, gömme yıldızlı salbek semseli, yıldız zencirekli ciltli. İlk yaprak eksik, ikincisinin ise üst kısmı yırtıktır, yapraklar dağınıktır. Ayetler kırmızıyla yazılmıştır. Son beyazda es-Seyyid Ahmed Vehbi Efendi ve Mart 1296 tarihi mevcuttur. Sonunda 3 sayfa manzume vardır. Bu manzumenin 2 sayfası Arapça, son sayfa Türkçedir. Tefsir, Nas Süresinin açıklamasıyla son bulur. Daha çok vaz ve mevize ağırlıklıdır. Tamamı 12 cilttir. Hayatül-Hayvanın konularından faydalanılmıştır. Hind Meliki Muzaffer Şah için yazılmış olup, esere Tefsir-u Necmed-din de denilir.

Picture 6: Accessible Information of Manuscript Works in Presidency of Religious Affairs Collection

Source: Turkish Manuscripts (<https://www.yazmalar.gov.tr/>)

When the logs of rare work are examined, it's seen that work's digital image is not accessible and information related to work is limited to location number, chapter, room, volume, way of providing, and also they are not compatible with the standards (Presidency of Religious Affairs, 2017).

Manuscripts and Rare Works found in Turkish Language Association are only accessible by registered membership and payment, therefore this is far from open access principle (Turkish Language Association Library, 2017).

Genel Bilgiler		Özellikleri		Notlar
Tür	Yazma Eser	Boyut (Dış-İç)	185x135-135x85 mm.	Çağatay lehçesiyle, nestalîk hatla, 185x135-135x85 mm. ölçüsünde, 15 satırlı, 170 yaprakta, haçlı daire filigranlı kâğıda, 1061(1650) Şevvalinde yazılmıştır. Kelimeler, beyitler, çizgiler kırmızıdır. Zencirekli, köşebentli, şemselli, siyah deri kaplı, iç ebru kâğıt kaplı bir cilt içerisinde. Serlevhada kitap adı "Lugat-ı Elfâz-ı Çağatâyî" dir. Zahriyede Hacı Hüseyine ait, 1218(1803) tarihli vakıf kaydı, 1bde serlevhada Abdurrah okunan bir mühür vardır. TUVATOK.34.1 V.847
Arşiv Numarası	A 168	Yaprak	170	
Demirbaş Numarası		Satır	15	
Eser Adı	Abuşka lugatı	Yazı Türü	nestalîk	
Yazar Adı		Kâğıt türü	haçlı daire filigranlı	
Müstensih		Alfabe		
Konu	T.427.53	Cilt/Sayı Bilgisi		
Dili	Çağatayca	Cilt Özelliği		
Telif Tarihi Hicri (Miladi)	0 (0)			
İstinsah Tarihi Hicri (Miladi)	1061 (1650)			
İstinsah Yeri				
Bulunduğu Yer				
Koleksiyon				
Dvd Numarası	426			

[Kullanıcı Notları](#)

Başlangıç Cümlesi

بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِیْمِ یٰۤاَیُّهَا الَّذِیْنَ اٰمَنُوْا اذِکَّرْ اَنْ یَّجِیْءَکُمْ یَوْمٌ لَّا تَدْرٰیۤا

Bitiş Cümlesi

صَوِّفْ بُوْءَیْمَیْهِ بَیْنَ وَیَکْدُرْ تَمَّتْ الْکِتَابُ

Başlangıç Cümlesi

ابوشقه لغتی



Eser Görüntüleri-Eseri Bilgisayara Yükleme



Picture 7: A Sample of Catalogue Log accessed from Turkish Language Association

Source: Turkish Language Association (<http://www.tdk.gov.tr/>)

Access to these works, all bibliographic tags and copyrights of those images are belonged to Turkish Language Association and protected by national laws. Members are only allowed to buy images by deposit units using virtual pos (VPOS) service.

National Library's Digital Library System contains Tag information and high resolution digital copy files of Handwriting Works, Periodic Publications and materials other than books existing within the structure of National Library. The most important property of manuscripts is that they are collected from inner and east, some part of these works do not exist in classical manuscript libraries and they are created by anonymous scientist. Even if access to these works is restricted, in order to benefit and use aforementioned works Regulations for Benefitting from Old Alphabet Printed Works Guidelines of Ministry of Culture Manuscript may give allowance under necessary terms.

Katalog Kartı



Call Number	06 Mil Yz B 1201
Author	Ahmed-i Dâî, 14. asrın ikinci yarısı ile 15. asrın ilk yarısı
Title	Terceme-i tefsîr-i Ebî'l-Leys / Ahmed-i Dâî.
DVD Number	2374
Library	Milli Kütüphane-Ankara
Collection	Milli Kütüphane Yazmalar Koleksiyonu
Inventory Number	D.N. 001201

Çıktı Al

Kapat

Picture 8: A manuscript catalogue sample accessed over National Library

Source: National Library of Turkey (<https://dijital-kutuphane.mkutup.gov.tr/tr/manuscripts/catalog/details/404736?SearchType=1>)

Picture 8 reflects catalogue record of manuscript “Terceme-i tefsîr-i Ebî'l-Leys” accessed over National Library. Access is restricted to digital image of any work identified by its place number, writer name, work name, DVD number, the located library, collection and stock number and only available under the terms regulated in the aforementioned regulation.

General Directorate of State Archives provides open access to some firman and patents in official web site. Access to these works are not bound to any restrictions. Open accessed documents are easily accessible over official web site without any membership or fee requirements.



Picture 9: Çelebikızı Firman sample
Source: General Directorate of State Archives Web Site
(<https://www.devletarsivleri.gov.tr>)

Descriptive factors related to the work reflected as follows on Picture 10.

Record type	:	Firman.
Reign	:	Mehmed II.
Date	:	A.H. First decade of Safar 880/February 1475 C.E.
Style of Script	:	Dîwānî. Text: 15 lines.
Dimensions	:	14.5 x 38.5 cm.
Description	:	Sultanic cipher drawn in black ink, sprinkled with ornamental blotting sand. Text in black ink.
Annotation	:	Name of locale wherein inscribed in lower left corner.
Reason issued	:	Notice that the manufacturer of roofing tiles situated adjacent to Rukiiye Hatun, daughter of Çelebi, is to desist in his acts of interference with the farm purchased by the aforesaid Rukiye.
Repository and classification number	:	BOA, A. DVN no. 1/1.

Picture 10: Descriptive Factors of Çelebi Kızı
Source: General Directorate of State Archives Web Site
(<https://www.devletarsivleri.gov.tr>)

Information defined in catalogue records related to open accessed works are highly explanatory and very facilitative for researchers. For the works are not accessible over General Directorate of State Archives web site, researchers have to fill application form and deliver it with 1 portrait and ID copy personally or by mail.

CONCLUSIONS AND RECOMMENDATIONS

Rather than being developing and promoting, regulations concerning manuscripts and rare works are restrictive and primarily based on supervisions. Regulations are expected to make open access to cultural heritage legally possible and this issue all by itself constitutes a problem, in order to realize the technical process concerning open access requires the whole legal basis to be renovated. By way of regulative actions on the Law of Intellectual Property Rights, assigning open access to digital presentations of works that have qualified as “cultural heritage” and rating under writer/creator provisions due to the public weal, have to be realized. It’s thought that restricting writer/creator rights on public weal, even if these rights are indicated in law, will reach the large masses to cultural heritage and provide an inspirational role on creating cultural heritage products of the future. In this context, the current law should be re-assessed and digitizing cultural heritage products without any problem, storing them in institutional archives and making them publicly available should be obligatory in the current law or in a new national law.

In deference to those steps indicated in Open Definition (2015), paying regard to the following principles may be beneficial for a possible draft copyright regulation concerning digitizing and accessing rare works in Turkey:

- Open license or status: Digital Cultural Heritage Products have to be presented by open license agreements like public wealth or Creative Commons. Terms of use on the work should not contradict the current situation of work or license conditions.
- Access: Materials should be provided as a whole and free downloadable over internet. If any additional information is required for license appropriateness (writer/creator name proper for citing requirements) should be provided along with the work.

- Machine readability: Work has to be provided in a form that computer easily process and make changes on it.
- Open format: Open format brings no restriction on legal, financial etc. about work and without any fee/membership prerequisite you can access via a digital archive/web site/application program and process on the work.

License openness depends on the following conditions:

- Necessary permissions: The license should allow the redistribution of work over different sources. Hence the work becomes more accessible over several different platforms, particularly collectors.
- Making changes: The license should allow the production of derivatives of work and the redistribution of them under the same conditions with the licensed work.
- Not to discriminate: The license should not discriminate between any individual or group.
- Distribution: All copyrights of the original one are valid for every redistribution without any additional (legal) provision to be accepted.
- Implementation to other purposes: The license should allow implementations like use for other purposes, redistribution and editing.
- Free of charge: The license denies any charge, restriction or imposing financial equivalent on re-use of works.
- Citation: The license provides citing to writers and creators for redistributed works if demanded.
- Integrity: The license may demand different names or edition numbers for redistributed works. Otherwise it should be indicated which changes have been made.
- Sharing: The license may require that the work distributions remain with the same license or a similar license.
- Technical Restriction: The license requires technical measures to be taken against the factors that limit the distribution of the works.

Adopting updated legal regulations in Turkey has extreme importance for manuscripts and rare works. In fact, for the past to be visible still in the future, this seems like an inevitable necessity.

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