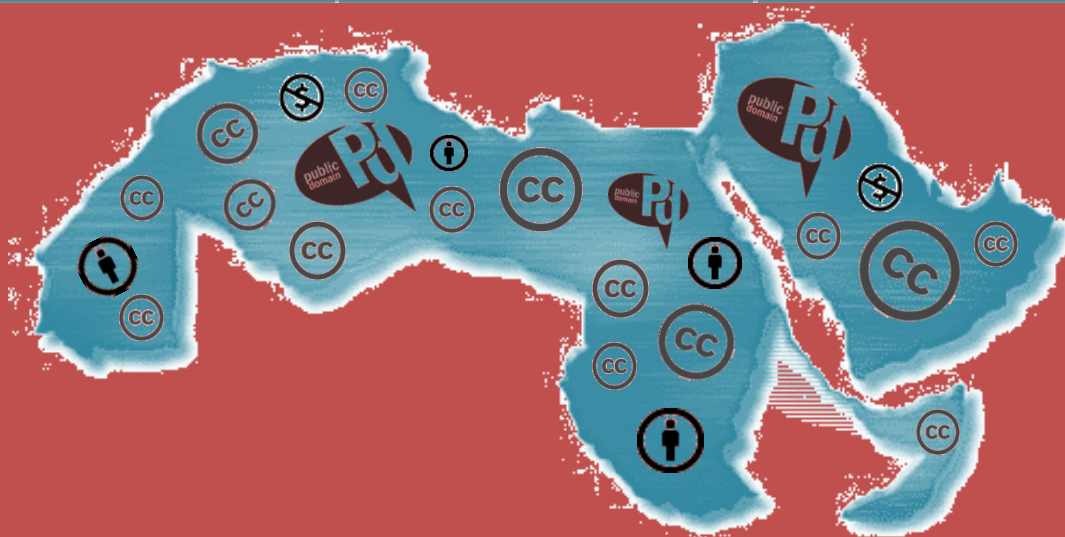


Creative Commons in the Arab World

Views from the Global South

Hala Essalmawi

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Views from the Global South

By: Hala Essalmawi¹

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Introduction and Background

Knowledge is the accumulation of human intellectual experience and expression through time. Knowledge is, also, the core of mankind's development and progress. Great leaps in the advancement of science and momentous turning points in the history of mankind were underpinned by new discoveries and by the unleashing of creative capacities. Thus, one can confidently argue that access to knowledge is an indispensable tool for civilizations to last.

History also proves that civilizations grew and flourished with the dissemination of knowledge and the integration among sciences. When knowledge was confined only to the elite, it perished beyond retrieval. This is the case with the Ancient Egyptian civilization where restrictions imposed by religious and political systems as well as linguistic barriers, among other factors, had led to this civilization's decline. This exemplifies the destructive consequences of inaccessibility to knowledge.

The Arab/Islamic civilization advocated openness. The Arabs opened up to other civilizations; they translated into Arabic the heritage of the Greeks, Persians as well as other cultures. In addition, their knowledge was accessible to all and was not confined to a certain class or group of people. Ordinary and even poor Arabs were able to rise above their social class and achieve remarkable scholarly status together with social mobility. Building upon the

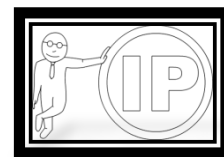
¹ The author would like to thank Mr. Ramy El Gamal, Dr. Mohammed El Said, and Ms. Wegdan Hussein for their useful feedback on an earlier draft.

knowledge handed to it from the Arab civilization and other cultures, the West managed to come out from the dark ages and step into the Renaissance. In other words, during the Arab/Islamic civilization, the knowledge cycle —building on the scientific legacy of preceding cultures, adding new contributions, and passing knowledge to others to initiate another cycle— was not interrupted.²

Thus, we can see that the norm for culture and knowledge continuum throughout human history till the 15th century was based on the notions of “openness” and “commons” with no legal restrictions on inventions and creativity.³

The scene, however, has changed after the introduction of the first law; the awarding of legal monopoly to intellectual creations, namely the Venetian patent law in 1474, and subsequently the first copyright law; the Statute of Anne in 1710. The rationale behind these laws was to promote individual creativity and innovation, giving incentive to the production of more knowledge goods. It is worth noting that the first Intellectual Property (IP) laws were coincided with the invention of the printing machine and the industrial revolution in Europe which led to mass production and abundance in printed books.

With the technological and industrial progress, more laws and regulatory agreements were introduced on international levels, and, in the late 19th century, many European countries signed bilateral and international treaties to protect intellectual property.⁴



² The role of open access and the idea of making most of the sources available to students and researchers are manifestly showcased in such seminal works on Islamic civilization, see for example:

Adam Mez (1937) *The Renaissance of Islam*, London; Marshall Hodgson (1977) *The Venture of Islam*, in 3 volumes, University of Chicago Press; Gustave Grunebaum (1953) *Medieval Islam*, University of Chicago Press; DeLacey O’Leary (2001) *How Greek Science Passed to the Arabs*, Routledge; Gustave Le Bon (1884) *La Civilisation des Arabes*, Paris par Firmin-Didot; Michael Morgan (2007) *Lost History: the enduring legacy of Muslim scientists, thinkers and artists*. National Geographic.

³ Unless there are religious or political restrictions as the case with the Ancient Egyptians or the Catholic Church in the Middle Ages.

⁴ Paris Convention for the protection of Industrial property in 1883 and the Berne Convention for the protection of Literary and Artistic Works in 1886. Both were amended many times through a whole century till 1979.

In the 21st century, different views were introduced. Though it is said that IP has been integrated into our everyday life, from what we eat, to our healthcare and from education to entertainment and climate change, many intellectuals and activists advocating public interests questioned the role of IP laws in general and copyright law in particular as incentives to promote creativity. They argued that the strong restricting copyright protection may hinder innovation and creativity rather than enhance and promote it.

The unnecessary prolonged term of protection defers works from falling into the public domain. The high price of e-resources stands as a barrier for many university libraries to obtain the latest research findings and articles.

“Intellectual Property And New Tools For The Dissemination Of Knowledge” Workshop – Cairo - 26 May 2007-28 May 2007”



It was clear to many intellectuals that the more restricted IP regime is mainly supporting businesses and few international companies than giving motivation to creators and inventors. On the other hand, promoting “Openness and Commons” to support access to knowledge would enlarge and deepen the common pool of knowledge to empower people everywhere.⁵ Thus, Certain creative minds thought about new tools to access and disseminate knowledge. As a result, the free and open-source software, open access, and Creative Commons’ initiatives were born in “The North”.

⁵ It was the time for the world to reassess its long beliefs that only private property gives incentive to people to create, innovate, and produce intellectual and tangible goods. Absolute privatization could be harmful even to environment. It caused global warming. Failure to fix it is one example of the impact of the absence of “Commons” on the whole planet.

However, the situation in the global south, with focus on the Arab countries, is different. The IP laws were not part of the national legislative system till late in the 20th century.⁶ Most of them were adopted during the colonial era or due to international obligations as the WTO or even stricter standards as a result of bilateral or multilateral trade agreements. Many legislators were not aware of the flexibilities available in the international treaties for developing countries. Even if they include these flexibilities in national legislations, there is little awareness about their existence, how they work, or how to apply them to their benefit.

The IP regulatory framework seems to be a complicated technical topic for many practitioners in the Arab world. Consequently, in most cases IP were introduced as a set of rules to protect the products of multinational corporations. It is promoted as a good incentive to encourage foreign direct investment (FDI). However, the public remains ignorant of IP impact on many essential aspects of our daily life, from food to health, and from education to entertainment. This made the public unaware of the existence of the IP problem as a barrier to access to knowledge. Therefore, there has been no need to think about adequate solutions as is the case with Northern countries.⁷

Thus when the BA A2K program introduced Creative Commons (CC) in the Arab world in conferences and workshops, the program team needed to start from the copyright history and its development from the 18th century till the digital era in the 21st century.

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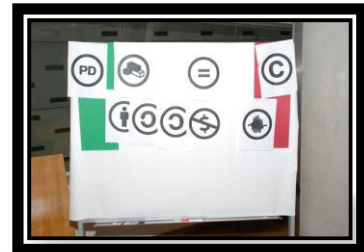
⁶ There were Ottoman copyright and trademark laws in Jordan, Palestine, , dated back to the 1880s, in Lebanon and Morocco, the French law was applied in for a while in the first half of the 20th century , see Mohammed El Said “*The Development of Intellectual Property Protection in the Arab World*”, Edwin Mellen Press, New York, 2008.

⁷ Bearing also in mind the high rate of illiteracy and the lack of infrastructure to Access to Knowledge in the digital age.

What is Creative Commons (CC)?

CC licenses were pre-dated by the Open Publication License (OPL) and the GNU Free Documentation License (GFDL). The GFDL was intended mainly as a license for software documentation, but was also used by non-software projects such as Wikipedia.

CC was officially launched in 2001 with its headquarters in San Francisco. Professor Lawrence Lessig, the founder, started the organization as an additional method to attain the goals of his Supreme Court case, *Eldred v. Ashcroft*. The initial set of CC licenses was published on 16 December 2002.



CC website enables copyright holders to grant some of their rights to the public while retaining others through a variety of licensing and contract schemes including dedication to the public domain or open content licensing terms. The intention is to avoid the difficulties current copyright laws create for the sharing of information and knowledge.

CC provides several free licenses that copyright holders can use when releasing their works on the web⁸. The licenses also provide a “Founders’ Copyright”⁹ contract, intended to re-create the effects of the original U.S. Copyright created by the founders of the U.S. Constitution.

All these efforts, and more, are made to counter the effects of the dominant and increasingly restrictive permission culture (in which you need to ask for permission to access and use knowledge) pervading modern society. It is a culture pressed hard upon society by traditional content distributors in order to maintain and strengthen their monopolies on cultural products such as popular music and popular cinema.

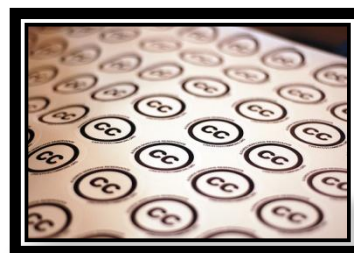
⁸ <http://creativecommons.org/about/licenses/> (Last access 20 February 2010)

⁹ “The Framers of the U.S. Constitution understood that copyright was about balance — a trade-off between public and private gain, society-wide innovation and creative reward. In 1790, the U.S. first copyright law granted authors a monopoly right over their creations for 14 years, with the option of renewing that monopoly for another 14. We want to help restore that sense of balance — not through any change to the current laws — but by helping copyright holders who recognize a long copyright term’s limited benefit to voluntarily release that right after a shorter period”. For more info please check: <http://creativecommons.org/projects/founderscopyright/> (Last access 20 February 2010)

The unported (non-localized) CC licenses were drafted based on international law and treaties, using terminology from Berne and other international conventions. To ensure maximum enforceability of the licenses as well as to promote a fuller understanding of their terms and conditions by licensors in different jurisdictions, CC established a porting process. The porting process allows legal experts to adapt the terms and conditions of the licenses to account for jurisdiction-specific copyright law. As of December 2009, representatives from 71 countries have joined this initiative, and licenses for 52 of those countries have already been completed. An estimated 350 million¹⁰ creative works use “Creative Commons” licenses, and a growing number of them are in Arabic language.

History of CC in the Arab countries

CC in the Arab countries has been the initiative of two Jordanian lawyers Ziad Maraqa and Rami Olwan at Abou Ghazala Law Firm. They started working on the translation of the first Arabic CC License in 2004.



Meanwhile, Dr. Anas Tawileh, an enthusiastic IT expert from Syria was inspired by the philosophy and rationale behind CC. He set out to launch the first website devoted to the promotion of CC in the Arab world entitled “Arab Commons”.¹¹ He managed to convince many authors to publish their work under CC licenses. As of December 2007, “Arab Commons” contained 11 full textbooks, 7 poetry books, 46 artworks, 1 magazine and 11 articles all in Arabic and all released under CC licenses.

The Bibliotheca Alexandrina (BA) inaugurated the discussion on CC and its importance to the Arab world in its landmark A2K meeting on 2006. Then CC was introduced to the Arab readers in a simple comprehensive article both in Arabic and English as a part of the BA A2K toolkit.¹²

¹⁰ <http://wiki.creativecommons.org/Metrics> (Last access 20 February 2010)

¹¹ <http://www.arabcommons.org> (Last access 20 February 2010)

¹² Available at <http://bibalex.org/a2k/References/references.aspx> (Last access 20 February 2010)

CC was introduced by the BA A2K project as a legal instrument to facilitate knowledge access and dissemination.

To raise awareness of the new tools to access and disseminate knowledge, the BA A2K project has been organizing two annual workshops since 2007. The workshops, attended by judges, lawyers, researchers, librarians and others, covered topics such as IP and development, access to public health, licensing, open source issues, and free trade agreements in the region.

An introduction to CC licenses is always a part of one of the annual workshops. Training on how to use the licenses is also part of the program, in addition to discussions about the importance and the need of CC licenses in the Arab world. In January 2010, the BA A2K project was able to finish the first Arabic draft license for Egypt. It was uploaded online for public discussion¹³. Once the discussions are over and the draft is amended accordingly – if needed –the Egyptian licenses will be launched.

“Intellectual Property And New Tools For The Dissemination Of Knowledge” Workshop – Alexandria - 29 May 2007-31 May 2007”



It is worth noting that Al Jazeera network became one of the best known users of Creative Commons licenses.¹⁴

In 2009, Al Jazeera launched a CC Repository;¹⁵ a section of their website dedicated to posting videos under CC Attribution license. These are exclusive videos of the 2009 war that took place between the Israelis and Palestinians. They serve as documentaries of the war atrocities especially against children. The footages can be used by anyone freely, as long as Al Jazeera is credited. And recently, Al Jazeera also launched Al Jazeera Blogs,¹⁶ a website

¹³ <http://creativecommons.org/international/eg/> (Last access 20 February 2010)

¹⁴ <http://creativecommons.org/about/who-uses-cc> (Last access 20 February 2010)

¹⁵ <http://cc.aljazeera.net> (Last access 20 February 2010)

¹⁶ <http://creativecommons.org/weblog/entry/18599> (Last access 20 February 2010)



presenting articles written by well-known journalists from Al Jazeera television network. They are all released under a CC BY-NC-ND license.

“Copyright Protection in the Digital Age - 29 Sep 2009-01 Oct 2009”

Conclusion

Despite the fact that neither the IP regime nor CC was developed in the Arab countries, there is promising potential for the use of CC licenses for research, entertainment, music, and arts in this region. CC licensed works could be more appealing for the young Arab generation seeking legitimate access to the lavish banquet of the cyber world. Another area where CC licenses could be used is works produced by public money from public entities.

Public universities and research institutions should make their work available to the public and meanwhile retain some of their copyright. The attribution-non-commercial license will, thus, be their perfect choice.

It is time for the world to renounce its long beliefs that only private property can give incentive for people to create, innovate and produce intellectual and tangible goods. In the past few years, a tendency to study and promote the “commons” concepts was developed. No wonder that the Noble Laureate for Economics in 2009, Elinor Ostrom, was rewarded the prize "for her analysis of economic governance, especially the commons"¹⁷

It is only natural for Arabs to welcome CC initiative and licenses for its noble function and philosophy. It fulfills and complies with the time-honored values deeply rooted in the Arabs' collective consciousness.

The common pool of knowledge is what we need to empower people in the Arab region, the global south, and everywhere.

¹⁷ http://nobelprize.org/nobel_prizes/economics/laureates/2009/index.html (Last access 20 February 2010)

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