

Copyright protection in Turkey: FAQs

17 Nov 2020

We provide a guide to copyright protection in Turkey, answering some commonly asked questions about protection, creation, duration and enforcement.

How is copyright protected in Turkey?

Copyright protection in Turkey is provided through the Law on Intellectual and Artistic Works numbered 5846 ("**The Law**"), which entered into force on 13 January 1951, as well as international agreements that Turkey is part of. These include the Berne Convention for the Protection of Literary and Artistic Works, the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, and TRIPs.

The Law has been amended various times, namely in 1983, 1995, 2001, 2004, 2007 and 2008. Although a new regulation has been on the legislator's agenda since 2010, as the Law falls short on the digital era and sectoral needs, the status of the new regulation remains unknown.

What types of works are protected?

An intellectual or artistic work is protected under the Law if it meets the dual requirements outlined in Article 1 of the Law:

1. The individuality of the author; and
2. Falling in one of the four main categories of works listed in Law:
3. Scientific and literary works
4. Musical works
5. Works of fine art
6. Cinematographic works

Scientific and literary works include but are not limited to: computer programs (source codes, scripts, and preparations regarding them), dances, written choreographies, pantomimes, similar theatrical works without dialogue, technical and scientific drawings and photos, maps, plans, projects, sketches, architectural models, industrial, environmental and theatrical designs and projects, geographical or topographical models and town-planning schemes lacking in aesthetic quality.

Musical works include verbal or non-verbal compositions.

Oil paintings or watercolors, all types of drawings, patterns, pastels, engravings, calligraphies, artistic scripts and gildings, works drawn or fixed on metal, stone, wood or other material by engraving, carving, silk screen printing, sculptures, reliefs and carvings, architectural works; handicrafts and minor works of art, miniatures

and works of ornamentation, textiles, fashion designs, photographic works and slides, graphic works, cartoons; and all kinds of personifications are considered as work of fine art as long as they have aesthetic value.

Cinematographic works cover artistic, scientific, educational or technical nature of all kinds of moving pictures, music videos, moving pictures of daily events, commercial videos, etc.

Although databases are also protected under the Law, they are not considered as an artistic work and they are protected by sui generis protection granted in the Law.

How are rights created?

Copyright arises automatically on the creation of a work; no formality or ceremony such as registration is required to benefit from copyright protection.

On the other hand, the Law sets forth mandatory registration for musical and cinematographic works and video games in order to facilitate proof of ownership and determination of infringement by the rights holders. The registration of such works is required in order to have a special label, called a banderol, which reproduced copies of the such works should bear for commercial exploitation and prevention of piracy.

Registration of the remaining types of artistic works is optional. Yet, although there is no mandatory registration set for literary works, computer software (except for video games) and non-period publications, these works also need to be registered due to banderol regulations.

The registrations are carried out by the Directorate General for Copyright operating under the Ministry of Culture and Tourism.

What are the categories of rights holder?

The Law categorizes two types of rights holder: authors and neighboring rights holders.

Neighboring rights holders are also sub-categorized in the Law as performers, movie producers, radio-television organizations and phonogram producers.

Who can be authors?

The person or persons who created the work is/are the author(s) of it. The Law only recognizes real persons as authors. Accordingly, the authors of a collective work are also the persons who created the work.

Regarding work for hire and/or employee works, material rights are used by the employer. Whereas the owner of the work and moral rights remains as the employee.

What moral and material rights of authors are recognized?

The moral rights of authors are: authority to disclose to the public, name determination competence, providing information regarding the content of the work, being recognized as the owner of the work, and protecting integrity of the work.

Material rights are adaptation, duplication, distribution, performing to the public, and communicating the work to the public.

How can works be assigned or licensed?

The Law sets forth a very strict formal procedure to dispose of any moral or material rights of artistic work. Any disposal of moral or material rights, including assignments and licenses, should be in writing. The rights granted, duration, place and scope should be specifically indicated.

Assignment or license of any moral or material right of an artistic work that has not been embodied is invalid under the Turkish Law. However, it is possible to undertake to execute such transfers or licenses before the creation of the work.

Also, the assignment of moral rights or waiving moral rights is not possible, whereas granting a license for moral rights is possible.

How long do rights last?

The protection period starts with the publication of the work and it lasts for 70 years following the author's death. If a work is created by more than one author, the 70-year time period starts upon the death of the last author.

For orphan works, author rights are used by their publisher and the 70-year period starts as of the publication of the work unless the author of the work is announced prior to the expiry date.

What actions can rights holders take?

Copyright infringement is both tort and crime. Authors and neighboring rights holders are entitled to bring civil and criminal actions against infringers.

Copyright infringement is a crime, which is prosecuted upon complaint. The crimes and respective punishments are defined under article 71 of the Law. Using a work in the absence of authorization of the author or neighboring rights holder is a crime, which is punishable by 1 to 5 years of imprisonment, which is generally converted to a judicial fine. It must be noted that ceasing and desisting the infringement and compensation cannot be requested within the scope of a criminal action. Rather criminal actions are used for leverage.

Within the scope of civil action right holders can request a determination of the infringement, prevention of infringement and elimination of infringement and compensation of material and moral damages.

If material rights are violated, the rights holders should choose one of these claims for damages:

1. The rights holder is entitled to ask for his/her actual damages, as well as for the loss of profit by proving the fault of the infringer and a causal link between the damage and the infringement under Article 70 of the Law and moral damages, or
2. The rights holder may request up to three times of current value as damages under Article 68 of the Law. With this method, a fictional license is established between the parties and the use subject to the action becomes legitimate. This option is preferred by rights holders as it sets strict liability for

the infringer.

Related Practices

- [Copyrights](#)
- [IP Litigation](#)

Related Attorneys

- [EZGİ BAKLACI GÜLKOKAR, LL.M.](#)
- [ECE BERKMAN](#)

Moroglu Arseven | www.morogluarseven.com