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# Copyright 2022

Turkey: Law & Practice  
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## Law and Practice

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## 1. GENERAL INFORMATION

### 1.1 Governing Copyright Statute

Copyright protection in Turkey is governed by the Law on Intellectual and Artistic Works numbered 5846 (the “Law”), which came into force on 13 January 1951 and was amended in 1983, 1995, 2001, 2004, 2007 and 2008.

The [latest version of the Law can be accessed through this link](#) where it is available in many languages in addition to Turkish. However, the translated versions are not the latest version.

A new regulation has been on the legislator’s agenda since 2010 and a draft was shared with the public in 2017, as the Law falls short on the digital era and sectoral needs, and includes unclear sanctions as it has been amended several times. The status of the proposed new regulation remains unknown.

### 1.2 Berne Convention

Turkey became a party to the Berne Convention on 1 January 1952. Turkey first accepted the text of 1948 in 1952 and later adhered to the latest amended version of the 1979 Paris text on 7 July 1995.

Turkey has been a member of the WTO since 26 March 1995 and is also a party to the following international treaties:

- TRIPS Agreement;
- WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty;
- Rome Convention;
- European Convention on Cinematographic Co-production; and
- Geneva Convention for the Protection of Producers of Phonograms Against Unauthorised Duplication of Their Phonograms.

### 1.3 Foreign Copyright Holders

Copyright protection under the Law does not impose any limitation with respect to the nationality of the author or neighbouring rights holder.

As per additional Article 2 of the Law and the Berne Convention, foreign copyright holders enjoy the same copyright protection as that granted to Turkish nationals, and they do not have to follow any special steps to secure protection.

## 2. COPYRIGHTED WORKS

### 2.1 Copyright Protection: Essential Elements

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

- individuality of the author; and
- falling in one of the four main categories of works listed in the Law –
  - (a) scientific and literary works;
  - (b) musical works;
  - (c) works of fine art; and
  - (d) cinematographic works.

### 2.2 Copyright Protection: Special Notice and Registration of Works

Neither a special notice nor the registration of works is required for copyright protection. Copyright arises automatically on the creation of a work.

On the other hand, the Law sets forth mandatory registration for musical and cinematographic works and video games to facilitate proof of ownership by rights-holders and, thereby, determination of infringement. The registration of works requires reproduced copies of such works to bear a special label, called a “banderol”. The

aim of this label is to prevent commercial exploitation and piracy.

Registration of the remaining types of artistic work is optional. However, computer software (except for video games) and non-periodical publications 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 (the “Ministry”). However, this is not a registration which grants ownership, but rather a kind of time stamp to secure the date of creation and ownership. The Directorate General for Copyright has no responsibility regarding the accuracy of the information provided and all the procedures taken for registration are made based on the declaration of the rights-holders.

Public access to the Intellectual and Artistic Works Database has been provided through the website of the Directorate General for Copyright since 9 May 2019.

## 2.3 Categories of Copyrightable Works

There are four categories of protected works in the Law as shown below. The sub-categories are not limited and allow expansion based on legal interpretation depending on the nature of the works.

### Sub-types of Copyrightable Works

The sub-types of copyrightable works are comprehensively listed by the Law.

#### *Scientific and literary works (Article 2)*

- Works that are expressed by language and writing in any form, computer programs/software (computer programs expressed in any form together with their preparatory designs, provided that the same leads to a computer program at the next stage). Ideas and princi-

ples on which any element of a computer program is based, including those on which its interfaces are based, are not deemed works.

- All kinds of dances, written choreographic works, pantomimes and similar theatrical works without dialogue.
- All kinds of technical and scientific photographic works, all kinds of maps, plans, projects, sketches, drawings, geographical or topographical models and similar works, all kinds of architectural and urban designs and projects, architectural models, industrial, environmental and theatrical designs and projects, lacking in aesthetic quality.

#### *Musical works (Article 3)*

- Musical works are all types of musical compositions, with or without lyrics.

#### *Works of fine art (Article 4)*

The following works, which have aesthetic value:

- oil paintings or watercolours; 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, ornamental inlay or similar methods; silk screen printing;
- sculptures, reliefs and carvings;
- architectural works;
- handicraft and minor works of art, miniatures and works of ornamentation, textiles, fashion designs;
- photographic works and slides;
- graphic works; and
- cartoons.

The use of sketches, drawings, models, designs and similar works as industrial designs does not affect their status as intellectual and artistic works.

### **Cinematographic works (Article 5)**

These include films of an artistic, scientific, educational or technical nature, or films recording daily events or movies, that consist of a series of related moving images with or without sound and which, regardless of the material in which they are fixed, can be shown by the use of electronic or mechanical or similar devices.

### **Application of Copyright**

Copyright does not protect an idea itself but must be expressed in writing or drawing or any other tangible form. Therefore, copyright protection does not extend to ideas but only to fixed works.

Article 1-b of the Law defines “fixation” as the act of recording sounds or representation of sounds or sounds and images in an apprehensible, reproducible and transmittable manner. “Fixation” is specifically defined for musical works, as the Law was written with musical works in mind. It has been amended several times and, in practice, fixation is accepted as any tangible form of a work.

### **2.4 Copyright Protection: Software**

Software is protected as a scientific and literary work. There are no special requirements – the nature of the protection awarded is the same as for any other copyrighted work.

Protection of software includes software expressed in any form, together with its preparatory designs, provided that they lead to a computer program at the next stage (including source codes, object codes, scripts, graphical interfaces, user manuals and preparatory materials). It is required that computer programs be expressed in language and writing in any form. Protection does not include the ideas or the principles regarding the interface of the software, or algorithms, which are considered to be an idea.

Cumulative protection is accepted under Turkish law. Therefore, software can be protected under the Turkish Commercial Law as a trade secret and as a product of the company under unfair competition rules, as well as through copyright protection. Moreover, although software itself is not subject to patent protection, inventions involving software can be granted patent registration if the other patentability requirements are fulfilled.

### **2.5 Copyright Protection: Databases**

Databases, which do not have any artistic value, are also protected under the Law. They are not considered as an artistic work and are granted sui generis protection under Additional Article 8 of the Law, considering the time, effort and expense invested in creating them. The main difference in the protection of such databases is the term of protection. Pursuant to the Law, protection granted to the maker of a database will be 15 years from the date on which the database is made public and it is granted only to the producer of the database, whereas the term of protection for other works lasts for the lifetime of the author and for 70 years after their death.

Databases may also be protected as a compilation of works and as an adapted work, pursuant to Article 6, if they also bear the individuality of the author like a regular copyrighted work. Protection for such databases cannot be extended to the data and materials contained in the database. In such cases, these databases enjoy the general protection granted by the Law.

### **2.6 Copyright Protection: Industrial Design**

#### **Protection under Copyright Law**

Industrial designs may benefit from copyright protection as works of fine art. There is no ceremony or registration required to obtain protection. Article 4 of the Law explicitly states that cumulative protection is granted to industrial

designs and they may be protected as a work of fine art as well.

## Protection under the IP Law

Industrial designs are mainly protected under the design provisions of Industrial Property Law No 6769 (the “IP Law”) alongside copyright protection. Article 55 of the IP Law defines designs as any industrial or handicraft item, including parts intended to be assembled into a complex product, products such as packaging, presentations of more than one object perceived together, graphic symbols and typographic typefaces, excluding computer programs. The IP Law mainly protects registered designs in Turkey and “novelty” and “individuality” are required for registration. Pursuant to Article 69 of the IP Law, the term of protection of a registered design is five years from the date of filing.

## Protection Terms

The main difference between copyright protection for industrial designs and protection granted to designs under the IP Law is the protection term. The protection term for an industrial design can only be prolonged in total up to 25 years (renewed in five-year periods), whereas the term of copyright protection lasts for the lifetime of the author and for 70 years after their death. Also, although the IP Law requires the industrial design to be registered in Turkey to grant protection, copyright protection is granted regardless of any ceremony, including registration. Unregistered industrial designs can be protected under the IP Law as well, but they should first be launched in Turkey and the protection term is only three years from the date of the first presentation to the public. However, it should be noted that to benefit from copyright protection, the industrial design should be considered as a work of fine art in that it should have artistic value. Also, it is not possible to take criminal action against infringement of an industrial design under the IP

Law, whereas under the Law, rights-owners are entitled to take criminal action against infringers.

## 2.7 Copyright Protection: Distinct Categories

A work can be protected under the Law if it meets the two requirements (individuality and falling within the four main categories of works – see **2.1 Copyright Protection: Essential Elements**). Accordingly, copyright is also applicable to such cases not expressly mentioned by the Law, if they meet the two main requirements.

### Distinct Categories Not Mentioned by the Law

#### *Fictional characters*

Fictional characters are not mentioned in the Law, but various supportive decisions of the Court of Appeal have protected “fictional characters”. “All kinds of personifications” are accepted as the works of fine artists; accordingly “fictional characters” can be protected.

#### *TV formats*

These are also not explicitly mentioned in the Law, yet they may be protected if they are fixed as cinematographic. They should be particularly detailed and clarified, such as a draft or plan that has a fixed structure, content, subject, shooting technique and set design for protection. Decisions of the Court of Appeal have seen tabloid programmes and competition programme formats accepted as copyrighted works; however, some Court of Appeal decisions have not granted any protection to competition programme formats. It should be noted that television programmes/formats are not automatically deemed as works under the Law and detailed evaluations are made specific to each case.

#### *Sports events*

Sporting events do not bear the individuality of the author and they are not protected as copyrighted works. As the owner of a sports event, the

Turkish Football Federation has exclusive rights for distribution and broadcasting, and generally concludes agreements with digital platforms for the broadcasting of these sports events by radio or TV. However, it must be noted that the owner of the broadcasting rights of sports events can enjoy protection under the Law as a neighbouring rights-owner.

#### *Advertising copy and product labels*

These are not explicitly mentioned in the Law, yet advertisement films are protected as cinematographic works. Other advertising materials, such as printed works and product labels, should also meet the dual requirement to be protected as a copyrighted work. Indeed, today the advertising industry has reached another level and goes far beyond the traditional advertising methods with creative and artistic adverts. However, not all advertising copy and product labels enjoy copyright protection.

#### *Museum exhibitions*

Museum exhibitions may enjoy protection as complete works of fine art, even though they are not referred to in the Law.

#### *Websites*

There is no reference to protection of websites in the Law. Yet, designs of websites can be protected as works of fine art and the content of a website is also protected, depending on its category, see **2.1 Copyright Protection: Essential Elements**. Additionally, HTML codes and source codes of the website are protected as software.

#### *Recipes*

Recipes can be protected as literary and scientific works, even though they are not mentioned in the Law. Rather than the recipe itself, the protection is granted to its expression, if it bears the mark of its author's individuality.

#### *Perfumes*

Perfumes do not fall in any categories and in principle they cannot be protected, though their recipes may be protected as literary and scientific works. However, there is no case law in this regard in Turkey.

#### *Maps*

These are explicitly included under the subcategory of literary and scientific works under the Law and are undoubtedly granted copyright protection.

## **3. AUTHORSHIP AND COPYRIGHT OWNERSHIP**

### **3.1 Authorship**

The author of a work is defined as the person who has created the work according to the Law. Pursuant to Article 11 of the Law, the person whose name or known pseudonym is attached to the original work or published copies of the work is deemed to be the author of the work until proven otherwise. Also, any person who is introduced as the owner of the work on TV or at a conference or public space during presentation of the work, will be deemed as the owner of the work, unless proven otherwise.

### **3.2 Joint Authorship**

Use of rights arising from a work, which is created by more than one person, differs depending on whether the work and the contribution of the authors can be divided into parts.

If the work of the authors cannot be divided into parts and was created collectively, the owner of the work is the union of the people that created the work. The provisions on ordinary partnership are applied to such authorship. Accordingly, any use of the rights arising from the work requires the consent of each fellow author. The share of each author in the profit and loss is also equal,



irrespective of the value of each author's contribution. If one of the authors would like to assign their interest to a third party, the third party cannot acquire the interest without the consent of the fellow authors. The exception to this general principle is cinematographic works.

If the work can be divided, the creators are entitled to enjoy rights arising from their own parts of the work that they have created separately.

In any case, each author may act individually if the interests of the joint authorship are violated. If one of the authors refuses without good reason to permit a joint transaction, then such permission may be granted by the court.

It must be noted that parties are entitled to regulate otherwise, or provide other terms, with a written agreement.

### 3.3 Copyright Protection: Anonymous or Pseudonymous Works

Article 12 of the Law sets forth different presumptions for "anonymous works":

- if the owner of the work is unknown, the author's rights are exercised by the publisher; if the publisher is also unknown, the rights are exercised by the person that copied the work; and
- if the owner of a work, which is publicised through a conference or any other way of presentation, is unknown, then the author's rights are exercised by the performer of the work.

The term of protection is accepted as 70 years from the date on which the work was made available to the public unless the author reveals their name before the expiry of such term.

There is no clear regulation under the Law regarding orphan works. Pseudonymous works

are treated in the same way as the works in which the name of the author is given. In other words, when a pseudonym is given to the author of a work, the pseudonym holder is deemed to be the author of the work.

It is argued that in the case of orphan works and pseudonymous works where the holder of the pseudonym is not known, the rules of anonymous works may apply. But there is no established practice regarding the treatment of such works.

### 3.4 Collective Works

Collective works are defined as a compilation of original works, in which the rights arising from the collected works are reserved. Examples include anthologies and encyclopaedias, which are the result of selection, collection and creativity by the collective work's author. They are deemed as works under the Law, if they bear the individuality of their author and are considered as adapted works. The collective work compiler should have obtained approval from the owner of each original work (unless the protection term has already expired).

It must be noted that authors of collective works may enjoy the rights arising from the collective work, but the protection cannot extend to each original work that makes up the collective work.

### 3.5 Corporate Authorship

The person or persons who created the work is/are the author(s) of it. The Law only recognises real persons as authors. A corporation cannot qualify as the author of a work.

Material rights arising from a work created by officers, servants and employees within the scope of their duties, are exercised by the employer. However, the owner of the work and the moral rights to it remains the employee.

It is controversial when the work is created by a freelancer, as the Law does not include any clear indication in this regard and freelancers are not in a permanent employment relationship with the employer in terms of Turkish Employment Law. Therefore, as a general principle, the rights are enjoyed by the freelancer.

The above regulations also foresee an exception to these general principles by stipulating that the contrary will not be determined by a private contract between the parties or be understood from the nature of the work. These agreements must conform to specified standards foreseen for the disposal of any moral or material rights in the artistic work. Apart from above exceptions, there is no concept of “work for hire” in the Law.

## **4. SCOPE OF COPYRIGHT PROTECTION**

### **4.1 Economic Rights of the Copyright Owner**

The economic rights defined in the Law from Articles 20 to 25 are adaptation, reproduction, distribution, performance and communicating the work to the public.

#### **Time Period**

The economic rights granted to the author are limited in time and the time period is the same for each economic right. The term of protection expires 70 years after the author’s death; this also applies to works published posthumously. In the case of multiple authors, the protection will expire 70 years after the death of the last surviving author. The term of protection for works that have first been made public after the death of the author is 70 years after the date of death. If the first author is a legal person, the term of protection is 70 years from the date on which the work was made public. Regarding anonymous works, the period is 70 years from the date

on which the work was made public, unless the author reveals their name before the expiry of such term.

However, the protection granted to the maker of a database is limited to 15 years from the date of the database being made public.

### **Rights Assigned to a Third Party**

Pursuant to Article 56 of the Law, if the rights of the author are assigned to a third party for an unlimited time and the general provisions on the protection period of a work are extended by the Law at a later stage, the rights arising from the work are recaptured and automatically returned to the author (or, if the author is dead, to their heirs) once the prior protection term expires.

Even if an author assigns their rights arising from a work to a third party, the author is entitled to withdraw the assignment of rights under Article 58 of the Law, if the assigned party does not use the work and the rights of the author are damaged due to non-use.

### **4.2 Alienable Rights**

Economic rights are transferable, as is any disposal of economic rights (one or more), including assignments and licences.

Economic rights are alienable. The Law sets forth a very strict formal procedure to dispose of any material rights of an artistic work, and any disposal of economic rights, including assignments and licences, should be in writing. The rights granted, the duration, place and scope should be specifically indicated. An agreement in which the author assigns or grants a licence to their economic rights in general terms, such as “assignment or licence of all material rights without any limitation”, is invalid under the Law.

Assignment or licence of any material right of an artistic work that has not been embodied is also

invalid under the Law. However, it is possible to undertake to execute such transfers or licences before creation of the work. It must be noted that it is not possible to withdraw any rights that may arise in the future and any assignment or licence regarding such is invalid.

In addition, unless otherwise agreed, under Article 55 of the Law, transfer of an economic right or the granting of a licence does not extend to translations or other adaptations of a work. Therefore, the assignment of an economic right on the adaptation of a work or the granting of a licence should be specifically indicated.

### 4.3 Transmissible Rights

After the death of the author, the right to use the work, providing the author has not arranged otherwise (it may be set out in a will), must remain undivided among the heirs for 70 years.

The Law exceptionally regulates the position of heirs, when one of the joint authors of a joint work dies, concerning whether the work is completed or made public or not. If the joint author dies before the work is completed or made public, their rights will be distributed equally among their fellow authors. The fellow authors are obliged to pay equitable remuneration to the heirs of the deceased joint author. If the author dies after the work has been made public, the fellow authors have discretion to continue the union with the heirs of the deceased joint author. If the fellow authors would not like to continue joint authorship with the heirs, they must pay equitable remuneration to the heirs.

### 4.4 Transfer of Rights

#### Legal Capacity to Transfer Rights

There is no regulation in the Law regarding age requirement to either exercise or transfer rights, and the general provisions in Turkish Civil Law No 4721 apply. Pursuant to this civil law, there

are three main conditions to having the legal capacity to transfer the rights:

- being a mature person;
- possessing distinguishing power; and
- not being in a state of disability.

Therefore, if the author of the work is not deemed to be a mature person within the civil law, they cannot undertake any obligation by their own will unless they receive the consent of their legal representatives. The age of majority is 18. A teenager who is over the age of 15 may become adult by their own will and under their parents' consent, subject to a court decision.

#### Material Rights

As indicated in **4.2 Alienable Rights**, the contracts and disposals concerning material rights must be in writing and the rights constituting their subject matter must be specified one by one. The material rights can be transferred or licensed unrestricted or restricted as regards duration, place or scope, with or without consideration. It is only possible to assign economic rights once the work is embodied.

#### Limitations on Sub-licensing and Re-transfer

The regulation foresees a strict limitation for sub-licensing and the re-transfer of an economic right. According to the Law, the person who has acquired an economic right or a licence to exercise such right from the author or their heirs may transfer such right or licence to another person only with the written consent of the author or their heirs.

### 4.5 Copyright Exhaustion Doctrine

The exhaustion doctrine "first sale defence" is accepted under the IP Law with respect to the right of distribution of a copyrighted work. Pursuant to legal interpretation of Article 23 of the Law, once a copy of the work is first sold or dis-

tributed within the country, the resale of these specific copies is legitimate.

#### **4.6 Moral Rights of the Copyright Owner**

The moral rights of authors are listed from Articles 14 to 17 of the Law. Authors have the authority to:

- disclose the work to the public;
- determine the name of the work and be recognised as the owner of the work;
- protect the integrity of the work; and
- prevent the destruction of the work.

The moral rights are valid during the author's lifetime and for 70 years after the author's death.

The moral rights are not transferable and any agreement with regard to the transfer of the moral rights is void. Waiving moral rights is not possible, whereas granting a licence to the moral rights is allowed.

The moral rights are transmissible upon the author's death. If the author of the work does not grant any licence on moral rights, these rights will be exercised after their death by the executor of the will, or, if no executor has been appointed, successively by their surviving spouse, their children, their testamentary heirs, their parents and their siblings.

## **5. COPYRIGHT MANAGEMENT SYSTEMS**

### **5.1 Anti-circumvention Right**

Turkey is a party to the WIPO Copyright Treaty and has implemented removal procedures for copyright infringement on the internet. The works that are subject to violation must be removed from the content within three days of the rights-holders contacting the content provid-

er and requesting that the violation be ceased. Should the violation continue, a request will be made to the public prosecutor requiring that the service being provided to the content provider persisting in the violation be suspended within three days by the relevant service provider.

The Law also requires that service providers submit a list of the names of their content providers to the Ministry every month.

The Law is still criticised, however, since it does not effectively address the technological measures needed in the digital age.

### **5.2 Legal Remedies for Copyright Management Information**

Removal of copyright management information (in other words, information on the owners of the work) is considered infringement of moral rights. The author is entitled to request correction on the copies of the work, compensation of damages and the publication of such infringement in a newspaper three times, with the expenses being borne by the infringer.

Additionally, Article 4 of the Law specifically forbids removal of any copyright management information from digital copies of the work, even in the absence of any commercial purpose.

Such actions are also regulated as crimes in the Law, which can be prosecuted upon complaint.

## **6. COLLECTIVES**

### **6.1 Collective Rights Management**

Collective rights management societies are not civil entities or government bodies; they have a special status. They are established by rights-holders under the Law and they are established upon approval of the Ministry and audited by the Ministry. Civil law applies to the societies.

In Turkey, there are currently 28 collecting societies covering several categories (cinematography, music, scientific and literary works, radio-television, fine arts, drama and including a federation for publishers). It is possible to establish a new collective society in the same area as another collective society, if the members of the new society reach one third of the membership of the collective society that operates in the same area. The most active collecting societies in Turkey are in the music industry and the oldest one, which also has the most members, is MESAM (Musical Work Owners' Association of Turkey).

The purpose of collecting societies is as follows:

- collection and distribution of royalties to members;
- protection of the common interests of members;
- setting tariffs for fees arising from the presentation and/or communication of works, performances, phonograms, productions and broadcasts; and
- management and following of the assigned economic rights of members (collecting societies can conclude agreements on permission for the presentation and/or communication of works, performances, phonograms, productions and broadcasts).

Radio-television organisations, cable and satellite broadcasting organisations, and organisations that carry out broadcasting and/or transmission by using technical means now known or to be developed in the future, are obliged to obtain prior permission from the collecting societies in the relevant field for works, performances, phonograms and productions other than staged works. They make the payments for such broadcasts and/or transmissions to such societies and inform such societies of the

works, performances, phonograms and productions that they have used.

## 6.2 Collecting Society

Collecting societies are in charge of the collection of royalties from public premises, online channels and radio-television organisations, and they distribute the income obtained during the management of their members' rights within the above-mentioned scope.

They are entitled to determine the tariffs regarding the rights they manage for contracts, and announce such tariffs and any changes in such tariffs.

Other functions of collecting societies are as follows:

- notifying the Ministry of all information concerning their members and the works, performances, phonograms and productions they represent;
- managing the rights resulting from the activities of their members; and
- giving information concerning the works, performances, phonograms and productions they represent, to persons who make written requests.

## 6.3 Synchronisation Rights

Synchronisation rights are not explicitly regulated in the Law, but are considered as a type of adaptation and as being a partially related moral right of "protecting the integrity of the work". The courts deal with synchronisation cases by applying general copyright rules.

## 7. EXCEPTIONS TO COPYRIGHT

### 7.1 Fair Use Doctrine/Fair Dealing

As a general principle, a copyrighted work can only be used with the written consent of the author. The Law lists specific cases where the use of a copyrighted work is allowed, in a limited manner, without the copyright holder's consent.

#### Use of Copyright that Does Not Require Written Consent

##### *Judicial and public order purposes*

- A copyrighted work can be used as evidence in court or before other authorities or can be the subject matter of police or criminal proceedings.
- Photographs can be reproduced and distributed in any form by official authorities or on their instructions, due to public security or for judicial reasons.

##### *Public interest and educational purposes*

- The reproduction, distribution, adaptation or exploitation in any other form of laws, by-laws, regulations, notifications, circulars and court decisions that have been officially published or announced is permitted.
- The right to reproduce or distribute public speeches that are made before the grand national assembly or other official assemblies, congress or courts, or public meetings can be communicated to the public or reproduced with the purpose of giving news and information to the public.
- Published works can be performed in all educational institutions without directly or indirectly aiming for any profit by announcing the name of the author and the work.
- There is no charge to create selected or collected works derived from published musical, literary and scientific works, and works of fine art that are made public for educational purposes.

- It is permitted to record parts of an intellectual or artistic work on devices in relation to current events, if the recording is made for the sake of news and giving information.
- As long as the author is indicated, it is permitted:
  - (a) to quote in scientific and literary works from a copyrighted work that has previously been made available to the public;
  - (b) to use in another musical work, a part, passage or theme of a composition, which has previously been made available to the public;
  - (c) to use a work of fine art or any other work which has previously been made public, to shed light on a literary work; or
  - (d) to use a work of fine art, which has previously been made public, to shed light in scientific conferences.

##### *Personal use and news purposes*

- Daily news and information communicated to the public by the press or radio may be freely used by other parties if the source and the name of the author are given.
- It is permitted to communicate a copyrighted work for daily news purposes.
- Reproducing any intellectual or artistic work for personal use without pursuing profit is also allowed.
- The reproduction and adaptation of a computer program by the lawful acquirer, where necessary for the use of the computer program in accordance with its intended purpose, including for error correction, is permitted. Loading, running and error correction of a computer program by a person who has lawfully acquired the program cannot be prohibited. The making of a back-up copy by a person having the right to use the computer program may not be prevented by contract in so far as it is necessary to ensure the use of such program.

- Works of fine art permanently placed on public streets, avenues or squares may be reproduced by drawings, graphics, photographs and the like, distributed, shown by projection in public premises, or broadcast by radio or similar means. For architectural works, this freedom of reproduction is only valid for the exterior form.

## 7.2 Private Copying

The reproduction of a copyrighted work for personal use is considered as fair use under Article 38 of the Law.

## 7.3 Reproductions of Cultural Goods/ Buildings

Cultural goods/buildings in public places can be freely reproduced in the form of drawings, graphics, photographs and similar forms under Article 40 of the Law.

## 7.4 Activities Carried Out by Intermediaries

There is no established exception in terms of the activities carried out by intermediaries, such as internet service or access and hosting providers.

However, if copyright infringement takes place by means of the internet, the liability of the internet access provider and hosting providers is different under the Law Regulating Internet Publications and Combating Crimes Committed by Means of Such Publications (Law 5651). In principle, they are not liable regarding the infringing use of copyrighted works and they are not obliged to check whether the content uploaded to the website is illegal or not. However, they are obliged to remove or disable access to content they host when they are notified by the rights-holder that the content is being used illegally.

## 7.5 Satire and Parody

There is presently no exception to copyright for satire and parody. However, the Draft Law

released on 5 May 2017 foresees an exception for satire, parody or caricature, but it has not yet been ratified.

## 7.6 Copyright: Freedom of Speech/ Right of Information

There are several exceptions foreseen in relation to the right of information such as reproducing, distributing or broadcasting speeches in the official assemblies and congresses, in courts of law or at public meetings; creating selected or collected works derived from published musical, literary and scientific works for educational purposes; and recording parts of an intellectual or artistic work that is part of a current event on devices to use in news reports.

# 8. NEIGHBOURING/ ENTREPRENEURIAL/ COPYRIGHT-RELATED RIGHTS

## 8.1 Neighbouring Rights

Neighbouring rights-holders are sub-categorised in the Law as performers, phonogram and movie producers, and radio-television organisations.

### Scope of Neighbouring Rights

The scope of neighbouring rights is defined under Article 80 of the Law.

### *The neighbouring rights of performers*

- The right to be identified as the performer of their performances and to seek prevention of any distortion or mutilation of their performances that would be prejudicial to their reputation. They hold this moral right even if they transfer their material rights to a producer.
- The exclusive right to authorise or prohibit the fixation of such performance, reproduction, sale, distribution, rental and lending of such

fixation, or the communication of such fixation to the public.

- The right to authorise or prohibit the distribution by sale of the original or copies of their fixed performances, which have not yet been put up for sale in the domestic market.

#### *The neighbouring rights of phonogram and movie producers that make the first fixation of the sounds/movies*

- The right to reproduce, distribute, sell, rent or lend the fixation, communicate the fixation to the public or retransmit or prevent the release of the fixation.
- The above-indicated exclusive material rights can be theirs only if they take over the material rights of the work from the author and performers.
- They do not have any moral rights.
- If performances fixed on phonograms and films are communicated to the public by a third person, even with the authorisation of the phonogram/movie producers, that person is obliged to pay an equitable remuneration to the authors as well as the performers and producers, or the collecting societies in the related field.

#### *The neighbouring rights of radio-television organisations*

- Radio-television organisations have exclusive rights to the broadcasts they produce, in terms of authorising or prohibiting simultaneous or delayed transmission by other broadcasting organisations or at public premises, and direct or indirect reproduction and distribution of the broadcasts.

### **8.2 Transferring/Licensing/Sale of Neighbouring Rights**

The general rules explained in **4.2 Alienable Rights** apply to the transfer, licensing and sale of neighbouring rights as well.

It must be noted that it is explicitly regulated under the Law that the right to be identified as the performer and the right to prevent any distortion remain with the performer even if the performer transfers their material rights. The moral rights cannot be transferred and any contract to transfer will be deemed null and void; however, it is possible to grant a licence on moral rights.

### **8.3 Copyright Exceptions Applicable to Neighbouring Rights**

The exceptions applicable to neighbouring rights are specifically regulated in the Law and are similar to the specific cases foreseen for fair use. There is no need to have the authorisation of the neighbouring rights-holders under the following circumstances:

- performance and communication of a work for public order, education and instruction, scientific research or news, without aiming for profit;
- reproduction of radio or television programmes for broadcasting and personal use, without aiming for profit;
- temporary fixations made by radio-television organisations by means of their own facilities and for their own broadcasts; and
- other suitable cases specified under fair use in the Law (see **7.1 Fair Use Doctrine/Fair Dealing**).

## **9. COPYRIGHT INFRINGEMENT AND LITIGATION**

### **9.1 Types of Copyright Infringement**

The following acts constitute copyright infringement:

- unauthorised use of any economic rights of a copyrighted work (including adaptation,



- reproduction, distribution, performance, or communication to the public of the work);
- violation of the moral rights (including disclosing the work to the public, not referring to the author of the work, or referring to the author of the work as a different person); and
- using the work by exceeding the scope of a licence agreement.

## 9.2 Defences against Copyright Infringement

The following can constitute defences to copyright infringement actions:

- exceptional fair-use arguments listed in **7.1 Fair Use Doctrine/Fair Dealing**;
- the public domain argument;
- claiming the work is not original or now governed as a work by the Law (challenging the ownership of the copyright or individuality of the author); and
- the statute of limitation.

## 9.3 Proceedings Available to the Copyright Holder

Copyright infringement is regulated as both tort and crime in Turkey. Authors and neighbouring rights-holders are accordingly entitled to bring civil and criminal actions against infringers.

### Criminal Action

Copyright infringement is a crime, which is prosecuted upon complaint, and the sanctions and actions that are considered crimes are regulated under Article 71 of the Law. It must be noted that cease and desist of the infringement and compensation of damages cannot be requested within the scope of a criminal action.

### Civil Action

In civil actions, right-holders can request determination of infringement, prevention of infringement, elimination of infringement, compensation

of damages and publication of the decision in a gazette.

### Requirements

No specific formality needs to be followed for these proceedings, including any registration of works. To succeed in these actions, the plaintiff and the complainant are obliged to prove ownership of the copyrighted work and that their rights are infringed under the general principle of Turkish law.

## 9.4 Jurisdiction for Copyright Proceedings

There are specialised civil and criminal intellectual property courts in Istanbul, Ankara and Izmir. It is mandatory to initiate copyright infringement proceedings before the specialised courts, if the dispute falls within the jurisdiction of one of the specialised courts.

In other cities, where there are no specialised courts, the criminal and civil courts of first instance are designated as specialised courts. The rule is as follows:

- if there is only one civil/criminal court of first instance, this court will handle the matters;
- if there are two civil/criminal courts of first instance, the first civil/criminal court of first instance will handle the matters; and
- if there are more than two civil/criminal courts of first instance, the third civil/criminal court of first instance is deemed to be the competent court.

The actions can be initiated before the authorised court where the defendant is resident, where the copyright-holder is domiciled or where the infringement occurred, under the general principles of the Civil and Criminal Procedural Laws of Turkey. Moreover, the court actions for the prevention and elimination of infringement can be

initiated at the residential address of the plaintiff, pursuant to Article 66 of the Law.

### **9.5 Necessary Parties to Copyright Infringement Proceedings**

Authors, neighbouring rights-holders and any other real persons or legal entities to whom/ which they assigned their rights, including collective societies, are entitled to bring civil and criminal actions against infringers.

Exclusive licensees can file infringement proceedings and claim compensation for infringement of their economic rights. On the other hand, non-exclusive licensees cannot initiate an infringement proceeding, if they are not specifically authorised in their license agreement.

### **9.6 Third Parties to Copyright Proceedings**

To be subject to any remedy or sanction, any person or entity must be a party to the legal proceedings.

A third party who or which has aided in the infringement may be held liable for contributory infringement (such as broadcasting organisations that have communicated infringing content or the main sponsor of an infringing event) and may be subject to claims for an injunction and damages. Legal action should also be taken against them for their liability.

In online infringements, the internet access provider and hosting providers are obliged to remove or disable access to content they host, when they are notified of the infringement by the rights-holder. If they do not fulfil their obligation, a compensation action may follow under the general rules of Turkish law.

### **9.7 Urgent Measures**

The rights-holders (including those whose rights have been violated or are under threat of viola-

tion) may apply for a preliminary injunction from the civil court before or after the commencement of the legal proceeding.

As a preliminary injunction, the following can be demanded:

- to perform certain acts or to refrain from performing them (eg, seizure of infringing products; prevention of sale, distribution, publishing, manufacturing and/or import of the infringing products; or to prevent access to online infringing content); or
- the seizure of the reproduced copies of a work or moulds and other similar devices for reproduction exclusively enabling the manufacture of such copies.

The general requirements foreseen under Civil Procedure Law No 6100 are applied to the preliminary injunction request in copyright proceedings as well. According to Article 389 of the Law, courts may grant a preliminary injunction if:

- serious damage might occur to the applicant because of a delay; or
- it would be impossible or difficult to obtain rights due to changes in the current situation.

### **9.8 Role of Experts in Copyright Proceedings**

Experts play an important role in copyright proceedings. The judges require expert examination of technical issues. Experts provide technical analysis, such as, assessing the originality of a work, whether a work can be considered a copyrighted work, damages, and the extent of the unauthorised exploitation.

### **9.9 Counterfeits and Parallel Imports**

The seizure of counterfeits is possible with a preliminary injunction decision obtained from a civil court.

Also, the customs authorities provide a suspension and notification procedure under Customs Law No 4458. To benefit from such protection, the rights-holder needs to have a valid custom watch application. To be able to file a custom watch application, the rights-holder should register its work before the Directorate General for Copyright.

If the rights-holder has a valid application, Customs will do the following.

- Inspect the shipments and detain the suspected goods.
- Notify the rights-holder about the suspicious shipment and give ten business days (three for perishable goods) to start a civil or criminal action and obtain an injunction decision. For non-perishable goods, this period may be extended by a maximum of ten further working days, where appropriate. Receiving a notification from Customs does not mean that the products are counterfeit. In most cases, the products are parallel imports. However, careful evaluation of all notices is important when considering how to prevent hundreds of products from passing through Customs.
- If the rights-holder does not file a lawsuit, or obtain a preliminary injunction order within ten days (three days for perishable goods), the seized goods will be released.
- There is also “simplified destruction” before Customs without filing any criminal or civil action. Destruction of the goods before Customs is only possible, however, if the shipment owner agrees to destruction by written consent within the ten business days (or three business days) mentioned above, and destruction costs should be borne by the rights-holder. As many infringers are not willing to provide such consent, this mechanism is rarely used.

There is no general rule in the Law regarding parallel imported works. However, Article 23 of the Law clearly states that copies of a work which is copied abroad cannot be distributed in Turkey in the absence of the author.

## 9.10 Remedies and Sanctions

Copyright infringement is a crime, which is prosecuted upon complaint. The sanctions and actions that are considered as crimes are regulated under Article 71 of the Law.

- Any person who exploits the material rights of a copyrighted work in the absence of the consent of the rights-owner is punished by one to five years’ imprisonment or a judicial fine.
- Any person who introduces a work wrongfully as their own is punished by six months’ to two years’ imprisonment or a judicial fine. If this crime is committed through distribution and publication of the work, it is punished by up to five years’ imprisonment (punishment by judicial fine is not possible).
- Any person who quotes a copyrighted work in the absence of referring to the source of the work, is punished by six months’ to two years’ imprisonment or a judicial fine.
- Any person who discloses a work to the public without permission from the rights-owner is punished by six months’ imprisonment.
- Any person who shares inadequate, wrong or deceitful information regarding the source of a copyrighted work is punished by six months’ imprisonment.
- Any person who reproduces, distributes or publishes a work to the public in the name of another well-known person is punished by three months’ to one year’s imprisonment or a judicial fine.

Within the scope of a civil action, rights-holders can request the following:

- preliminary injunction (see **9.7 Urgent Measures**);
- determination of the infringement;
- prevention of infringement and elimination of infringement (prevention of sale, distribution, publishing, manufacturing and/or import of the infringing products, removal and destruction of infringing materials);
- compensation of material and moral damages; and
- publication of the verdict in a gazette.

If material rights are violated, the rights-holders should choose one of these claims for damages within the scope of the civil action:

- the rights-holder is entitled to ask for their actual damages, as well as for 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, plus moral damages; or
- the rights-holder may request up to three times the current value as damages under Article 68 of the Law – with this method, a fictional licence is established between the parties and the use, subject to the action, becomes legitimate (this option is generally preferred by rights-holders, as it sets strict liability for the infringer).

### **9.11 Copyright Infringement as Administrative or Criminal Offences**

As indicated in detail in **9.10 Remedies and Sanctions**, copyright infringement is regulated as a crime as well as being a tort.

Copyright infringement crimes are prosecuted upon complaint. The complaint should be filed before the Public Prosecution Offices. The procedure is as follows.

- The proceeding begins with the filing of the rights-holder’s complaint.
- The complaint may include seizure of counterfeits, in which case, if the public prosecutor agrees, they send the file to the Criminal Court of Peace, for the issuance of a search and seizure warrant. The search and seizure request is evaluated by a judge of the Criminal Court of Peace. The request might be accepted, if there is “reasonable doubt” in respect of the infringing activities. The search and seizure is conducted by police officers and the complainant’s attorney is entitled to accompany the officers.
- Mediation is an obligatory step for criminal cases where the crime is prosecuted upon complaint. Since copyright infringement is among these crimes, before rendering a bill of indictment the files are sent to the mediation offices.
- If the parties do not agree on a settlement, the public prosecutor starts the court action. The parties can settle during litigation until the court decision is finalised.
- The rights-holders are the parties involved in the criminal proceedings if they duly submit such a request before the criminal court. If such a request is not submitted, the rights-holders cannot challenge the court’s decision regarding their complaint.

In addition, as explained in **9.9 Counterfeits and Parallel Imports**, there can be “simplified destruction” before Customs.

### **9.12 Appellate Procedure for Copyright Proceedings**

There is neither a special appellate procedure for copyright proceedings nor a specialised appeal court. The appellate procedure for copyright proceedings is the same as the general appellate procedure before civil and/or criminal courts. Copyright matters are handled by the

same chambers of the regional courts and the 11th Chamber of the Court of Appeal.

### 9.13 Costs of Copyright Litigation

In general, the plaintiff bears the litigation costs until the end, and if the plaintiff is successful, the losing party bears the official litigation fees and official attorneys' fees of the counterparty.

At first instance, the official fees and expenses, including the expert fee for a copyright case, without claiming damages, are around TRY4,000. If there is more than one expert panel appointed in the file, the costs may increase. The official attorneys' fee determined in line with the annual tariff declared by the Turkish Bar Union is TRY7,375 for the year 2022. Official fees, other than expert fees, incurred in initiating the action are generally around TRY500–800. For appeals handled by the regional courts, the official fees and expenses are around TRY250–300. If an additional expert report has to be obtained before the regional courts, the costs may increase. For appeals handled by the Court of Appeal, the official fees and expenses are around TRY 350–400. Professional attorneys' fees may vary depending on the complexity of a case.

According to the Code of Civil Procedure Law, the losing party is obliged to pay the fees, trial expenses and official attorneys' fees. Parties cannot demand the actual fees that they paid to their attorneys.

### 9.14 Alternative Dispute Resolution

Infringement proceedings and other types of non-contractual claims are generally resolved through court proceedings. License agreements and other agreements relating to copyright may include arbitration clauses.

Turkey has adopted an obligatory mediation procedure for monetary claims arising from the Law, since 1 January 2019. As per this legislation, parties with cases pertaining to monetary receivables cannot bring their case before the court unless the mandatory mediation process is completed, and a final report is issued by the mediator setting forth the parties' failure to settle the dispute.

In this respect, rights-holders who claim monetary damages due to copyright infringement must proceed with mediation before bringing their case before the court.

However, the 11th Civil Chamber of the Court of Appeal, which handles intellectual property matters, recently ruled that when the lawsuits are compounded, mediation is not mandatory for cases initiated with non-monetary claims, such as determination of the ownership of the work and prohibition of the infringement alongside the monetary claims pursuant to the Law.

It should be noted that this decision is not binding on all the courts. Considering the practice has not yet been settled, applying for mediation before initiating a civil action is advisable.

The most common alternative dispute resolution methods are:

- mediation – a discussion between the parties before a mediator, who is assigned by the Ministry of Justice upon the application of the plaintiff before the authorised courthouse; and
- arbitration – this implies that the parties have previously accepted to settle a potential dispute between them through arbitration, by signing a contractual document.

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