

UNESCO
WORLD ANTI PIRACY OBSERVATORY

TURKEY

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I. Legislation

1. Copyright laws

Copyright is protected in Turkey through:

- international Agreements
- [Law on Intellectual and Artistic Works](#) (Law No. 5846) (Date of adoption: 5.12.1951)
- Regulation on the Procedure and Principles Concerning Bandrole Implementation (Official Journal Date: 08.11.2001)
- Regulation on the Procedures and Principles Concerning Utilization and/or Transmission of Works, Performances, Productions and Publications(Official Journal Date: 08.06.2004)
- Regulation on Neighbouring Rights (Official Journal Date: 16.11.1997)
- Regulation on Procedures and Principles Regarding the Use Of Deductions Made From The Costs Of Carrying Materials That Include Intellectual and Artistic Works and Technical Devices Used To Copy These Works (Official Journal Date: 13.04.2006)
- Regulation on the Marking of Intellectual and Artistic Works (Official Journal Date: 16.11.1997)
- Regulation on the Procedures and Principles Regarding the Certification of the Enterprises Disseminating or Performing the Record, Copying and Sale of the Materials on Which Intellectual and Artistic Works are Fixed (Official Journal Date: 18.04.2005)
- Decision on Giving Share From the Sale Prices of Handwritten Originals of Works Fine Arts, Scientific, Literary and Musical Works (Resale Right) (Official Journal Date: 27.09.2006)
- Regulation on the Registration of the Intellectual and Artistic Works (Official Journal Date: 17.05.2006)
- Decision of the Council of Ministers No. 2002/4101 on Determining the Amount to be Deducted from the Production or Importation Costs
- Regulation on the Certificate of Authority To Be Issued by Authors of Intellectual and Artistic Works (Official Journal Date: 04.09.1986)
- Regulation on the Collecting Societies and Federations for the Authors of the Intellectual and Artistic Works and Restricted Right holders (Official Journal Date: 01.04.1999)
- other legislation related to enforcement of copyright or affecting copyright protection.

2. Other laws

The laws pertaining to anti-piracy measures and copyright enforcement in Turkey are:

- The Turkish Criminal Law (Official Journal Date: 26 October 2004 no.5237)
- The Code of Civil Procedure (Official Journal Date: 02 April 1927 no. 1086)
- The Code of Criminal Procedure (Official Journal Date: 17 December 2004 no. 5271)
- The Code of Obligation (Official Journal Date: 29 April 1926 no. 818)
- The Code of Press (Official Journal Date: 26 June 2004 no. 5187)
- The Law on the Establishment of Radio and Television Enterprises and Their Broadcasts Law (Official Journal Date: 20 April 1994 no. 3984)

3. Latest developments and perspectives

In order to accomplish full harmonisation with the EU Acquis and to eliminate discrepancies in the implementation of intellectual property rights, some amendments will be enacted on Law no

5846 (Turkish Copyright Law). With this amendment, the provisions on legal application procedures and legal sanctions will be harmonized with the EU legislation. The amendment will include the issue of the mandatory exception concerning temporary acts of reproduction as well. Besides, private copying exception regulated in Article 38 of Law No. 5846 will be revised with a view to aligning with relevant EU Directives. (Directive 2001/84/EC, Directive 93/83/EEC, Directive 96/9/EC, Directive 2006/116/EC, Directive 2006/115/EC, Directive 2004/48/EC, Directive 2001/29/EC)

4. Summary of legislation

- *Exclusive rights of the authors and of the owners of neighboring rights*

Exclusive Rights of the authors (Articles 20 to of the Law on Intellectual and Artistic Works)

- Right of Adaptation
- Right of Reproduction
- Right of Distribution
- Right of Performance
- Right to Communicate a Work to Public by Devices Enabling the Transmission of Signs, Sounds and/or Images
- Resale Right

In addition to the above mentioned economic rights, authors enjoy moral rights which are set forth in Articles 14 to 17 of the Law on Intellectual and Artistic Works.

Exclusive right of the owners of neighboring rights

The exclusive rights of performers (Article 80 of the Law on Intellectual and Artistic Works)

- The right of authorizing or prohibiting the fixation of their performance, reproduction, sale, distribution, rental and lending of such fixation, communication of such fixation to the public by devices permitting transmission of signs, sounds and/or images as well as its re-transmission and performance.
- The right of authorizing or prohibiting the distribution by sale or any other way of the original or the copies of his fixed performances which have not yet been put up for sale or distributed in any other way in the domestic market.
- The right of authorizing or prohibiting the sale of the original or reproduced copies of his fixed performance by wire or wireless means, or the distribution or other supply and communication of such performance or reproduced copies to the public by providing access to them at a time and place chosen by natural persons.

Performers enjoy also moral rights which are provided under Article 80 of the Law on Intellectual and Artistic Works.

The exclusive rights of phonogram producers: (Article 80 of the Law on Intellectual and Artistic Works)

- The right of authorizing or prohibiting the direct or indirect reproduction, distribution, sale, rental and lending to the public of the fixation which was made with the permission of the author and performer shall belong exclusively to the phonogram producer. Producers shall have the exclusive right of authorizing the communication of their fixations to the public by devices permitting the transmission of signs, sounds and/or images and re-transmission of such fixations.

- The right of authorizing and prohibiting the distribution by sale or any other way, of the original or the reproduced copies of his fixations which have not yet been put up for sale or distributed in any other way in the domestic market.
- The right of authorizing or prohibiting the sale of the fixations of the performances by wire or wireless means or the distribution or other supply and communication of such fixations to the public by providing access to them at a time and place chosen by natural persons. Distribution and supply of fixations by means of communication to the public shall not prejudice producer's right of distribution.

The exclusive rights of radio-television organizations: (Article 80 of the Law on Intellectual and Artistic Works)

- The right of authorizing or prohibiting the fixation of their broadcasts, their simultaneous transmission by other broadcasting organizations, their delayed transmission, their re-transmission, and their distribution via satellite or cable;
- Authorizing or prohibiting the direct or indirect reproduction and distribution by any technique or method of their broadcasts except for private use;
- The right of authorizing or prohibiting the transmission of their broadcasts at public premises;
- The right of authorizing the communication of their fixed broadcasts to the public by providing access to them at a time and place chosen by natural persons.
- The right of authorizing or prohibiting the communication of their broadcast signals on communication satellites or signals directed at them to the public by another broadcasting organization or cable operator or other third parties as well as the decrypting of their encrypted broadcasts.

The exclusive rights of film producers: (Article 80 of the Law on Intellectual and Artistic Works)

- The right of authorizing or prohibiting the direct or indirect reproduction, distribution, sale, rental and lending to the public of the fixation, which was made with the permission of the author and the performer.
- The right of authorizing the communication of their fixations to the public by devices permitting the transmission of signs, sounds and/or images and their re-transmission.
- The right of authorizing or prohibiting the distribution by sale or any other way, of the original or the reproduced copies of film fixations which have not yet been put up for sale or distributed in any other way in the domestic market.
- The right of authorizing or prohibiting the sale of film fixations by wire or wireless means, or the distribution or other supply and communication of such fixations to the public by providing access to them at a time and place chosen by natural persons.

- *Exceptions and limitations to copyright / Permitted Acts in relation to copyright works*

The exceptions in Turkish Law on Intellectual and Artistic Works are as follows:

- Copyrighted work used as evidence in court or before other authorities or as the subject matter of police or criminal proceedings (Article 30).
- Photographs reproduced and distributed in any form by official authorities or on their instructions due to public security or for judicial reasons without the author's consent (Article 30).

- 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 (Article 31).
- Reproduction, public recitation or broadcasting by radio and distribution by any other means, of speeches and addresses made in the Grand National Assembly and at other official assemblies and congresses, in courts of law or at public meetings, is permitted for the purpose of giving news and information. The right to reproduce or distribute speeches and addresses for purposes other than those mentioned in the first paragraph belongs to the author (Article 32).
- Published works may be freely performed in all educational institutions for the purpose of face-to-face education and without directly or indirectly aiming for profit, provided that the name of the author and the work is announced in the customary manner (article 33).
- It is free to create selected or collected works, which are dedicated to educational purposes, by way of making quotations in an amount justified by the purpose, from published musical, literary and scientific works and works of fine arts that are made public. However, this freedom may not be used in a way which would prejudice the legitimate interests of the author without good reason or which would conflict with the normal exploitation of the work (Article 34).
- Quotations of a work are permitted in the following cases (Article 35):
 - Quoting a few sentences or passages of a work made public, in an independent literary or scientific work;
 - Incorporating certain elements of a published composition, at the most such as themes, patterns, passages or ideas, into an independent musical work;
 - Reproducing works of fine arts that have been made public and other published works, in a scientific work for the purpose of explaining its content and to the extent justified by such purpose;
 - Displaying works of fine arts that have been made public by projection or similar means in order to explain a subject at scientific conferences or lectures.

The quotation must be made in a manifest way. In scientific works, it shall be necessary to mention not only the name of the work and the author but also the passage from which the quoted part has been taken.

- Daily news and information communicated to the public by the press or radio may be freely quoted (Article 15 of the Press Law being reserved) Articles or features on social, political or economic issues of the day published in newspapers or journals may be freely quoted in their original or adapted form in other newspapers or journals and may be broadcast by radio or disseminated by any other means, except where the right to quote them has been expressly reserved. Even where the right to quote is reserved, it is permitted to abridge such articles and features as a press review and to so quote, broadcast by radio or disseminate them in any other manner. In all such cases, mention must be made of the name, the issue and the date of the newspaper, of the journal, of the agency and of any other source from which the quotations have been made, together with the name, the pseudonym or the mark of the author of the articles (Article 36).
- It is permitted to record parts of an intellectual or artistic work on devices enabling the transmission of signs, sounds and/or images in relation to current events, provided that this has the nature of news and does not exceed the limits of giving information. The reproduction, distribution, performance and broadcasting by devices such as radio and television of passages quoted in such a manner are free. This freedom may not be used

in a way which may prejudice the legal interests of the right holder or which may conflict with the normal exploitation of the work (Article 37).

- It is permitted to reproduce all intellectual and artistic works for personal use without pursuing profit. However, such reproduction may not prejudice the legitimate interests of right holders without good reason or conflict with the normal exploitation of the work (Article 38).
- In the absence of specific contractual provisions, the reproduction and adaptation of a computer program by the lawful acquirer is permitted where necessary for the use of the computer program in accordance with its intended purpose, including for error correction. The loading, running and error correction of a computer program by a person who has lawfully acquired the program may not be prohibited by contract. The making of a backup copy by a person having the right to use the computer program may not be prevented by contract insofar as it is necessary to ensure the use of such program. The person who has acquired the right to use a computer program may observe, analyze or test the functioning of the program in order to determine the ideas and principles underlying any element of the program while performing any of the acts of loading, displaying, running, transmitting or storing the program which he is entitled to do (Article 38).
- Where reproduction of the code and translation of its form in the sense of reproduction and adaptation of the computer program are indispensable to obtain the information necessary to achieve the interoperability of an independently created computer program with other programs, the performing of such acts shall be permitted, provided that the following conditions are met (Article 38):
 - That these acts are performed by the licensee or by another person having the right to use a copy of the program or by a person authorized to do so in their name;
 - That the information necessary to achieve interoperability was not made available to the persons specified in subparagraph one;
 - That these acts are confined to the parts of the program which are necessary to achieve interoperability.

The provisions of the sixth and seventh paragraphs may not be interpreted in a way that conflicts with the normal exploitation of the program or that unreasonably prejudices the right holder's legitimate interests.

- Works of fine arts 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 is only valid for the exterior form (Article 40).
- Works of fine arts may be publicly exhibited by their owners or by others with their consent, unless the author has expressly prohibited such exhibition (Article 40).
- Works to be sold by auction may be exhibited to the public. Works exhibited in public premises or placed at an auction may be reproduced and distributed by way of catalogues, guides or similar printed matter published for such purposes by persons organizing the exhibition or auction (Article 40).

According to Article 47 of the Law on Intellectual and Artistic Works, the authority to exercise economic rights on a work which is deemed important for the culture of the country may be expropriated before the expiry of the term of protection through the payment of an appropriate fee to the right holders and by issuing a decree. In order for such a decision to be taken, the work must have been created in Turkey or by Turkish citizens outside of Turkey and the published copies of the work must have been out of print since two years and it must be

established that the right holder shall not publish a new edition in an appropriate amount of time. The decree shall stipulate:

1. The name of the author and title of the work;
2. The fee to be paid to persons whose acquired rights are violated;
3. The authority and establishment which shall exercise economic rights;
4. The cultural purposes for which the net profit to be obtained following the full payment of the fee shall be allocated.

- *Protection of foreign works*

The Copyright law applies to foreign works. According to Code No 5718 on Private International Law and Procedure Law “Intellectual property rights shall be governed by the law of the State in which protection of the intellectual property is demanded.”

Article 88 of the Law on Intellectual and Artistic Works provides for the protection of foreign works.

Article 82 of the Law on Intellectual and Artistic Works provides for the protection of foreign subjects of related rights.

- *Period of copyright protection*

The term of protection shall last for the lifetime of the author and for 70 years after his death. If there is more than one author, this period shall end upon the expiry of 70 years after the death of the last remaining author. The term of protection for works that have been first made public after the death of the author shall be 70 years after the date of death. So long as the author of a published work cannot be established the term of protection shall be 70 years from the date on which the work was made public, unless the author reveals his name before expiry of such term (Article 27).

The term of protection of Related Rights is set forth in Article 82 of the Law on Intellectual and Artistic Works.

- *Registration*

Registration of a work is not mandatory to claim protection in Turkey according to the Law on Intellectual and Artistic Works. There is a registration system to facilitate proof of right holdership.

According to Article 13 of the Law on Intellectual and Artistic Works, the film producers who make the first fixation of films and the phonogram producers who make the first fixation of sounds shall have their productions containing cinematographic and musical works recorded and registered for the purpose of preventing violation of their rights, facilitating proof of rightholdership and tracking the authority to exercise economic rights, and without the aim of creating any rights.

The recording and registration of all the works protected under this Law may be made for the same purpose upon demand of the authors; the authority to exercise economic rights may also be recorded. The Ministry of Culture and Tourism is the competent authority responsible for recording and registration procedures carried out under Turkish Law on Intellectual and Artistic

Works. The rules and procedures of recording and registration, the determination of the fees and other matters are set out in a by-law named "Registration of the Intellectual and Artistic Works"

5. International treaties

Turkey is a member of the following International Convention and Treaties on Copyright and Related Rights:

- [Berne Convention on the Protection of Literary and Artistic Works](#), in force since January 1, 1952.
- [Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations](#), since April 2004.
- [WTO Agreement on Trade Related Aspects of Intellectual Property Rights](#) (TRIPS), since March 26, 1995.
- [WIPO Copyright Treaty](#) (WCT), in force since November 28, 2008.
- [WIPO Performances and Phonograms Treaty](#) (WPPT), in force since November 28, 2008.

II. Measures and remedies

There is no provision in the Turkish Law on Intellectual and Artistic Works defining copyright infringement. However, a definition of copyright infringement may be deduced from the provisions of Articles 71 to 73 of the Law on Intellectual and Artistic Works. All acts, infringing copyright are listed in related articles.

1. Copyright infringement

Internet copyright infringement (Internet piracy):

According to additional article 4 of the Turkish Law on Intellectual and Artistic Works "In case where rights of authors and related rights holders granted by this Law have been violated by providers of service and content through the transmission of signs, sounds, and/or images including digital transmission, the works which are subject of the violation shall, upon the application of the right holders, be removed from the content. Natural or legal persons whose rights have been violated shall to this end initially contact with the content provider and request that the violation be ceased within three days. Should the violation continue, a request shall next 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 service being provided to the content provider shall be restored, if the violation is ceased. Service providers shall submit a list of the names of their content providers to the Ministry on the first working day of every month. Service providers and content providers are obliged to submit all kinds of information and documents when requested by the Ministry."

According to article 71 "Any person (...), the content providers who persist in violation of the rights granted by this Law shall be sentenced to imprisonment, if their acts does not compose a crime entails heavier penalty, from 3 months to 2 years."

According to Article 66 of the Law on Intellectual and Artistic Works –“Any person whose moral and economic rights have been infringed may bring an action against the infringer to cease the infringement. If the infringement has been committed by agents or employees of an enterprise in the execution of their duties, legal action may also be brought against the owner of such enterprise. It is not necessary that the infringer or the persons referred to in the second paragraph be at fault.

The court shall order appropriate measures as required by the force of circumstances for the cessation of the infringement, by assessing the moral and economic rights of the author, the extent of the infringement, whether there is fault and if there is, degree of fault, and the damages likely to be suffered by the infringer in case of the cessation of infringement.

The author may bring an action for cessation and prevention of infringement in place of his residence as well.

Infringement of Moral Rights (Article 67):

Where a work which has not yet been made public is disclosed to the public without the consent of the author or against his wishes, action for cessation of infringement may only be brought, if the reproduced copies have been disclosed to the public by way of publication. This provision shall also apply in cases where the author's name is shown on the work against his wishes.

If the author's name has not been shown on the work or has been shown wrongly or in such a way giving rise to confusion, and if the author has claimed the cessation of infringement in addition to the action for declaratory relief referred to in Article 15, the infringer shall be obliged to show the author's name on the original work and on the reproduced copies already in circulation. The publication of the judgment in not more than three newspapers may be requested at the expense of the infringer.

The provision of the second paragraph shall apply in the cases of Articles 32, 33, 34, 35, 36, 39 and 40 (the provisions, limitations and exceptions are set out), if the source has been wrongly or incompletely designated or no source is given.

If the work has been unlawfully modified, the right holder may claim the following:

1. The author may claim that reproduction, publication, performance and broadcasting by radio of the modified work be prohibited and that the modifications in the reproduced copies already in circulation be corrected by the infringer or restored to their original form. If the modification is made by publication in a newspaper or journal or by radio broadcasting, the author may claim the administrations of such newspapers, journals or broadcasting organizations that have published the modified work to correct the modification at the expense of the infringer.

2. In the case of works of fine art the author may claim an announcement be made declaring that the modification in the original work has not been made by him, or may claim that his name be removed or changed on the original. If it is possible to restore the work to its original form and if removal of the modification does not significantly prejudice the interests of the owner or of the public, the author may restore the work to its original form.

Infringement of Economic Rights (Article 68)

If a work has been translated without permission of the author, has been published outside the scope of the contract or in excess of the number stipulated in the contract, or has been adapted in another way or broadcast by means like radio or television or performed, the author whose permission was not obtained, may claim the payment of compensation of up to three times of the amount that would have been determined, had the right been granted by contract

or of the damages suffered on the base of imputed or current value. In determination of this amount the opinions of the concerned collecting societies shall be given prior consideration.

If a work is being exploited by reproduction without permission and the reproduced copies have not been put up for sale, the author may claim that the reproduced copies, films, moulds and similar devices enabling the reproduction be destroyed or be surrendered to him in return for equitable remuneration not exceeding their cost price or may claim the payment of three times of the amount he would have demanded, if a contract had been concluded. These claims shall not remove the legal liability of the person who has undertaken the reproduction without permission.

If copies of a work reproduced without permission have been put up for sale or if the sale constitutes an unlawful infringement, the author may, as regards copies in the possession of the infringer, choose one of the alternatives mentioned in the second paragraph.

The person who claims remuneration may assert all rights and authorities he would have enjoyed, had he concluded a contract.

2. Remedies to protect copyright holders

Civil Remedies

Action for Prevention of Infringement (Article 69 of the Law on Intellectual and Artistic Works)

An author whose moral or economic rights are in threat of being infringed may bring an action to prevent the probable infringement. The same provision shall apply in cases where the infringement is likely to continue or recur.

The provisions of the second, third and fourth paragraphs of Article 66 shall also apply in such case.

Action for Damages (Article 70 of the Law on Intellectual and Artistic Works)

Any person whose moral rights have been infringed may bring an action for moral damages for the moral injury he has suffered. In place of or in addition to such pecuniary compensation the court may order another sort of compensation for moral damages.

Any person whose economic rights have been infringed may claim compensation under the provisions governing torts, if the infringer is at fault.

In the cases set out in the first and second paragraphs, the infringed person may, apart from the damages, also claim the profits gained by the infringing party. In such case, any sum demanded in accordance with Article 68 shall be deducted from this amount.

Criminal Remedies

According to Article 71 of the Law on Intellectual and Artistic Works,

Any person,

- who in contravention of the copyright and related rights shall be sentenced to imprisonment from 1 year to 5 years or a judicial fine,
- who sells, rents, lends or distributes in any other, imports or exports the pirated copies of a work or adaptations of such work shall be sentenced to imprisonment from 1 year to 5 years or a judicial fine,
- who buys the pirated copies of a work or adaptations of such work for the commercial purposes shall be sentenced to imprisonment from 1 year to 5 years or a judicial fine.

- who modifies a work, performance, phonograms or productions without the written permission of the right holders shall be sentenced to imprisonment from 1 year to 5 years or a judicial fine.
- who violates paternity right of the author shall be sentenced to imprisonment, if their acts doesn't compose a crime entails heavier penalty, from 6 months to 2 years or judicial fine. In case, this act committed by distributing or publishing, the upper limit of imprisonment should be 5 years without imposing judicial fine.
- who makes quotations without indicating the source including author's name, shall be sentenced to imprisonment from 6 months to 2 years or judicial fine,
 - who makes a statement about the content of unpublished work without getting permission from right holders shall be sentenced to imprisonment up to 6 months,
 - indicates the source about a work insufficiently, incorrectly or deceptive, shall be sentenced to imprisonment up to 6 months,
 - reproduces, distributes or publishes a work, performance, phonogram or production by using well-known person shall be sentenced imprisonment from three months to from 3 months to 1 year or judicial fine,

Any person, who commits the acts indicated in the first paragraph of Additional Article 4 without authority and the content providers who persist in violation of the rights granted by this Law shall be sentenced to imprisonment, if their acts does not compose a crime entails heavier penalty from 3 months to 2 years.

The judge may diminish or desist giving the penalty to any person who sales, puts into commercial circulation or buys the work, performance, phonogram or production illegally manufactured, adapted, reproduced, distributed or published, in case he made them captured by informing against the person providing such subject matters mentioned above in prosecution process.

According to Article 72 of the Law on Intellectual and Artistic Works

Any person, who manufacture, sells or possesses programmes and technical components neutralizing supplemental programmes which purpose is to prevent illegal reproductions of computer programmes apart from personal use purposes shall be sentenced to imprisonment from 6 months to 2 years.

According to Article 75 of the Law on Intellectual and Artistic Works

The investigation and prosecution of the offenses specified in Articles 71 and 72 shall be subject to complaint.

According to Article 76 of the Law on Intellectual and Artistic Works

Specialized courts to be established by the Ministry of Justice shall be competent for litigations arising from the legal relationships regulated by this Law regardless of the amount in controversy or the punishment prescribed by the Law. Until the specialized courts are established and until they commence their proceedings, The Supreme Council of Judges and Prosecutors shall, upon the proposal of Ministry of Justice, determine which criminal and civil courts of first instance are to be designated as specialized courts and the jurisdiction of such courts.

In the civil litigations to be initiated under this Law, the court may order that documents of permissions and authorizations or the lists of all protected works, phonograms, performances, films and broadcasts be submitted by those who use such works, phonograms, performances, films and broadcasts, if the plaintiff submits sufficient evidence to form a strong opinion as to the validity of his claims. The failure to submit such documents or lists shall constitute a presumption, that all works, phonograms, performances, films and broadcasts have been unlawfully used.

According to Article 77 of the Law on Intellectual and Artistic Works

Upon the request of the person whose rights have been violated or are under threat of violation or collecting societies, the civil court may order the other party, before or after the commencement of the proceedings on the merits of the case, to perform certain acts or to refrain from performing them as well as it can order closing the premises where the act is being committed or opening that place, furthermore as a precautionary measure the seizure of the reproduced copies of a work or moulds and other devices for reproduction like these exclusively enabling the manufacture of such copies, if such an order is deemed necessary for the prevention of a substantial injury or an instantaneous danger or accomplished facts or it is necessary for any other reason and if the claims asserted are considered to be strongly probable. It shall be stated in the order that non-compliance with the order shall be resulted in criminal consequences as provided in Article 343 of the Law on Execution and Bankruptcy.

The provision of Article 57 of the Customs Law shall apply during the import or export of the copies, which require sanctions in case an infringement of rights is likely to occur.

The procedure regarding the seizure of such copies by the Customs Authorities shall be implemented in accordance with the related provisions of the Customs Regulation.

According to Article 81 of the Law on Intellectual and Artistic Works

Any person who reproduces and puts into commercial circulation, sells or distributes the work without banderole or against banderole obligation shall be sentenced to imprisonment from 1 year to 5 years or a judicial fine up to 5000 days.

Any person who buys the work without banderole or against banderole obligation for commercial purposes shall be sentenced to imprisonment from 1 year to 5 years or a judicial fine up to 5000 days.

It is prohibited to sell lawfully reproduced copies bearing banderoles which are under the protection of this Law on roads, squares, open air markets, sidewalks, piers, bridges or similar places.

Any person who acts contrary to this provision shall be sentenced administrative fine of 50 TL (26 Euro)

Any person, who manufactures fake banderoles, puts them into commercial circulation, sells, distributes, buys or uses them shall be sentenced to imprisonment from 3 years to 7 years or a judicial fine up to 5000 days.

Any person who uses the banderole which was obtained lawfully for another work shall be sentenced to imprisonment from 1 year to 5 years or a judicial fine up to 1500 days.

Any person who obtains banderoles by fraudulent acts without authority shall be sentenced to imprisonment from 1 year to 3 years.

Any person who provides banderoles to unauthorized person shall be sentenced to imprisonment from 2 years to 5 years or a judicial fine up to 5000 days.

3. Provisional measures

Precautionary measures (PM)

Persons who are to institute or who have instituted proceedings or whose rights have been infringed or endangered or the person who has authority to claim, may require the court to order precautionary measures. The request for PM may be filed before or with the institution of proceedings or filed later. The request for PM shall be examined separately from the main action.

Conditions:

- a) PM should be taken to prevent an essential damage or sudden danger or any other reason,
- b) The court should be convinced of a high probability of the claims.

Nature:

PM shall be in nature to enable securing of the judgment and particularly provide the following:

- a) to perform certain acts or to abstain from performing them,
 - b) to close the district that the act is being done or to open that place,
 - c) cessation of the acts of infringement of the rights of the plaintiff,
 - d) injunction to arrest within the borders of Turkey, including the customs, free ports or free trade areas and keep in custody the produced or imported goods which have infringed the rights,
 - e) to order the placement of security for damages to be compensated.
- (Article 77 of the Law on Intellectual and Artistic Works)

Article 372 of the Code of Civil Procedure stipulates the provisions corresponding to the provisional measures to preserve relevant evidence *inaudita altera parte*.

Article 372 of the Code of Civil Procedure:

“The petition and the copy of court decision shall be notified to the other party. The other party also has the right to submit the other questions to the court and be present while the proceedings are executed. The notification may be renounced exceptionally in so far as it is necessary for the preservation of petitioner’s rights or there are reasons for urgency.”

- Injunction to perform certain acts or to refrain from performing them (article 77)
- Search and Seizure (article 77)

Non-compliance with the order shall be resulted in criminal consequences as provided in Article 343 of the Law on Execution and Bankruptcy.

The procedure regarding the seizure of such copies by the Customs Authorities shall be implemented in accordance with the related provisions of the Customs Regulation.

Publication of the Judgment is available under Article 78 of the Law on Intellectual and Artistic Works. Seizure, confiscation and destruction of pirated goods are set forth in Article 79 of the Law on Intellectual and Artistic Works.

4. Penalties for copyright infringement

Articles 71 to 79 of the Law on Intellectual and Artistic Works covers penalties for copyright infringement.

5. Requirements for foreign persons

Foreign persons are not required to obtain any special approvals, engage any special agents, or present any special documentation in order to gain access to national courts, customs officials, or police officials to obtain enforcement of their copyright in your country.

III. Enforcement

1. Enforcement authorities

a) Authorities responsible for enforcing the copyright law

Only the Courts are the competent authorities responsible to enforce the copyright law. In Turkey specialized IPR courts are competent in copyright cases. The total number of IPR Courts reached to 23, which are distributed as follows:

- Istanbul: 7 IPR civil courts, 7 IPR criminal courts
- Ankara: 4 IPR civil courts, 2 IPR criminal courts
- Izmir: 1 IPR civil court, 2 IPR criminal courts)

General civil and general criminal courts are competent to deal with IPR cases where specialized IPR courts do not exist. (If there is one or two general civil or criminal courts, the first one is competent to deal with IPR cases. If there are three or more than three general civil or criminal courts, the third one is competent to deal with IPR cases.)

b) Enforcement bodies entitles to act ex-officio in copyright infringement cases

The enforcement bodies are entitled to act ex-officio in copyright infringement cases. The investigation and prosecution of banderole violation is not subject to complaint. Banderole is an important determination device in distinguishing the original copy from the pirated copy in combating piracy.

Additionally, the Ministry and local representatives of central government may always inspect, whether the copies and non-periodical publications on which banderoles should be affixed, bear banderoles or not. In order to carry out such inspection the local representatives of central government may, *ex-officio* or upon the request of the Ministry, form an “inspection commission” in provinces when deemed necessary. When required, representatives of the Ministry and the representatives of the collecting societies in the relevant fields may also take duty in these commissions. In cases of violation of banderole obligation, the national police and the municipal police may *ex-officio* and/or upon notification by right holders, inspection commission, collecting societies.

Precautionary measures and provisional seizure at the Customs are set forth in Article 77 of the Law on Intellectual and Artistic Works.

c) Courts dealing with copyright cases

2. Enforcement at the border

IV. Public Awareness

1. Awareness campaigns and actions

2. Promotion of legal exploitation

3. Associations and organizations with awareness-raising purpose

In order to carry out research on intellectual property rights a research institute has been established in Ankara University Law School. The centre has been lobbying for improved IPR protection and providing legal advice to related bodies. In cooperation with NGOs the centre has organized meetings for enterprises where information on IPR has been given. The centre also manages a library in Turkey on IPR. Additionally an Intellectual Property Law centre is established by Istanbul Bilgi University.

4. Best practices

V. Capacity-building

1. Training

Seminars and training programs for enforcement of intellectual and industrial property were organized by Ministry of Culture and Tourism, Ministry of Justice, and Ministry of Interior, collecting societies and universities with the aim of increasing public awareness and to strengthen coordination between relevant institutions.

2. Establishment of specialized units and intersectoral groups

- A police department Intellectual and Industrial Property Rights Office has been established in order to pursue the procedures in provinces, gather statistical data, coordinate the related institutions and evaluate the enforcement in the area of combating piracy. Under the supervision of Public Security Sections in the provinces specific and exclusive enforcement offices for IPR piracy crimes were established in January 2008 in 6 cities, where the IPR infringements take place intensively.
- Intellectual and Industrial Coordination Board has been established on 21/05/2008 with the aim of creating short, medium and long term strategies for the implementation of intellectual and industrial property rights in Turkey and improving the coordination between the relevant institutions. A National Contest of "Respect to Works and Authors" was organized within the context of World Intellectual Property Day Celebrations, with the collaboration of the Ministry of Culture and Tourism and two collecting societies. The award ceremony was held on 26 April 2008. In addition, two seminars were held in the same day by universities and collecting societies. In addition regional seminars and a contest among universities on combating against piracy have been organized by Collecting Societies.

3. Best practices

The practices carried out by the Ministry of Culture and Tourism in order to further improve the enforcement of IPR commitments are stated below:

Banderole

Banderole is an important determination device in distinguishing the original copy from the pirated copy in combating piracy. It is a label with a holographic characteristic, consisting of serial numbers and security band and when peeled off it demolishes the material on which it is affixed. According to the Article 81 of the Law on Intellectual and Artistic Works, it is obligatory to use banderole in the reproduced copies of cinematographic and musical works and non periodical publications. Furthermore, on copies of other groups of work which can easily be reproduced, banderole use is obligatory, when demanded by the right holder.

Inspection Commissions

The establishment of inspection commissions is another effective tool in combatting piracy. According to Article 81 of the Law on Intellectual and Artistic Works the inspection commissions may be formed by the provincial administrative authorities, ex-officio or upon request from the Ministry in the provinces. The Ministry of Culture and Tourism carries out the procedures within its jurisdiction (the issuance of banderole, determining its originality, identifying forged banderoles etc.) during these inspections. The Ministry of Culture and Tourism provides logistics to inspection commissions for the enhancement of their technical infrastructure. The amendment of the Law on Intellectual and Artistic Works by the Law 5571 has established a rewarding system for the public officers of inspection commissions responsible for combating piracy entered into force on 13 January 2007. It is aimed that the inspection activities will be perpetuated more effectively with this amendment.

Certification

In the framework of Law No. 5101 which amended the Law No. 5846 on Intellectual and Artistic Works; the enterprises recording, reproducing and selling or disseminating the materials on which intellectual and artistic works are fixed, are obliged to obtain a certificate. Business premises subject to certification are outlined in the related By-Law which was put into force in April, 2005. To ensure an effective monitoring of the certification enforcement electronically and enable application processing on the Internet, 81 provinces of Turkey have been furnished with ADSL connection and necessary technical equipments including training programmes for the staff responsible for processing certification applications.

Joint Database

According to the Additional Article 9 of the Turkish Law on Intellectual and Artistic Works, a Joint Database should be established with the inclusion of the associations and institutions concerned so as to provide the protection and pursuit of the Intellectual Property rights as well as to use it in the investigations and prosecutions. The information regarding banderole, registration, certificate systems and information concerning collecting societies, works and authors were began to be transferred to the digital environment. After its completion, it will be opened to the access of courts and the other units concerned. Thereby, it is aimed to accelerate the juridical process with respect to Intellectual Property issue, and to activate inter-institutional coordination.

VI. Other

1. TPM/DRM

In Turkish Copyright Law, legal protection against circumvention of technological measures technological protection is provided for only computer programs. Within the context of

harmonization of Turkish Copyright Law with EU Acquis protection for other types of work will be ensured.

According to Article 72 of the on Intellectual and Artistic Works:

Any person, who manufactures, sells or possesses programmes and technical components neutralizing supplemental programmes which purpose is to prevent illegal reproductions of computer programmes apart from personal use purposes shall be sentenced to imprisonment from six months to two years.

2. Licensing Schemes

3. Optical Discs

4. Hotlines

5. Contact Details

Ministry of Culture and Tourism
Directorate General for Copyright and Cinema
Tel: +90 312 3090787/ +90 312 3090779
Website: www.telifhaklari.gov.tr

Ministry of Justice
Directorate
General for EU Affairs
Tel: +90 414 79 31
Website: www.adalet.gov.tr

Ministry of Interior
Turkish National Police Department
Tel: +90 312 412 30 67
Website: www.emniyet.gov.tr

Undersecretariat for Customs
Tel: +90 312306 85 84

Musical Work Owners Group Society (MSG)
Tel: +90 212 267 45 15
Fax: +90 212 267 45 60
Website: www.msg.org.tr

Literary Work Owners Society of Turkey (ILESAM)
Tel: +90 312 419 49 38
Fax: +90 312 419 49 39
Website: www.ilesam.org.tr

Artistic Work Owners Society of Turkey (GESAM)
Tel: +90 312 231 10 82
Fax: +90 312 231 23 84
Website: www.gesam.org.tr

BSB Cinematographic Work Owners Society (BSB)

Tel.: +90 212 231 39 31

Fax: +90 212 232 61 47

Cinematographic Work Owners Society of Turkey (SESAM)

Tel.: +90 212 245 90 96-231 39 31

Fax: +90 212 232 61 47

Musical Work Owners Society Of Turkey (MESAM)

Tel.: +90 212 296 99 10

Fax: +90 212 296 99 26

Website: www.mesam.org.tr

Players of Theatre Society (TOMEB)

Tel.: + 90 312 468 60 39

Fax: + 90 312 427 89 09

Literary Work Owners Society (BESAM)

Tel.: + 90 212 251 95 25

Fax: + 90 212 251 95 25

Related Right Owner Producers of Musical Work Society (MÜ-YAP)

Tel.: +90 212 292 46 13

Fax: +90 212 292 46 17

Website: www.mu-yap.org

Artists of Sound Recording Society (SES-BIR)

Tel.:+90 312 490 43 00/4690

Performers of Musical Works Society (MÜYOR-BIR)

Tel: + 90 212 266 36 70-275 83 61

Fax: +90 212 275 57 95

Website: www.muyorbir.org.tr

Literary Work Owners Society (EDISAM)

Tel.: +90 212 512 56 02

Fax: + 90 212 511 77 94

Radio and Television Broadcasters Society (RATEM)

Tel.: + 90 212 283 15 70 Fax: + 90 212 283 15 69

Website: www.ratem.org

Association of Film Directors, Writers and Composers (SETEM)

Tel.: + 90 212 251 82 90

Fax: + 90 212 251 83 29

Television and Cinematographic Work Producers Society (TESIYAP)

Tel.: + 90 212 244 47 41-244 03 50

Fax: +90 212 245 29 28