

**T.C.
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**Copyrights in Artistic Activities
Case in Turkey and
Implementations in European Union**

Zeynep Esen

137540

Supervisor: Prof. Dr. Nazan Erkmen

**T.C. YÖKSEKÖĞRETİM KURULU
DOKÜMANTASYON MERKEZİ**

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ABSTRACT

The object of this study is to describe the concept of the copyright, its contents, the terms of protection on behalf of authors and their related rights and the harmonization of Turkish Law on Intellectual and Artistic Works compared to European Union. In the beginning of the thesis, before discussing the copyright issue which is one of intellectual property rights besides trademark and patent, the "intellectual property" concept is defined. Its contents and the historical developments are given.

The first part of this study is prepared to point out the historical background of "copyright" and its definition. Informations about "ownership" are also given. While the definition of copyright is defined in different systems of law; the criteria of a creative work to be protected by copyright and the list of ownerships are also mentioned here.

The second part of the study gives information about the rights comprised in copyright which consist of economic (reproduction, adaptation, distribution, performance, broadcasting, etc...) and moral rights, and the related rights (performers, producers, broadcasters). Also, the fair use and the infringements to these rights are studied in part two.

In the third part; the kind of works protected by copyright is fully listed. The definitions and the contents of each of the "protected work" are explained within the scope of the Turkish Law on Intellectual and Artistic Works compared to systems in developed countries. The problems related to the topic and examples of real situations are given.

In the fourth part; the copyright protection is discussed. While the copyright industries amount to increasing economic growth throughout the world, the importance of the protection revalued. The term for protection of copyright, the conventions, directives,

regulations and laws which protect the author's and his related rights in the international field are also fully explained.

In the appendix; **Law on Intellectual and Artistic Works** numbered as 5846, revised as February 21, 2001 and numbered 4630, is attached to the study in an attempt to make the users aware of these new regulations.



ÖZET

Bu çalışmanın amacı; telif haklarının kavram ve içeriği, telif hakları kapsamındaki eser sahiplerinin bundan nasıl etkilendikleri ve Avrupa Birliği ve Türkiye'de yürürlükte bulunan kanunların uyumlaştırılması konularında bilgi vermeye yöneliktir. Fikri mülkiyet haklarından biri olan telif hakkı konusuna girmeden önce, dünyada **fikri mülkiyet** kavramının nasıl geliştiğinden ve uluslararası alanda ne durumdan olduğundan bahsedilmiştir.

Çalışmanın birinci bölümünde; telif haklarıyla ilgili tarihsel bir gelişim sunulmakta, tanımı, kimlerin eser sahibi olabileceği belirtilmektedir. **Telif hakkının** tanımı yapılırken; farklı hukuk sistemlerinde ne şekilde ele alındığı, oluşabilmesi için hangi şartlara sahip olması gerektiği, kimlerin bu haktan yararlanabilecek şekilde eser sahibi olacağına dair detaylı bilgiler vardır.

Çalışmanın ikinci bölümü; eser sahibinin hakları ve ilgili haklara dairdir. Eser sahibinin kendi yarattığı eserlerden elde ettiği ekonomik (çoğaltma, uyarlama, dağıtım, temsil, yayınlama hakları) ve moral haklar ve ilgili haklardan (eseri icra edenler, yapımcılar, yayınlayanların hakları) detaylı olarak bahsedilmektedir. Eser sahibi ve ilgili hak sahiplerinin; haklarına yapılan ihlaller ve bunlara istisna oluşturabilecek haklı kullanımlara ilişkin şartlar ve eserler belirtilmiştir.

Üçüncü bölüm; telif hakları kapsamında korunan eserleri incelemektedir. 5846 sayılı **Fikir ve Sanat Eserlerinin Korunmasına Dair Kanun**'unun ve gelişmiş ülkelerdeki kapsamıyla; bu eserlerin tamamı yapılmıştır. Dünyada ve Türkiye'de yaşanan sıkıntılardan bahsedilmiş ve eser sahibi ve komşu hakların korunmasına ilişkin yaşanmış örneklerle de yer verilmiştir.

Dördüncü bölümde; telif haklarının korumasından bahsedilmektedir. Telif haklarını içeren sektörlerin ulaştığı ekonomik büyüklük gözönünde bulundurularak, korumanın önemine değinilmiştir. Avrupa Birliği ve Türkiye'de; eserin koruma süresi, bu hakların uluslararası alanda hangi sözleşme, kararname, yönetmelik ve yasalarla koruma altına alındığına dair bilgiler vardır.

Çalışmanın ek bölümünde; kullanıcıların yeni düzenlemelerden haberdar olmaları amacıyla, 5846 sayılı Fikir ve Sanat Eserlerinin Korunmasına Dair Kanun - 21 Şubat 2001 tarih ve 4630 sayılı düzenlemeleri de içerdiği şekliyle- tam metin olarak verilmiştir.



LIST OF ABBREVIATIONS

AHRA	Audio Home Recording Act
BESAM	Bilim ve Edebiyat Eseri Sahipleri Meslek Birliđi
BSA	Business Software Alliance
DMCA	Digital Millenium Copyright Act
EC	European Community
EU	European Union
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GESAM	Türkiye Güzel Sanat Eseri Sahipleri Birliđi
ISMN	International Standard Music Number
İLESAM	İlim ve Edebiyat Eserleri Sahipleri Meslek Birliđi
MESAM	Musiki Eserleri Sahipleri Meslek Birliđi
MSG	Müzik Eserleri Sahipleri Grubu Meslek Birliđi
MÜYAP	Müzik Yapımcıları Meslek Birliđi
MÜYOBİR	Müzik Yorumcuları Meslek Birliđi
OECD	Organization for Economic Co-operation and Development
RATEM	Radyo Televizyon Yayıncıları Meslek Birliđi
SESAM	Sinema Eserleri Hak Sahipleri Meslek Birliđi
TRIPs	Trade Related Aspects of Intellectual Property
TRT	Turkish Radio Television
UCC	The Universal Copyright Convention
UK	United Kingdom
US / USA	United States (of America)
WCT	The WIPO Copyright Treaty
WIPO	World Intellectual Property Organisation
WPPT	TheWIPO Performances and Phonograms Treaty
WTO	World Trade Organisation

INTRODUCTION

"Copyright" or "author's right" has been a concept widely used recently. Turkey has realized structure of modifications in several issues in order to realize its commercial relations and international responsibilities compared to developed countries in the globalized world. One of these changes is **Law on Intellectual and Artistic Works** numbered as 5846 which is known as "copyright law" in public. This Law has not been able to play a functional role due to structural deficiencies and the reasons stem from the differences in social mentality since January 1st 1952 when the Law first came into force.

In Turkey under certain circumstances, the rights of artists can not be protected. Their struggle to perform their arts and to survive economically at the same time has been continuing for ages on social and legal grounds. For this reason, the title of this study has been stressed as "copyright in artistic activities" instead of "copyright".

The aim of the study is to inform the artists and authors who are unaware of these rights as much as possible without going into legal technical details. Besides, examples and applications on these issues in the member countries of European Union and United States of America are given. The regulations concerning the **Law on Intellectual and Artistic Works** which is accepted by the Grand National Assembly of Turkey on February 21, 2001 and came into force after being published in Official Paper on March 3, 2001 are not known by many artists. Currently, the negotiations regarding the Law have been going on between the official institutions and the concerned professional associations. Laws are only a part of the solution of counterfeiting problems, provided that people will become more aware of their rights, the laws will be more effective and dissuasive and people will gain self-respect.

Intellectual property which has the same value as human rights in developed countries has been an interest of a sector which is economically progressing. All the works which are realized by the original idea of a person, for example from music sector to film industry, from computer software to television and radio broadcasting, from advertising to theatrical works, etc... are protected by laws. However, in a globalized world where you can easily communicate through technological advances, new structural regulations concerning the author's rights and the related rights will be required.



PART 1

WHAT IS COPYRIGHT ?

Introductory Note: What Is Intellectual Property ?

Intellectual Property is a private intangible property in the form of monopoly rights given by, or at least protected by, the state to certain parties, in return for their contribution to the society at large. Although the underlying concept and the philosophical underpinnings of the various fields of intellectual property differs, the concept of monopoly is fundamental to patent, copyright, trademark and all the other forms of **intellectual property**.¹

Intellectual property is a concept covering a number of different types of protection for the works generated by the human intellect.²

The objects of intellectual property include:

- ***Copyright***

Copyright relates to the rights of creators of literary, scientific and artistic works such as books, paintings, music,... (copyright or intellectual property in strict sense)

- ***Patents and technical knowhow***

Patents are scientific and technical inventions. They give exclusive rights to inventors; however, inventions can be patented only if they are new, non-obvious and are capable of industrial applications.

¹ Virginia Brown Keyder, *Intellectual Property Rights and Customs Union*, Istanbul: Intermedia, 1996, p.126.

² *Intellectual Property Guidelines for Promoters of Training Project*, Luxembourg: European Commission, 1998, p.3.

- ***Industrial designs***

Industrial designs are new or original aesthetic creations determining the appearance of industrial products.

These three rights are available for limited durations.

Intellectual property also includes;

- ***Trademarks***

A trademark is a sign which serves to distinguish the goods of an industrial or commercial enterprise / product from those of others.

- ***Service marks***

A servicemark is a sign which serves to distinguish the services of an industrial or commercial enterprise / product from those others, and

- ***Appellations of origin*** (or geographical indications)

In case of these property rights, the aspect of intellectual creation is less prominent. However, protection is granted to trademarks and other signs to enable manufacturers to distinguish their products or services from those of others. Trademarks help manufacturers build consumer loyalty. They also assist consumers in making informed choices on the basis of the information provided by manufacturers on the quality of their products.³

³ International Trade Center Commonwealth Secretariat (ITC), *Business Guide to the World Trading System Trade-Related Aspects of Intellectual Property Rights*, Geneva: 1999, p.238.

It is seen that there is no one application related to the use of "**intellectual and industrial property**" or "**intellectual property**" both in the world today. But World Intellectual Property Organisation - WIPO which is one of the United Nations organisations was founded in 1967 and has 170 member countries using "**intellectual property**" expression as a main concept and evaluating this concept as "**industrial property**" and "**copyright**" on the basis of the issues they refer to.

The distinction made as "**industrial property**" and "**author's right**" previously, has been expressed as "**industrial property**" and "**copyright and neighboring rights**" since 1995. In 1998, due to its use in presentations, the concept changed as "**intellectual property**", and also "**copyright and related rights**" is being used as a sub-concept.

Instead of the expression "**intellectual and industrial property**" which takes place in European Union's presentations and which violates WIPO (World Intellectual Property Organisation) system, only the term "**intellectual property**" started to be used.

When World Trade Organisation Agreement came into force in 1985 and after the foundation of the World Trade Organisation-WTO, the text of the Agreement "Trade-Related Intellectual Property Rights-TRIPs" (1994) brought a new dimension to intellectual property field.⁴

"**Intellectual property**" concept has been defined as "**one of the basic human rights**" on the basis of the 27th statement of "**Human Rights Report**" that was accepted by United Nations General Assembly in 1948.⁵

Intellectual property is the leading issue in which the greatest number of regulations in the intellectual platform have been done. In other words, the protection of intellectual property is interpreted as the protection of human rights and is of great importance.⁶

⁴ Devlet Planlama Teşkilatı (DPT), *Fikri Haklar Özel İhtisas Komisyonu Raporu*, Ankara: Sekizinci Beş Yıllık Kalkınma Planı Yayın No:DPT2500-ÖİK:521, p.6.

⁵ Deniz Ilgaz, Gürsel Üstün (çev.), *Fikri Hakların ABC'si*, İstanbul: Engin Yayıncılık Pen Yazarlar Derneği Yayını, 1994, p.37.

⁶ M.Kaan Dericioğlu, "İnternet, elektronik ticaret ve fikri haklar", *Görüş Dergisi Türk Sanayicileri ve İşadamları Derneği Yayın Organı*, Mart 2000, s.20.

Intellectual property rights: instruments, subject matter, field of application and related WIPO and other international agreements

Types of intellectual Property rights		Subject Matters	Main fields of Applicaiton	Major international agreements
Types of instruments				
Industrial Property	Patents	New, non- obvious Industrially applicable Inventions	Manufacturing	Paris Convention Patent Cooperation Treaty Budapest Treaty
	Utility Models	Functional Designs	Manufacturing	Paris Convention
	Industrial Designs	Ornamental Designs	Clothing, motor, cars, Electronics, etc...	Hague Agreement Paris Convention Locarno Agreement
	Trademarks	Signs or symbol to distinguish the goods And services of one enterprise from those of others	All industries	Paris Convention Madrid Agreement (international registration) Nice Agreement Madrid Protocol Trademark Law Treaty
	Geographical Indications	Identificaiton of the place of origin of goods Indicative of the quality Or other characteristics Associated with the area	Agricultural and food industries, notably the Sectors for wine and Spirits	Lisbon Agreement Madrid Agreement
Literary and Artistic property	Copyrights and neighbouring rights	Original works of authorship and related contributions from performers, producers of sound recordings and broadcasting organisations	Printing, Entertainment (audio, video, motion picture), software, Broadcasting	Berne Convention, Rome Convention Geneva Convention Brussels Convention Universal Copyright Convention
Sui Generis protection	Breeders' rights	New, stable, homogenous distinctive varieties	Agriculture and food industry	Union for the Protection of New Varieties of Plants (UPOV)
	Integrated circuits	Original layout designs	Micro-electronics industry	Washington Treaty
	Trade Secrets	Secret business information	All industries	

Source: Carlos Braga, "Trade-Related Aspects of Intellectual Property Rights: The Uruguay Round Agreement and Its Economic Implications" (World Bank conference paper, 26-27 January 1995).

Note: With the exception of UPOV, all treaties identified above are administered by WIPO. The Rome Convention is administered jointly by WIPO, ILO and UNESCO. The Universal Copyright Convention is administered by UNESCO.⁷

⁷ ITC, p.240.

1.1. ORIGINS AND HISTORICAL DEVELOPMENTS

1.1.1. How Is Intellectual Property Come Into Being ?

In the world today, the developments of the benefits related to intellectual property has a long and complicated history.

Intellectual property law has a long history in the west, various sources date its inception from a grant for a two-year monopoly on a receipt found among the ruins of a second-century Greek town to the 14th century monopolies for glass making and mining techniques.

The ethnographers indicate that a literary ownership has existed in the historical periods. Before the invention of print by the German printer Johann Gutenberg in the 15th century, people in China and Korea knew how to print. Print which changed the distribution conditions of printed works can be considered a milestone in the intellectual property issue.

In ancient Greek and Rome, to appropriate a work for himself without the permission of his author was considered as a dishonorableness crime and it was subject to punishment. The Roman authors were aware from their rights in the presentations of their work to public and other benefits as well as their moral rights. The existence of author's moral rights is accepted as more important than the economic rights.⁸

1.1.2. How Is Intellectual Property Make Progress ?

The development of copyright law in England was shaped by the efforts of merchantile interests to obtain monopoly control of the publishing industry. The history of copyright law is largely the story of judicial and statutory reactions to the resulting monopolistic restraints.

⁸ Ilgaz, Üstün, p.22

During the late seventeenth century, the control that publishing groups exercised over the printing of books was challenged by authors and others wishing to share in the commercial rewards of publishing. In 1710, The English Parliament enacted the "Statute of Anne", which purported to limit the formerly perpetual rights held by publishers to a period of years. Thus, copyright law has been shaped since at least 1710 by practices and laws intended to limit as well as to create monopolistic copyright protection.⁹

A number of important steps were taken within the scope of the development of French Intellectual Property Law during French Revolution. While adopting an intellectual property law which recognizes "representation right" in 1791, the author was given an absolute right to reproduce his works in 1793.

Before the French and American Revolutions, "**first intellectual property**" laws were implemented in different states of America. The Massachusetts State Law dated as 17 March 1789 declared that "*no property could be more personal than intellectual property*".

There is no consensus on when a literary property concept in a contemporary sense was developed in Germany. The principle of literary property first appeared in the 18th century. A Saxon Decree dated as 27 February 1686 was accepting an author's right aiming at protecting his books from piracy.

In Denmark and Norway, a governmental decision which recognized literary property right to the authors and their inheritors was passed in 1741 and implemented until 1814.

In Spain, intellectual property rights were taken into the scope of law system with the law established under Charles III rule in 1762. With this Law, it was guaranteed that the privilege of publication of a book only belonged to the "author of the work".

⁹ Arthur R. Miller, Michael H. Davis, *Intellectual Property, Patents Trademarks and Copyright in a Nutshell*, 3rd ed., New York: West Group, 2000, p.285-288.

Despite the fact that there was a system of privileges in force in Italy previously, several states existing in Italy gained assurance of intellectual property rights in a modern sense.¹⁰

From their modern origins in the late 19th century, the main areas of intellectual property law have been subject to constant modification designed to meet the needs of the era.

Everywhere in the world, the 1990s have been characterized most by an accelerated growth in global trade, expanded communications and information technology. These interrelated developments require not only a regulatory framework to serve as a bulwark against inherent chaos, but also legal protection of the intellectual property involved to ensure the broad-based and long term social benefits which intellectual property laws was originally designed to encourage.

1.1.3. Developments in International Area

From the gaps in the Great Conventions, 1883 Paris Convention on Industrial Property and the 1886 Berne Convention on Copyright, new hybrid forms of law in the areas of design, utility models and plant breeders rights were enacted throughout the industrialized world to try to protect and regulate innovation.¹¹

The Berne Convention for the Protection of Literary and Artistic Works (Berne Convention) is the first international convention establishing common rules as to copyright protection, was concluded in 1886 and has since been revised and expanded in scope (most recently in 1971) and is now the major international copyright instrument, with a membership of over 100 countries, including all EU Member States).¹²

¹⁰ Ilgaz, Üstün, p.22.

¹¹ Keyder, p.120.

¹² J.A.L.Sterling, *TRIPs Agreement: Copyright and related rights*, Luxembourg: European Commission, 2000, p.15-16.

In order to constitute International Office of Intellectual Property (BIRPI - in French), Paris and Berne Offices are merged in 1893. As the importance of the intellectual and industrial property rights has enlarged in its content, World Intellectual Property Organisation-WIPO (1967) has declared a new property right in 1970. In 1974, WIPO has become a part of United Nations organisations system.¹³

During the post-World War II, a world driven by the spirit of competition and the need to utilize all available resources did not embrace the concept of monopoly. One reason for the awakening of the sleeping giant was the birth of the European Community in the late 1950s. Europe's efforts to bring national intellectual property law into line with the needs of the European Economic Community has led to the first stages of its formation which witnessed a growing awareness. And various laws of the Member States stated out problems which proved to be one of the pillars of the free movement of goods.¹⁴

During the 1970s the United States also involved in overestimating the intellectual property. The 1960s and 1970s had been characterized, for the most part, by anti-trust and more anti-trust, with the view that efficiency and emerging consumer interests were paramount, and were not compatible with intellectual property monopolies.

Another crucial factor in the legal trends characteristic of the second half of the twentieth century is the technology boom of the late 1960 and early 1970. The entertainment was largely national. Further, while entertainment was by and large product of national culture, where "culture" was not always considered as "entertainment". Music, film and books were cultural products as yet untained by the notions of commerce and industry. In the field of law, this was clearly the field of "intellectual" rather than "industrial property".

¹³ Tuğba Başaran, *Avrupa Birliği'nde ve Türkiye'de Fikri ve Sınai Mülkiyet Hakları*, İstanbul: İktisadi Kalkınma Vakfı Yayını İKV:161, 2000, p.2-4.

¹⁴ Keyder, p.126.

In the days when music was available to the consumer only in the form of records, there was no need to have strong copyright provisions to protect them. The technology for mass copying were simply not available.

And also the revolutionary photocopy machine's appearance was truly revolutionary in the 1960s. The machine copied books, articles and other printed works, while with consumer previously had to purchase and/or read to take advantage of, what the cassette and film recorder did for film and music. Its effect were at least as far reaching throughout the world. These technological developments which led Europe and the US to overestimate their position vis-a-vis the monopolistic aspects of intellectual property law.

The latest and the most important development in the universal protection of intellectual and industrial properties was the finalizing of the agreement on Trade-Related Aspects of Intellectual Property Rights - TRIPs which also includes the trade of copied goods under the structure of World Trade Organisation in April 1994.¹⁵

There were numerous worldwide differences in intellectual property legislation. The GATT Uruguay Round negotiations offered another forum for these discussions. It was during these negotiations both in the developed and the developing countries, grasped the nettle and reached, inter alia, an agreement on trade-related aspects of intellectual property, TRIPs.

The TRIPs Agreement is a major advance in the international system for the protection of intellectual property rights in this century and will probably be the corner stone of the international system in this area for the foreseeable future.

There has been a varied worldwide approaches towards the development of intellectual property protection. Historically, industrialized countries have allocated both private and public resources to education, research and development of creative materials. These

¹⁵ Başaran, p.3.

resources have meant that industrialised countries have been constantly upgrading their systems of protection for intellectual property rights.

Up until 100 years ago, the main forms in which author's work were put before the public were books and other printed material (music scores, ...), live performance of music and plays and original or copies of artistic works. At the end of the 19th century, however two new forms came on the market: Sound recordings (phonograms) and films. In 1920s public sound broadcasting arrived and in 1930s, television. More recently, with new technological developments, such as computer programmings, satellite broadcasting, cable transmissions, internet, etc... have appeared on the scene.¹⁶

Internet, which allows by linking millions of users through the computer net has broadened the traditional copyright concept.

Now, the world of intellectual property looks different from that of the early 1990s. In the late advancing period, with the progress in international trade, the insistence on "nationality" left its place to "universality"

1.1.4. 20th Century Copyright History in United States of America

The history of copyright in America in the 20th century, highlights the progress of the sciences and the arts: it reflects the growing cultural self-confidence of the United States and the dawning of the artistic maturity.

The below mentioned milestones are 20th century's landmarks of copyright in United States of America:

- The remarkable history of copyright in America begins in 1900 by L.Frank Baum who published "The Wizard of Oz".

¹⁶ Sterling, p.15.

- In 1909, President Theodore Roosevelt signs the copyright law giving protection to all the writings of an author and extending the term of copyright protection to a total of 56 years after publication
- In 1912, Congress extends copyright protection to motion pictures. Previously only the individual frames of the film could be protected as photographs.
- In 1914, Victor Herbert, Irving Berlin and other famous composers meet in New York to organize the American Society of Composers, Authors and Publishers (ASCAP), which will help composers enforce their copyrights by collectively licensing the right to perform music publicly at restaurant, bars, concert halls and stores.
- In 1915, D.W.Griffith registers Birth of a Nation, the first feature-length motion picture with a storyline and character development.
- In 1930, George and Ira Gershwin register "I Got Rythm" in one of their many joint works that turn the American jazz vernacular into high art.
- In 1933, Parker Brothers registers "Monopoly" the popular board game.
- In 1936, Margaret Mitchell registers "Gone with the Wind"
- In 1939, Broadcast Music, Inc (BMI) is gounded to help American composers and music publishers enforce their public performance right, particularly in the popular new medium of network radio.
- In 1942, Irving Berlin registers the song "White Christmas" said the most valuable music copyright in history.
- In 1943, the motion picture "Casablanca", starring Humprey Bogart and Ingrid Bergman, is registered.
- In 1954, Supreme Court extends copyright protection to the artistics aspects of useful articles in Mazer v.Stein.
- In 1956, Leonard Bernstein registers the innovative "West Side Story"
- In 1957, Alan Jay Lerner and Frederick Loewe register the smash Broadway musical "My Fair Lady".
- In 1958, Mattel, inc. Registers "Barbie".
- In 1963, Martin Luther King. Jr. Registers his famous "I have a Dream" speech.
- In 1964, The Walt Disney Company registers "Mary Poppins" with music by Richard and Robert Sherman.

- In 1969, Andrew Wyeth belatedly registers “Christina’s World” (painted in 1946), after the work becomes famous and reproductions become commercially valuable.
- In 1972, Steve Wonder registers the words and music for “You Are the Sunshine of My Life”.
- In 1974, in response to the advent of a new technology- the personal tape recorder and the audiotape cassette- the United States ratifies the Geneva Phonogram Convention to help fight international music piracy.
- In 1976, Congress revises the US copyright law, imposes copyright liability on cable companies and jukebox operators.
- In 1977, the first episode of the television mini series “Roots” based on the Alex Haley book, is registered in the US Copyright Office.
- In 1980, Atari registers “Asteroids” and “Lunar Lander” the first two video games registered in the US Copyright Office.

Congress grants copyright protection to computer software

- In 1984, the United States ratifies the Brussels Satellite Convention in order to help combat signal piracy of pay-cable satellite feeds.

Congress extends a copyright-like sui generis protection for Microchip designs. Under this law, Congress draws the line on the further expansion of the copyright clause of the Constitution to cover technical products.

Sony Corporation of America v. Universal City Studios Inc. Case: The Court holds that home taping on a VCR from a television broadcast for time-shifting purposes is excused as a "fair use", an exception to normal copyright liability.

To help combat signal piracy of pay-cable satellite feeds US laws ratify the Brussels Satellite Convention which gives full copyright protection to programming transmitted by satellite to foreign countries.

- In 1985, The Supreme Court in Harper and Row Publishers v. Nation Enterprises declares that copyright is the engine of free expression and holds that even a public figure like former President Gerard Ford has the right to control first publication of his memoirs.
- In 1988, Congress establishes the guidelines for satellite transmission of copyright works. Ted Turner registers, the first colorized motion picture “The Asphalt Jungle” starring Marilyn Monroe.

- In 1989, the United States finally joins the Berne Convention assuming a greater leadership role in international copyright.
- In 1990, Congress extends copyright protection to works of architecture, including the unpublished works of Frank Lloyd Wright.

Congress gives artists a new form of protection “moral rights” which allows them, as creators of paintings, prints and sculptures, to prevent the alteration of their work without their permission.

- In 1992, Congress places limits on the private copying of music on digital tape recorders.
- In 1995, Congress grants records-companies and performers a limited public performance right -the right to authorize the transmission of their digital works in an interactive, online environment.
- In 1996, with US leadership, 140 countries meet at the World Intellectual Property Organization (WIPO) in Geneva, Switzerland and adopt two new treaties in establishing international standards for protecting copyrighted works on the internet and upgrade the level of protection for sound recording, musicians and vocalists.

With the US leadership WIPO adopt a new treaty that give explicit protection to software and certain types of databases, establish international standards for protecting copyrighted works on the internet.

With the US leadership WIPO adopt a new treaty that upgrade the level of protection for sound recording, musicians and vocalists.

- In 1998, Congresss enacts the Digital Millenium Copyright Act (DMCA) which extends protection into cyberspace, gives creators the right to control access to their work on the internet, outlaws devices that could be used to defeat anti-copying circuitry and extends a unique form of copyright-like protection for boat hull designs.

Congress increases the term of copyright to life of the author plus 70 years to enable US authors to qualify for the longer term of protection in foreign countries.

- In 1999, with passage of the DMCA, ensuring compliance with the two new WIPO Treaties, US deposits its articles of ratification, thereby strenghtening international copyright protection for literary and artistic works in digital format, especially on

the internet, and including for the first time explicit international copyright protection for software and databases.¹⁷

1.1.5. Developments of Intellectual Property In Turkey

The matter of "intellectual property" has become a current issue since Turkey in 1850s, and the law called as "**Hakki Telif Nizamnamesi**"¹⁸ was accepted. Since then this Regulation took the name "**Hakki Telif Kanunu**"¹⁹ in 1910 and "**Law on Intellectual and Artistic Works**" in 1951. The latest amendment was made in 2001 after being modified in 1983 and 1995. The 1871 Trademark Law (**Alameti Farika Nizamnamesi**) and 1879 Patent Law (**İhtira Berati**) were the first laws within this content.²⁰

Turkey confirmed the 1948 Brussel Document of Bern Convention in 1951, and the 1971 Paris Document in 1995. The Grand National Assembly of Turkey also confirmed the TRIPs Agreement with law dated as 31 December 1994 and numbered 4067.

The first legal implementation related to **Law on Intellectual and Artistic Works** was made on 5 December 1951 which came into force in 1 January 1952. The gaps in this law were filled with the new laws introduced in 1983 and 1995.

In order to harmonize with European Union law related to intellectual property rights and because of the requirements of TRIPs Agreement, Turkey attempted to make some legal changes in intellectual property rights issue. However, these legal regulations were criticized and could not be achieved as much as desired because of the following reasons; some changes appeared both in technology and law, and different problems originated from implementation were encountered. The penalties were not sufficient enough to prevent the piracy of goods. Moreover, the legal gaps in intellectual property

¹⁷ "A Century of Intellectual Property", *IP Worldwide, The Magazine of International Law and Policy for High Technology* (December 1999), p.26-38.

¹⁸ It means "Intellectual Property Regulation"

¹⁹ It means "Intellectual Property Law"

²⁰ DPT, p.6.

law was considered as a problem in our relationship with our commercial partners such as United States of America, European countries, etc,...

In an attempt to harmonize with European Union and TRIPs Agreement, a new bill related to changing some articles of "Law on Intellectual and Artistic Works" numbered as 5846 dated as 5 December 1951 was prepared by Ministry of Culture and presented to the Grand National Assembly of Turkey. The related amendments was accepted by the Assembly on 21 February 2001 with Law no.4630 and the law came into force after being published in Official Paper on 3 March 2001.

1.2. DEFINITION

Probably the best known of intellectual property categories, copyright automatically applies to all types of original expression, including art, sculpture, literature, music, songs, choreography, crafts, poetry, flow charts, software, photography, movies, CD-ROMs, video games, videos, websites and graphic designs.

A copyright gives the owner of a creative work the right to keep others from using the work without the owner's permission. The key to understanding copyright law is to understand the difference between the idea and the expression of the idea. Copyright applies only to a particular expression, not to ideas or facts underlying the expression. For instance, copyright may protect a particular song, novel or computer game about a romance in space, but it cannot protect the underlying idea of having a love affair among the stars.²¹

Copyright is seen by many as a reflection of a system which encourages intellectual creation, allows freedom of speech to be protected and acts as a medium through which cultural needs and aspirations of our times is expressed.²²

²¹ Stephen Elias and Richard Stind, Beth Mc.Kenna (ed.), *Patent, Copyright, Trademark, An Intellectual Property Desk Reference*, 4th ed., USA: 2001, p.74.

²² Sterling, p.4.

Copyright is a form of intellectual property which is automatic once a work is created. A creator, therefore, need not apply for copyright protection or produce a document attesting to his /her ownership of a work. Ownership of copyright is different and separate from the ownership of the physical object containing the work.²³

Early in 20th century, the legendary American judge **Learned Hand** urged that copyright constantly reinvent itself to embrace all new art forms and technologies that **“the ingenuity of men should devise”**. Copyright, he said, is not a straitjacket, but a charter for a living people”. Faithful to judge Hand’s injunction, United States (US) Congress for the past century has extended copyright protection to technologies such as radio, television, satellites and the internet, to name but a few.²⁴

1.2.1. Different Systems of Copyright

Copyright law derives from two distinct sources. By the way of explanation of particular copyright issues, this dual origin is worth mentioning.

Since the 18th century, authors have been granted rights to enable them to control certain uses of their literary, dramatic, musical and artistic works (in particular, copying - reproduction- and public presentations). In jurisdictions founded on common law, these laws are called "copyright" (for example, those of the United Kingdom, the Commonwealth, Ireland and the United States of America). It should be noted that there are significant differences between the British and USA copyright systems. In the civil law jurisdictions, these rights are classed as "author's right".²⁵

- **“Copyright law”** refers, as its name would indicate, to the right of copy. It has originated with a 1710 English statute that gave English authors for the first time the power over their writings that went beyond ownership of any work done and the right to sell their manuscripts. In short, the law deals with the right to derive economic benefit from one’s creative efforts.

²³ Institute of Canadian Advertising, *Copyright in Advertising, a Handbook for Advertising Agencies*, Ontario: 1988, p.4.

²⁴ "A Century of Intellectual Property", p.26.

²⁵ Sterling, p.14.

- “*Author’s rights*” means “*Droit d’auteur*” in French which also deals with the rights of authors and other creators of tangible works of arts from a different perspective. It gives the rights to benefit financially from their work. Its main function is to protect the creative work as an extension of the personality of an individual author.²⁶

There are two concepts of intellectual property in European Community: that of “*copyright*”, in force in **common-law countries**, and that of “*author’s right*” which is specific to **continental legal systems**. If simplified to its extreme, it can be said that copyright is more favourable to the party inventing the creation -the producer- than to the party actually developing it – the author. Conversely, continental law is more favourable to the author in that it gives priority to protecting the moral rights of the latter in respect of his work.²⁷

American copyright law distinguishes between the “common law” right of an author related to his unpublished creations and the statutory copyright that might be secured upon publication. Until recently, therefore, an author had a perpetual right upon his creation, which included the right to decide when, if, and how to publish the work.

Copyright, at least in Anglo-American jurisprudence, never has developed a procedure of administrative examination before registration as is true of both patent and trademark law. Instead, copyright has developed the doctrine that expressive works are entitled to protection without examination, and in fact largely without registration. At common law, prepublication protection would have been impossible, of course, if prior examination were required since one of the purposes of protection was the author’s privacy. Registration is significant to modern American copyright law but the basic doctrine of this country’s copyright law is to protect authors without requiring it.²⁸

²⁶ Keyder, p.147.

²⁷ Intellectual Property Guidelines for Promoters of Training Project, p.3.

²⁸ Miller and Davis, p.285-288.

A definition of copyright can be developed through asking a few basic questions:

- How does copyright come into being ?
- What are the criteria to be protected by copyright ?
- Who may hold a copyright ?
- What type of work can copyright protect ? ²⁹

1.2.2. What Is Public Domain ?

Material not protected by copyright is said to be in the "public domain". Most public domain material consists of subject matter that does not qualify for copyright protection, or the copyright of which was expired. Thus much literature and art from the past -such as the plays of Shakespeare and the music of Mozart- is in the public domain.³⁰ Works on folklore have been considered as a part of public domain. Today in computer technology most integrated circuit know-how is in the public domain.

1.3. HOW DOES COPYRIGHT COME INTO BEING ?

More specifically, a creative work (often referred to as "work of authorship") must meet all of three criteria to be protected by copyright.

1.3.1. Originality

The creative work must be an original creation. In other words, the author must create rather than copy.³¹ Originality is a tricky concept in so far as it is difficult to define. This accounts for the flexibility shown in substantive law which covers works of art provided it "carries the stamp of its author's personality".³²

²⁹ Intellectual Property Guidelines for Promoters of Training Project, p.4.

³⁰ Roger E. Schecchter, *Unfair Trade Practices and Intellectual Property*, 2nd ed., New York: West Group, 1993, p.90.

³¹ Elias and Stind, p.74.

³² Intellectual Property Guidelines for Promoters of Training Project, p.5.

The idea in the work does not need to be new but the form used by the creator, literary, artistic or scientific in which it expressed must be the original creation of the author.³³

For example, the amateur movie capturing the events surrounding the assassination of John F. Kennedy were held to be sufficiently original to deserve copyright protection. Despite the fact that the "creativity" was minimal consisting of merely recording the unfolding of a real world event.³⁴

The essence of copyright is originality, which implies that the copyright owner or claimant originated the work. An author can claim copyright in a work as long as he created it himself, even if a thousand people created it before him. Originality only implies that the copyright claimant did not copy from someone else. From that definition of originality comes the common but true example that an author could gain a copyright on the Romeo and Juliet story as long as he made it up himself and did not copy it from Shakespeare. The resulting copyright would prevent anyone else from copying the work of the copyright owner. (But it would not prevent others from copying Shakespeare's creation since that is in the public domain).³⁵

1.3.2. Tangible Form

The creative work must be fixed in a tangible (concrete) medium of expression. For example, it might be expressed on paper, audio or video tape, computer disk (CD), clay or canvas.

This tangible form will exist when the work is given physical expression. For instance copyright protection cannot be conferred upon ad lib comments made during a talk, but can upon a speech based on brief notes.³⁶

A work consisting of sounds or images which is simultaneously transmitted and recorded on videotape, CD, etc... qualifies also for copyright protection. For example,

³³ ITC, p.329.

³⁴ Schecchter, p.91.

³⁵ Miller and Davis, p.295.

³⁶ Intellectual Property Guidelines for Promoters of Training Project, p.4

a record of a professional sporting event which is live broadcasted by television, radio, internet, etc...

1.3.3. Creativity

To be original, it is not enough that the author prepare the work "from scratch" without copying. The work must also possess a minimal degree of creativity,³⁷ that is, it must be produced by an exercise of human intellect. There is no hard and fast rule as to how much creativity is enough.³⁸ To give an example, a child who is nine years old, prepared a crayon drawing. The drawing is, by measure, a primitive one. Nonetheless, it is an original work of authorship and a proper subject for copyright protection.³⁹

In any event, there is no provision for a "test" of creativity.

1.4. WHO MAY HOLD A COPYRIGHT ?

A copyright claimant is the party considered to be the basic owner of the copyright in a work.

With the below mentioned three important exceptions copyrights are owned by the righters, poets, musicians, choreographers, composers, artists, software designers, sculptors, photographers, movie producers, craftpersons and other who create them. In the copyright world, these people are all called "authors". Then, for the exceptions:

- If a work is created by an employee in the course of his/her employment, the work is called a "work made for hire" and the copyright is owned by the employer.
- If the work is commissioned (created by an author working as an independent contractor) and the parties sign a written work made for hire agreement, the copyright will be owned by the commissioning party as long as the work falls within

³⁷ Schecchter, p.91.

³⁸ Elias and Stind, p.74 .

³⁹ Schecchter, p.92.

on of the statutory categories of commissioned works that can qualify as works made for hire.

- If author sells the copyright to someone else, the purchasing person or business owns the copyright.⁴⁰

1.4.1. The Author of The Work Himself

In most cases the copyright owner is the first person creating the work.⁴¹

Referring to Article 8 of Turkish Law, the author of the work is the person who has created it. Also, the author of a derivative work is the author of processed work. In cinematographic works, the director, composer of the original music, the scripwriter, the dialogwriter and the animator shall be deemed as joint authors of the work.

If an artist creates a one-of-a-kind oil painting and then sells it to a collector, the artist continues to own the copyright in the work. Thus only the artist would be legally entitled to make and market reproductions of the work on posters or in books. The collector who owned the painting itself would be forbidden from doing so.⁴²

1.4.2. The Employee

This is the case when the employee of a natural person or legal person(firm) is the author. If the material is developed in a member state of European Union in which the copyright system is in force, for example in England, the employer is given the copyright. But under the continental system of author's right, this arrangement cannot be taken for granted and special provision has to be made in the law of the country, in employment contracts or, where applicable, in agreements with sector or branch organizations.

⁴⁰ Elias and Stind, p.76.

⁴¹ Intellectual Property Guidelines for Promoters of Training Project, p.6.

⁴² Schecchter, p.103.

1.4.3. Two or More Authors

Referring to Article 9 of Turkish Law, "if a work created by more than one person can be divided into parts, each such person shall be deemed the author of the part created by him."

When the contributions of different authors cannot be distinguished from one another the right is shared. This often happens in this case of multimedia products when a data base has been used online.

When any author makes a contribution which can be clearly identified, a separate copyright may be negotiated.

1.4.4. The Publisher

It is important to bear in mind that the original owner of the right -the creator- may transfer ownership of the right to a publisher. However, in certain continental legal systems, the author retains a moral right even after the work has been transferred.

1.4.5. Any Person To Whom The Property Rights Have Been Transferred

Publishers are not the only parties, who can benefit from a transfer. Others may also benefit from this type of right, for example the producer of technologically-based training material.⁴³

1.5. HOW IS A COPYRIGHT CREATED ?

As a corollary to authors's rights having their origin in the creativity of the author rather than power of the state, most Civil Law jurisdictions, in compliance with Berne Convention, have traditionally provided that no formality for protection may be required. This means that the right comes into existence with the creation of the work

⁴³ Intellectual Property Guidelines for Promoters of Training Project, p.4-6.

and that the state may require neither registration nor making of the protected object. This is expressed in the second paragraph of the fifth Article of Berne (The enjoyment and the exercise of these rights shall not be subject to any formality).

This position was rejected by Common Law countries for a long time, and is one reason why the United States (US) did not become a party to Berne Convention until 1989. Prior to 1989, protection in the US required registration (to pursue legal action) and the placing of a circled letter © on the work or copies thereof.⁴⁴

A creative work is protected by copyright, when the work assumes a tangible form; "fixed in a tangible medium of expression" as referred to in "copyright" idiom. .

The copyright notice commonly appears in this form: "© (year of publication) (author or basic copyright owner)". Placing this information on the work of art to be published (distributed to the public without restriction), the author prevents others from copying the work without his consent. And people will not have the right to claim that they did not know the work was covered by copyright.

This can be important if the author is forced to file a lawsuit to enforce the copyright, since it is much easier to recover significant money damages from a deliberate (as supposed to innocent) copyright infringer.⁴⁵

⁴⁴ Keyder, p.149.

⁴⁵ Elias and Stind, p.74-75.

PART TWO

COPYRIGHT AND RELATED RIGHTS

The provisions on copyright and related rights are contained in Turkish Law on Intellectual and Artistic Works. Also, Berne Convention and TRIPs Agreement clarifies the mentioned rights under their related articles.

2.1. RIGHT COMPRISED IN COPYRIGHT

The two systems of "copyright" and "author's right" have developed separately, but they both cover protection of "economic rights", which is the right to authorize the work's reproduction (copying), adaptation, distribution and communication to the public (as in public performance or broadcasting)

Authors are also granted "moral rights" concerning their rights to be identified as creators and to preserve the integrity of their work (against distortion,...). The author's right countries have a strong tradition of recognition of moral rights, the copyright countries less so.⁴⁶

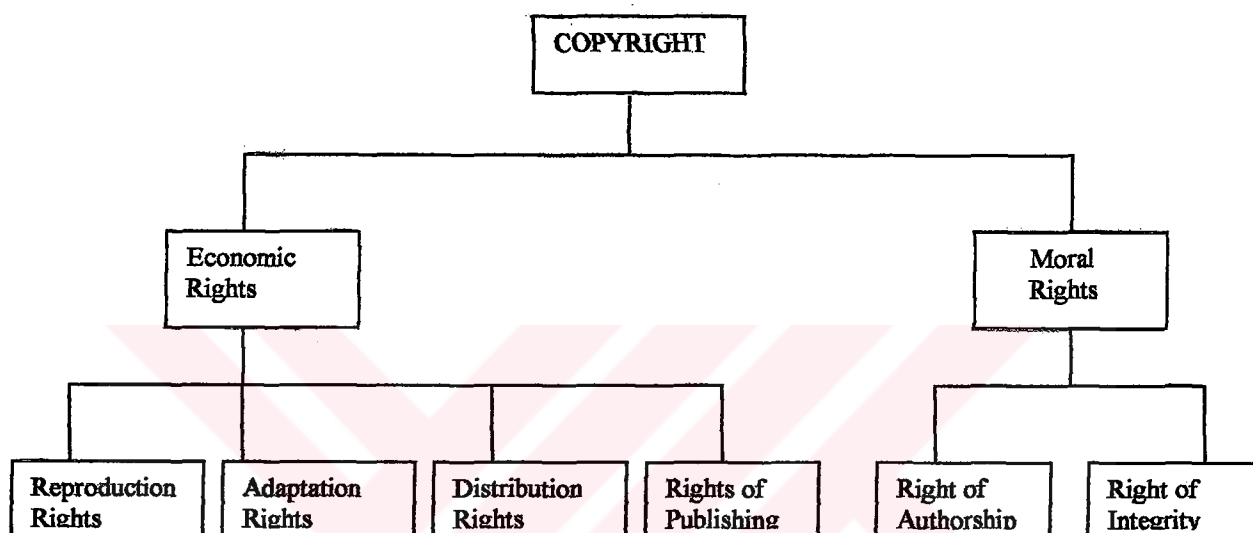
Author's right could be applied to all domains such as literature, music, theatre; in general, to all living spectacles in plastic arts, graphic arts, audiovisual art, publicity, applied arts, industrial and computer arts.

Also, for example a theatrical play may be published (reproduction right) or played (representation right). The representation may be broadcasted by the television or recorded to a tape. This recording (registration) may be sold out or be used for the new radiophonic or televisual diffusions.⁴⁷

⁴⁶ Sterling, p.14.

⁴⁷ Pascal Desconqueres, *Les Droits d'Auteur Guide Juridique Social et Fiscal*, 3eme ed., Lyon:1997, p.29.

Copyright therefore consists of an exclusive right conferred upon the owner (creator, or transferee in the event of a transfer). The content of this exclusive right is set out in the Berne Convention. It includes property and moral rights. Moral rights cannot be transferred in continental law countries.⁴⁸



Source: Intellectual Property Guidelines for Promoters of Training Projects, European Commission Education Training Youth, Luxembourg, 1998, p:7

2.1.1. ECONOMIC RIGHTS

A copyright consists of a bundle of rights held by the author or developer of an original work of authorship. The term "copyright" applies both to the following entire bundle of rights, to any individual right or part of individual right: The exclusive rights to make copies, to authorize others to make copies, to make derivative works, to sell the work, to display the work, to perform the work, to obtain court relief in the event others infringe these rights.

⁴⁸ Intellectual Property Guidelines for Promoters of Training Project, p.7.

Each of these exclusive rights can be sold separately through transfers of copyright ownership. For example, a transfer may give a party the exclusive right to make derivative works from original work. In addition, each right may be transferred, giving different parties exclusive rights during different periods of time in different geographical areas.⁴⁹

Owners of copyright in a protected work have a right to exclude others from using it without their authorization. The rights of copyright owners are therefore often described as exclusive rights to authorize others to use the protected work.

The owner may prevent others from exercising these rights vis-a-vis his or her work unless permission has been granted. Not all of the rights apply to all types of art works, however.⁵⁰ Authorizations from copyright owners is usually required in the following situations:

- **Reproduction Rights** : Copying and reproducing the work
- **Performing Rights** : Performing the work in public (for example, play or concert)
- **Recording Rights** : Making a sound recording of the work (for example phonograms or sound recordings in technical language of copyright law)
- **Motion Picture Rights** : Making a motion picture -often called cinematographic work- in technical language.
- **Broadcasting Rights** : Broadcasting the work by radio or television
- **Translation and Adaptation Rights**: Translating and adapting the work.⁵¹

When a copyright owner wishes to commercially exploit the work covered by the copyright, the owner may transfer one or more of these rights to the publisher or other entity who will be responsible for getting the work to market.

It is also common for the copyright owner to place some limitations on the exclusive rights been transferred. For example, the owner may limit the transfer to a specific

⁴⁹ Elias and Stind, p.102.

⁵⁰ Schecchter, p.104.

⁵¹ ITC, p.244.

period of time or allow the right to be exercised only in a specific part of the country or world or require that the right be exercised only on certain computer platforms.

- When all copyright rights are transferred unconditionally, it is generally termed an "*assignment*".
- When only some of the rights associated with the copyright are transferred, it is known as a "*licencee*".
- An exclusive license exists when the right being licensed can only be exercised by the licensee and no one else. If the license allows others to exercise the same rights being transferred in the license, the license is said to be non-exclusive.

The US Copyright Office allows buyers of exclusive and non-exclusive copyright rights to record the transfers in the US Copyright Office. This helps to protect the buyers in case the original copyright owner later decides to transfer the same rights to another party.⁵²

Members of Berne Convention may decide whether to protect official texts of a legislative, administrative and legal nature, and official translations of such texts. Article 31 of Turkish Law permits the reproduction, diffusion, adaptation or use in any other manner of laws, by-laws, regulations, notifications, circulars and Court decrees which have been officially published or announced, as being in the public interest.⁵³

The principal economic rights guaranteed by the Berne Convention are; the right of translation (Article 8), the right of reproduction in any manner or form (Article 9(1)), the right of authorizing public performance, cabling and broadcasting (Articles 11 and 11*bis*), the right of adaptation (Article 12), the right of cinematographic adaptation and reproduction and rights in cinematographic works (Article 14 *bis*). From the point of view of the rights-owner, whether in the the European Union or elsewhere, the

⁵² Elias and Stind, p.77.

⁵³ Keyder, p.150.

extension of the regime of the Berne is the most important advance in the recognition of copyright.⁵⁴

Economic rights, or those acts which the author has the exclusive right to perform, authorize or prevent, are set forth in the Turkish Copyright Law. These include:

- Right of Adaptation (Article twenty one)
- Right of Reproduction (Article twenty two)
- Right of Distribution (Article twenty three; including sale, rental right and the right to prevent importation of unauthorized copies)
- Right of Performance (Article twenty four) and
- Right of Broadcasting (Article twenty five)

In terms of subject matter and rights, Turkish Law on Intellectual and Artistic Works provides standard contemporary protection.

2.1.1.1. Adaptation Right

A copyright owner has the right to exclude all others from creating works based on his own. This right safeguards a copyright owner from what otherwise might be an unduly narrow interpretation of the reproduction right, which would permit another to vary elements of the work sufficiently or change the medium of presentation and then assert that it is not actually a copy: It is "adaptation right", the exclusive right to prepare adaptations of the derivative works.

The "derivative work" is the transformation of a work into another form. Its definition is extremely comprehensive, including translations, arrangements, dramatizations, fictionalizations, films, recordings, abridgments, condensations, "or any other form in which a work may be recast, transformed or adopted".⁵⁵

⁵⁴ Sterling, p.24.

⁵⁵ Miller, and Davis, p.326.

The owner of the copyright in the original work has the sole right to create a derivative work. The preparation of such a work by any other party without the creator's permission constitutes infringement.

Article 21 of Turkish Copyright Law defines the right of adaptation such as: "The author shall have the exclusive right to exploit his work by adaptation".

2.1.1.2. Reproduction Right

The most basic exclusive right is that of reproduction. It allows the copyright owner in the form of a copy, sound recording. The sound recordings are defined as "phonograms" in continental law systems and as "phonorecords" in US law system. Only the copyright owner or a person acting with his/her permission, may make "copies", "phonorecords or phonograms" of the protected works.

Phonograms are defined as "physical environment where the voices in a performance or other voices or voice performances fixed. The voice fixations of audiovisual works like cinematographic works are excluded" in Article 1b of Turkish Law.

Phonorecords are "material objects in which sounds are fixed by any method now known or later developed, and from which the sound can be perceived, reproduced or otherwise communicated". Thus making a single copy of a book or a single unauthorized tape recording of a compact disc constitutes infringement, unless done with the consent of the copyright holder, or excused under some other statutory provision. The exclusive right to make copies is qualified by several statutory provisions conferring limited rights on libraries, broadcasters and the owners of computer programs, among others, to make single copies of copyrighted works.⁵⁶

Although the reproduction right is basic and seems obvious, the statute must be referred to for the definition of a copy. A copy is any material object from which, either with the

⁵⁶ Schecchter, p.104.

naked eye or other sense, or with the aid of a machine or other device, the work can be perceived, reproduced, or communicated.⁵⁷

Berne Convention states the reproduction right in its Article 19. A proposal of a directive about "the reproduction right and exceptions, limitations" has been prepared by the Commission of the European Union in 1999. In accordance with Berne, Article 22 of Turkish Law mentions about the rights concerning reproduction. Also, exceptions to these provisions are held in Article 35 Freedom of Quotation. The reproduction of artistic works that have been made public and the reproduction of other published works in a scientific work to the extent that such reproduction is justified for the purpose of explaining the text.

"The author shall have the exclusive right to exploit his work by reproducing the original or an adaptation, by any kind of method or procedure, in part or in whole, directly or indirectly, permanently or temporarily.

Reproduction of a second copy of original works or the recording of works on devices permitting the transmission and reproduction of signs, sounds, and images, or on other known or future mediums or recordings of sound and music, as also the application of plans, projects and sketches of architectural works, shall be deemed reproduction. The same provision shall apply to engravings or moldings.

The right of reproduction shall also extend to loading, displaying, running, transmission and storage of a computer program where such acts require the temporary reproduction of the computer program."

2.1.1.3. Distribution Right

The third of the enumerated exclusive right guaranteed to the copyright owner is the right "to distribute copies to the public by sale or other transfer of ownership, or by rental lease, or lending".

Only the owner of the copyright is empowered to distribute copies of the protected work to the public, whether by outright sale or by rental or loan.

⁵⁷ Miller and Davis, p.324.

Since the reproduction and adaptation rights secure to the copyright owner all or most of what conceivably could form the basis of any public distributions, the distribution right might be thought of as more of a limitation than a grant of an exclusive right. In that sense, it accurately has been called the "first-sale" doctrine.

Because this right involves distribution to the public, it gives the copyright owner the power to determine when and how the work should be published. Once a given copy of the work has been transferred to another party, however the copyright owner loses control over that particular copy. Thus the buyer may resell the copy without infringing the copyright. This is sometimes referred to as the "first-sale" doctrine. Of course the buyer may not make additional copies without violating the copyright owner's reproduction rights.⁵⁸ For example, a numbered copy of an engraving sold to a collector A. A has the right to re-sell this copy to the collector B, but he can not make any additional copies of this numbered copy.

The "first-sale" doctrine assures the right to prohibit all others from distributing the work until the author parts with ownership. Once the work is sold out, the doctrine allows the new owner to treat the object as his own. Thus, although a copyright owner might transfer ownership to a buyer and impose certain conditions, it is not a violation of copyright for the buyer to sell the work to another, even if the copyright owner had conditioned the sale upon a promise of no reselling. Copyright law and the distribution right only secure to the copyright owner the right to control the first transfer of ownership. A statutory exception to the first-sale doctrine enacted at the behest of the computer and record industries, forbids the commercial rental, lease or lending or anything "in the nature of rental, lease or lending" of phonorecords and computer programs.⁵⁹

The right of distribution is circumscribed by the exhaustion principle. Under this, goods protected by copyright are placed on the market within the country for the first time by the right holder or with his consent, the distribution right will not be infringed by further

⁵⁸ Schecchter, p.104-105.

⁵⁹ Miller and Davis, p.327-328.

sale or rental of those particular goods. Article 23 of Turkish Law on Intellectual and Artistic Works reserves rights to rental and public lending.⁶⁰

" The author shall have the exclusive right to distribute, rent or place on sale or setting his original work or reproductions commercially available in any manner.

The right of importing the copies reproduced abroad with the consent of the author and benefiting from these copies by distribution exclusively remains with the author.

The copies reproduced abroad shall not be imported without the permission of the author and/or the person who holds the right of distribution.

On condition that the right of rental and the right of public lending are possessed by the author, exercising the right of distribution afforded to the right holder as the resale of certain copies after the first sale or distribution on the territory by revolving ownership shall not violate the right of distribution afforded to the author."

Article 45 comprises the conditions about Resale Royalty Right. If after the sale, the work resold during the period of protection and if there is a substantial difference between the last price and the preceding one, the seller must pay an appropriate portion of the difference in price to author or his/her heirs.

2.1.1.4. Performance Right

Largely due to the highly developed and profitable communications and entertainment industries and technologies of the twentieth century, the right of the copyright owner to exclude all others from publicly performing his work is one of the most important rights secured by the copyright laws. Because large segments of our population now receive copyrighted information through mass media, electronic motion pictures, television tapes and discs, radio broadcasts and a host of other technologies by which information is delivered to the consumer the right of public performance has become extremely valuable to a copyright proprietor.

Only the copyright owner may "perform" the protected work publicly. To perform a work is defined as "to recite, render, play, dance or act it either directly or by means of

⁶⁰ Keyder, p.151.

any device or process ...". Thus the showing of a videotape on a television monitor, or the playing of a compact disc on a CD player constitute "performances".

The public performance right applies only to literary, musical, dramatic, choreographic, pantomime, motion picture and other audiovisual works. Except for purely pictorial, graphic and sculptural works -visual arts- and sound recordings, this list exhausts the works which merits copyright.⁶¹

By their nature, visual arts such as paintings, sculptures and graphic works cannot be performed in this sense, while sound recordings can be performed by playing them on a player machine. Thus any party who possesses a recording for tape -including a radio or television station- may play it publicly without violating the rights of the owner of the copyright in the sound recording. Playing the record is also a "performance" of any underlying musical composition contained on the record, tape or CD. Since the composer of a musical work does have an exclusive performance right, the composer is entitled to a royalty each time the record is played "publicly" -e.g. over the radio- unless the work is in the public domain.

For all types of subject matter which own copyrights, the copyright owner has the exclusive right to perform the work. According to law, the performance is statutorily defined as the showing "a copy of it, either directly or by or means of a film, slide, television image, or any other device or process or, in the case of a motion picture or other audiovisual work, to show individual images nonsequentially". However, the owner of a copy of a copyrighted work may display that copy to viewers present at the place where the copy is located and the copyright owner's exclusive right to perform the work is limited by a provision permitting display for charitable, religious, non-profit and educational purposes.⁶²

With the proliferation of computer networks, and the Internet, this situation has gained a great importance nowadays. The performance right recognizes the potential

⁶¹ Miller and Davis, p.330.

⁶² Schecchter, p.105-106.

development of new technological methods for exploiting works that do not amount to a performance or actual reproduction.⁶³

The twenty-fourth Article of Turkish Copyright Law mention about the rights concerning performance:

"The author shall have the exclusive right of performance of his work by reciting, playing, dancing or showing the original or an adaptation on public premises either live or by means of devices permitting the transmission of signs, sounds or images.

The author shall also have the right of transmission of the performance from the premises on which the live performance to the public takes place to any other location by means of any technical device whatsoever.

The right of performance may not be exercised by other natural or legal persons without the written permission of the author or, if the author is a member of a professional association, the permission of such professional association in accordance with the rights set out in the authorization certificate. However, the provisions of Article thirty-three (Free performances) and Article thirty-four (selected and collected works for educational and instructional purposes) shall remain unaffected."

2.1.1.5. Broadcast Right

Description of this right refers to wires and/or wireless broadcasting organisations like radio, television, satellite and cable broadcasting through devices.

In some laws (e.g. that of the United Kingdom) broadcasting refers to wireless transmission, while in other laws the term used may cover both wireless and cabling. The ambiguous meaning of broadcasting can cause difficulties and the particular instrument being considered must be carefully examined to ascertain which meaning is intended.⁶⁴

The broadcast right which is dated from the original Turkish Law on 1951 is caused problems in the past. It is possible that the courts will interpret definition differently to include more sophisticated forms of transmission, it will still be a dangerous oversight.

⁶³ Miller and Davis, p.336.

⁶⁴ Sterling, p.28.

Given the expansion of technology in broadcasting through cable, satellite, on-line transmission and digital broadcast, and the economic importance of industries built around these technologies, the significance of the interpretation of the law cannot be overestimated.⁶⁵

The amended twenty-fifth Article of Turkish Law on Intellectual and Artistic Works mentions about the rights concerning broadcasting.

"The right of broadcasting the original work or the reproduced copies by means of organizations like radio-television, satellite and cable broadcasting by devices used for transmitting signs, sounds and/or images included digital transmission and the right of communicating these works to the public by rebroadcasting by different broadcasting organizations after containing materials from the previous broadcasts exclusively belongs to the author of the work.

The author shall have the right to give permission or to prohibit the sale, distribution or presentation of his original work or reproduced copies to the public by devices working with wires and by wireless devices and the transmission of these works to the public by providing communication in the places and on the time that may have been set up by the natural persons.

The distribution and presentation of works arranged with this article shall not violate the author's rights of distribution. "

2.1.1.6. Other Economic Rights In Advanced and Digital Technologies

With the advent of an entirely new sphere of distribution and performance based on computer digital transmissions over the Internet, the opportunity was ripe to recognize the digital transmission performance right.⁶⁶

The digital transmission performance right is the only portent of the related new copyright developments. The growth advanced in digital technology has accelerated changes in the US Copyright Act.

⁶⁵ Keyder, p.151.

⁶⁶ Miller and Davis, p.337.

Traditional broadcasters already pay fees to songwriters through arrangements with rights clearinghouses. But digital broadcasters do not pay performance royalties to record companies on the theory that radio broadcasting actually generates record sales. By 1998's Digital Millennium Copyright Act (DMCA) set up a compulsory-license scheme for Internet-only Webcasters. In December 2000, US Copyright Office ruled that digital -radio- broadcasters must pay licensing royalties to record companies when they simulcast music recordings on the internet. This is an important right for artists and record companies.

"Interactive radio" which must independently negotiate royalty arrangements with record companies and "non-interactive Webcasting" can participate in the compulsory-license arrangement. The reason for this distinction here is that an interactive Webcasting service users may tune in to get the music they want, on the other hand record companies fear that these users have less incentive to buy records.⁶⁷

One of the earliest changes made in US Copyright Act is Audio Home Recording Act of 1992. It attempted to protect the rights of sound recording proprietors in digital recordings, because digital, unlike analog recordings, suffer no degradation during duplication process. In order to afford these proprietors rights against and royalties in, such flawlessly accurate reproductions, various copy protection efforts were adopted, including a prohibition on the distribution of digital recorders without special protective measures -The Serial Copy Management System. The protection efforts make it possible to assess royalties on both the machines and the media-disks, tapes and drives for instance. The consumers who make non commercial recordings in both analog and digital form cannot be sued for infringement, thus effectively legalizing "home taping", which absent this compromise provision, would be infringing as an unauthorized reproduction of a sound recording.

The Intellectual Property and Communications Omnibus Reform Act of 1999 adopted further provisions respecting advanced technologies, many of which establish rights far

⁶⁷ Mike Godvin, "Webcasters, RIAA Make Strange Bedfellows", *IP Worldwide, The Magazine of International Law and Policy for High Technology* (February 2001), p.12.

broader than those of traditional copyright. Unlike traditional copyright, the law does not directly protect the expressions themselves, but instead the "technological measures" employed to prevent the expressions from being copied. The "technological measure" is protected from being deciphered, even though any other work protected by copyright is generally available to be read, examined or otherwise understood.⁶⁸

Because of the international nature of exploitation of protected material and the problems caused by international electronic transmission of such material, states will be increasingly obliged to formulate implementing rules which take into consideration the solutions adopted by other countries. This tendency is already evaluated in the European context and may become increasingly evident as international harmonisation is sought.⁶⁹

2.1.2. Moral Rights

In addition to the above mentioned exclusive rights of an economic character, copyright laws provide original author's moral rights. These rights enable authors even after they have transferred their economic rights, to claim authorship of the work and to object to any actions which would effect negatively on moral rights such as reputation, honour, etc...

This function of protecting a work as an extension of a personality has led author's right down a different road, to the notion of "*moral rights*" or "*droit moral*".

Going back to the Roman period, the capacity to protect moral rights allows an author to protect his reputation as it is embodied in his creation, even long after he has sold his work. Moral rights allow an author to withdraw his work from circulation if it no longer represents his beliefs or to prevent its destruction or use in a manner which he believes reflects on him in a derogatory way. In exercising moral rights, an author may become liable for damages to the current owner of the physical work which he has created.

Moral rights were given a significant place in Berne Convention through Article 6bis:

⁶⁸ Miller and Davis, p.338.

⁶⁹ Sterling, p.44.

"Independently of the author's economic rights, and even the transfer of the said rights, the author shall have the right to claim autorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honour or reputation."

Turkish Law on Intellectual and Artistic Works No.5846 provides a protection for moral rights of the author. Right of communication to the public, right to be named on the work, prohibition of modification without the author permission and rights of the author against the owner of a work and the holder of the rights are given in Articles 14-17. Some limitation on the exercise of moral rights was added in 1995 under the second paragraph of Article 67. Remedies for infringement of moral rights include moral and material damages under Article 70 and criminal penalties under Article 71, as amended in 2001.

All Civil Law systems, those deriving from Roman laws and other continental European traditions, recognize moral rights. Until recently, however, no Common Law system (in concern with countries which received their legal tradition from England) did so. This has changed to a large degree, since Berne Convention mandates from protection of moral rights and TRIPS Agreement mandates compliance with Berne. The US was the last major country to finally enact protection of moral rights in relation to some products.

As with all copyright law, the work of art is put into protection under the control of the copyright after being introduced to the public. A living example of the significance of this principle is found in a recent case where an American film which was licensed to a French company to be distributed in France. The film, originally in black and white, was in a colorized version. Claims by the heirs of the director that such colorization violated his moral rights were accepted by the French Court and distribution of the colorized version was prohibited, even though such rights did not exist in the US where the film was first made public.⁷⁰

⁷⁰ Keyder, p.148.

Even though the US is a signatory nation to Berne Convention it does not specifically recognize moral rights, taking the position that a number of different US statutes provide equivalent and adequate protection.⁷¹ US Court added provisions to the copyright law in 1990 to provide additional protections for authors of works of "visual art". Such works are defined as one of a kind or limited edition (of less two hundred copies) paintings, drawings, prints, sculptures or photographs. The rights provided are similar to those granted in most European nations under the label "moral right". Specifically, the statute confers a right to claim authorship of one's own work; to prevent the use of one's name as author of a work that one did not create ; to prevent the use of one's name as author of a work that has been distorted or mutilated and to prevent the distortion, mutilation or destruction of one's work. The author continues to retain these rights even if he has parted with ownership of the copyright interest in the work.

For example, a celebrated French painter, Claude Renoir, created a huge oil painting and sold it to the Museum of Modern Art in New York City and also conveyed the copyright from the museum, so that he could reproduce the image on postcards. Then, the Museum sells the painting to a private collector, John D.Stonefeller. Because the painting does not fit in the space where the collector wishes to hang it, he cut a one foot section off of each side of the canvas and reframes it. Stonefeller violated Renard's rights and Renard may secure those statutory remedies that are appropriate under the circumstances, even though he no longer owns either the painting or the copyright in the work.⁷²

2.2. RELATED RIGHTS

Literary, artistic, musical, etc... works are created in order to be disseminated among the public. This cannot always be done by the authors themselves, for it often requires intermediaires who use their professional skills to give the works appropriate forms of presentation to make them accessible to a wide public.

⁷¹ Elias and Stind, p.143.

⁷² Schecchter, p.106.

In addition to protecting the rights of authors of works, it is therefore also necessary to protect the rights of:

- Performing artists in relation to their performance
- Producers of phonograms in relation to their phonograms and
- Broadcasting organisations in relation to their radio and television programmes.

These related rights of performing artists, cover producers and broadcasters are also called "*neighboring rights*" because they have developed in parallel to copyright and the exercise of these rights is often linked with the exercise of copyright. Copyright laws frequently deal also with neighboring rights.⁷³

A considerable investment of human resources and finance goes into the making of published editions, phonograms, films and broadcasts, author's right countries found it difficult to grant the individual creator's right:

- To individuals who do not make an independent creative contribution to the work.
- To legal entities, such as companies.

In the copyright system, protection of these parties is accorded through copyright (in the British system, often distinguished from that accorded to traditional literary and artistic works) or, in the case of performers, a *sui generis* right.

In the civil law system, the concept of "*neighboring rights*" or "*related rights*" developed. During the 1930s, work began on an international system for the protection of related rights. Finally, an international system of protection of these rights was instituted in 1961, with the adoption of the Rome Convention.⁷⁴

Authors' work are generally brought before the public through the activities of performers, publishers, phonogram and film producers, wireless broadcasters and cable operators.

⁷³ ITC, p.245.

⁷⁴ Sterling, p.15.

The related rights refers to rights of performers, producers and broadcast of their works. These are not parties who have such rights under traditional copyright law because their contribution is often seen as less “creative” than that of authors, (for performers because they are only interpreting works created by others and for producers and broadcasters because their input is merely financial rather than original).⁷⁵

The paragraph "k" of the first b Article of Turkish Copyright Law comprises neighboring rights such as:

The rights of artists interpreting, presenting, describing, singing, playing and performing a work in several other ways in an original manner, without prejudice to the moral and fiscal rights of the author and with the consent of the holder of the rights, phonogram producers making the first fixation of the voices produced by a performance and other voices and radio-television organisations."

Neighboring rights in Turkey are set out in Article 80-82 of the Law (amended in 1995). It provides protection to “artists who perform or interpret intellectual and artistic works in an original manner, producers of phonograms who make the first fixation of a performance or of sound and radio and television organisations shall enjoy neighboring rights on condition that the economic-moral rights of the author are not prejudiced”.

This law grants to the performer, the phonogram producer or the broadcaster (radio and television organisation) the exclusive right “to make a fixation of a performance, to reproduce, to rent the fixation thereof, to exploit the performance by broadcasting it by wire or over the air or by direct performance”. All authorizations must be in writing except where:

- Performance or communication to the public of intellectual and artistic works for purposes of public order, education and instruction, scientific research or interview and without aiming to profit
- Broadcasting of intellectual and artistic works and radio-television programs and their reproduction for personal use, without aiming the profit

⁷⁵ Keyder, p.153.

- Temporary fixations made by broadcast organizations on their own and for their own use in broadcasts
- The cases specified in Articles 30, 32, 34, 35, 43, 46 and 47 of the Law.

Such use must unjustly prejudice the lawful interests of the rights owner or conflict with normal exploitation of the work. Artists, chorus masters, orchestra conductors and soloists and leading actors in theatrical companies may require that their names be shown on devices permitting the transmission of signs, sounds and images. Limitations set forth in Article 80 are fairly serious and right holders should examine these provisions carefully to determine the extent of protection granted to them under the Law.⁷⁶

The main provisions on copyright and related rights are contained in the Berne Convention. The TRIPs Agreement clarifies and adds to the Convention's provisions on:

- Computer programmes and databases (Article ten)
- Rental rights to computer programmes, sound recordings and films (Article eleven)
- Rights of performers and producers of phonograms (Article twelve)
- Rights of broadcasting organisations (Article twelve)

Under the third Article of the European Council Directive (93/98 OJ L 290/9), related rights are discussed for 50 years (the minimum under TRIPS) from the date of specified events. Turkey provides a 70-year term of protection for all copyrightable works covered by Law No.5846, including related rights.

The fifth paragraph of the fourteenth Article of TRIPS provides a protection :

"The term of the protection available under this Agreement to performers and producers of phonograms shall last at least until the end of a period of 50 years computed from the end of the calendar year in which the fixation was made or the performance took place. The term of perfection granted pursuant to the third paragraph (regarding broadcasting organisations) shall last at least 20 years from the end of the calendar year in which the broadcast took place."

⁷⁶ Keyder, p.152-153.

2.2.1. Rights of Performers

The right of a performer to prevent copies of his or her own unfixed performance is a relatively new in the world of copyright. Laws usually authorize a performer (artists, chorus masters, orchestra conductors, soloists, leading actors, etc...) to prevent unauthorized recording, broadcasts or other transmissions and importation of fixations of the performance.

The provisions of Turkish Law about the scope and the term of neighboring rights are given in Article 82 apply to performers:

- Who are nationals of the Turkish Republic, or
- Who are not nationals but make their performances on the territory of Turkish Republic.

2.2.2. Rights of Producers

Producers' rights may protect both record producers and film producers, with the objective of giving the party who has financed the project some means of taking legal action to protect his investment, separate from the rights of the original authors (such as song writers, arrangers and film directors). The need for such protection grew out of the improved copying technology of the early 1970s. Prior to the enactment of such legislation, producers of a record, for example, when confronted with evidence of copying had to bring the various copyright holders together to commence action. Producers rights recognize the producer's need to protect his investment.

The provisions of Article 82 of Turkish Law applies to producers:

- Who are Turkish nationals, or
- Who are located on the territory of the Turkish Republic.

2.2.3. Rights of Broadcasters

Broadcast rights may be in material which is or is not subject to a separate copyright. Like producers' rights, this is designed to protect the investment of the broadcaster in

procuring the work. Broadcast of a film is secondary to the copyright in the film itself, but related rights allow the broadcaster, who has usually paid a substantial amount to secure broadcast rights, to pursue infringers with or without the owners of the copyright in the original material. This may also cover works which are not copyrightable on their own, such as sports events, for which a broadcaster usually pays a hefty sum to be allowed to broadcast.⁷⁷

The provisions of Article 82 on broadcast apply to radio and television organisations:

- Whose headquarters are located in Turkey, or
- Who broadcast from a transmitter on Turkish Republic Territories.

2.3. INFRINGEMENTS TO THESE RIGHTS

Copyright infringement is the unauthorized exercise of one of the rights that the statute reserves exclusively for the copyright owner. Usually, the infringement will involve unauthorized copying of the work, although it may involve unauthorized adaptation, vending, performance or display.⁷⁸

Actions for infringement, infringements of moral and economic rights of the author, actions for injunction and for damages both for civil and criminal actions set out in Articles 66-72 of Turkish Law.

Infringements to the economic rights of the author are as follows:

- Adaptation of a work in any manner,
- Reproduction of a work in a manner,
- Selling, offering a sale or commercially distributing copies reproduced by him of a work or of its adaptation,
- Performing or exhibiting a work in a public, organizing this exhibition or disseminating or mediating the broadcasting by all kinds of signs, sounds and visual transmissions,

⁷⁷ Keyder, p.154.

⁷⁸ Schecchter, p.110.

- Hiring out or lending a work, and
- Legally or illegally importing the reproduced copies and using them for commercial purposes.

Infringements to moral rights of the author are as follows:

- Communication or publication to the public,
- Placing a title on a work or on the reproduced copies of the work,
- Alleging the authorship of the work of others,
- Making changes on a work, without the written permission of the author.

2.3.1. What Happens If A Copyright Is Infringed ?

If someone infringes the exclusive rights of a copyright owner, the owner is entitled to file a lawsuit in court asking the court to:

- Issue orders (restraining orders and injunctions) to prevent further violations
- Award money damages if appropriate, and
- In some circumstances, award attorney fees.

Whether the lawsuit will be effective and whether damages will be awarded depends on whether the alleged infringer can raise one or more legal defenses to the charge. Common legal defenses to copyright infringements are:

- Too much time has elapsed between the infringing act and the lawsuit
- The infringement is allowed under the fair use defense
- The infringement was innocent (the infringer had no reason to know the work was protected by copyright)
- The infringing work was independently created (that is, it was not copied from the original), or
- The copyright owner authorized the use in license.

Referring to Article 71-72 of Turkish Law, "any person who infringe the author's moral and/or economic rights shall be liable to imprisonment of between four to six years and a fine of between fifty to hundred fifty billion Turkish Liras".

2.3.2. Fair Use of Copyright

Certain types of infringements of copyright do not constitute infringements in the strict sense and are not therefore punishable. These are:

- Quotations, provided they are short
- Representations or copies for private use, this exception is common in many countries
- Compilations
- Press reviews and caricatures ⁷⁹

Some uses of the work which covers copyright are considered "fair use"- that is, the use may infringe but the infringement is excused because the work is being used for a transformative purpose such as research, scholarship, criticism or journalism. When determining whether an infringement should be excused on the basis of fair use, a court will use several factors including the purpose and the character of the use, amount and substantiality of the portion borrowed, and effect of the use on the market for the copyrighted material.

It is important to understand that fair use is a defense rather than an affirmative right. This means that a particular use only gets established as a fair use if the copyright owner decides to file a lawsuit on the court upholds the fair use defense. There is, therefore, no way to find out in advance whether something will or won't be considered a fair use. If the copyright owner is willing to grant permission for the use, then the uncertainty surrounding the use goes away. For this reason, most people who propose to use a copyrighted work do what they can to obtain permission, and only rely on the fair use defense if permission is not granted or the copyright owner can't be located.

⁷⁹ Intellectual Property, Guidelines for Promoters of Training Projects, p.7.

A person who infringes a copyright but has good reason to genuinely believe that the use is a fair use is known as an "innocent infringer". Innocent infringers usually don't have to pay any damages to the copyright owner, but do have to cease the infringing activity or pay the owner for the reasonable commercial value of that use.⁸⁰

Also, use of copyrighted material for purposes of parody is fair use. As example during a skit on the television program Saturday Night Live satirizing the public relations efforts of New York City, actors purporting to be the civic leaders of the Biblical village of Sodom performed the copyrighted song "I love New York" with the altered lyrics "I love Sodom". This was held by US Court to be a fair use of the original musical composition and not actionable.⁸¹

Limitations to author's right -fair use of copyright- are given in Articles 30-47 of Turkish Law. These exceptions are listed; for reasons of public policy, for the interests of individuals and for the rights belonging to the government; as follows:

- Legislation and court decisions
- Speeches
- Free performances
- Selected and collected works for educational / instructional purposes
- Freedom of quotation
- Contents of newspaper
- Interviews.
- Personal Use
- Reproduction of exhibited works
- Right of use by the State

⁸⁰ Elias and Stind, p.79.

⁸¹ Schecchter, p.114.

PART THREE

KIND OF WORKS PROTECTED BY COPYRIGHT

Copyright protection covers a wide range of creative activity. Copyright protects the following types of work provided they fulfil the three conditions mentioned earlier (originality, tangible form, creativity). Moreover, this list is not limitary.

- Written material, including letters, lists, tables, compilations, lengthy text extracts
- Theatrical works
- Computer programmes (software) in the form of electronic symbols (object codes) and also in the form of programme printouts (source codes)
- CD-ROMs
- Combinations of sounds, musical and sound works which can be incorporated, for instance, a didactic material
- Artistic works such as paintings, drawings, cards, and even diagrams and graphs
- Films, including videos
- Radio and TV programmes, including those transmitted via satellite
- Cable broadcasts.⁸²

The subject matter of copyright law has been set out in the second Article of the Berne Convention, which lists the works to be protected as follows:

“ ...every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramatico-musical works; choreographic works and entertainments in dumb show; musical compositions with or without words; cinematographic works to which are assimilated works expressed by a

⁸² Intellectual Property, Guidelines for Promoters of Trainig Projects, p.4-5.

process analogous to cinematography; works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works to which are assimilated works expressed by a process analogous to photography, works of applied art; illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science.”

Also other protected works are “translations, adaptations, arrangements of music and other alterations of a literary or artistic work, without prejudice to the copyright in the original work.” Not every member state of the European Union sets forth the entire list, but members of Berne Convention are required to protect all of these works.

The definition of the work which is protected by copyright is given in the paragraph a of Article 1b: "all kinds of artistic and intellectual products of science and literary, music, artistry or cinematography, which are carrying the mark of its author are deemed work".

Kinds of artistic and intellectual works protected by copyright are set forth in the Turkish Law under the second Article (scientific and literary works, including computer programs), the third Article (musical works), the fourth Article (artistic works, including textile and fashion designs), the fifth Article (cinematographic works) and the sixth Article (adaptations -sometimes known as derivative works- including translations, modifications of computer programs or databases).

In order to protect the rights of artists and related rights' holders, it was suggested with Article 42 of the 1951 Turkish Law that associations should be established for every professional group of intellectual and artistic works. However, since the system was not favoured, it could not be employed until 1983. Four associations which were contractual with the government were established following the regulations made in 1986. Nevertheless, the authors did not join these associations very much because they felt thinking that the government would have a lot of impact on these associations.

- İLESAM (Professional Association of Scientific and Literary Works' Authors)
- MESAM (Professional Association of Traditional Turkish Musical Works' Authors)
- GESAM (Professional Association of Fine Art Works' Authors)

- **SESAM (Professional Association of Cinematographic Works' Authors)**

When a new law declaring that "more than one association can be established in every branch of intellectual and artistic works" was passed in 1995, there was an increase in the number of professional associations. BESAM (Professional Association of Scientific and Literary Works Authors) started its activities in 1999. The 2001 Law, while putting some constraints, gave the permission of establishing new associations to the government.

According to Alpay Kabacalı (Member of The Executive Committee of BESAM); the existence of more than one association in the same art brach makes it difficult for the authors to defend their rights and it causes to lose their power. There are some efforts to pass a new regulation considering the possibility of establishing professional associations for the subsector related right holders. There are still some negotiations with the authorized institutions and the professional associations.

3.1. WORKS CREATED BY ITS AUTHOR

3.1.1. Literary Works

Literary works are works expressed in words, numbers or other verbal symbols. Both prose and poetry, as well as fiction and non-fiction are included. A work is a literary work, regardless of the physical form it takes, so that a novel that is never printed, but recorded on a computer disk constitutes a protectable literary work. However, because coyright protection extends only to expression, and not to the ideas in a work, the courts have held that protection does not extend to the facts and interpretations contained within a historical or journalistic literary work.⁸³

Protected literary works compromises:

⁸³ Schecchter, p.94.

1- *Written Works*

- Writings of imagination and fiction such as novels, news, essays, poems, pieces of theatre, recital, correspondances, tales, philosophic essays, etc ...
- Course-notes of the professor of a university, an article from a newspaper treating a scientific discovery (because of its tangible form, not for its idea), a doctorate record, etc ...
- The titles of books, films, TV broadcasting, spectacles, sketches, musical compositions, articles of newspapers, etc ...
- Almanacs, year-books, calendars, etc... which present some originality in their composition
- Catalogues, dictionaries, guides, programmes, formularies
- Background in newspapers
- Derivative works such as translations, adaptations, summaries, abridgements, anthologies
- Missives. Letter as a document belongs to its addressee, but decision of publishing the letter belongs only to its author.

2- *Oral Works*

Oral works including conferences, allocations, pleadings, teaching courses, interviews, stateman discourses, etc... are protected by author's right.

In case of an oral publication of a literary work, the author is not deprived of his rights. Without the authorisation of his author an oral work can neither be published nor registered.

Stateman discourse can be of two types:

- Public speeches which reflects his personal ideas are protected by author's right
- Reproduction of public speeches performed by the statesman can only be possible provided that the title of the speech is referred to.

3- *Titles*

The titles may benefit from protections mentioned below unless they are prohibited by law. Law prohibits signs and associations to deceive public in terms of nature or origin

of the product. It also prohibits the titles which may disturb public order. This concerns the use of certain words such as "doctor" or signs of reproduction symbols, flags of states or international organisations like "Red Cross", etc...

Titles of the work must not represent a patronymic name either rare or famous, or a commercial name of an enterprise which still exercises its activity in the same economic sector. A chosen title must not represent or imitate the name of the same kind of product which was used before; however two different product with similar appellations may co-exist. In this case, it does not cause confusion in public sense.

The titles may benefit from the following protections:

- By author's right as long as they present an original character.
- Protection of the titles from an unfair competition. The works having the same title may cause a risk of confusion in public sense. The title must have a distinctive character.
- By trademark. It confers of identical or similar products from all damages caused either by counterfeiting or by illicit imitation.
- By registration to the related registration office of the country (US). This kind of registration presents many advantages such as:
 - It confers a protection from all infringers,
 - The protection is perpetual under the specific conditions of the related registration office.

Author's right protects all categories of literary works whatever their form, destination or their degree of originality with the exceptions of official texts (laws, regulations, judicial and administrative decisions, proposed subjects to examination) and the published news (the articles of the newspaper presenting an original character are protected by author's right, but the informations from official journal are not are protected).⁸⁴

⁸⁴ Desjonqueres, p.43-50.

Referring to the interview made with Alpay Kabacalı, the main problems of authors encountered in Turkey in the literary works are the following:

- ***Problems originating from the authors' relationship with the publishers***

Referring to the latest amendment made in 2001; if the publisher infringes economic and/or moral rights of the author, he has to pay fifty to hundred fifty billions of Turkish Liras and stay in a prison four to six years. Also; if a work is published without the permission of its author, the author has the right to get three times as much as the money he demands as his copyright value.

For example, before these amendments, a publisher once changed the name of the work and published it again after adding new parts to the text without the permission of its author. When the author took it to the court, the publisher obliged to agree with the author and only his apology was published in the newspaper.

- ***Piracy books***

The argument on the band of books took a long time because of the publishers' anxiety of censorship. On 8 November 2001 "Band Obligation" which must be affixed to published works for them to be legally salable was came into force including the books published previously. The bands will be obligatory after the preparation period which will take until 8 May 2002.

- ***Plagiarism***

The legal process can only put into practice in case of complaining. The authors should complain about the plagiary and prove their arguments.

- ***Processings and Adaptations***

For example, the adaptation of a literary work is made for television. The provisions on the protection of first authors' rights must process effectively.

3.1.2. Musical Works

Musical works include:

- *Musical Compositions with or without words*
- *Sound recordings*

They are defined as works that result from the fixation of a series of sound in a tangible object. Thus, the particular version of a song recorded on a compact disc would be a sound recording, as would a cassette tape of bird calls or of French language lessons.

The vast majority of sound recordings involve recorded music. It is important to understand that in most such cases there are actually two separate copyrightable works involved, each created by different "authors". Where the recording is of music, the composer of the music and lyrics has copyright protection in the song itself. The parties who create the sound recording -namely the entertainers, who play the musical instruments and sign the words and/or the recording company that hired them -have a discrete copyright interest in their performance of the work, embodied in the sound recording.

American pop singer, Bruce Springsteen, writes music and lyrics for a song called "Born in the USA". Thereafter, Motown Records hires Barry Manilov to record his version of the song. Still later Peter Pirate makes bootleg versions of the Manilov recording. Pirate is guilty of infringing two copyrights; Springsteen's copyright in the musical composition and Motown's copyright in the sound recording.⁸⁵

- *Dramatic Works or dramatico-musical* (opera or opera-comic)
- *Title of a musical work* is protected in the same way as the title of a literary work.

The inheritors of Turkish composer A.Adnan Saygun agreed to receive copyright value by negotiating with the German firm Peer-Music for several musical works including

⁸⁵ Schecchter, p.94-95.

"Yunus Emre Oratorio" as well. This incident is used as an example in the court cases related to the copyright issue in musical works.⁸⁶

Protection of the musical work by author's right is acquired as long as one of the three elements mentioned below involves the impression of author's personality:

- *Melody* (a chaining of easy and successive sounds)
- *Juxtaposition harmony-melody* (Harmony results by simultaneous emission of many different sounds which are accord)
- *Juxtaposition rhythm-melody* (Rhythm is determined on the basis of different durations of sounds, or distinctive notes, accentuation of some notes more than the others)

Characteristic of musical domain bears a possibility of being reproduced as derivative works which can easily be effected by author's right: the same melody with a new harmonisation or a different rhythm, the same rhythm applied to two different melodies, etc...

Protected musical works are:

- *Arrangements*; the adaptation of a written work from a specific instrument to another, such as the reduction of the instruments played in a symphony.
- *Variations*; implemented to an existing work, the compositor may add some melodic elements or sometimes modify harmonisation and the rhythm. For example, the transformation of a rhapsody to a valse.
- *Borrowings from folklore*; works on folklore have been considered as a party of a public domain. In order to be protected by author's right, musical arrangements must have the impression from its adaptor. In this case, the adaptor has the the exclusive rights only for the arrangement, but not for the utilization of the folkloric work

⁸⁶ Gürsel Üstün, *Fikri Hukukla İlgili Bilirkişi Raporları*, İstanbul: Besam Yayınları, 2001, p.66-67.

which is public domain. The interpreter of the folkloric melody benefits from "related right" on its interpretation

- *Jazz and improvisation*, contrary to folklore, constitutes a pure creation, protectable as by the author's right.⁸⁷

Some determinations and the problems encountered in musical works domain in Turkey, can be summarized as follows;

- In Turkey, the authors' rights are protected by MESAM, MSG, the performers' rights by MÜYOBİR and the producers' rights by MÜYAP.
 - MESAM (Professional Associations of Traditional Turkish Musical Works' Authors)
 - MSG (Professional Association of Musical Works' Authors),
 - MÜYOBİR (Professional Associations of Musical Works' Performers),
 - MÜYAP (Professional Association of Musical Works' Producers).
- According to the agreement between these associations; the copyright value - broadcasting fee- of the music used by radios is saved in a pool and then shared by MESAM & MSG and MÜYOBİR & MÜYAP. For the television, MESAM & MSG takes 65% of the money and MÜYOBİR & MÜYAP the rest 35%.⁸⁸
- The copyright value is shared by the authors, the performers and the producers. MÜYAP forbade the broadcasters who do not pay the copyright value to use the works in question. But the musical performers do not support this situation because it takes them away from televisions and radios. Essentially, if the performers become a member of MÜYAP they can get their performer right for their playback played in television and radio broadcastings. But, first of all they should become more concious and ask for their rights.

⁸⁷ Desjonqueres, p.50-52.

⁸⁸ Sümer Ezgü, "MÜYAP'ın TV yasağı ve telif hakkı", *Radikal Gazetesi*, 3 Haziran 2001, p.4.

While asking for its right, MÜYAP defends the authors' rights of its members and owes money to the authors (composers, arrangers, ...) for their works used in cassettes and CDs prepared by its member firms and it is obliged to pay this to MESAM.

- In Turkish music market, 70% of the whole sale is piracy sale. The sanctions directed towards the piracy works sold in the streets rather comfortably were not dissuasive. Most recently, a pedlar was accused of selling piracy CDs and taken to court. The Court referring to Article 81 found him guilty and sentenced him to prison for four years.⁸⁹
- In 2001, a new agency called "International Standard Music Number - ISMN" was founded. Its function is to number each musical work produced in Turkey and present it to the public notice. This agency has a relationship with international ISMN whose headquarter resides in Berlin, will bring the system implemented in twenty-five countries around the world. Thus, all kinds of musical works and their productions will be registered.⁹⁰

3.1.3. Choreographic Works

The choreographic works are defined as the choreographics, the entertainments in dumb show and circus tours. These are protected by author's right since the originality is refilled in the work in written form or else, for example by videocassette.

The choreographic works are mentioned in the second paragraph of the second Article of Turkish Law of Intellectual and Artistic Works, under the "Scientific and Literary Works" item: "all types of dance, choreographic works in writing, dumb show and similar theatrical works without words". For example, "Sultans of the Dance" which staged in 2000 by Mydonose Group is an original choreographic work which is formed by several traditional Anatolian folkloric dances and it is subject to copyright protection.

⁸⁹ Doğan Hızlan, "Yargıcın Korsana Örnek Cezası", *Hürriyet Gazetesi*, 27 Şubat 2001, p.13.

⁹⁰ "Her Müzik Eserine Bir Numara", *Hürriyet Gazetesi*, 5 Nisan 2001, p.38.

3.1.4. Theatrical Works

Theatrical works are protected by author's right. For example, the representation of a piece of theatre necessitates the acceptance of the author. But if the director of this piece can prove the originality of his work, the theatre can be considered as another work to be protected and the director may benefit from the author's rights. However, the theatrical work must be fixed "in written form or else" for example by design or by annotating.

The director has an important role both in the "creation" of the theatrical work -in the status of author- and in the "realisation" -in the status of a salaried person, producer.⁹¹

For example, the dramatic theatrical work "Vişne Bahçesi" written by famous Russian writer, Anton Çehov, is staged under the name of "Fişne Pahçesu" by Ortaoyuncuları-Ferhan Şensoy, as a comedy.

3.1.5. Audiovisual, Radiophonic and Cinematographic Works

They compromise cinematographic and broadcasting works as well as video games:

- The title of the audiovisual work,
- Its poster which is a protectable graphical work if it is original,
- Its scenario,
- The extracts of the work,
- The features of its characters (for example, the character of E.T) are protected by author's right.

Audiovisual work is a collaborative work which many people contribute to the creation of this work. Radiophonic work is created upon the radiophonic emission, for example a "radio-interview" but not the simply diffusion of the programme for the radio.⁹²

⁹¹ Desjonquieres, p.53.

⁹² Desconquieres, p.59.

Copyright protection is needed in the audiovisual sector such as operas, novels, radio plays, stage plays and film scripts on the one hand and the communication and performance of existing works such as related rights on the other hand. The importance of related rights is growing in the digital age, with its new forms of exploitation and the inevitable disappearance of national boundaries. An internationally recognized system of effective copyright and related rights is required in order to protect the economic interests of authors, artists, phonogram producers and film producers. Current provisions for the protection of authors, artists and producers are contained in Berne Convention, International Convention for the Protection of Performers, Rome Convention, Geneva Convention and TRIPS Agreement.

Audiovisual works and artistic performances including sound and film recordings of them, are protected by specific copyright and related regulation. There are also provisions to protect rights to distribute these works, such as those granted to broadcasters. A host of technological developments and convergence of existing and new forms of transmission such as cable and satellite technology and digital broadcasting have been made in the broadcasting sector. At the same time the financial and technical implications of distributing audiovisual works have grown considerably. WIPO and European Union try to strenght legal measures to against piracy and provide sufficient protection.

IRIS, Legal Observations of the European Audiovisual Observatory, is a unique newsletter dedicated to all legal developments relevant to the audiovisual sector. IRIS reports on legislation, case law and related policy documents on a national and international level. It is a part of the Council of Europe guarantees independent information and focuses on its thirty-four European member states, neighboring states and important developments outside of Europe.⁹³

⁹³ Natali Helberger, Fransisco Javier Cabrera Blazquez and Suzanne Nikoltchev, "Copyright and Related Rights in the Audiovisual Sector", *IRIS-Legal Observations of the European Audiovisual Observatory*, 2000-2, p.2-7.

In Turkey, RATEM (Professional Association on Radio and Television Broadcasters) tries to establish and to strengthen the relationships between radio and television broadcasters and the related right holders and to protect the rights of the broadcasters.

Referring to Kartal Ergür (General Coordinator - Euro D Channel), the main problems encountered in broadcasting activities in Turkey are as follows;

- From the point of view of radio and television broadcasters, the copyright system does not operate well. The broadcasters are taken on difficult task. The responsibility of taking the list of the works subject to copyright are kept only by broadcasters. It is difficult to control the works subject to copyright and to count how many time their broadcasting value.
- The broadcasters want to share these issues with the right holders. The associations of right holders should be well organized and should participate in handling all these activities related to their rights.
- The broadcasters are responsible for having to control and the responsibility of paying money. The rules of copyright payment are implemented strictly by television and radio broadcasters.
- Moreover, the usage period is not taken into account while determining the copyright value. This causes an unfair situation, for example, a news television channel pays the same amount of copyright value as a music television channel for the same musical work.
- The regulation about the methods and rules related to the usage of "intellectual and artistic works on radio and television broadcastings" came into force after being published in the Official Paper numbered as 24524 and dated as 15 September 2001.

In Turkey, the definition of cinematographic works was designed again according to the technological development and international law. The fifth Article list the revised protected cinematographic works as follows;

"Cinematographic works are animated serials of images related with each other like movies of aesthetic, scientific, educative or technical nature or movies related with daily events or cinema movies which shall be broadcasted by related electronic and mechanical tools as a silent movie or sound motion picture, regardless of the material it has been fixed."

Although the author gives the written permission to present and broadcast his work, if the way it is presented hurts the author's pride -moral rights- he/she has the right to forbid the presentation and the broadcast of the work.

Some noteworthy points arise in connection with the application of provisions concerning cinematographic works contained in various European Directives. Fourth Article of European Council Directive 92/100 (about rental and lending right and on certain rights related to copyright) and Council Directive 93/93 harmonizing the term of protection of copyright and other related rights, also contains the points relevant to cinematographic works.

The term of protection of cinematographic or audiovisual works shall expire 70 years after the death of the last of the following persons to survive, whether or not these persons are designed as co-authors: the principal director, the author of the screenplay, the author of the dialogue and the composer of music specifically created for use in the cinematographic or audiovisual work.

According to the third paragraph of the second Article of Council Directive 93/93, the term "film" shall designate a cinematographic or audiovisual work or moving images, whether or not accompanied by sound.

3.1.6. Artistic Works

In the fourth Article of Turkish Law, the following works having an aesthetical value are set forth as "artistic works":

- Paintings in oil or water colors, drawings, pastels, engravings, scripts and gildings, works drawn or fixed on metal, stone, wood or other material by engraving, carving, ornamental inlay or similar method, calligraphy, silk screen printing;

- Sculptures, reliefs and carvings;
- Works of architecture;
- Handicraft and minor works of art, miniatures and works of ornamentation, textiles, fashion designs;
- Photographic works;
- Graphic works;
- Caricatures;
- Typefaces.

The use of sketches, drawings, models, designs and the like as industrial designs shall not affect their status as intellectual and artistic works.

French Law on intellectual property gives an unlimited list of plastic art works susceptible to be protected: "works of design, paintings, architectures, sculptures, engravings, lithographs, graphic and typographic works, photographs, applied art works, illustrations, geographic cards, plans, sketches and plastic works related to geography, topography, architecture and sciences, ..."

Besides of these art work categories, as long as they fulfill the condition of originality, other various art productions such as furniture, jewels and carpets can be considered as art works susceptible of protection.⁹⁴

For example, Kobi Katz's is a jewellery designer who designed a "bridge" diamond ring purportedly inspired by Golden Gate Bridge in San Francisco. The US Court found that the design was not dictated by function, and that no evidence was presented that any "substantially similar" ring had been produced before the Kobi Katz design. So the ring is in a tangible form, is a original work and susceptible to be protected by its creator, Kobi Katz.⁹⁵

⁹⁴ Desjonqueres, p.54.

⁹⁵ "Copyright law is a diamond's best friend", *IP Worldwide "The Magazine of International Law and Policy for High Technology* (December 2000), p.65.

Some of art works are not protected by the author's rights. Others may imply many protections, such as the protection of the title of the author's right and the legislation on design and models.

3.1.6.1. Pictorial, Sculptural Works

The pictorial and sculptural works category includes two-dimensional and three-dimensional works of fine arts and applied arts. Thus, all forms of paintings and sculpture fall into arts category, as do various kinds of maps, charts, and technical drawings.⁹⁶

A plastic art work is protectable since there is a concrete artistic expression which is chosen by the creator.

Generally; pictorial, sculptural and graphic works are called "visual arts". In United States, some additional protections are provided for the visual art works and their authors, in 1990. The protection is covered one of a kind or limited edition of less two hundred copies of the works such as paintings, drawings, prints, sculptures or photographs.⁹⁷

The problems encountered in plastic art domain in Turkey can be summarized as follows;

- ***Copying of works without permission***

It is difficult to control and to apply for sanction in practice. For example, a person/firm who owns the original work may copy a thousand of the same engraving without the permission of its author or inheritors.

- ***Counterfeiting of works and author's sign***

There is an important counterfeiting problem related to pictorial works, because of the growing turnover of the pictorial works and the ignorant purchasers.

⁹⁶ Schecchter, p.94.

⁹⁷ Schecchter, p.106.

For example, Fikret Mualla -famous artist died in 1967- is one of the most counterfeited artist in Turkey. The counterfeited copies were sold out even in the auctions and the case was subject to newspapers.

An artist who was trying to earn money by counterfeiting the works of the artist, Burhan Uygur and by imitating his sign was found guilty by the Court.

- ***Using the work out of its aim and place***

For example, when a writer made use of a picture on the cover of his book without the permission of its creator, he was found guilty by the Court.

Recently, there has been an increase in the number of artists who go to court and take their rights back.

- ***Infringements to author's rights***

Generally, the economic and moral rights of artists have been infringed by the purchasers, gallery owners and commission agents and third persons while they live and/or mostly after they die.

A sculptor who won the competition organized by Ankara Municipality, complaint about the infringement of his copyrights. Ankara Municipality and the artist agreed on presenting his statue to the public in Altınpark/Ankara. However, after a period this statue was moved away for the simple reason that it was against the public manner. The Mayor used some bad words for the sculptur and the statue was damaged in such a way that it could not be repaired. The decision taken by the court was for the benefit of the sculptor. The court accepted that the author's rights were infringed both in economically and morally and he had the right to go to court for indemnity.⁹⁸

Another example is from America. The art work is one of the eight sculptures collectively entitled by their artist Jackie Mackie, "Dancer's Series: Steps" placed in

⁹⁸ Üstün, p.146-155.

common place in the city. Local graphic artist Bonnie Rieser snapped some photographs that she used in a collage for the Seattle Symphony Orchestra's 1996-97 season brochure. The case is taken to the court and the decision is for the benefit of Jackie Mackie, there is a copyright infringement case by using the photographs of the sculpture works on the brochure without the permission of its author.⁹⁹

According to the articles of Berne Convention, it is up to individual members to decide whether to protect "works of applied art and industrial designs and models" within the scope of copyright law.

The 1996 proposed EU Directive on industrial design, however, specifically provides in Article 18 that "...a design protected by a design right registered in or for a Member State in accordance of that State."

3.1.6.2. Architectural Works

Architecture is double protected, one against its plans and maquettes' reproductions and other against the constructable real estates.

Architectural works are the designs of buildings, embodied in any tangible form including buildings themselves as well as architectural plans and drawings.

Although they are not built; the plans, the scethes, maquettes, models, etc... are protected. In compensation, the plans or sketches which are not protected because lack originality.¹⁰⁰

For example, the case between Leicester and Warner Bros is the one about where does pure "art" stop and "architecture" begin. The designer plans and paints "Zanja Madre" -a massive artistic work designed to tell an allegorical history of Los Angeles- which is part of the facade of a downtown office building. Warner Bross filmed several towers

⁹⁹ Margery Gordon, "It takes two to tango", *IP Worldwide The Magazine of International Law and Policy for High Technology* (December 2000), p.29-31.

¹⁰⁰ Schecchter, p.94.

from the work as the entrance to the Second Bank of Gotham in the movie "Batman Forever" with the permission of the building but not the designer. Although the towers were not habitable, they nevertheless functioned as part of building wall, and were part of architectural work. The Court affirmed a finding that a building's decorative "street-wall" was entitled only to the narrowed copyright protections given architectural works by U.S. Copyright Act. The broader protection afforded to pictorial representations extended to sculptural works did not apply. The dissent argued that even if the towers were part of an architectural work, they were nevertheless "conceptually separate" from that work and entitled to full copyright protection.¹⁰¹

3.1.6.3. Photographic Works

Photographic work is protectable since it is original, in other words, it bears its author's personality. The originality of a photograph is determined by the choice of subject or by parcelling out and laying the subject, by different operational techniques (objective, lighting, time of exposition,...)

The single or plural use of photographs without the permission of its authors may cause problems. For example, the use of a photograph in a poster which is specially photographed for a cover of a catalogue without the permission of its author, (photographer).

For example, in order to protect fashion photographs in their original forms, there are certain measures required like their original forms, the choice of the pose of the fashion model or the lightening.

Also there are some specific photographs which are statistically unique such as airy photographs (and even taken from satellites). Because their creation depends on the success of technical operations, they must be protected by the author's right.

¹⁰¹ "A streetwall is not a picture", *IP Worldwide The Magazine of International Law and Policy for High Technology* (February 2001), p.55.

3.1.6.4. Copies of Art Works

The copies of art works are protected by author's right, because principally they are originals: The personality of the copier may not disappear in the performance of the copy. This constitutes an important difference between the original and the copied art work despite being executed manually. The copy of the art work is a derivative work. The sixth Article of Turkish Law lists the principal types of such works, like adaptations, arrangements, annotations, abridgements, etc... The necessary informations and the list of derivative works are given in part 3-composite works section.

Furthermore some art work copies are not protected even though they are the results of mechanic process which does not require any personal manifestation, such as the reproductions of Leonardo Da Vinci's "Mona Lisa".

3.1.6.5. Graphic and Typographic Works

Graphic and typographic works include design studies, page-setting and sketching in the edition or the conception of the packing domains which are often executed upon the order.

For example, the cover page of the book is a work protected by the author's right. In addition, a road map whose originality comes from the choice of the localities, interests and symbols, selection and classification of roads is protected as well.¹⁰²

These graphic and typographic works are considered like the works of an idea, may be protected in France by the following ways;

1- Protection by the author's right.

Original works, original but not new works and new but unregistered works are protected by only author's right.

¹⁰² Desjonqueres, p.55-56.

2- *Protection of Designs and Models*

Both the original and the new works are protected by author's right and by the law on design and models. The conditions necessary for the utilisation of this kind protection are:

- The innovation results from the absence of recorded accumulation and often the original work is not much the new work. The Law is applicable to all new designs, new plastic forms, industrial objects which distinguish them from their rivals, either a distinct configuration conferring them a new character, or by one or many exterior effects which give them different characteristics.
- Registration of the work
- The registration of designs and models presents an important practice interest for the author: It makes the creation official by giving it a certain date and it creates a presumption of property on the profit of registration.

3- *Protection by Patent Law*

A creation is susceptible to protection sometimes by the author's right and sometimes by legislation on design and models and legislation on patent.

- The condition of protection application is related to the right of patent. The decisive criterion is the utilitarian destination of the patented object. Since the creation is an utilitarian vocation, the unique applicable protection is the patent.
- Practical Cases
 - Purely ornamental creations in which the form has nothing with the use of the object: Application of law on design and models and/or law on literary and artistic property. For example, the design of the furniture textile whose motives are only for ornamental use and have no concern with obtaining an industrial result.
 - Purely utilitarian creations whose form directly influences the functional use: Application of patent law
 - Creations which are sometimes utilitarians and ornamentals allow some elements in form purely aesthetic and others utilitarian: To the ornamental element the disposal on the author's right and designs and models and to the

utilitarian element, the patent law. For example, a belt having a very practical fastening system and an ornamentation has no relation with this utilitarian aspect.

In certain cases, some artistic creations profit from the protection of the industrial property, such as protection by the law on design and models, protection through patent law. A graphic work is protectable since there is a concrete artistic expression which is chosen by the creator.¹⁰³

In Turkey, designs are protected according to the third item of the second Article and to the fourth item of the fourth Article, as well as under the new Industrial Design Decree.

According to Onur Bayiç (President- Professional Organisation of Graphic Designers); graphic design is a branch of profession having certain working conditions and price intervals. It is a commercial kind of work having an artistic character. There is a copyright protection in every stage of the creation.

Referring to Onur Bayiç and Sadık Karamustafa (Graphic Designer -Lecturar in Mimar Sinan University), the problems encountered in graphic design domain in Turkey are as follows;

- ***Unwillingness to make a contract***

Assuming that there are nearly fifty graphic design studios which work seriously, it would not be easy to insist on making a contract for others who are trying to compete and to survive.

- ***Unconsciousness of the client***

In Turkey, because of the reduced price levels, the clients mostly prefer to work with printing houses instead of graphic designers, design studios or publicity agencies. It is uncertain how much of these printing houses' profit is transferred to designers.

¹⁰³ Desjonqueres, p.56-58.

- ***Copying and/or multiple creativity problem***

There is a widespread copying problem in design domain. Generally, the excuse of multiple creativity is used in copying cases.

For example, a logo which is already created by another designer -first author of the work- won the competition organized by the Ministry of Tourism for Turkey's presentation. When the first author is complained, the designer who won the competition is defended himself by multiple creativity.

- ***Designers not struggle to take back their rights***

Generally, the designers did not pay attention to their rights after collecting the design fee from the client. Designers must know the scope of their copyrights and must struggle to take them back.

- ***Infringements made by designers***

Because of the economic problems and the present system; the use of copied software programs (without licence) are widespread in Turkey -even in public institutions- such as "photoshope, freehand, etc..."

The other problem is about the use of materials without paying their copyright value. For example, the use of a "font" or a "photograph" in a design work. The solutions, like hiring system both for the software programs and for the use of materials, must come into force for the specific usage period.

- ***Distinction of "Design fee" and "Utilization fee"***

When the design fee of the product is paid, there is an uncertainty on the subject "where and how often" the client will use the project and also there is a difficulty in collecting the utilization fee.

- ***The greatest trouble in Turkey is the insolubility of the utilization rights.***

- Unintended usages (for example, the use of the work in brochure which is specially designed for poster)

- Re-usages (for example, the payment is made for the cover design of the first edition of the book, but in the second edition the payment is not made)

- ***Infringements to author's moral rights***

For example, a logo design is transferred to the customer with its all rights.

However, the deficiencies resulting from the usage are out of the control and in a manner violating the moral rights of the designer. The "Copyright Identity Guide", which is not often seen in Turkey and used mostly in the practices abroad, prevents the customer from making any changes to it.

- ***The difficulty and slow nature of the legal process.***

3.1.6.6. Publicity Works

Publicity works protected by author's right include the slogans, designs, logos, labels, catalogues, posters, films, ...

They constitute different types of works protected by author's rights:

- Literary works (slogans, titles, etc...),
- Graphical works (logos, posters, labels, etc...),
- Audiovisual works (films, video films, advertising films, etc...).

Besides the protection by the author's right, the above mentioned art works may be protected by the legislations on "design and models" and "brands", or by "unfair competition law".

The copyright in publicity works can be summarized as follows;

1- *Who should own the copyright ?*

The first owner of the copyright will be the creator of the work, although copyright in work created by employees belong automatically to their employer. Therefore, work created by the employees of an advertising agency involves the copyright belonging automatically to the agency. In order to secure the copyright of a work

commissioned from the agency's outside creative suppliers, such as photographers or illustrators, the agency -either for it self or its client- must agree with them.

There is a little question in the advertising business that advertisers have always believed that they own the entire creative content of all advertising produced for them, but there is a strong likelihood, in hundred cases, that they may not. They may not own them because there is no written undertaking between the original creators and the agency or the agency and themselves that the copyright has, in fact, been transferred.

2- Transfer of copyright ownership

The only way the ownership of a copyright may be transferred is in writing, usually in a contract between the creator and the one who wishes to own the intellectual property. Copyright law requires that any transfer of copyright ownership should be written in order to be valid.

3- Transfer of ownership from agency to client

Agencies should ensure that a written understanding exists between their clients and themselves as to the ownership of copyright. For their own protection, agencies should not agree to transfer copyright ownership to clients until they have been agreed for the possible limits to the rights of usage and until they have been paid in full for their services.

4- What happens if the creation is the joint work of a team ?

Often advertising creativity is not the product of a single mind on a specific project but a team work. The tendency of agencies to organize creative teams into pairs of writers and artists who stimulate each other's creativity is well-known. When dealing with suppliers, agencies interested in securing ownership of intellectual property should ask their supplies to demonstrate that transfers of copyright have been obtained from all creative persons involved in a project if those persons are not in the regular employees of the suppliers's company.

5- Copyright in components of advertising

Copyright may only exist in what courts have found to be something of sufficient length as to amount to a work in itself. Thus copyright does not exist in titles, headlines, corporate logos or slogans but may exist in the copy body of a print advertisement. If it is thought that a considerable investment may be made as a slogan, for example, and there is judged to be some danger that it might be copied in whole or in part by a competitor, consideration should be given to protecting the slogan as a trademark. However, copyright may exist in photographs, music and illustrations used in advertising.¹⁰⁴

Advertising world is becoming more conscious about the issue of copyright.

Copyright law is broadly similar throughout the Europe, and this is in large measure a consequence of the Berne Convention for the protection of literary and artistic works, to which all advanced industrialized countries belong. Berne Convention defines copyright as a series of property rights and moral rights conferred on the creators of literary and artistic works. Therefore, copyright exists in every original piece of literary, artistic, dramatic or musical work and in sound recordings, films and television broadcasts. Normally advertising titles and slogans do not attract copyright protection although in some countries, such as France and Holland, it is possible to register a slogan. In Holland it is also possible to protect titles.¹⁰⁵

6- Moral rights

The creator of the work who owns copyright also owns what is termed "moral rights" of the work, the ownership of which is completely separate from the copyright. Thus, a creator who has the license of his copyright still possesses the moral rights in the work. If the creator can demonstrate that the copyright owner of one of his/her works has modified the creation in such a way to hurt the honour or the reputation of its creator, then the owner's modification of the creation can be stopped. Moral rights are not owned by the employer and they can not be assigned

¹⁰⁴ *Copyright In Advertising* (n.a), Reklamcılar Derneği Kütüphanesi, p.4-8.

¹⁰⁵ *The Legal Protection of the Work of Advertising Agencies-Guidelines for EAAA Members* (n.a), Reklamcılar Derneği Kütüphanesi, p.1-2.

to someone else, because they are personal rights.¹⁰⁶

The problems encountered in publicity works in Turkey are the same as it is mentioned in "Graphic and Typographic Works" section. Also;

- In comparison with the developed countries' publicity sector, it is difficult to use the word "sector" for publicity in Turkey which is reduced approximately 60% in 2001.
- Copyright infringements are experienced in Turkey in different fields of advertisement sector and for different reasons. Although these infringements are usually held by small-size individual and/or firms, some well known firms in their sector practice them as well. The problems like copying, non-permitted use, etc.... experienced in the graphical works are experienced in the advertisement sector too.

For example, there was an important similarity between the advertisement film of Renault created by Y.Agency / Turkey and the one of Wolkswagen which is produced and played abroad.

Referring to Şükrü Öksüz (Owner-İRA Advertising Agency); the case between "İRA Advertising Agency and E.T -a member company of a holding group- is the first incident legally ended in favour of advertising agency. Even though, İRA won the competition and the contract is made accordingly, E.T came into agreement with another agency. After a period, the publicity works created by İRA are implemented by E.T. the decision taken by the court is for the benefits of İRA.

Another example is between two advertising companies about the author's rights and the answer to a question "who is the owner of the work ?". Öykü Agency claimed that a work prepared by TerraNova Agency has already been created by themselves, (by an employee of Öykü Agency). The defence of TerraNova is that the copyright value is

¹⁰⁶ *Copyright In Advertising* (n.a), Reklamcılar Derneği Kütüphanesi, p.5.

paid to the creator of the work (to the resigned employee of Öykü).¹⁰⁷

3.1.6.7. Fashion Design Works

There is a need of efficient protection for the creations of fashion just for a season. French Law on Fashion Creations gives a particular protection to the "sewing, fur, underwear, embroidery, mode, shoe, glove, morocco-dressing, high-tech fabric or specials for "haute-couture", manufacture and products of boatmakers.

A fashion designs may be protected at the same time by the dispositions referring to author's right, to designs and models and to articles of fashion.¹⁰⁸

Fourth paragraph of the fourth Article of Turkish Law mentions about fashion designs which shall be deemed artistic works.

3.1.7. Computer-Related Works

The appearance of new computer-related commercial goods has posed a list of problems and issues for all fields of intellectual property law. These products are highly expensive to develop, their lifespan is often short due to rapid obsolescence.

In the area of computer technology, four main areas have been the focus of legal innovation and reform:

- Chips
- Software
- Databases
- Digital Transmission (Multi-media and Internet)

¹⁰⁷ "Çok boyutlu bir telif davası", *Mediacat Dergisi* (Aralık 1998), p.46-51.

¹⁰⁸ Desconqueres, p.58.

3.1.7.1. Chips

It is known variously as topographies of semiconductors, lay-outs of integrated circuits or mask works. This is an industry much less in the public view and it is bases for all the new technologies. Today most integrated circuit know-how is in the public domain.

Protection of the three-dimensional design embedded in semiconductor material was as novel as it was swift. Unprotectable under US design law as "functional" and for the same reason unprotectable as a "sculptural work" under copyright law., the US created in 1984 a sui generis form of intellectual property in the form of Semiconductor Chip Protection Act. This protection which is valid for ten years, requires originality and fixation (for example, it must exist in tangible form). In 1989 an international convention known as the Washington Agreement (Treaty on Intellectual Property in Respect of Integrated Circuits) was signed. This is devoted specifically to international protection of topographies.

In the European Union, the rights in a semiconductor chip are set out in the 1987 EC Directive. The Directive comprises the right to perform, authorize and prevent others from performing acts of reproducing, commercially exploiting and importing protected chips. In order to protect the topographies, Member States may decide the forms of intellectual property legislations (copyright, design, sui generis,...) and the formalities (e.g. registration, deposit,...).

Most European Union countries have choosen copyright and/or design protection. TRIPs also sets forth protection requirements that must be fulfilled by member states such as prohibiting unauthorized importing, selling, otherwise distributing for commercial purposes, ...). Turkey adopted domestic legislation in the unfair competition area.

3.1.7.2. Software

The term "software" refers not only to the computer program, but also to the materials used in design, documentation and instructions issued with the program. Most countries have accepted that computer programs are best protected by copyright law.

The solution of protecting programs under copyright law has two advantages: It brings computer programs under the existing international harmonizing influence of the Berne Convention and allows room for the innovation which is crucial to the continuation of this industry. For this reason, TRIPs has provided in the tenth Article that "Computer programs, whether in source or object code, shall be protected as literary works under the Berne Convention. Though this has been accepted worldwide, in the United States, European Union and Turkey, but patent law still plays a crucial role in software protection both in the United States in European Union.

In compliance with TRIPs and to harmonize Turkish Law with the provisions of 1991 EC Directive on the legal protection of computer programs, the first paragraph of the second Article of the Law was amended in 1995 to provide for software protection. The exclusive right of reproduction under twenty-second Article has been amended to include the loading, displaying, running, transmission and storage of a computer program where such acts require the temporary reproduction of the computer program.

Most computer program infringement in Turkey, is said to be in business software. This is both in the form of piracy (illegal reproduction and distribution) and unauthorized reproduction of legally purchased software. While business users of complex and/or "purpose-built" software who are in close service relationships with their licensors are not likely to engage in unauthorized reproduction (because this is easily discoverable by the licensor), the costs to the industry of pirated business software and unauthorized reproduction of standard business programs are enormous. Major software companies estimate that 95% of business software used in Turkey is pirated.

Generally in Turkey, the users -except some large scaled firms- use the copied, piracy software programs. Turkey's' economic possibilities and the deficiencies in legal and social areas make it difficult to prevent these infringements.¹⁰⁹

Being subject to copyright issues, the software companies struggle since 1990s. Business Software Alliance (BSA) which consists of 23 software and computer companies around the world, opened a branch in Turkey. It tries to form a common platform for all persons, firms and institutions working in software copyright issues and also to prevent the use of software programs without license.¹¹⁰

3.1.7.3. Databases

The Berne Convention has long recognized the importance of databases in the fifth paragraph of the second Article includes works which must be protected in member states.

"Collections of literary or artistic works such as encyclopaedias and anthologies which, by reason of the selection and arrangements of their contents, constitute intellectual creations shall be protected as such, without prejudice to the copyright in each of the works forming part of such collections."

This provision is widely held to mandate international protection of electronic as well as non-electronic collections.

The eleventh paragraph of the sixth Article of Turkish Law which is amended in 1995 also ensures an applicable protection for databases -kind of derivative works- even they are electronical or non-electronic collections.

Many European countries already have strong data protection laws. France and Netherlands have particularly strong legislation related to this subject. But because of the Nazi era when public archives were looted for information about citizens, German's

¹⁰⁹ Keyder, p.164-173.

¹¹⁰ Aşlı Güven, "Düşünceyi Korumak Gerek", *Radikal Gazetesi*, 28 Şubat 2000, p.16.

first data privacy laws date from 1970s, such as Italy and Greece whom adopted such laws by mid 1998.

Turkey's constitution protects individual privacy. Turkey is also a signatory to the OECD (Organisation for Economic Co-operation and Development) guidelines on data protection and transborder data flows, and has a tradition of protecting personal privacy in terms of judicial and criminal records of citizens, censuses, surveys, banking and communication. The Civil Code also provides for protection of individual privacy.

3.1.7.4. Digital Transmission Through Multi-Media Works

Multi-media work is a complex creation which reunites many kinds of creations (texts, fixed images and/or animated, and/or music) accessible on "compact disc" and which necessitates the utilisation of the equipment (computer, TV, etc...)

In the term "multi-media" means many things to many people. In the words of The Concise Columbia Encyclopedia (as licensed to Microsoft for its multi-media database of reference work "Bookself"), multi-media is: "... software and applications that combine text, high quality sound, graphics and animation or video..." which may also be used for "electronic publishing and electronic games". It also includes "home entertainment systems and other electronic products and services, particularly interactive ones, that combine text, sound, video and the like".

Under the reservation of the originality condition, multimedia work benefits from the author's right. Nevertheless, its juridical case and then the modalities of its protection depend on its qualification (literary works, logical, base of datums, audiovisual work, etc...) just as the conditions in which it has been created (by one or many authors, "original" or "derivative" work, collective work)

For example, in the electronic encyclopedia; the literary creation is the principal element and the computer support is the accessory element. Like all works protected by author's right, the multimedia work may make the assignment's objects of author's right in the framework of execution contracts.

3.1.7.5. Digital Transmission Through Internet

The "internet" as described by World Almanac and Book of Facts 1994 (as licensed to Microsoft for "Bookshelf" from Funk and Wagnalls) defines the internet as linking "people together via computer terminals and telephone lines -and in some cases wireless radio connections in a web of networks and shared software- allowing users in one area to reach other users anywhere in the 'net'" ¹¹¹.

Cyberspace refers to the electronic world that has been created by linking millions of computers through the Internet and millions of business and home computer users to the Internet and such gigantic online services. Copyright law is supposed to work the same in this electronic world in the more tangible worlds of print and the fine arts. However once the works are put into digital form and uploaded into cyberspace, keeping track of author's right ownership and enforcing copyright rights becomes difficult.

The works cast in digital form can more be easily copied and modified than when they exist on paper or canvas, and it can be difficult to know when the line has been in copyright violation and permissible copying of ideas has been crossed. Once a work is posted in cyberspace, it can simultaneously be copied by millions of users in many different countries, even if the copying is illegal. There is an attempt to establish some regulation and predictability for copyrights on Internet, US Congress enacted the Digital Millenium Act of 1998. The DMCA prohibits circumvention of digital anti-piracy devices and secret codes known as digital watermarks form digital files and also limits liability for companies that provide access to the Internet (Internet Service Providers- ISPs) in the event that an infringing copy is offered. In addition, DMCA establishes licensing standards by which companies play webcast music (broadcast over the Internet).

Despite passage of DMCA, technology has continued to outpace copyright definition and new unresolved issues have emerged in cyberspace such as file sharing. For example, website owners may be liable as copyright infringers for creating links to

¹¹¹ Keyder, p.164-179.

infringing materials. One company run many problems when framing -placing the contents of one website to another- because the process resulted in the creation of a creative work.¹¹²

The most common system for music downloads from the Internet is known as "MP3" or MPEG 1 Layer 3. MP3 technology compresses sound files so that approximately 60 minutes of music can be stored on 32 megabytes of computer memory. The distribution of MP3 files is an infringement unless authorized by the respective copyright owners. In 1998, the Rio appeared, the first hand-held MP3 storage device. The music industry attempted to halt sales of the Rio, arguing that the Rio failed to meet standards established in the Audio Home Recording Act (AHRA). In 1998, a judge refused to issue an injunction halting the sale.¹¹³

The new technology which permits to number, reproduce and diffuse the works, faces two exigences: Universal access to be known and the protection of author's on their works.

In reality, the absence of control as for the utilization of others work and as for its economic execution, since this is spread out in "web", damages the moral and economic rights of the author.

Some recent affairs about the diffusion of works or the songs on Internet, have therefore illustrated that the principles of author's right are applicable to Internet. The diffusion of works to public -without authorization of author's rights' titulars- put two fundamental author's rights; reproduction right and representation right.

- *Reproduction right* is the transfer fact and refixation (numbering of books) and refixation on a support (put into the computer's memory)
- *Representation right* Insofar as the books appear on screen¹¹⁴

¹¹² Elias and Stind, p.111-112.

¹¹³ Elias and Stind, p.143.

¹¹⁴ Desjonqueres, p.61.

US Copyright Office is ruled an important right for artists and record companies in December 2000. The rule declared that radio broadcasters must pay licensing royalties to record companies when they simulcast music recordings on the Internet.¹¹⁵

There are then counterfeiting works protected by author's right since these are put in disposition to Internet's utilisators, without authorization of authors' titulars (authors, editors, etc...)

The exception of private copy may not be advanced insofar as there is a necessarily collective use in Internet. When a "web" page is installed on the server then the first vocation will be to permit to all visitors to consult information. The principal difficulty then results, a lot of efforts to imply in order to assure the author's protection and to pursue the infringers.¹¹⁶

In United States and Europe, many infringement cases are encountered in cyberspace and internet. For example, George Frena who worked as an computer operator in Techs Warehouse Company used some photographs of Playboy/USA in internet without permission. The case is held to the court, Playboy Company won. The defense of Frena (the multiplications of the works are made by the users not by him) is rejected. The Court arrived at a decision that "his responsibility was valid even he was ignorant about the results of his actions".

In Turkey, the infringement cases on author's rights in internet domain held by the courts are rare comparing to developed countries. The necessary amendments are made in Turkish Law dated as 2001, by permitting the presentation of works to the public through internet. The software programs are included into the scope of the scientific and literary works. The reproduction, distribution, selling, rental rights and the essentials of their use became definite.

¹¹⁵ Godwin, p.12.

¹¹⁶ Desjonqueres, p.61.

All visual, auditory and written works being in internet domain are protected in the name of their authors. Due to the control difficulty, it would not be easy to prevent this kind of infringement. It belongs to author's right to permit or to forbid the presentation of his works to the public through the internet.¹¹⁷

3.2. WORKS CREATED BY MORE THAN ONE AUTHOR

Although the author is traditionally an individual creator, there are cases where authors participate together in the elaboration of a work. This is the case for audiovisual works (cinematographic works), staging theatrical works, preparing dictionaries, encyclopedias, publication of newspapers, publicity works, etc.

This incorporation may be realized by the authorization of the author of preexisted works if this is not the subject of public domain. For example, a publicity catalogue including the photographs, anthologies, adaptations, translations, arrangements.

Turkish Law on intellectual and artistic works distinguishes the works such as derivative works (composite) and collective works which are mentioned in the first b Article;

- *Derivative Works (Composite Works)*

Intellectual and artistic works created on the basis of another work which bear the work of the processor and which are comparably independent.

- *Collective Works*

The work that came into body as a result of an intellectual creativity will continue to be published in encyclopedias and anthologies, on condition that all the rights of the original work shall remain unaffected.

¹¹⁷ Dericioğlu, p.20.

French Law on intellectual property distinguishes into three categories, according to the plurality of authors:

- Collaborative Works
- Composite Works
- Collective Works

3.2.1. Collaborative Works

The collaborative work is that many authors have contributed voluntarily to its creation. The principle characteristics are the followings:

- *A common objective for the authors : The realization of the work.*

For example, In Renoir c/ Guino Case. The sculptor Guino executed a certain number of sculptures under the direction of Renoir who at the end of his life, does not have the necessary physical power in order to realize his works. The judges estimated that these works are the collaborative works. Renoir participated in the creation of his works by directing Guino. Guino worked as work creator in artistic domain since he has got the freedom to reflect his impression in the work.

Concerning literary issue, the quality of co-author supposes a collaboration to the realizations of works: Conception, selection of treathening questions, writings. As examples of collaborative work, in addition to interwievs, cartoons are realized as result of collaborative work since there is always a scenarist and a designer taking part in them.

- *A creation may be of the different kinds: Literary, musical or plastic arts.*

The creations of co-authors may produce the same kind of product. For example, a written song-lyrics and music (by two persons working on these elements), or different kind (a composed song by a lyricist and a musician or the opera although it composed by a compositor), there is an author for the dialogues and a choreograph for the figures of dances.

- *The possibility to identify the creative part of each author.*

The creative part of each author is identifiable.¹¹⁸

3.2.2. Composite Works

Composite works are also called " derivative woks". Without the contribution of the last author, a work cannot be considered as a composite work. In order to be incorporated in a new work, the preexisting work must be achieved.

Sixth Article of Turkish Law clarifies the derivative works as follows;

- Translations
- Adaptation of novels, short stories, poem or plays to a different from,
- Adaptation of a musical, artistic, scientific or literary work for incorporation in a film or transformation for the purposes of filming or broadcasting by radio or television,
- Musical arrangements and synchronizations,
- Transforming artistic works from one form to another,
- Assembling all the works of one author or all his works of one kind as a collection,
- Compilation of selections or anthologies of numerous works for a specific purpose and in accordance with a specific plan,
- Editing, by scientific investigation and study, of an unpublished work for publication,
- Annotations, critiques and abridgements of a work of another person,
- Adaptation, editing or any modification of a computer program,
- Databases obtained by the selection and compilation of materials and data in accordance with a particular plan and databases legible by a tool or other kind of databases.

¹¹⁸ Desconqueres, p.62-63.

3.2.3. Collective Works

Collective work is created by the person's initiative who edit it. The publication and the distribution are carried and his name should be mentioned. There are different authors who take part in this work, and they realize a collective work.

Encyclopedias, dictionaries and reporters, some scientific and juridicial works, publications of newspapers, billboard posters, some applied art works, etc... are collective works. These examples show that the collective works are found essentially in literary works, and most rarely in musical works or plastic art works.

- *The person in charge of initiation of the collective work plays a role of coordinator*
He determines the general idea of the work (choice of themes, etc...), he decides the authors he will work with coordinates this work and manages the distribution of the collective work.
- *The differents authors of the collective work have different roles*
Their contribution is temporary because only the coordinator decides the composition of the work. It is not possible to attribute their distinct rights. Distinctively their contribution should be formed together on the work as a whole.
- *Distinction with the collaborative work*¹¹⁹

¹¹⁹ Desjonqueres, p.64.

PART FOUR

COPYRIGHT PROTECTION

Copyright and related rights, protecting the works of authors, performances, films, sound recordings and broadcasts (including satellite and cable transmissions) have become increasingly important in recent years, with the development of technological advances which enable protected material to be copied or transmitted throughout the world instantaneously.

Authors, performers, producers and broadcasters, who provide the basic material at the heart of the information super-highway of the entertainment and communications industries, and indeed of the computer itself, through its programs, suffer losses amounting to the equivalent of billions of US dollars per annum through unauthorized use of their material.

Piracy is the unauthorized copying of protected material for the purpose of production and sale or unauthorised use. It is a multi-billion dolar business, its suppression involves considerations with legal, practical and social aspects. For example, it is estimated that in 1996 pirate sales of pre-recorder music reached USD 5 billion- up 6 % on 1995. This means globally, one out of three music carriers is a pirate copy. Losses suffered by the European copyright industries through worldwide piracy of European copyright and related rights material are likely to be substantial in relation to the European economy as a whole.¹²⁰

The report "Copyright Industries in the US Economy: The 1999 Report" was prepared by Economists Inc. for the Intellectual Property Association which represents more than 1350 US companies to create and distribute materials subject to copyright around the world. According to the study, in 1997 core copyright industries (those that create

¹²⁰ Sterling, p.10-18.

works with copyrights such as movies, music, newspapers, computer software and advertising as their primary product) accounted for nearly 4,3 percent of the nation's gross domestic product. From 1977 to 1997, the core copyright industries share of the GDP grew twice as fast as the rest of the economy. And copyright industries created jobs "at a much faster rate many leading sectors of the economy". More US workers, 3.8 million in 1997, are employed in copyright-based business. Referring to the report, preliminary estimates conservatively measure foreign sales and exports of the core copyright industries to be at least "66,85 billion US dollars" in 1997 larger than nearly all other industries.¹²¹

No study appears to have been carried out as regards the European Union as a whole, although it could be estimated that copyright and related rights account for 5 % of the Community's GDP. In view of the importance of European Union member states in the areas of sound, video, and film recording, book, software and database publishing and in other areas based on European material, it is reasonable to conclude that the contribution of the copyright industries to the Community's GDP is an important and growing factor in the European economy as a whole.¹²²

4.1 PROTECTION IN EUROPEAN UNION

The European Community's extensive programme in the field of copyright and allied matters, aimed at harmonizing relevant laws throughout the European Union has resulted in significant advances, both in increasing recognition of copyright and related rights and (by adopting uniform rules in a number of areas where, in some member states, there was previously no legislation, or different levels of protection) in the establishment of the highest overall level of regional protection of copyright and related rights in the world.¹²³

The followings are some examples of the protection established in European Union legislation;

¹²¹ Dugie Standeford, "Multiple Copies", *IP Worldwide*, "The Magazine of International Law and Policy for High Technology" (February-March 200), p.10.

¹²² Sterling, p.10-18.

¹²³ Sterling, p.16.

1- Protection for Authors (Directive 91/250 and Directive 93/98)

- Specific right to authorize any form of public distribution of protected computer programs and copies thereof.
- Specific enforcement rules concerning putting into circulation and possessing for commercial purposes, an infringing copy of a computer program and any devices for removing or circumventing computer program protection devices.
- General period of duration of protection fixed at author's life plus 70 years.

2- Protection for Performers (Directive 92/100)

- Specific right to authorize direct or indirect reproduction of fixations of performances
- Specific right of distribution in respect of the fixations of performances

3- Protection for Phonogram Producers (Directive 92/100)

Specific right of distribution in respect of phonograms.

In addition, cable operators and film producers have rights under European Union legislation (Directive 92/100) which are not reflected in the international conventions or the TRIPs Agreement.

The relevant directives of European Union are:

- **Council Directive 91/250/EEC**

Council Directive 91/250/EEC of 14 May 1991, on the legal protection of computer programs, establishing the obligation of Member States to protect computer programs by copyright as literary works within the meaning of the Berne Convention, and the rights to be accorded to the authors of such programs, with rules governing de-compilation and other matters.¹²⁴

- **Council Directive 92/100/EEC**

Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property,

¹²⁴ Sterling, p.16.

establishing the obligation to grant rental and lending rights to authors and related rights owners and specific rights for performers, phonogram producers and broadcasting organisations (also for film producers).¹²⁵

- ***Council Directive 93/83/EEC***

Council Directive 93/83/EEC of 27 September 1993, on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission, dealing with application of rights in relation to satellite broadcasting and rules concerning cable retransmission.¹²⁶

- ***Council Directive 93/98/EEC***

Council Directive 93/98/EEC of 29 October 1993 harmonises the term of protection copyright and certain related rights. It establishes a high level of protection period both; for author's right -70 years after the death of the author- and for related rights -50 years after the event which sets the term.¹²⁷

- ***European Parliament and Council Directive 96/9/EC***

European Parliament and Council Directive 96/9/EC of 11 March 1996 on the legal protection of databases, dealing with copyright protection of databases, and granting makers of databases a sui generis protection against extraction and/or reutilisation.¹²⁸

4.2. PROTECTION IN TURKEY

In Turkey after mid 1970s, the long-play sector was damaged when the cassette technology entered the market because it cost a lot of money to produce long-plays and the piracy production increased due to the tape-records which were brought from Germany and could make serial recordings. Until the law was changed, there were "cassette recording studios" in almost every neighborhood which produced mixed

¹²⁵ Official Journal of the European Communities, L346 27/11/1992 P, 0061-0066

¹²⁶ Sterling, p.17.

¹²⁷ Official Journal of the European Communities, L290, 24/11/1993 P.0009-0013

¹²⁸ Sterling, p.18.

cassettes. In this way, there was a recession in the musical work of bands. By 1983 law amendments, some articles were changed and two temporary articles were added.

Turkish Radio Television (TRT) had the broadcasting monopoly until 1990s and it had the right to broadcast the works in the way it wanted. The work of Moğollar named as "İkliğ" was used as a generic music of one of the most popular series of that time "Kaynanalar" without permission and without mentioning the author's name. Although none of Moğollar's works were allowed to perform on TRT. Furthermore, Yeşilçam would make use of musical works without their authors' permission and without paying an attempt to make original music for the films at that time.¹²⁹

In 1994, American music producers' annual loss was about fifteen million US dollars in the Turkish market. In the same year, since the warnings about piracy broadcastings of "Commercial Representative of United States of America" did not have the impact intended, USA decided to implement an embargo on China starting from 26 February 1994 and to duplicate the custom tax for the goods coming from China. Turkey would share the same destiny in case the same implementations continued. In the map which showed the countries where there was piracy broadcasting, Turkey was the country shown with the darkest colour.

James Chandler, President of American National Intellectual Property Institute on his visit to Turkey in 1998, examined the implementations related to copyrights, intellectual property, patent and trademark, and said that if a culture did not blame copying and if this was overlooked, a different behaviour could not be expected from the members of this culture.¹³⁰

The copyright is an important issue in terms of respect to human beings, consciousness and economy. In the developed countries, people are more aware of copyright and this facilitates development and taking new steps in this issue. It is evident that the individuals should be informed to respect others' rights when they grow up.

¹²⁹ Serkan Seymen, "Bitmeyen Telif Masalı-2", *Radikal Gazetesi*, 2 Ağustos 1998.

¹³⁰ Edip E. Öymen, "Fikri Mülkiyet İnsan Hakkıdır", *Milliyet Gazetesi*, 28 Eylül 1998.

Although copyrights are protected by laws in Turkey, there are a lot of infringement cases. The main reason is that individuals and public are not conscious enough and the law can not be implemented effectively. If the laws are employed effectively and the lawyers and judges are informed, the ratio of dissuasiveness will increase and people will ask for their rights more.

The first object of Turkey was the Customs Union towards European Union. In an attempt to harmonize with European Union, necessary amendments are made in the Law dated 2001 and accepted.

The list of the richest people who are dead and their inheritors is published in American Forbes Magazin-2000 Issue. Referring to it, the annual earnings of the artists were as follows; Elvis Presley 35 million US dollars, John Lennon 20, Theodor Geisel -a film producer- 17, pop singers Jimi Hendrix and Bob Marley 10, Frank Sinatra 6, Keith Haring -a painter- and Marilyn Monroe 4, and James Dean 3.¹³¹ On the other hand, in Turkey there are countless artists who could not get their copyrights even though they are alive. In one of his speeches, the Minister of Culture-İstemihan Talay talked about the author's economic rights' infringements and the real situations are exemplified.¹³²

The latest amendments made in "Turkish Law on Intellectual and Artistic Works" numbered as 5846 are as follows;

- 1- The definiton of cinematographic works was designed again according to the technological development and international law, with the law dated as 2001. In the cinematographic works made by animation, the dialog writers were accepted as the owners of the work as well as animators and scenario writers. Although the author gives the written permission to present and broadcast his work, the way it is presented hurts the author's pride, he has the right to forbid the presentation and broadcast of the work.

¹³¹ "Kefenin Kasası Var", *Radikal Gazetesi*, 13 Mart 2001.

¹³² "Telif Hakları Yasası Yayın Dünyasını Karıştırdı", *Hürriyet Gazetesi*, 27 Şubat 2001.

- 2- It is obligatory to put bands on all the intellectual and artistic works which are recorded in the forms of signs, sounds and/or vision carriers and which are presented to public, free or commercially. The bands will be given to related professional associations or to the Ministry of Culture after an agreement was made between the authors and related associations.

- 3- According to the law; radio and televisions have to take permission from the authors, the related right holders and the associations for the intellectual and stage works -except for the stage works they use in their broadcast.

- 4- The author may ask for three times as much as the money he deserves in the following cases;
 - If the work is translated without his permission
 - If it is published more times than it is mentioned in the agreement
 - If it is processed, broadcasted and presented in different ways
 - The people who change the work without its author's permission can be fined to pay fifty to hundred fifty billion Turkish Liras and can be sentenced to four to six years in prison.
 - The people who present work in the places open to public, organize this presentation and/or who act as mediators, who rent a work or lend it to public and import the copies legally or illegally and who treat it as a trade subject and who use it will be sentenced in the same way.

- 5- The law including the latest technological developments, regulations declaring that it is the author's right to permit the presentation of works to the public through internet were made.

4.3. HOW LONG DOES COPYRIGHT PROTECTION LAST ?

Berne Convention required a term of protection for copyright extending to at least 50 years (25 years for photographic works and applied arts) from the death of the author, although it leaves it open to signatories to extend this period and to define who the

author is. The European Council in a 1993 Directive (93/98 OJ L 290/9) extended this period to 70 years for literary and artistic works in order to harmonize laws of the member states at the level of the highest protection in the European Union (which was Germany). This change, which came into effect in July of 1995, gave rise to some interesting issues in terms of works in the public domain which were now brought back under copyright protection.

One UK author who died in 1879 but who remained unpublished until 1938 will carry his copyright until 2008, and authors such as James Joyce, Rudyard Kipling and George Orwell will now remain under copyright protection until well into the next century, much to the dismay of cheap edition publishers. In response to this, the US enacted legislation in 1996 reinstating copyright protection for certain foreign authors who regained protection under the EC Directive. There is also some debate as to whether the US should extend its full copyright protection to 70 years.

The 1993 European Council Directive left the term of protection of moral rights to the member states to determine.

The Turkish Law Article 27, which provides for a 70-year term of protection for economic rights under the new amendments, does not specify any limitation of moral rights. Article twenty-six provides that “economic rights are limited in time”, which would imply that moral rights are unlimited as in the case in many countries which recognize these rights.¹³³

As a result of US Copyright Extension Act of 1998, most copyrights for works published after January 1, 1978 last for the life of the author plus 70 years.

- 1- *However for works created after 1978, the copyright lasts between 95 and 120 years, depending on the date the work is published;*
- The work belongs to the author's employer under the work made for hire law

¹³³ Keyder, p.152.

- The work was commissioned under a work made for hire agreement (and fits within one of the categories of works that qualify for work made for hire treatment), or
- The author publishes and registers the work anonymously or under a pseudonym. After the expiration of the copyright, the work goes into the public domain, meaning it comes available for anyone's use.

2- *For works created before 1978, the duration times are different;*

- If the work was published before 1923, it is in the public domain (available for use without permission).
- If the work was published between 1923 and 1963 and not renewed, it is in the public domain.
- If the work was published between 1923 and 1963 and it was renewed, the copyright lasts 95 years from the date of first publication.
- If the work was published between 1964 and 1977, the copyright lasts for 95 years from the date of publication.
- If the work was created but not published or registered before 1978, the copyright lasts at least until December 31, 2002 if the work remains unpublished, or until December 31, 2047 if the work is published before December 31, 2002.¹³⁴

4.4. INTERNATIONAL CONVENTIONS

The protection of intellectual property rights has a long international history. For over hundred years international conventions have provided us with international rules and standards which have attempted to strike a balance between the rights of creators and the interests of users of intellectual property.

By their nature, laws on copyright and author's right only have effect in the respective national territories. Countries began to conclude bilateral treaties to give formal recognition to reciprocity: these treaties, however, contained varying provisions, so the position by the late 19th century was highly complex and by no means

¹³⁴ Elias and Stind, p.78.

comprehensive.¹³⁵

International conventions already cover to a large extent the area of copyright and related rights. However not all countries are signatories to these conventions. Three international conventions (*Rome, Geneva and Brussels*) exist on the subject of related rights and all are administrated by WIPO.

4.4.1. Berne Convention

The first attempt to build a bridge between national copyright laws was the Berne Convention for the protection of Literary and Artistic Works, the first international convention establishing common rules as to copyright protection, was concluded in 1886.

This Convention, which began with 11 countries, has since been revised and expanded in scope most recently in 1971 (the "Paris Revision") and ammended in 1979. Turkey was an early signatory to Berne and ratified the Paris Revision in 1994. In its original form it was an acknowledgement of the expansion of commerce and to some degree the globalization of culture characteristic of the late 19th century. Today it is still the foundation of international copyright law. Until the late 1980s it was the prime harmonizing instrument for copyright in the European Community.¹³⁶

Berne Convention is now the major international copyright instrument, with a membership of over 100 countries, including all European Union member states. The basic principles of the Convention are that an author from a member state of the Union constituted by the Convention, or the first publishes in the state, is protected in the other member states; protection is based on national treatment and minimum rights, as guaranteed by the convention (such as the rights of reproduction, public performance, broadcasting and moral rights).

¹³⁵ Sterling, p.15.

¹³⁶ Keyder, p.148.

4.4.2. Universal Copyright Convention

The Universal Copyright Convention (UCC) was signed in 1952 (revised in 1971). It also ensures protection for authors, but at a lower level than the Berne Convention. The adoption of the lower level (as regards term of protection) was intended to accommodate countries which, because of particular local conditions or lack of sufficient standards, were not ready to join the Berne Convention. In some senses, the UCC could therefore be regarded as a “stepping stone” in progress towards, higher international levels of protection. The UCC at present has over 90 members, including all European Union Member States.

4.4.3. Rome Convention

Related rights are covered by the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Rome Convention 1961). The contracting states afford the three groups protection against unauthorised reproduction of performances, phonograms and broadcasts respectively; the majority of the Convention’s contracting states grant rights of remuneration “the phonogram performing right” to performers and phonogram producers for the broadcasting or public performance of commercially issued sound recordings. By September 1998, the Convention has 58 members, including all European Union member states except Belgium and Portugal (countries which are nevertheless bound by Directive 92/100/EEC).¹³⁷

The 1961 Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations has the widest scope and was primarily designed to prevent unauthorized fixation of works embodying the rights in other productions. As of January 1996 this Convention had 50 members, including Turkey.

¹³⁷ Sterling, p.15-16.

4.4.4. Geneva Convention

In 1971, the Convention for the Protection of Producers of Phonograms against the Unauthorized Duplication of their Phonograms (Geneva Convention) was concluded, with the object of offering states a convention limited to dealing with record piracy. By September 1998, the Convention has over 55 contracting states (September 1998) including all European Union member states (except Belgium, Ireland and Portugal countries which afford protection to phonograms).

The 1971 Geneva Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms, is believed by the record industry and performing artists to afford better protection against music piracy than the Rome Convention.¹³⁸

4.4.5. Satellites Convention

The Convention relating to the Distortion of Programme-Carrying Signals Transmitted by Satellite (Satellites Convention) was concluded in 1974 and obliges each contracting State to take adequate measures to prevent the distribution on or from its territory of any programme-carrying signal by any distributor for whom the satellite signal is not intended. At present, about 20 states are members of the Convention (including Austria, Germany, Greece, Italy and the USA).¹³⁹

4.4.6. Brussels Convention

The third is the 1974 Brussels Convention relating to the distribution of programme-carrying signals transmitted by satellite. This had 19 signatories as of January 1996, but has not generated significant international interest. One reason for this lack of interest is that it is not applicable to distribution of signals from direct broadcasting satellites, and because European Union legislation has established a framework which goes beyond the provisions of the Convention. This has primarily been done through the 1993

¹³⁸ Keyder, p.154.

¹³⁹ Sterling, p.15-16.

Directive on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission (OJ L 248/15), which is soon to be the subject of further revision.¹⁴⁰

4.4.7. Transfrontier Satellite Broadcasting Convention

The European Convention concerning Copyright and Neighbouring Rights in the framework of Transfrontier Broadcasting by Satellite (Transfrontier Satellite Broadcasting Convention) was adopted by the Council of Europe on 16 February 1994 and contains provisions in many respects comparable to corresponding regulations in Directive 93/83/EEC.

4.4.8. WCT (WIPO Copyright Treaty)

4.4.9. WPPT (WIPO Performances and Phonograms Treaty)

New international treaties are necessary to address additional needs for copyright protection following technological changes.

In that respect, two new treaties were adopted by a World Intellectual Property Organisation (WIPO) Diplomatic Conference in December 1996. These treaties improve the protection of authors as well as performers and producers of phonograms in the light of new forms of information and communication technologies.¹⁴¹

- ***The WIPO Copyright Treaty (WCT)*** protects authors' rights in their artistic and literary works. It supplements the Berne Convention for the Protection of Literary and Artistic Works, adapting its provisions to the new requirements of the Information Society.
- ***The WIPO Performances and Phonograms Treaty (WPPT)***
In contrast to the WCT, the WPPT deals with the holders of related rights, its purpose being the international harmonisation of protection for performers and phonogram producers in the Information Society. It mainly protects the economic interests and personality rights of performances, whether or not they are recorded on

¹⁴⁰ Keyder, p.154.

¹⁴¹ Sterling, p.16.

phonograms. It also helps persons who, or legal entities which, take the initiative and have the responsibility for the fixation of the sounds.¹⁴²

4.4.10. TRIPs Agreement (Trade-Related Aspects of Intellectual Property)

The TRIPs Agreement, as part of the multilateral World Trade Organisation (WTO) agreements, ensures a world-wide recognition of minimum standards of protection of intellectual property rights, notably copyright and related rights. Its provisions are based on the provisions of the most important international conventions in this area, such as the Berne and Rome Conventions.

In the past, the global trade regulation effected through the General Agreement on Tariffs and Trade (GATT) has not dealt specifically with the issues raised by the worldwide growth in the economic importance of copyright and other intellectual property rights. The trade-related aspects of these rights were, however, considered in detail in the latest series of multilateral trade negotiations, the Uruguay Round, which began in 1986. The TRIPS Agreement, which resulted from the Uruguay Round, completely changes the international environment as far as copyright and related rights are concerned because:

- It establishes minimum standards of protection for authors, performers, producers and broadcasters in most countries of the world -even covering countries which are World Trade Organisation (WTO) members but are not signatories to the relevant international conventions-
- It provides a means for settlement of disputes between countries as to the implementation of intellectual property rights
- It lays down procedures for ensuring effective enforcement of rights in national law.

The TRIPs Agreement is a major advance in the international system for the protection of intellectual property rights this century and will probably be the cornerstone of the

¹⁴² Helberger, Blazquez and Nikoltchev, p.2.

international system in this area for the foreseeable future. Turkey is a signatory of TRIPs since 1994.

The TRIPs Agreement had to be implemented by developed countries by 1st January 1996. As of 1 January 2000, developing countries provide protection for copyright and related rights as envisaged by the TRIPs Agreement.

A better recognition of intellectual property rights will give incentives to creators. It will lead to a reduction of unauthorized to creators and thereby help the fight against piracy, one of the major problem of this area. The benefit not only for European rights-holders, but right-holders throughout the world, in developed and developing countries.¹⁴³



¹⁴³ Sterling, p.4-11.

CONCLUSION

One will see, upon examination of the existing situation in developed countries such as the European Union member states and United States of America, that Turkey needs to take much more steps regarding artists' copyrights, subject of this thesis study.

Progress has been recorded in the process of adaptation to the European Union legislation with regards to the settlement of legal disputes with the renewed Law on Intellectual and Artistic Works numbered 5846. The changes made in the provisions of law need to be implemented in practice as well. Many artists whose copyrights are violated insist on their rights due to the difficulty and slow nature of the legal process. Legal process should be quicker and more productive. It is expected that it will be easier people to insist on their right and that fines will be more deterring. The artists should be informed, aware of their rights and protect them. Violations of new copyrights will decrease in the proportion of the increase and finalization of instances in this regard.

It is too hard to speak of artists' copyrights in Turkey until the 1990s. Whatever the subject, either it is a copied painting being sold in auction, a computer software, a pirated book or a CD, etc... ; it will take time to perceive the significance of copyright in a society where copying and counterfeiting and piracy is not considered as being wrong from the social and cultural point of view. The Turkish society needs to be informed and trained in this regard. Increase of respect towards human efforts and art should be ensured, at least for the next generations.

When compared with its examples in European Union member states and developed countries, it is hard to speak of many artistic and vocational domains subject to copyrights and related rights. Music sector has an important place in the development of copyrights due to its rather big economic potential and through the support of a powerful lobby.

However, it is hard to make the same determination for the other artistic domains. Gains of the author from his/her work will increase the strength of both him/her and the sector he/she is in, and ensure that the society will respect creativity.

Until the new legal adjustment, several professional associations were established in every field, but it has been impossible to achieve common goals due to multi-headedness. It will be to the artists' advantage if they work under a single roof and for common goals.

Technological improvements change the definitions and the limits that exist in the copyright that are within the scope of intellectual property rights. Therefore, a continuous study in the concept of law is required for both Turkey and the developed countries and the existing laws must be revised in accordance with these improvements.

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APPENDIX

GENERAL DIRECTORATE OF COPYRIGHT AND CINEMATOGRAPHY

Law on Intellectual and Artistic Works - 5.12.1951 and 5846 no.

PART ONE ARTISTIC AND INTELLECTUAL WORKS

A) Objective

Art.1- (Amendment: 21.2. 2001- 4630/1) The purpose of this law is to determine and protect the moral and fiscal rights of the authors who create artistic and intellectual works, artist performing or interpreting these works, producers phonograms that make the first fixation of voices and producers that make the first fixation of movies and radio-television organizations, whereas it also arranges the utilization conditions of these products and designates the law sanctions in case of utilization contrary to projected basis and procedure.

Extent

Art.1a- (Addition: 21.2.2001- 4630/2) This law comprises the moral and fiscal rights that authors creating artistic and intellectual works, artists performing or interpreting these works, phonogram producers that make the first fixation of voices and producers that make the first fixation of movies and radio-television organizations possess on their works, related principles and procedures of dispositions, means of verdict, sanctions and the responsibility, authority and duty of the Ministry of Culture.

Definitions

Art.1b-(Addition: 21.2.2001- 4630/2) The following definitions refer to:

a) **The Work:** All kinds of artistic and intellectual products of science and literary, music, artistry or cinematography, which are carrying the mark of its author, are deemed work.

b) **The author of the work:** The natural person that creates the work

c) **Derivative Works:** Intellectual and artistic works created on the basis of another work which bear the mark of the processor and which are comparingly not independent.

d) **Collective Works:** The work that came into body as a result of an intellectual creativity and made up of numbers of arrangements and selections like encyclopedias and anthologies, on condition that all the rights of the original work shall remain unaffected.

e) **Fixation:** The recording procedure of voices of voice performances or voices and images in a manner that could be reproduced and transmitted.

f) **Phonogram:** Physical environment where the voices in a performance or other voices or voice performances fixed. The voice fixations of audiovisual works like cinematographic works are excluded.

g) **Computer Program:** The computer command system arranged to ensure a computer system to make a specific operation or work and the he preparation providing the

creation and development of this command system.

h) Interface: Program sections that compose the interaction and connection between the computer hardware and components of the printer.

i) Interoperability: Functional cooperation and interaction of the computer program sections and capability of mutual usage of the information issue of exchange.

j) Connected Rights: The rights of the movie producer who makes the first fixations of movies and holders of neighboring rights, without prejudice to the moral and fiscal rights of the author of the work.

k) Neighboring rights: The rights of artists interpreting, presenting, describing, singing, playing and performing a work in several other ways in an original manner, without prejudice to the moral and fiscal rights of the author and with the consent of the holder of the rights, phonogram producers making the first fixation of the voices produced by a performance and other voices and radio-television organizations.

B) Types of Artistic and Intellectual Works

I. Scientific and Literary Works

Art. 2- (Amendment: 7.6.1995- 4110/2) The following shall be deemed scientific or literary works:

1. all works of language and writing in any form of expression, and computer programs expressed in any form and their preparatory materials therefor if they subsequently lead to a program;
2. all types of dance, choreographic works in writing, dumb show and similar theatrical works without words;
3. all types of photographic works of a technical or scientific nature, all types of maps, plans, projects, sketches, drawings, three-dimensional works relating to geography and topography, all types of architectural and urban designs and projects, architectural models, industrial, environmental and theatrical designs and projects, not being of an aesthetic nature.

Concepts or principles on which any element of a computer program is based, including those on which its interface is based, shall not be deemed works.

II. Musical Works

Art. 3. All kinds of musical compositions, with or without words, shall be deemed musical works.

III. Artistic Works

Art. 4. (Amendment: 7.6.1995-4110/2) The following works, having an esthetical value, shall be deemed artistic works:

1. paintings in oil or water colors, drawings, pastels, engravings, scripts and gildings, works drawn or fixed on metal, stone, wood or other material by engraving, carving, ornamental inlay or similar method, calligraphy, silk screen printing;
2. sculptures, reliefs and carvings;
3. works of architecture;
4. handicraft and minor works of art, miniatures and works of ornamentation, textiles,

- fashion designs;
 5. photographic works;
 6. graphic works;
 7. caricatures;
 8. typefaces.

The use of sketches, drawings, models, designs and the like as industrial designs shall not affect their status as intellectual and artistic works.

IV. Cinematographic Works

Art.5. (Amendment: 21.2.2001- 4630/3) Cinematographic works are animated serials of images related with each other like movies of aesthetic, scientific, educative or technical nature or movies related with daily events or cinema movies which shall be broadcasted by related electronic and mechanical tools as a silent movie or sound motion picture, regardless of the material it has been fixed.

C) Derivative Works

Art. 6. Intellectual and artistic works created on the basis of an existing work and which are not independent of such work shall be deemed derivative works. The principal types of such works are:

1. translations;
2. adaptations of novels, short stories, poems or plays to a different form;
3. adaptation of a musical, artistic, scientific or literary work for incorporation in a film or transformation for the purposes of filming or broadcasting by radio or television;
4. musical arrangements and synchronizations;
5. transforming artistic works from one form to another;
6. assembling all the works of one author or all his works of one kind as a collection;
7. compilation of selections or anthologies of numerous works for a specific purpose and in accordance with a specific plan;
8. editing, by scientific investigation and study, of an unpublished work for publication (ordinary transcriptions and facsimiles that are not the result of scientific investigation and study shall be excluded);
9. annotations, critiques and abridgments of a work of another person.

Derivative works bearing the imprint of the person who has created them shall be deemed works under this Law;

10. (Addition: 7.6.1995- 4110/3) Adaptation, editing or any modification of a computer program;
11. (Addition: 7.6.1995- 4110/3) Databases obtained by the selection and compilation of materials and data in accordance with a particular plan and databases legible by a tool or other kinds of databases. (The protection provided in this case shall not be extended to protect the data and material contained in the database).

(Amendment: 21.2.2001- 4630/3) The derivations that bear the imprint of the person who has created them and that have been composed with no prejudice to the rights of the author of the original work are deemed work according to this Law.

D. Works Made Public and Published Works

Art. 7. A work made available to the public with the consent of the right holder shall be deemed to have been made public.

A work shall be deemed to have been published if the copies thereof obtained by reproduction of the original are made available to the public with the consent of the

right holder by means of selling, distributing or otherwise making commercially available.

The provisions of Article 3 (2) of the Press Code, No. 5680, shall remain unaffected.

General Directorate of Copyright and Motion Pictures

Mandate

- a) To undertake the duties defined by Intellectual and Artistic Properties Law, numbered 5846.
- b) To provide administrative and fiscal control of the related unions
- c) To regulate the relations between the authors and creators and the Ministry
- d) To undertake, control and supervise the relevant tasks related to appropriate marking of intellectual and artistic property.
- e) To ensure that works which are significant in terms of the history and culture of the country among those broadcasted by the Turkish Radio and Television Board are copied and a copy is kept at the National Library
- f) To undertake the responsibilities defined by the Motion Picture, Video and Music Law No. 3257.
- g) To organise or support film showings and festivals to promote our national cultural wealth both at home and abroad, to provide or have produced documentaries and to procure films.
- h) To establish, develop and make accessible archives for films, videos and the like.
- i) To cooperate with international organization on copy right issues and to carry out the necessary studies.
- j) To undertake similar tasks to be assigned by the Ministry.

PART TWO THE AUTHOR

A. Definition

I. General

Art. 8- (Amendment: 21.2.2001- 4630/5) The author of a work is the person who has created it. The author of a derivative work is who processes that work without prejudice to the rights of the author of the original work.

In cinematographic works, the director, composer of the original music, the scriptwriter and the dialogwriter shall be deemed as joint authors of the work. In cinematographic works that have been created by the usage of technic of animation, the animator shall also be deemed as one of the joint authors.

II. More Than One Author

Art. 9. If a work created by more than one person can be divided into parts, each such person shall be deemed the author of the part created by him. Unless otherwise agreed by contract, each person who has contributed to the creation of a collective work may request the other persons to cooperate in the modification or publication of the whole work. If any person refuses to participate, without good reason, permission may be granted by the court. The same provision shall apply to the exercise of economic rights.

III. Community of Authors

Art. 10. If a work created by the contributions of more than one person constitutes an indivisible whole, the community of authors shall be deemed the author.

The provisions on ordinary partnership shall apply to such community. If one of the authors refuses, without good reason, to consent to a common transaction, the court may grant such permission. Each of the joint authors may act independently in the event of infringement of the rights of the community.

Technical services or assistance in detailed matters rendered with respect to the creation of a work shall not be deemed a basis for participation in such community.

(Addition: 21.2.2001- 4630/6) If a work created by the contributions of more than one person constitutes an indivisible whole, unless the concluded otherwise in an agreement or in service conditions or in a law which is in force in the preparation period of the work, the rights of a work shall be exercised by natural or legal person that gathers the authors. All rights related with the cinematographic work shall remain unaffected.

B. Presumption of Authorship

I. Works on Which the Name of the Author is Given

Art. 11. The person whose name or whose known pseudonym is given as that of the author on published copies of a work or on the original of an artistic work shall be deemed the author of such work, unless proved otherwise.

(Amendment: 7.6.1995- 4110 /5)The person habitually introduced as the author in the usual manner at lectures or performances on public premises or broadcasts by radio and television shall be deemed the author of the work concerned, unless another person is deemed the author by presumption under the first paragraph.

II. Anonymous Works

Art. 12. Where the name of the author of a published work is not revealed in accordance with Article 11, the rights and prerogatives of the author shall be exercised by the publisher, in his own name, or, if the name of the publisher is not known, by the person reproducing the work.

Where the author is deemed to be unknown under the second paragraph of Article 11, such prerogatives shall be exercised by the person giving the lecture or by the person who has caused the performance to be given.

The provisions applying to simple proxy shall apply to relations between the persons authorized under this Article and the right holders, unless otherwise agreed by contract.

PART THREE

INTELLECTUAL RIGHTS

A. Rights of the Author

I. General

Art. 13. The economic and moral rights of authors in their intellectual and artistic works shall be protected as set out by this Law.

The rights and prerogatives afforded to authors shall extend to the entire work and to each of its parts.

(Addition: 21.2.2001- 4630/7)The authors and producers of cinematographic and musical works shall make the registrations and enterings of their works for the aim of

protecting their fiscal and moral rights from every infringement, providing easiness of proof in case of determination of their authorship and ensuring their authorization of utilization related with economic rights, without the purpose of asserting rights. The authorizations of utilizations related to works and economic rights shall be registered to the same end upon the authors' request in other groups of work. The procedures and principles of registration and entry shall be issued by regulation to be published by the Ministry of Culture.

H. Moral Rights

(1) Right of Communication to the Public

Art. 14. The author of a work shall have the exclusive right to decide whether his work shall be communicated to the public or not and to decide the time and manner of such communication.

The author shall have the exclusive right to disclose the contents of a work of which the whole or an essential part have not been published or the main outline of, which has not been made available to the public in any manner.

(Amendment : 21.2.2001- 4630/ 8) If the manner of communication or publication of a work is detrimental to the honor or reputation of the author, the author shall be entitled to prohibit the communication or publication of the original work or of an adaptation of such work, regardless of any previous written authorization. Renunciation of this right by contract shall be null and void. The authorized party's right to sue for indemnity shall remain unaffected.

(2) Right to Be Named

Art. 15. The right to decide whether a work should be communicated to the public or published under his own name, under a pseudonym, or anonymously shall belong exclusively to the author.

The name or mark of the author shall be shown clearly, in the agreed or usual manner, on reproductions of an artistic work and on the original and reproductions of an adaptation, and it shall be clearly shown whether the work produced is a copy or an adaptation.

In the event of a dispute concerning the identity of the person who has created the work, or if another person claims to be the author of the work, the true author may institute proceedings to have his rights recognized.

(Addition: 7.6.1995- 4110/6) In architectural buildings that have work qualifications, the name of the author shall be indelibly inscribed on a visible part of the work using material considered suitable by the author, at his written request.

(3) Prohibition of Modification

Art. 16. No abbreviations, additions or other modifications may be made to a work or to the name of its author without his consent.

A person who adapts, communicates to the public, reproduces, publishes, performs or otherwise presents a work in any manner as authorized by law or by the author may make reasonable modifications as required by the technique of adaptation, production, performance or publication, without special authorization by the author.

(Amendment: 21.2.2001- 4630/ 9) The author's right to prohibit any modification that is detrimental to the nature of his work or to his honor and reputation shall remain unaffected, even if he has given his unconditional approval. Renunciation of this right by contract shall be null and void.

(4) Rights of the Author against the Owner of a Work and the Holder of the Rights

Art.17- (Amendment: 21.2.2001- 4630/ 10) Under necessary conditions, the author shall exercise the right to demand temporary usage of artistic works included in the item and item 2 of article 4 and he/she shall make the same demand for the works written in hand scripts of writers and composers included in the first item of article 2 and article 3. This right of the author shall be explained to the ones who buy or obtain the work by the help of catalogs of auctions and sells, by the people who make the commerce of the work.

(Amendment: 7.6.1995-.4110/ 7)The owner of the original of a work may dispose of it within the limits of the contract he has concluded with the author provided he does not mutilate or destroy the work or prejudice the legitimate interests of the author.

(Addition: 7.6.1995-. 4110/ 7) If a copy is unique and original, the author may request that the copy concerned be made available for use in a retrospective exhibition, covering all his productive phases, subject to the necessary precautions for its subsequent return.

(5) Exercise of Rights

(a) General

Art. 18- (Amendment: 21.2.2001- 4630/ 11) The right to exercise the financial rights exclusively belongs to the author.

Unless otherwise is understood from the private contract or from the content of the job, the rights of a work created by functionaries, messengers and workers while doing their proper jobs are exercised by the people who employ or assign them. This rule is also available for the ones under the control of natural persons.

The producer or publisher of a work may solely exercise the financial rights of a work according to the contract concluded by the author.

(b) Persons Eligible to Exercise Rights

Art. 19. If an author has not provided for the manner in which the rights afforded him by the first paragraphs of Articles 14 and 15 are to be exercised or has not entrusted another person with their exercise, those rights shall be exercised after his death by his executor or, if no executor has been appointed, successively by the surviving spouse, his children, his legatees, his parents, his brothers and sisters.

(Amendment: 21.2.2001- 4630/ 12) After the death of the author, the people set out in the preceding paragraph may exercise the rights afforded to the author in their own name rights for a time period of 70 years according to third paragraphs of Articles 14, 15 and 16.

If the author or the right holders under the first and second paragraphs do not exercise their rights, any person who acquires from the author or from his successor in title an economic right may, provided he proves a legitimate interest, exercise in his own name the rights afforded the author under the third paragraphs of Articles 14, 15 and 16.

Where more than one person holds such rights and those persons are unable to agree on an action, the court shall settle the dispute in summary proceedings, according to the presumed intentions of the author.

(Amendment: 1.11.1983-2936/ 2) If there are no right holders under Article 18 or the preceding paragraphs or if there are right holders and they do not exercise their rights or if the terms laid down in the second paragraph have expired, the Ministry of Culture may exercise in its own name the rights afforded the author under the third paragraphs of Articles 14, 15 and 16 where it deems such exercise of importance for national culture.

III. Economic Rights

(1) General

Art. 20- (Amendment: 1.11.1983-2936/ 3) The author shall have the exclusive right to exploit in any manner whatsoever a work which has not yet been made public. The exclusive right afforded the author to exploit a work that has been made public shall comprise exclusively the rights afforded as economic rights by this Law. The various economic rights shall each be distinct. Exercise of one right shall not affect exercise of the other rights.

Where the author is a member of a professional association, his economic rights shall be exercised by the association and royalties shall be collected, revenue distributed and works managed as set out in the written authorization certificate.

The principles and rules relating to the authorization certificate shall be specified by regulations to be issued by the Ministry of Culture.

The holder of rights in an adaptation may only exercise the economic rights afforded him in such capacity to the extent to which the author of the original work so permits, except where the adaptation is free.

(2) Types of Economic Rights

(a) Right of Adaptation

Art. 21. The author shall have the exclusive right to exploit his work by adaptation.

(b) Reproduction

Art.22- (Amendment: 21.2.2001- 4630/ 13) The author shall have the exclusive right to exploit his work by reproducing the original or an adaptation, by any kind of method or procedure, in part or in whole, directly or indirectly, permanently or temporarily.

Reproduction of a second copy of original works or the recording of works on devices permitting the transmission and reproduction of signs, sounds and images, or on other known or future mediums, or recordings of sounds and music, as also the application of plans, projects and sketches of architectural works, shall be deemed reproduction. The same provision shall apply to engravings or moldings.

The right of reproduction shall also extend to loading, displaying, running, transmission and storage of a computer program where such acts require the temporary reproduction of the computer program.

(c) Right of Distribution

Art. 23- (Amendment: 21.2.2001- 4630/ 14) The author shall have the exclusive right to distribute, rent or place on sale or setting his original work or reproductions commercially available in any manner.

The right of importing the copies reproduced abroad with the consent of the author and benefiting from these copies by distribution exclusively remains with the author.

The copies reproduced abroad shall not be imported without the permission of the author and/or the person who holds the right of distribution.

On condition that the right of rental and the right of public lending are possessed by the author, exercising the right of distribution afforded to the right holder as the resale of certain copies after the first sale or distribution on the territory by revolving ownership shall not violate the right of distribution afforded to the author.

The distribution of a work or its reproduced copies by rental and lending shall not cause widespread reproduction of the work in a manner that may endanger the right of reproduction of the author.

The principles and rules related to this article shall be arranged by a regulation to be issued by the Ministry of Culture.

(d) Right of Performance

Art. 24. The author shall have the exclusive right of performance of his work by reciting, playing, dancing or showing the original or an adaptation on public premises either live or by means of devices permitting the transmission of signs, sounds or images.

The author shall also have the right of transmission of the performance from the premises on which the live performance to the public takes place to any other location by means of any technical device whatsoever.

(Addition: 1.11.1983-2936/ 4)The right of performance may not be exercised by other natural or legal persons without the written permission of the author or, if the author is a member of a professional association, the permission of such professional association in accordance with the rights set out in the authorization certificate. However, the provisions of Articles 33 and 34 shall remain unaffected.

(e) Right of Broadcasting

Art.25- (Amendment: 21.2.2001- 4630/ 15) The right of broadcasting the original work or the reproduced copies by means of organizations broadcasting by wires or by wireless broadcasting organizations like radio-television, satellite and cable broadcasting by devices used for transmitting signs, sounds and/or images included digital transmission, and the right of communicating these works to the public by rebroadcasting by different broadcasting organizations after obtaining materials from the previous broadcasts exclusively belongs to the author of the work.

The author shall have the right to give permission or to prohibit the sale, distribution or presentation of his original work or reproduced copies to the public by devices working with wires and by wireless devices and the transmission of these works to the public by providing communication in the places and on the time that may have been set up by the natural persons.

The distribution and presentation of works arranged with this article shall not violate the authors' rights of distribution.

(3) Term of Protection

(a) General

Art. 26. The economic rights afforded to authors shall be limited in time. Except for the cases under Articles 46 and 47, any person may exploit the economic rights afforded the author after expiry of the term of protection.

The terms of protection applicable to the original and to adaptations of a work shall be independent of each other.

This provision shall also apply to works under the first paragraph of Article 9. The term of protection shall not start to run until the work has been made public.

For works that are published in installments, the publication date of the last installment shall be deemed the date on which the work was made public. For works comprising several consecutive volumes published at intervals and for works such as bulletins,

magazines, periodicals and annuals, the date of publication shall be the date of publication of each volume or issue.

Terms of protection that start to run on the date on which the work has been made public shall be calculated from the first day of the year following the year during which the work has been made public for the first time or is deemed to have been made public under the fourth paragraph.

Terms of protection starting to run on the date of the author's death shall be calculated from the first day of the year following the year of the author's death. In the cases referred to in the first paragraph of Article 10, the term of protection shall start to run with the death of the last surviving joint author.

(b) Duration of Term of Protection

Art. 27- (Amendment: 7.6.1995-4110/ 10) The term of protection shall last for the lifetime of the author and for 70 years after his death. (Addition: 21.2.2001-4630/16) This term shall expire 70 years after the death of last joint-author in case of the existence of more than one author.

The term of protection for works, which have been first made public after the death of the author, shall be 70 years after his death.

The term of protection in the cases referred to in the first paragraph of Article 12 shall be 70 years from the date on which the work has been made public, unless the author reveals his true name before expiry of such term.

If the holder of the rights in the original work is a legal person, the term of protection shall be 70 years as from the date on which the work has been made public.

(c) Term of Protection for Translations into Turkish

Art.28. (Has been repealed: 21.2.2001-4630/36-b)

(d) Term of Protection for Handicraft, Minor Works of Art, Photographic and Cinematographic Works

Art. 29. (Has been repealed: 21.2.2001-4630/36-c)

B. Limitations

I. For Reasons of Public Policy

Art. 30. The rights afforded authors shall not prevent a work from being used as evidence in court or before other authorities or from being the subject matter of penal or criminal proceedings. Photographs may be reproduced and published in any form by the authorities or on their instructions for reasons of public policy or for judicial reasons without the author's consent.

The general rules of public policy that forbid the putting of a work into commercial circulation by any means, its performance or exploitation in any form, or subjecting them to authorization or controls, shall remain unaffected.

II. In the Interest of the Public

(1) Legislation and Court Decisions

Art. 31. The reproduction, diffusion, adaptation or use in any other manner of laws, bylaws, regulations, notifications, circulars and court decisions that have been officially published or promulgated shall be permissible.

(2) Speeches

Art. 32. The reproduction, public recitation or broadcasting by radio or other means of speeches and addresses given in the Grand National Assembly or at other official assemblies and meetings, or in courts of law or at public meetings, shall be permissible for the purpose of giving news and information.

Where the nature of the event or of the situation does not so require, the names of the speakers need not be given.

For purposes other than those mentioned in the first paragraph, the right to reproduce or publish speeches and addresses shall belong to their authors.

(3) Free Performances

Art.33- (Amendment: 7.6.1995-4110/ 13) Published works may be freely performed in every education and instruction institution for the purposes of direct education and instruction and without any purpose of direct or indirect profit, if the name of the author and the title of the work are cited in usual manner.

(4) Selected and Collected Works for Educational and Instructional Purposes

Art.34. (Amendment: 7.6.1995- 4110/13) Reproducing selected and collected works from published musical, scientific and literary works and from publicly exhibited works of art clearly made for the purposes of education and instruction within the necessary limits of the purpose, shall be permissible.

Work passages of the kind referred to in item 3 of article 2 and items 1 and 5 of the first paragraph of article 4 may solely be quoted for illustrating contents of the selected or collected work. However, this possibility may not be used in a way that would unreasonably prejudice the legitimate interests of the right holder or would conflict with normal exploitation of the work.

The provisions of the first paragraph shall also be applied to (school-radio) broadcasts exclusively prepared for schools and approved by the Ministry of Education.

(Amendment: 21.2.2001- 4630/18) Reproducing selected and collected work from published musical, scientific and literary works and from publicly exhibited works of art for a purpose other than education and instruction is only permissible with the permission of the author.

In all such cases, the title of the work and the name of the author shall be cited in the usual manner.

(5) Freedom of Quotation

Art. 35. The following uses shall be permissible:

1. the quotation of a few sentences or passages from an already published work in an independent work of science or literature;
2. the use of certain elements of a published musical work, such as themes, passages or ideas, in an independent musical work;
3. the reproduction of artistic works that have been made public and of other published works in a scientific work to the extent that such reproduction is justified for the purpose of explaining the text;
4. showing by projection or other means of artistic works that have been made public where such showing accompanies a lecture and serves the purpose of explaining the subject.

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

(6) Contents of Newspapers

Art. 36. Subject to Article 15 of the Press Code, news of the day and information communicated to the public by the press or radio may be freely quoted.

Except where the right to quote from articles or features on social, political or economic issues of the day published in newspapers or reviews has been expressly reserved, they may be freely quoted in their original or modified form in other newspapers or periodicals and may be broadcast or disseminated by any other means.

Even where the right to quote is reserved, it shall be permissible to reproduce such articles and features in the form of an abridged press review or to broadcast 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 periodical, 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.

(7) Interviews

Art. 37. (Amendment: 21.2.2001- 4630/ 19) It shall be permissible to record on devices permitting the transmission of signs, sounds or images passages from intellectual and artistic works relating to current events, provided it is done in the nature of an interview. The reproduction, dissemination, performance and broadcasting by radio of passages quoted in such a manner shall be permissible. This freedom shall not be exercised in a manner of prejudicing the legitimate interests or in a contrary manner to the usual exploitation of the work.

III. In the Interest of Individuals

(1) Personal Use

Art. 38- (Amendment: 7.6.1995- 4110/ 14) It shall be permissible to reproduce intellectual and artistic works for personal use not involving purposes of publication or exploitation for profit. However, such reproduction may not unreasonably prejudice the legitimate interests of right holders or conflict with normal exploitation of a work. The second item has been repealed. (21.2.2001- 4630/ 36-d)

In the absence of specific contractual provisions, the reproduction and adaptation of a computer program by the lawful acquirer shall be permissible 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 such use.

It shall be permissible for a person who has acquired the right to use a computer program to observe, analyze or test the functioning of the program in order to determine the ideas and principles underlying any element of the program if he does so while performing any of the acts of loading, displaying, running, transmitting or storing the program which he is entitled to do.

Where reproduction of the code and translation of its form within the meaning 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 permissible, provided that the following conditions are met:

1. these acts are performed by the licensee or by another person having a right to use a copy of the program or on their behalf by a person authorized to do so;
2. the information necessary to achieve interoperability shall not be made available to the persons specified in item 1;
3. these acts are confined to the parts of the program which are necessary to achieve interoperability.

The provisions of the above paragraph shall not permit information obtained through its application:

1. to be used for purposes other than to achieve the interoperability of the independently created computer program;
2. to be given to others, except where necessary for the interoperability of the independently created computer program;
3. to be used for the development, production or marketing of a computer program substantially similar in its expression or for any other act which infringes copyright.

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

(2) Rights of Composers

Art. 39. (Has been repealed: 21.2.2001- 4630/ 36-e)

(3) Reproduction of Exhibited Works

Art. 40. Works of art permanently situated on public streets, avenues or squares may be reproduced, publicly projected on a screen or broadcast by radio or similar means in the form of drawings, graphics, photographs and the like. In the case of works of architecture, permission shall extend to their exterior form only. Artistic works may be publicly exhibited by their owners or with their consent, unless the author has expressly prohibited such exhibition.

Works to be sold by auction may be exhibited to the public. It shall be permissible to reproduce and publish in catalogs, guides and similar printed matter works exhibited on public premises or to be sold by auction by the organizers of the exhibition or auction. The name of the author may be omitted in such cases unless it is customary to include the name.

(4) Use on Public Premises of Recordings, Video Cassettes and Audio Cassettes

Art.41-(Amendment: 21.2.2001- 4630/ 20) It is permissible to affix bands on recordings, audiocassettes and/or videocassettes for the usage in public places that the entrance is free of charge or is not available free of charge, for a purpose of benefit. The ministry of Culture of related professional association shall give the bands after the contract which gives the performing permission is concluded between the user and authors or related professional association of authors.

In case of the recordings, videocassettes and audiocassettes do not carry the necessary band; this may be an issue of prejudice to the financial right.

IV. Rights Belonging to the Government

(1) Creation of Professional Associations

Art.42- (Amendment: 21.2.2001- 4630/ 21) Authors and holders of neighboring rights may establish more than one professional association in accordance within the framework of bylaws and uniform statutes issued by the Ministry of Culture and approved by the Council of Ministers in order to protect mutual interests, to provide management and assertion of their rights afforded by this Law and to ensure the collection and distribution of the fees to the right holders.

If the number of real persons is 4 times larger than the number of permanent members of the obligatory organs for authors and performing artists, and if the number of real and legal persons who have the quality to be members is 2 times larger than the number of permanent members of those organs, these persons shall have recourse to the Ministry for having permission to operate as a professional association. After having this permission, professional associations may start operating once they are established. 110

(Amendment: 21.2.2001- 4630/ 22) To create another professional association in the same field, the legal and natural persons having the quality to be 1/3 of the complete number of members of the professional association created in the same field who has the maximum number of members, and being no less than the number of charter members mentioned in the paragraph above, should have recourse to the Ministry in order to take the operating permission. In case of the Ministry approves and gives the permission, they may start operating. Each association may operate by creating branch offices according to their needs. At least 2 professional associations coexisting in the same field may establish a federation in the framework of the principles and procedures issued by the bylaws and uniform statutes drawn up by the Ministry. There may be solely one federation in each field.

The professional associations and the federation shall constitute civil law legal persons. Their members shall not be required to invest capital and shall not participate in the profits and losses nor in the legal liability.

The uniform statutes of the professional associations and the federation shall require as compulsory organs a general assembly, a board of directors, a board of audit, a technical and scientific committee and a court of honor. Regulations drawn up by the Ministry of Culture, after obtaining the views of the bodies concerned, shall govern the foundation of associations and of the federation, control and inspection thereof, the minimum number of members required to constitute the first general assemblies, the composition of other optional organs and committees and the number of their members and the members' duties, conditions for membership, resigning membership and discharge from membership, designation of regions where branches may be opened, relations with official public organizations at home and abroad, with natural persons and civil law legal persons, rights and powers in such relations, monetary relations with members, distribution of royalties and compensation collected and other principles and rules.

Article 21, second paragraph, Articles 30, 37, 40, 42, 43, 44, 45, 48, 65, 66, 67, 68, 69, 70 and 90 of the Law on Companies, No. 2908, dated October 4, 1983, shall apply, together with the criminal provisions, to the professional associations and the federation to be established in accordance with this Article.

(Amendment: 21.2.2001- 4630/ 21) Right of holders of the neighboring rights approved by this law, shall not be exercised by another association, foundation and alike except the professional association that have been created according to this article. The provisions of this article like membership, number of charter members and complete number of members are also compulsory for the professional association that have been

created prior to the entry into force of this Law. Each professional association should adapt to the principles of this article within 6 months beginning from the laws coming in to force. The professional associations that fail to comply with this provision shall be deemed to have been dissolved on expiry of the initial year.

(2) Broadcasting Royalties

Art. 43- (Amendment: 21.2.2001- 4630/ 22) Radio- television organs shall obtain permission of the authors, related with the published work that they make use of. Radio- television organs and organs making satellite and cable broadcast and organs that are broadcasting and/or transmitting by present technical means or which will broadcast and/ or transmit by the technical means to be found in the future shall obtain permission by concluding a collective agreement with the authors and/or holders of the neighboring rights or with the professional association of the author according to Article 52, and shall pay the royalties related to these exploitations to the author and/or to the holders of the neighboring rights or the professional association of the author. The principles and procedures related with the exploitation of the work shall be arranged by a regulation that should be issued after the consultation of professional associations about the Supreme comitee of radio- television, by the Ministry of Culture.

(3) Identification of Intellectual and Artistic Works

Art. 44-(Amendment: 7.6.1995-4110/18) The holders of economic rights and the manufacturers and printers of devices permitting the reproduction of intellectual and artistic works by means of signs, sounds and images shall be jointly responsible for placing an identification sign and a serial number on all copies of a work to be reproduced in accordance with this Law and offered for sale, distributed or placed in commercial circulation in any other manner.

(Amendment: 21.2.2001- 4630/ 23) Natural and legal persons who produce or import any kind of blank video cassette, audio cassette, computer disc, compact disc and DVD for commercial purposes shall be required to deposit the sum of the month by issuing an amount which will be determined by the Council of Ministers, not exceeding 3% of the production or importation costs, in a special account to be opened in a national bank in the name of the Ministry of Culture each month by depositing the amount of the preceding month latest in the first half of the following month.

(Amendment: 21.2.2001- 4630/ 23)The Ministry shall use this amount on the activities for empowering the system of intellectual rights and sustaining the protection of the cultural heritage in the territory and abroad. The procedures and principles related with the distribution and exploitation of this amount shall be issued by a regulation to be published by the Ministry of Culture.

The Ministry of Culture shall issue a regulation setting out the principles and rules for the signs and serial numbers to be placed on copies of intellectual and artistic works depending on whether they are to be used for private performance or performance on public premises, confiscation of copies not bearing such signs and serial numbers, the person to whom the number of copies made and distributed is to be notified and other related matters.

(4) Resale Royalty Right

Art. 45. If, after the sale by the author or his heirs, the original of an artistic work referred to in items 1 and 2 of Article 4 or of the manuscript of a work in the author's or composer's own hand referred to in item 1 of Article 2 or in Article 3 are resold during

the period of protection, either at an exhibition or public auction or in a shop where such articles are generally sold, and if there is a substantial difference between the price of the last sale and of the preceding one, the seller in the latter transaction may be required, by decree, to pay an appropriate portion of the difference in price to the author or, if the author is dead, to his spouse and heirs to the second degree inclusive according to the rules of inheritance, and in the absence of heirs, to the professional association.

The decree shall:

1. stipulate a royalty rate to be determined in proportion to the difference in price, but which shall not exceed 10% of such difference;
2. stipulate that sale prices not exceeding the amount laid down in the tariff shall not be subject to royalties;
3. state which branch of the professional association is to be concerned, depending on the nature of the work.

The owner of the establishment where the sale takes place shall be jointly and separately liable with the seller.

In the event of a forced sale, the royalty shall be paid only after all other debts have been settled in full.

The time limit for payment of the royalty shall be five years from the sale that gave rise to the obligation.

(5) Right of Use by the State

Art. 46- (Amended: 1.11.1983-2936/10 md.) Works that are unpublished or have not been made public and whose author has not expressly prohibited reproduction and publication, kept in public libraries, museums or similar institutions, shall belong to the public institution or establishment in which they are kept, provided the term of protection for economic rights has expired. The Ministry of Culture shall draw up a regulation, after consultation with the establishments concerned, to determine the authority from which permission is to be obtained by the public institutions and establishments and by persons and establishments wishing to use such works for scientific or other purposes, the fees to be paid for using them, the cultural aims on which such fees are to be spent and other matters.

(6) Expropriation

Art. 47. The economic rights in a work deemed to be of importance to the culture of the country may be expropriated, by decree, prior to expiry of the term of protection, on payment of equitable remuneration to the right holders.

(Amendment: 21.2.2001- 4630/ 24) A decision to expropriate may only be taken if the work is created in Turkey or published outside of Turkey by Turkish nationals, and if copies of the published work have been out of print for a period of two years and it appears unlikely that a new edition may be published within a reasonable period.

The decree shall:

1. state the title of the work and the name of its author;
2. state the price payable to persons whose rights are expropriated;
3. state the name of the authority or institution which is to exercise the economic rights;
4. state the cultural purpose to be served by the proceeds after the remuneration has been paid.

PART FOUR CONTRACTS AND TRANSFERS

A. Transfer Inter Vivos

I. First Transfer

Art. 48. The author or his heirs may transfer to others the economic rights afforded them by law, either in whole or subject to limitations as regards duration, place or contents, gratuitously or for consideration.

The right to use the economic rights may also be transferred to others.

Transfers of the kinds referred to in the preceding paragraphs shall be null and void if they relate to works to be created or completed in the future.

II. Subsequent Transfer

Art. 49. A person who has acquired from the author or his heirs an economic right or a license to exercise such right may transfer such right or license only with the written consent of the author or his heirs.

The consent of the author or his heirs shall also be required by a person acquiring the right of adaptation by transfer.

III. Contracts

(1) Works to Be Created

Art. 50. The provisions concerning the various kinds of transfer referred to in Articles 48 and 49 shall also apply to contracts for works to be created in the future.

Such contracts, whether they relate to all or some of the author's works to be created in the future, may be terminated by either contracting party on one year's notice.

Such contracts shall be automatically canceled if the author dies before completing the work or loses the capacity to complete the work or if completion of the work becomes impossible through no fault of his own. This rule shall also apply when the other party is declared bankrupt or is unable to exercise the economic rights transferred to him under the contract or exercise of those rights becomes impossible through no fault of his own.

(2) Prospective Future Rights

Art. 51. Contracts concerning the transfer of economic rights or the exercise by others of rights which may be granted to the author by future legislation shall be null and void.

The same provision shall apply to contracts for the renunciation of transfer of rights which may arise from future legislation extending the scope or duration of economic rights.

IV. Form of Contract

Art. 52. Contracts and transfers concerning economic rights shall be in writing and the rights that constitute their subject matter shall be specified.

V. Guarantees

(1) Existence of Right

Art. 53. The person transferring an economic right or granting a license to use such right shall guarantee to the transferee, in accordance with Articles 169 and 171 of the Code of Obligations, that the right exists.

Any claim arising from unlawful acts or unjust enrichment shall remain unaffected.

(2) Lack of Title

Art. 54. A person acquiring economic rights or a license to exercise such rights from a person who is not authorized to effect such transfer shall not be protected even if he acted in good faith.

A person who transfers an economic right or grants a license to exercise such right to another person without having title to do so shall be liable to pay compensation for the damages arising from the fact that the transfer was null and void, unless he is able to prove that the other person was aware or ought to have been aware that he had no such title. If found guilty, the court may award greater compensation if warranted.

Any claim arising from unlawful acts or unjust enrichment shall remain unaffected.

VI. Rules of Interpretation

(1) Scope

Art. 55. Unless otherwise agreed, transfer of an economic right or the grant of a license shall not extend to translation or other adaptation of a work.

(2) Licenses

Art. 56. A license which does not prohibit the holder of economic rights from granting the same license to other persons shall constitute a non-exclusive license and a license limited to one person only shall constitute an exclusive license.

Unless otherwise laid down by law or contract, all licenses shall be deemed non-exclusive.

The provisions on leases shall apply to non-exclusive licenses and the provisions on usufruct shall apply to exclusive licenses.

(3) Transfer of Ownership

Art. 57. Transfer of ownership of an original or of reproduced copies shall not include transfer of moral rights, unless otherwise agreed.

Any person who has acquired the plates or other devices for reproduction from the owner of the right of reproduction in an artistic work shall be deemed to have acquired the right of reproduction, unless otherwise agreed.

The last item has been repealed. (21.2.2001-4630/ 36-f)

VII. Right of Rescission

Art. 58. If the person to whom an economic right has been transferred or a license has been granted does not properly exercise such right within the agreed period or, where no period has been agreed, within a reasonable time, and if the author's interests have been prejudiced by the delay, the author may rescind the contract.

In order to rescind the contract, the author must have a notice issued by a notary public, requiring the other party to exercise the right transferred by the contract and allowing him a given period to fulfill his obligation. The allowance of such a period shall not be necessary if exercise of the right has become impossible for the other party or if the other party has refused to exercise the right or if delay would jeopardize the author's interests.

The notice issued by the notary public shall give effect to the rescission of the contract if the stipulated period expires without producing the required result or if it is not necessary to give such a period. Rescission of the contract shall become incontestable four weeks after the notice issued by the notary public.

If no blame may be attached to the transferee for failure to use the economic rights or if greater fault may be imputed to the author, the transferee may claim reasonable compensation in those cases where equity entitles him to do so.

The right to rescind may not be renounced beforehand and any restriction prohibiting the exercise of such right for a period exceeding two years shall be null and void.

VIII. Reversion of the Right to the Author

Art. 59. If the author or his heirs have transferred an economic right for a specific purpose or for a definite period of time, the right shall revert to the author when the purpose has been attained or the period has expired. This provision shall not apply in the event of death or bankruptcy of a transferee who is not permitted under the contract to make a further transfer unless the nature of the work requires that the right be personally exercised by him.

Licenses granted for a specific purpose or a specific period of time shall terminate in the cases set out in the first paragraph.

B. Renunciation

Art. 60. The author or his heirs may renounce the economic rights afforded them by law by means of an official deed published in the Official Gazette, provided there is no prejudice to previous contractual obligations.

As of its date of publication, renunciation shall have the same legal effects as expiry of the term of protection.

C. Execution and Security

I. When Not Permitted

Art. 61. Without prejudice to the provisions of Articles 24 and 30 of the Law on Execution and Bankruptcy, the following shall not be the object of execution, lien, pledge, seizure or retention:

1. drafts or originals of a work not yet made public that are in the possession of the author or of one of his heirs;
2. economic rights in works referred to in item 1, except cinematographic works;
3. money due to the author, other than money resulting from transactions concerning his economic rights.

II. When Permitted

Art. 62. The following may be the object of execution, lien, pledge, seizure or retention, subject to the provisions set out thereunder:

1. drafts or originals of works that have been made public;
2. reproduced copies of a published work;
3. economic rights in a work that has been made public, provided that the author's moral rights worthy of protection are not prejudiced;
4. money due to the author as a result of transactions concerning his economic rights.

Liens and pledges shall be valid only if stipulated in writing. Their object must be specified in the document.

Plates and other means of reproduction may be temporarily taken from their holders to the extent necessary for the purposes of execution upon the economic rights referred to in item 3 of the first paragraph.

Original artistic works, except for works of architecture, and manuscripts of musical, scientific and literary works belonging to the author or to his heirs may be temporarily taken from their possessors to the extent necessary for the purposes of execution upon the economic rights referred to in item 3 of the first paragraph.

D. Inheritance

I. General

Art. 63. The economic rights afforded by this Law may be transmitted by way of succession. Economic rights may be the object of a will or other testamentary provision.

II. Death of One of the Joint Authors of a Work

Art. 64. If one of the joint authors of a work dies before the work is completed or has been made public, his share shall be divided among the other joint authors, who shall be required to pay suitable remuneration to the heirs of the deceased joint author.

Should they fail to agree as to the amount of such a remuneration, it shall be determined by the court.

If one of the joint authors of a work dies after the work has been made public, the other joint authors shall be free to decide whether or not they continue the association with the heirs of the deceased joint author.

If they decide to continue the association, the surviving joint authors may request the heirs to appoint a representative to exercise their rights in respect of the association.

Where it is decided not to continue the association, the provisions of the first paragraph shall apply.

III. More Than One Heir

Art. 65. Where the estate of a deceased author contains economic rights afforded by this Law and if an executor has been appointed in accordance with Article 581 of the Civil Code, the executor must obtain the consent of the heirs for any transaction connected with such rights.

PART FIVE

CIVIL AND CRIMINAL ACTIONS

A. Civil Actions

I. Actions for Infringement

(1) General

Art. 66. Any person whose moral or economic rights have been infringed may take legal action against the infringer.

If the infringement has been committed by the manager or employees of a company in the execution of their duties, legal action may be taken against the owner of such company.

It is not necessary that the infringer or the persons referred to in the second paragraph be at fault.

The court shall order such measures as the circumstances require for the discontinuation of the infringement, taking into consideration the moral rights and economic rights of the author, the extent of the infringement, the existence and degree of fault, and the probable prejudice suffered by the defendant if an injunction is issued.

The author shall also be entitled to bring an action in the district in which he resides for an injunction.

(Addition: 7.6.1995-4110/ 19) The author shall also take legal action for an infringement and for an injunction in the district in which he resides.

(2) Infringement of Moral Rights

Art. 67. Where a work that has not yet been made public is communicated to the public without the consent of the author or against his wishes, action for infringement may only be taken if communication has been made to the public by publication of the

reproduced copies. This provision shall also apply if the author's name is placed on the work against his wishes.

If the author's name has not been placed on the work or has been given erroneously or in such a way as to cause confusion, and if the court recognizes his authorship in accordance with Article 15 and orders the discontinuance of the infringement, the infringer shall be required to place the author's name on the original work and on reproduced copies already distributed. The author may also require that the decision of the court be published in not more than three newspapers at the expense of the infringer. The provisions of the second paragraph shall apply in the cases referred to in Articles 32, 33, 34, 35, 36, 39 and 40 if the source has not been stated or has been wrongly or inadequately stated.

If the work has been improperly changed, the author may require:

1. that reproduction, publication, performance and broadcasting of the modified work be prohibited and that the reproduced copies already distributed be corrected by the infringer or restored to their original form. If the changes are made in connection with publication in a newspaper or magazine or by broadcasting, the author may require that the newspapers, magazines or broadcasting organizations which have used the work to correct the modifications.

The expenses for such corrections shall be borne by the infringers;

2. (Amendment: 7.6.1995- 4110/ 20) in the case of artistic works, that an announcement be made to the effect that the change in the original work was not made by him, or that his name be removed or changed on the original. If it is possible to restore the work to its original form and if elimination of the changes does not seriously prejudice the interests of the owner or of the public, the author may restore the work to its original form.

(3) Infringement of Economic Rights

Art. 68- (Amendment: 21.2.2001-4630/25) If a work has been translated without the author's consent, has been published outside the scope of the contract or in excess of the number stipulated in the contract, or has been adapted in some other way or broadcast by radio or television or performed, the author may require the payment of compensation of up to three times the damages incurred, based on the current value. The setting of this amount is based on the opinions of the related professional associations before all else.

If use is made of a work by unauthorized reproduction and the reproduced copies have not been put into commercial circulation, the author may require destruction of the reproduced copies and of devices such as films, plates and the like, that permit reproduction, or may require the reproduced copies and the devices such as films, plates and the like, that permit reproduction, to be handed to him in return for suitable remuneration not exceeding their cost price, or may require payment of three times the amount he would have demanded if a contract had been concluded. These claims shall not remove the legal liability of the person undertaking the unauthorized production. If copies of a work reproduced without the consent of the author have been put up for sale or if the nature of the sale constitutes an infringement, the author shall have a choice of the alternatives referred to in the second paragraph with respect to copies in the possession of the infringer.

Any person demanding compensation may claim all the rights and prerogatives he would have enjoyed had he concluded a contract.

II. Action for Injunction

Art. 69. Where his moral or economic rights are in danger of infringement, the author may take legal action to prevent such infringement. The same provision shall apply where there is a likelihood that an infringement will be continued or repeated.

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

III. Action for Damages

Art. 70- (Amendment: 7.6.1995-4110/ 22) Any person whose moral rights are infringed may sue to take moral indemnity in response to the infringement he/she had been exposed to.

The court may order that punitive damages be awarded instead of or in addition to ordinary damages.

If the infringer is at fault, the person whose economic rights have been infringed may claim damages under the provisions governing unlawful acts.

In the cases mentioned in the first and second paragraphs, any person whose rights are infringed may also claim, in addition to damages, that the profits made be surrendered to him. In such case, any sum claimed in accordance with Article 68 shall be deducted from the above amounts.

B. Criminal Actions

(1) Infringement of Moral Rights

Art. 71- (Amendment: 1.11.1983- 2939/11)

In violation of the provisions of law, any person who willfully

1. communicates to the public or publishes, without the written consent of the author or his successor in title, a work whether or not it has already been made public;
2. places a title on a work or on the reproduced copies of the work without the written consent of the author or his successor in title;
3. alleges that the work of others are his own or that his own works are those of others or who acts contrary to the second paragraph of Article 15;
4. fails to cite the source in the case provided in Articles 32, 33, 34, 35, 36, 37, 39 and 40, or cites the source in a false, incomplete or misleading way,
5. (Addition: 21.2.2001- 4630/ 26) Makes changes on a work without the written consent of the author.

(Addition: 21.2.2001- 4630/ 26) Shall be liable to imprisonment of between 4 years and 6 years and a fine of between 50 billion and 150 billion Turkish Liras.

(2) Infringement of Economic Rights

Art. 72. (Amendment: 1.11.1983- 2936/ 12) Any person who, in violation of this Law, willfully and without the written consent of the right holder:

1. adapts a work in any manner;
2. reproduces a work in any manner;
3. sells, offers for sale or commercially distributes copies reproduced by him of a work or of its adaptation;
4. (Amendment: 21.2.2001- 4630/ 27) Performs or exhibits a work in public, organizes this exhibition or disseminates or mediates the broadcasting by all kinds of signs, sounds and visual transmission.
5. (Amendment: 21.2.2001- 4630/ 27) Hires out or lends a work.

6. (Amendment: 21.2.2001- 4630/ 27) Legally or illegally imports the reproduced copies and uses them for commercial purposes.

(Amendment: 21.2.2001- 4630/ 27) Shall be liable to imprisonment of between 4 years and 6 years and a fine of between 50 billion and 150 billion Turkish Liras.

(3) Other Offenses

Art. 73.(Amendment: 1.11.1983-2936/ 13) Any person who willfully:

1. places on sale or uses for profit for the purposes of public performance, broadcasting or in any other manner, copies of a work which he knows or should know to have been reproduced in violation of the provisions of this Law;
2. sells or uses for profit for the purposes of public performance, broadcasting or otherwise copies of a work which he knows or should know to have been placed on sale in violation of the provisions of this Law;
3. transfers, donates, pledges or otherwise disposes of an economic right or a license which he knows or should know does not exist or cannot be the subject of such transaction;
4. (Has been repealed: 21.2.2001-4630/ 36-g)
5. (Addition: 7.6.1995- 4110/ 25) stores for commercial purposes, copies of a work which he knows or should know to have been reproduced in violation of the provisions of this Law;
6. (Addition: 7.6.1995- 4110/ 25) stores or distributes for commercial purposes, any technical device serving the circumvention or unauthorized removal of a technical device applied solely for the protection of a computer program,
(Amendment: 21.2.2001- 4630/ 28)Shall be liable to imprisonment of between 2 and 4 years and a fine of between 10 billion and 50 billion Turkish Liras.

II. Offenders

Art. 74. If the offenses set out in Articles 71, 72 and 73 have been committed by the managers or employees of a company, the proprietor, director or any person, whatever his appellation, who in effect directs that company shall be liable to punishment in the same manner as the persons who have actually committed the offense if he has not prevented the offense. If the offense has been committed on the orders of the proprietor, director or other person who directs a company, such person shall be liable to punishment as the offender and the managers and employees as accomplices.

Any person who, knowing the unlawful nature of a performance, provides premises for such performance either on lease or gratuitously, or accepts a role or a part in the performance, shall be liable to punishment as an accomplice.

If any of the offenses laid down in Articles 71, 72 and 73 are committed in connection with the business activities of a legal person, such legal person shall be jointly and severally liable with the other offenders for the expenses and the fines.

The provisions of Articles 64, 65, 66 and 67 of the Criminal Code shall remain unaffected.

III. Prosecution

Art. 75- (Amendment: 21.2.2001- 4630/ 29) The offenses set out in Articles 71, 72 and 73 shall be prosecuted on complaint.

In addition to the persons suffering injury, the following shall also be authorized to file complaints:

1. the Ministry of Education and the Ministry of Culture or the professional association to which the infringer or the plaintiff belongs in the cases set out in item 4 of Article 71 and in respect of the citing of the source as required by Article 35;
2. the Ministry of Culture and the General Directorate of Press and Advertising and the institution representing the Turkish press in the cases set out in item 4 of Article 71 with respect to the citing of the source as required by Article 36.
3. The ministry of Culture in cases set out in the item 14 and 15 in the framework of the last paragraph of the Article 19.
4. Professional Associations in the fields that they operate.

In case of infringement of the rights of authors, right holders of neighboring rights or other right holders, the public prosecutors office of where the infringement or its consequences occurred may demand abolishment of the place where the improper reproduction is being realized, the confiscation of the copies or publications found there and the padlock of technical tools used to that end, from the competent tribunal after the application of people who have authorization of complaint.

Where the circumstances demand rapid action, the public prosecutor may, at his own initiative, issue an order for confiscation and padlock that shall be submitted for approval to the competent tribunal within three days.

If the offense remains in the prescription term of action, right holders may have recourse to public prosecutors office with the documents that prove their rights, in 6 months beginning from the day that they learn the infringement and the perpetrator. The adjudication procedure of the Law on Procedure in Flagrant Offenses no. 3005 related to this offense shall be applied to such offenses, regardless of the district mentioned in the item A of the first Article and the time enrollment written in the Article 4 of the same law.

If one, who has already been sentenced because of the offenses included in this Law, recommits the same crime within 2 years, the sentence shall be increased one level.³⁰⁰

C. Miscellaneous Provisions

I. Jurisdiction

Art. 76- (Amendment: 21.2.2001- 4630/ 30) In cases concerning the legal relations governed by this law, the specialized tribunals that are to be established by the Ministry of Justice shall be competent regardless of the amount involved or the degree of penalty foreseen by the law. Until the establishment of specialized tribunals and until they start their judging activities, The supreme Committee of Judges and Prosecutors determine which Criminal and Law Courts of first instance are to be charged and their frameworks of judgment as specialized tribunals upon the proposal of Ministry of Law.

If a personal complaint is brought, Article 358 of the Code of Criminal Procedure shall apply. If the criminal case is disposed of by acquittal and a claim for damages is also involved, the file shall be automatically referred to the Civil Court for a decision on the claim.

(Addition: 21.2.2001- 4630/ 30) In the proceedings extended by this law, if the plaintiff presents right amount of evidence that ensures powerful belief about the truth of the claim, the tribunal may demand the presentation of documents of permissions and authorizations and/ or the list of every work, phonogram, performance, movie and broadcasts under protection. If the issued documents and/or lists are not being presented, it refers to the unjust usage of all works, phonograms, performances, movies and broadcasts.

II. Interlocutory Injunctions

Art. 77- (Amendment: 21.2.2001- 4630/ 31) Upon the request of the person whose rights have been infringed or endangered or the person who has authority to claim, the tribunal may order the other party, before or during the proceedings, to perform certain acts or to abstain from performing them as well as it can order closing the district that the act is being done or opening that place, if such an order is deemed necessary for the prevention of serious injuries or sudden dangers or accomplished facts. The order shall state that, in the case of non-compliance, the penalties specified in Article 343 of the Law on Execution and Bankruptcy shall be applied.

The provisions of Article 57 of the Customs Law shall be applied during the exportation and importation of the copies that may possibly violate the rights on the work.

The operations related with the confiscation of these copies by the Custom Administrations are put into force in accordance with the related provisions of the Customs Regulation.

III. Publication of the Decision

Art. 78. In addition to the cases referred to in the second paragraph of Article 67, the prevailing party may, if justified, require publication of the decision, in whole or in part, in a newspaper or similar medium at the expense of the other party. The form and contents of the text to be published shall be specified in the court order. The right to require such publication shall lapse three months after the date on which the decision becomes final.

IV. Seizure, Confiscation and Destruction

Art. 79. Article 36 of the Criminal Code and Articles 392, 393 and 394 of the Code of Criminal Procedure shall apply to the seizure, confiscation and destruction of copies, plates and similar devices for reproduction, the manufacture and reproduction of which are punishable under the provisions of this Law.

PART SIX

MISCELLANEOUS PROVISIONS

A. Neighboring Rights and Injunctions

I. Neighboring Rights

Art. 80- (Amendment: 7.6.1995- 4110/ 26) Artists who perform and interpret intellectual and artistic works in an original manner, producers of phonograms who make the first fixation of a performance or of sounds and radio- television organizations shall enjoy neighboring rights on condition that the economic and moral rights of the author are not prejudiced.

Performers shall have the exclusive right to make a fixation of their performances, to reproduce and to hire out the fixations thereof, to use their performances by broadcasting, by wire or over the air or by live performance and shall require their written consent. Performers may transfer these rights to the producer by contract and against equitable remuneration.

In the case of a performance by an orchestra, chorus or a theatrical company, the permission of the manager shall suffice. If an individual performer or a group has been engaged under contract for a recital, performance or presentation by an entertainment promoter, the permission of such promoter shall also be required.

The right of reproduction of a fixation, directly or indirectly, rental, broadcasting by wire or over the air, or exploitation of a fixation by presentation on public premises shall belong exclusively to the producer and his written consent shall be required. No person or organization may reproduce broadcasts, in whole or in part, or rebroadcast them by wire or over the air or show them on premises subject to an admission fee without the written consent of the radio and television organization.

The written consent of the holder of neighboring rights shall not be required in the following circumstances:

1. performance or communication to the public of intellectual and artistic works for purposes of public policy, education and instruction, scientific research or interviews, for non - profit-making purposes;
2. broadcasting of intellectual and artistic works in radio and television programs and their reproduction for personal use, for non-profit-making purposes;
3. ephemeral fixations made by broadcasting organizations using their own facilities and for use in their own broadcasts;
4. in the cases referred to in Articles 30, 32, 34, 35, 43, 46 and 47 of this Law.

However, such uses may in no way prejudice the legitimate interests of the right holder and may not conflict with normal exploitation of the work. Artists, chorus masters, orchestra conductors and soloists and leading actors in theatrical companies may require that their names be shown on devices permitting the transmission of signs, sounds and images.

The holders of neighboring rights, like authors, shall enjoy the right to bring legal proceedings for injunction and for damages.

Any person infringing neighboring rights without obtaining the written consent laid down in this Article shall be liable to imprisonment of between three months and one year and a fine of between 300 million liras and 600 million liras.

II. Injunctions With Respect to Intellectual Rights

Art. 81- (Amendment: 7.6.1995- 4110/ 27) In order to reproduce a work it shall be necessary to prove the capacity as author or right holder to the printing house, the production company or the recording facilities by means of a contract or powers drawn up in accordance with Article 52 and certified by a notary public. The persons who reproduce works shall be required to complete an order slip and a waybill certified by the Ministry of Finance and to present these together with the invoice.

It shall be compulsory to affix to non-serial publications a band to be obtained from the Ministry of Culture. The documents referred to in the first paragraph shall be submitted in order to obtain the band. On such submission, the band shall be issued within 15 days without further formality. The rules and principles for obtaining a certificate shall be set out in a regulation to be issued by the Ministry of Culture.

Where economic and neighboring rights in intellectual and artistic works are used without authorization by persons other than the lawful holders thereof, the public prosecutor of the district in which the infringement or the consequences thereof have occurred shall request the competent judge, at the request of the right holders or of the appropriate professional association, to order confiscation of the copies of the work that have been unlawfully produced or performed and to secure the technical devices used in the infringing act.

Where the circumstances demand rapid action, the public prosecutor may, at his own initiative, issue an order for confiscation and securing that shall be submitted for approval to the competent judge within three days.

The right holders may submit a petition, together with documents evidencing their rights, to the public prosecutor's office within six months of the date on which they were informed of the infringement and the identity of the infringer, insofar as the infringement took place within the period of protection. The Law on Procedure in Flagrant Offenses, No. 3005, shall apply to such offenses.

Any person who reproduces or distributes works by means of devices or processes which serve to transmit signs, images and sounds without having obtained the required written permission and the band referred to in this Article shall be liable to imprisonment of between three months and one year and a fine of between 300 million liras and 600 million liras.

III. Scope and Term of Neighboring Rights

Art. 82- (Amendment: 7.6.1995- 4110/ 28) The provisions of this Law on performers shall apply to:

1. performers who are nationals of the Turkish Republic;
2. performers who, not being nationals of the Turkish Republic, make their performances on the territory of the Turkish Republic, including recording on sound mediums to which the provisions of this Law apply and, even where not fixed on a sound medium, broadcast in radio or television programs to which the provisions of this Law apply.

The provisions of this Law on recording mediums shall apply to:

1. producers who are nationals of the Turkish Republic;
2. producers located on the territory of the Turkish Republic.

The provisions of this Law on broadcasts shall apply to radio and television organizations:

1. whose headquarters are located on the territory of the Turkish Republic;
2. who broadcast from a transmitter on the territory of the Turkish Republic.

The provisions of this Law on neighboring rights shall also apply to performers, producers of phonograms and broadcasting organizations under the provisions of the international treaties to which the Turkish Republic is party.

The rights of performers shall subsist for 70 years beginning with the date of first publication of the fixation of their performances. If their performances have not yet been published, the term shall begin with the date on which the performance is first made public.

The rights of phonogram producers shall subsist for 70 years beginning with the date on which the sound mediums were first broadcast.

The rights of broadcasting organizations shall subsist for 70 years beginning with the date on which the program was first broadcast.

B. Unfair Competition

I. Titles and Distinguishing Marks

Art. 83. The title, the distinguishing marks and the form of the reproduced copies of a work may not be used in connection with another work or with its reproduced copies in such way as to give rise to confusion.

The provision in the first paragraph shall not apply to titles, marks or forms that lack a distinguishing character and are commonplace.

This Article shall apply even in the absence of the conditions set out in Parts One, Two and Three of this Law.

The provisions of Article 14 of the Press Law concerning the titles of periodicals shall remain unaffected.

The provisions on unfair competition shall apply to persons who infringe the first paragraph of this Article even if they are not acting by way of business.

II. Signs, Sounds and Images

Art. 84. Any person who fixes signs, sounds or images on a device permitting the transmission of such elements or who lawfully reproduces or distributes the same for commercial purposes, may prohibit others from reproducing or distributing the same signs, sounds or images by use of the same means.

The provisions on unfair competition shall apply to persons who infringe the provisions of the first paragraph of this Article even if they are not acting by way of business.

The provisions of this Article shall also apply to those photographs that do not qualify as works, to images fixed by similar means and to cinematographic productions.

C. Letters

Art. 85. Even where they do not have the character of a literary work, letters, memoirs and similar writings may not be published without the consent of their writers or, if they are dead, without the consent of the persons referred to in the first paragraph of Article 19, unless 10 years have elapsed since the death of the writer.

In addition to the conditions set out in the first paragraph, letters may not be published without the consent of the addressee or, if he is dead, without the consent of the persons referred to in the first paragraph of Article 19, unless 10 years have elapsed since the death of the addressee.

The provisions of Article 49 of the Code of Obligations and Articles 197 and 199 of the Criminal Code shall apply to persons infringing the above provisions.

In those cases where distribution is permitted in accordance with the first and second paragraphs of this Article, the provisions of Article 24 of the Civil Code shall remain unaffected.

D. Pictures and Portraits

I. General

Art. 86. Even where they do not have the character of a work, pictures and portraits may not be exhibited or presented to the public in any other way without the consent of the person portrayed or, if he is dead, without the consent of the persons referred to in the first paragraph of Article 19, unless 10 years have elapsed since the death of the person portrayed.

No consent shall be required for:

1. pictures of persons who have played a role in the political and social life of the country;
2. pictures of parades, official gatherings or public meetings at which the portrayed persons appeared;
3. pictures concerning events of the day in the press, television and film.

The provisions of Article 49 of the Code of Obligations and Articles 197 and 199 of the Criminal Code shall apply to persons who infringe the provisions of the first paragraph of this Article.

In those cases where distribution is permitted under the provisions of the first and second paragraphs of this Article, the provisions of Article 24 of the Civil Code shall remain unaffected.

II. Exceptions

Art. 87. Photographs, pictures and portraits, if made to order, may be reproduced by photography with the consent of the person who ordered them or with the consent of the person portrayed or with the consent of their heirs, unless otherwise agreed.

The foregoing provisions shall not apply to photographs, pictures and portraits published in the press. However, if the persons referred to in the first paragraph are unable to obtain such photographs, pictures or portraits or if they encounter serious difficulty in so doing, they may be reproduced by photography.

E. Applicable Law

Art. 88. The provisions of this Law shall apply:

1. irrespective of the nationality of the author, to all works communicated to the public for the first time in Turkey and to all works existing in Turkey but not as yet communicated to the public, as also to all letters and pictures existing in Turkey;
2. to all works of Turkish nationals which have not yet been communicated to the public or which have been communicated to the public for the first time outside Turkey;
3. to all works of foreigners which have not yet been communicated to the public or which have been communicated to the public outside Turkey, subject to the relevant provisions of the international conventions to which Turkey is party.

Where the State of which the author is a national affords adequate protection to the rights of Turkish authors or an international treaty allows for exceptions and limitations with respect to the conditions concerning foreign authors, the Council of Ministers may order certain exceptions to the provisions of items 1 and 3 of this Article.

Additional Art. 1- (Being the provision of the law; 1.11.1983- 2936, numbered for concatenation by transformation to additional article). The regulations and statutes to be issued pursuant to this Law shall be prepared within six months and published in the Official Gazette.

Additional Art. 2- (7.6.1995- 4110/ 29) The terms of protection under this Law for neighboring rights, cinematographic works, computer programs and databases shall apply only to works, adaptations and productions that are made public after the date on which this Law enters into force. The provisions of this Law with respect to ownership of cinematographic works shall apply to cinematographic works of which the production begins after this Law enters into force.

Additional Art. 3- (7.6.1995- 4110/ 30) The principles relating to practice with respect to neighboring rights shall be laid down by regulation to be issued within six months from the date on which this Law enters into force.

F. Temporary Provisions

I. Transitional Provisions

(1) General

Provisional Art. 1. Except as otherwise provided below, the provisions of this Law shall also apply to works communicated to the public for the first time on the territory of the Turkish Republic or entered in the register before this Law entered into force.

This provision shall apply even where the Copyright Law of May 8, 1326 (1910), did not apply to such works or products.

The term of protection for works which were made public before the entry into force of this Law shall be calculated in accordance with this Law. The terms "copyright," "intellectual rights," "literary property," "artistic property" and similar expressions used

in other laws and treaties shall be given the meaning this Law requires according to the context in which they are used.

If all or part of the rights in a work or their exercise have been transferred to another person before this Law enters into force, the new and broader rights and prerogatives afforded by this Law to the author shall not be considered to have been transferred. The same provision shall also apply if the term of protection under this Law is longer than the term afforded by the former Law or if the former Law did not protect works and products protected by this Law.

(2) Protection of Acquired Rights

Provisional Art. 2. If the term of protection afforded by the former Law is longer, such term shall apply to works published before the entry into force of this Law.

If a lawful translation or adaptation of a work has been published before the entry into force of this Law, the rights and prerogatives acquired by the translator or adapter under the former Law shall not be prejudiced by this Law.

If the publication of a translation permitted by the former Law but prohibited by this Law was started before this Law came into force, such publication may be completed within one year. This provision shall also apply to translated works to be performed by theatrical companies or other entertainment organizers.

Where reproduction was permitted under the former Law, but is now prohibited under this Law and the reproduction of a work had already started at the date of entry into force of this Law, reproduction may be completed and the reproduced copies may be distributed.

The distribution of copies existing at the date of entry into force of this Law and whose reproduction was permitted under the provisions of the former Law may be continued. The same shall apply to devices permitting the transmission of signs, images and sounds and to plates and similar means of reproducing artistic works.

Any person wishing to avail himself of the possibility afforded by the preceding paragraph shall be required to declare such copies and devices to the competent authority and have them sealed within six months of the entry into force of this Law.

Where necessary, details may be specified in a regulation.

Provisional Art. 3:

(Addition: 1.11.1983- 2936/ 17 md.) The president and members of the boards of the compulsory organs of the professional associations and the federation shall be determined by decree of the Council of Ministers, on a recommendation by the Ministry of Culture, until such time as the number of members required by the statutes for convening the first general meeting has been attained and an election can be held.

Provisional Art. 4:

(Addition: 1.11.1983- 2639/ 17md.)

Decree of the Council of Ministers No. 8/423 of March 15, 1980, issued under Article 43 of Law No. 5846 on Artistic and Intellectual Works, and the schedule of fees to be issued under that Decree, shall be applicable as from March 15, 1980, and up to December 31, 1985.

Payments made in accordance with the schedule of fees to be issued under the Decree of the Council of Ministers shall be made to the appropriate professional association for distribution to right holders in the case of works which have been transferred to the professional association under an authorization certificate and, in other cases, directly to the holders of the economic rights.

Such payment shall be finalized by the Turkish Radio and Television Organization on December 31, 1985, at the latest. After deduction of its own share from the payments made by the Turkish Radio and Television Organization, the professional association shall pay the remaining amounts to its member right holders within two years of the date on which payment has been made to it.

Royalties that have not been claimed by members within two years shall be deposited in accordance with Article 44 in a special account to be opened with a national bank in the name of the Ministry of Culture.

Provisional Art. 5:

(Addition: 6.7.1995- 4110/ 31 md.) Professional associations established prior to the entry into force of this Law shall be converted to new professional associations under the surveillance of the Ministry of Culture within one year from publication of the uniform statutes in accordance with this Law and with the principles of uniform statutes and shall set up their respective new organs in a general meeting to be held within that same period.

Professional associations that fail to comply with the provisions of the first paragraph shall be deemed to have been dissolved on expiry of the initial year.

II. Repealed Provisions

Art. 89. The Copyright Law of May 8, 1326 (1910), and any provisions of other laws in conflict with this Law are hereby repealed.

G. Final Provisions

I. Entry Into Force of This Law

Art. 90. Articles 42 and 43 of this Law shall enter into force on publication of this Law and the remaining Articles shall enter into force on January 1, 1952.

II. Authority Entrusted With the Implementation of this Law

Art. 91. This Law shall be implemented by the Council of Ministers.

LAW OF CINEMA VIDEO AND MUSIC WORKS OF ART

Number of Law: 3257

Date of Approval: 23/1/1986

Publication in Official Gazette: 7.2.1986/19012

Law on amendment of some articles

Number of Law: 3329

Date of Approval: 29.1.1987

Publication in Official Gazette: 4.2.1987/19362

Objective:

Article 1:

The objective of this law is to realize the educative, instructive, culture spreading and transmitting, introductory functions of cinema, video and music works of art which are one of the most important mediums of mass communication due to their close relation with culture and their prevalence; to provide their improvement from the aspect of production, inspection and display, programming matters and technology usage; to give support to the people working in the field of Turkish Cinema and music art; to

contribute order and dimension to cinema and music life from the aspect of national solidarity, integrity and our continuity.

Scope:

Article 2:

This law comprises the incite, creation of the work of art, inspection, display, execution of the products of Turkish Cinema and Turkish music art, which are branches of industry and art, and the principles and procedure of the protection of the copyright, display and execution right, which arise from these process.

Definitions:

Article 3:

The explanations of the phrases used in this law are as follows:

- a) Work of art: Mobile or audio thought and art productions recorded on film, video, recorders or on their similar ones.
- b) Inspection: The inspection of the works of art, which are identified in this matter, by the authorities in order to determine whether they contain elements of offense or incite to offense from the aspect of the indivisible integrity of the state with its country and nation, national sovereignty, republic, national security, public order, general ease, public interest, general ethics and general health and whether they are appropriate to our national culture, customs and traditions.
- c) Film: Every kind of mobile cinema works and their similar ones that determine works of art prepared as audio or visual or only visual with commercial purpose and the introductory, instructive or technical ones or the daily events.
- d) Video: Every kind of mobile material on which vision with sound or only vision has been recorded with the electromagnetic parts on it.
- e) Recorder: Every kind of record, cassette or their similar ones on which only sound has been recorded.
- f) Banderole: The label which is stuck on the band, cassette and outer package of the works that makes the stuck material lose its special feature when removed and which the special sign of the person with the enterprise certificate and the serial number is on. (ministry banderole and the special sign of the owner of enterprise certificate is used on the recorder)
- g) Producer: Real or legal persons producing or importing the works of art.
- h) Operator: Person doing the total and retail distribution, buying-selling and hiring of the works, or managing public cinemas or similar other saloons that provide more than one people to watch or listen, or broadcasting cable network.
- i) Ministry: Ministry of Culture and Tourism.

Production and Import:

Article 4:

The real and legal persons that shall do the production and import and collective distribution of the works of art are obliged to inform the ministry beforehand. Amateur works related with the question of who can do broadcasting, their qualifications, the rules to be obeyed and other matters related with this subject, the principles that should be followed by the foreign real or legal persons who want to make films about scientific researches in Turkey, or films with inspection and commercial purpose or by real or legal persons of Turkish nationality who make activities on behalf of these persons and the principles of the co-production, which shall be made by real

and legal persons of Turkish nationality and foreigners, shall be determined with the regulations prepared by the Ministry.

Register and Record:

The first paragraph of Article 5 has been amended.

Article 5:

The register and record of the works of art, which are the subject matter of production and import, shall be done by the Ministry and enterprise certificate shall be given before they are presented to collective distribution and display. This certificate can be bought by the person who produces the work of art or who has taken the copy, broadcast and display rights in domestic works of art; by the person who imports the work of art by taking the production, copy, distribution and display rights of the works of art from the person they belong to, by a contract, in works of art with foreign origin.

It is obligatory that the banderole of the ministry and the owner of the enterprise certificate shall be stuck on every copy of the work whose register and record has been done. The special sign of the owner of the enterprise certificate shall be used together with the Ministry banderole in records and audiocassettes. But, the Ministry shall not be responsible from this register and record based on the declaration of the producer and importer.

Inspection:

The third and the fourth paragraphs and the last paragraph of Article 6 have been amended.

Article 6:

For the register and record of the works of art, an application shall be made to the Ministry with a declaration of which a copy of any size or form is enclosed and this declaration shall be taken as a base in the transactions. The ministry determines the works of art that seem to be necessary or obligatory to be inspected, transfers them to the inspection committee and forms a sub commission of three persons that shall be determined with the regulations. The ministry can form more than one sub commissions or inspection committees with regard to the size of the work.

The register and record of works of art that do not seem necessary or obligatory to be inspected and the works of art that have been determined as positive as a result of the inspection shall be done and enterprise certificate shall be given. The necessary amendments shall be made by the producer in the works of art that are determined to be amended by the committee and enterprise certificate shall be given with the register and record. The ones that are absolutely inappropriate to be presented to distribution and display shall be returned after all administrative and judgment transactions have been completed.

The producers can request the Ministry to inspect the scenarios of the production if they wish. This inspection shall be made by the sub commissions. The inspection results of the works of art and the inspection results of the scenarios shall be declared to the related person in maximum 15 days. The inspection result shall be registered on the enterprise certificate of the works of art. If inspection is not necessary and obligatory, this matter shall also be registered on the enterprise certificate.

The inspection committee forms from the representatives of the Ministry of National Education Youth and Sports, the General Secretariat of the National Security Council and the Ministry of Interior under the chairmanship of the representative of the Culture and Tourism Ministry. But, it is obligatory that one representative from the vocation

union of Turkish cinema works of art and one from the vocation union of Turkish music works of art and one artist determined by the Ministry shall take position in the inspection committee. The producer of the work of art that is inspected can participate in the inspection committee as an observer if he wishes. The number of sub commissions and inspection committees, the provinces they shall be organized in, the place they shall assembly at and the working principles and procedures, the financial rights of the non-officials and other matters shall be stated in the regulation that shall come into force with the resolution of the council of ministers.

Distribution and display:

The first paragraph of Article 7 has been amended.

Article 7:

The persons who make the collective and retail distribution, who sell, rent and present to display the works of art containing enterprise certificate for more than one person with commercial purpose are obliged to get enterprise license. The enterprise licenses are given by the municipalities and by the superior local administration chief at places outside the municipality border.

The persons to whom the enterprise license shall be given, the characteristics, rules to be obeyed and other matters related with this subject and exceptions shall be stated in the regulation prepared by the Ministry.

Copyright:

Article 6 has been amended.

Article 8:

The copy, distribution and display rights of the works of art belong to the owner of the enterprise certificate. The right of copying and responsibility of these works of art belongs to the person who registers and records them. Every kind of disposal on the works of art is forbidden unless there is the permission of the owner of the rights. The copy, distribution and display rights can be subject to any kind of perception as buying, selling and leasing.

A work of art that has not been registered and recorded cannot be subject to right of display, copy and distribution. The transfer of the copyright after the register and record does not give the right to make any amendments on the work of art.

When any conflict arises in the matters of copying, distributing and displaying, the work's copy at the ministry shall be taken as a base. The provisions of the law numbered 5846 on works of thought and art shall be applied on the matters about copyright that have not been mentioned in this law.

Authority of the enterprise:

Article 9:

The ministry and the civil administration chiefs can inspect enterprise certificate and banderoles of the works of art during their distribution and display and inspect the work of art at any time in order to determine whether there have been any amendments on it. The works of art without enterprise certificate or banderole or on which any amendment has been made shall be collected and transferred to the C Attorney generalships with offense declaration.

The civil administration chiefs can prohibit the distribution and display of the works of art which are probable of causing a social event due to the characteristics of the region, in the limits of their authorities and duties, on condition that the reason shall be stated.

In case the work of art is found inappropriate to the inseparable integrity of the state with its country and nation, to our national sovereignty, Republic, National Security, Public Order, General Ease, Public Interest, General ethics and general health, customs and traditions at the end of any inspection made by the ministry or the civil administration chiefs, the work of art shall be prohibited and legal proceeding shall start.

Local civil authorities and municipalities have the authority to inspect the banderoles and the enterprise certificates.

Fund:

The fourth paragraph of the 10th article has been amended, sub paragraph (d) has been annexed to its 6th paragraph numbered II and its last paragraph has been amended.

Article 10:

“Cinema and music art subvention fund” has been established to the order of the ministry with the aim of contributing to the development of cinema industry and music art, supporting the cinema and music workers and to provide the introduction of the country. In the fund establishments, implementation of the public accounting law numbered 1050, state tender law numbered 2886 and provisions of Audit Court law numbered 832 depend on the inspection of the Fund and Prime Ministry High Control Board.

I- Fund Revenue;

- *a) 10.000 liras that shall be taken from domestic works of art during the register and record, 50.000 liras of register and record charge that shall be taken from foreign works of art,
- b) 1000 liras that shall be taken from every domestic film copies, 5000 liras that shall be taken from every foreign film copies,
- **c) 200 liras for each banderole from the domestic video copy, 500 liras that shall be taken for each banderole from the foreign video copy,
- **d) 50 liras that shall be taken from each record, 20 liras that shall be taken from each cassettes,
- e) Donations and aid,
- f) The interest yield and other incomes of the fund,
- g) Money that shall be collected according to the provisional 3rd article.

The council of ministers is authorized to increase or decrease the charges and quantities in the a, b, c and d sub paragraphs of the paragraph above to five folds.

Register and record charge shall not be taken from the works of art produced with educational purpose.

Annex of resolution dated 9/9/1987 and numbered 87/12090

RESOLUTION

A- The charge of 50.000 liras that should be taken from the foreign works of art during register and record according to the (a) sub paragraph has been decreased to 10.000 liras for foreign records and their similar ones.

B- The banderole charge of 20 liras that should be taken for each cassette according to the (d) sub paragraph has been increased to 50 liras.

Annex of resolution dated 26/8/1988 and numbered 88/13242

RESOLUTION

A- The charge of 200 liras that should be taken from each banderole of domestic video copies and the charge of 500 liras that should be taken from each banderole of foreign video copies according to the (c) sub paragraph have been increased to 300 and 600 liras respectively.

B- The banderole charge of 20 liras that should be taken from each cassette according to the (d) paragraph and that has been determined as 50 liras with the council of ministers resolution dated 9/9/1987 and numbered 87/12090 has been increased to 100 liras.

II- Fund expenditures;

a) Non-profit aids and credits that shall be given for maximum 5 years term by an intermediary state bank.

b) Aids that shall be made for needy cinema and music artists.

c) Expenditures that shall be made for the introduction of Turkey's historical, cultural and natural wealth.

d) The necessary expenditures for the duties to be realized given to the ministry by this law.

Principles and procedures regarding the use of the fund, collection of the revenue, expenditure that shall be made from the fund, giving credit, interest rate of the credits shall be stated in the regulation.

Penalty Provisions:

Article 11:

According to this law:

a) The persons who do not give the information to the Ministry that must be given shall be penalized with heavy fine from 1.000.000 to 2.000.000 liras according to the 1st paragraph of the 4th article.

b) The persons who do not obey the obligation to get enterprise license stated in the 1st paragraph of the 7th article shall be penalized with heavy fine from 1.000.000 to 2.000.000 liras.

c) The persons who do not obey the prohibition in the 1st paragraph of the 8th article shall be penalized with heavy fine from 2.000.000 to 10.000.000 liras.

d) As stated in the 1st paragraph of the 9th article the persons who declare the works of art in an improper way with its origin although they have an enterprise certificate and the persons who do not obey the prohibition stated in the 2nd paragraph shall be penalized with heavy fine from 2.000.000 to 4.000.000 liras even if their acts form another offense, the persons who have been prosecuted and the ones whose offense is fixed shall be penalized with heavy fine from 3.000.000 to 6.000.000 liras even if their acts form the same offense; the penalty provisions, which can be implemented in case the situations stated in this paragraph form another offense or offenses, shall be concealed.

Administrative Penalty:

Article 12:

10.000 liras of fine shall be collected by the municipalities from the works of art or from their copies that have no enterprise document or banderole or special sign, with regard to the 9th article.

Outside the municipalities, these fines shall be given by the superior local administration chief.

These fines shall be collected by the inventory official according to the law provisions numbered 6183 on procedure of public receivable collection.

An objection can be raised against the administrative penalties to the criminal court of peace in 15 days from the date of declaration. The objection shall not stop the execution of the penalty given by the administration.

In situations where there is no indispensability, the objection shall be accomplished in the shortest time by inspecting the document. The penalties upon the objection are final.

Abolished Provisions:

Article 13:

The 6th article of the police duty and authority law dated 4 July 1934 and numbered 2559 has been abolished with the annexes and amendments.

Provisional Article 1:

The regulations to be passed in this law shall be prepared in three months from the validity date of the Law and shall be put into force by the council of ministers.

Provisional Article 2:

Enterprises are obliged to get license in three months from the issuing of the regulations. Penalty provisions shall not be applied within this period.

Provisional Article 3:

The works of art still existing in the market with no banderole shall be registered and recorded on the person presenting the copyright or display right and enterprise certificate shall be given in six months from the date when the regulations have been put into force. But these works of art shall be declared to the ministry with a declaration. 500 liras from every copy of the film, 100 liras for each banderole from every video copy, 25 liras from every record and 10 liras from every audio cassette shall be taken with 2.000 liras of register and record charge from the present domestic and foreign works of art provided that these declarations are taken as a base. Penalty provisions shall not be applied within the 6 months period.

Provisional Article 4:

Every kind of cinema work and their similar ones, which were being inspected and have been inspected by the Film Inspecting Committees on the date when this law has been put into force, and information about them, sources and material (display and record copy machines) shall be transferred to the Ministry by the Ministry of Interior in one month from the date when the regulations have been put into force. The former committees continue to perform their duties within this period.

Validity:

Article 14:

This law shall come into force on the date of issue.

Execution:

Article 15:

The Council of Ministers execute these provisions of law.

5/2/1986.¹⁴⁴

**T.C. YÜKSEK HUKUK KURULU
DOKÜMANTASYON BÜROSU**

¹⁴⁴ <http://www.kultur.gov.tr/english/bakanlık/k-telif.html>