

Copyright 2021

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Copyright 2021

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and Andrew J Thomas****Jenner & Block LLP**

Lexology Getting The Deal Through is delighted to publish the sixteenth edition of *Copyright*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on the European Union and Russia.

Lexology Getting The Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.lexology.com/gtdt.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Steven R Englund, Andrew H Bart, Susan J Kohlmann and Andrew J Thomas of Jenner & Block LLP, for their continued assistance with this volume.



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Turkey

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CETINKAYA

LEGISLATION AND ENFORCEMENT

Relevant legislation

1 | What is the relevant legislation?

Copyright is granted under Law No. 5846 on Intellectual and Artistic Works (Law No. 5846). In addition, the draft bill to amend Law No. 5846 (the draft bill) was released on 5 May 2017 for public comment on the Turkish Ministry of Culture and Tourism's website with proposed amendments for at least 38 articles, including: clear notification and removal procedures for copyright infringement on the internet; reorganisation of collecting societies to deal with the difficulties of effective collective rights management (eg, the right to equitable remuneration for actors and film authors for future use of their films and the right to use works for caricature, parody or pastiche); and judicial discretion regarding the compensation stated in article 76 of Law No. 5846.

The draft bill aims to establish a functioning copyright system, increase the creation of qualified works and standardise licensing. However, it has not yet entered into force. Since Turkey is a party to international conventions on copyright, these conventions also affect Turkish legislation.

Enforcement authorities

2 | Who enforces it?

There are specialised intellectual property civil and criminal courts in Istanbul, Ankara and Izmir. Copyright is enforced before these courts if the dispute falls within the jurisdiction of one of these areas. In other cities, one of the regular civil courts is assigned as a specialised intellectual property court, and copyright must be enforced there.

Copyright registration certificates can be used to enforce copyright before customs authorities. The acceptance of the copyright registration through the customs authority will prompt customs tracking on the passing of possible infringing goods that will initiate the suspension of release of such products. Through the 'IP Rights Portal' used by the Ministry of Commerce, rights holders can apply for copyright infringement at customs. With this programme, the obligation of the rights holders to apply separately to each relevant customs administration for the protection of their intellectual property rights at customs was removed.

Online and digital regulation

3 | Are there any specific provisions of your copyright laws that address the digital exploitation of works? Are there separate statutory provisions that do so?

For online copyright infringement, the additional article 4 of Law No. 5846 regulates the essential 'notice and takedown' procedure. This regulation provides that the copyright owner first sends a notification

to the content provider that supplies the applicable material for use on websites and requests the removal of infringing content within three days. If the violation continues, a request must then be addressed to the Public Prosecutor asking that the service being provided be removed within three days.

In parallel with this provision, Law No. 5651 on the Regulation of Publications on the Internet and Suppression of Crimes Committed by Means of Such Publications (Law No. 5651) regulates the general principles as to the liability of content providers, social network providers, service providers and public use providers, who must remove content from websites if they are informed of infringements.

Additionally, the draft bill to amend Law No. 5846 was published online on 5 May 2017 for public opinion. The draft bill abolishes the additional article 4 of Law No. 5846 and envisages a new article 77/B, regarding digital infringement by content providers. It is planned that article 77/B will harmonise the notice and takedown procedures provided under Law No. 5651 and the additional article 4 of Law No. 5846.

Extraterritorial application

4 | Do your copyright laws have extraterritorial application to deal with foreign-owned or foreign-operated websites that infringe copyright?

Since copyright protection arises irrespective of the nationality of the creator, there is no extraterritorial application besides general regulations.

Turkish courts cannot grant cross-border or extraterritorial injunctions. However, they can decide on access restriction orders to prevent access to an internet site containing infringing materials based in Turkey.

Agency

5 | Is there a centralised copyright agency? What does this agency do?

The General Directorate of Copyrights is an authorised body based within the Ministry of Culture and Tourism. The duties of the General Directorate of Copyrights are regulated in Law No. 4848, article 11. The Directorate oversees the recording and registering of copyright.

SUBJECT MATTER AND SCOPE OF COPYRIGHT

Protectable works

6 | What types of works may be protected by copyright?

The following may be protected by copyright:

- original works that bear the characteristics and originality of the author; and
- works capable of being classified as:

- science and literature;
- music;
- fine art; and
- cinema.

There are also subcategories for each category. For instance, computer software, databases, performance arts, written works of choreography, maps, plans, projects and architectural designs are protected as scientific and literary works. Musical compositions are protected as musical works. Sculptures, stone, wood, graphic works, cartoons, etc, are protected as works of fine art.

Rights covered

7 | What types of rights are covered by copyright?

Copyright is a type of automatic protection of moral and economic rights for any intellectual or artistic work bearing the characteristics of its author. Economic rights authorise rights holders to derive financial reward from the use of their works by others. Moral rights allow authors and creators to enforce artistic integrity of the work and protect the link between the characteristics of the authors and their work.

Moral rights include the right to: disclose the work; attribute the work; protect the integrity of the work; and claim ownership of the work. Economic rights authorise or prohibit the rights holder regarding the adaptation, reproduction, distribution, representation and publication of the work.

Excluded works

8 | What may not be protected by copyright?

Copyright does not protect an idea. The idea or plan must be fixed in a 'tangible form of expression', meaning that the work must be written or otherwise recorded, since copyright protects the expression of that idea or plan.

Fair use and fair dealing

9 | Do the doctrines of 'fair use' or 'fair dealing' exist, and, if so, what are the standards used in determining whether a particular use is fair?

According to Turkish copyright law, a protected work can be used by a person provided that the rights owner has granted a licence. For using the protected work without a licence, the respective use shall be covered by the exceptions listed below and set forth by Law No. 5846 on Intellectual and Artistic Works:

- the reproduction and publication of officially published texts as well as official speeches given in unions, congress, courts or public meetings;
- use of a work for educational or information purposes;
- quoting from written and musical works that have been made public;
- use of a work after its copyright expires; and
- personal use.

Personal use includes reproducing all intellectual and artistic works for use without pursuing profit. Such reproduction may not prejudice the legitimate interest of the rights owners. There is a specific rule provided for computer programs, stating that the entitled owner of the program can reproduce and adapt the program where necessary for their use. The contract may not prohibit the loading, running and error correction of a computer program by the entitled owner of the program.

Architectural works

10 | Are architectural works protected by copyright? How?

Architectural works are considered works of art if they have aesthetic value, while two-dimensional project plans and three-dimensional models of the architectural works are considered as scientific and literary works. Both categories are protected provided the works are original.

Performance rights

11 | Are performance rights covered by copyright? How?

Performance rights are regarded as neighbouring rights and are protected. Without prejudice to the author's rights, performers have the right to be identified as the performer and the right to prevent any distortion, along with the material rights. Performers may transfer these rights to a producer by contract in return for equitable remuneration.

Written permission shall be taken from the author for performing the work.

Neighbouring rights

12 | Are other 'neighbouring rights' recognised? How?

Turkish law recognises the neighbouring rights of performers, phonogram producers, and radio and television organisations. The protection of the neighbouring rights of phonogram producers and radio and television organisations covers material rights, while the moral rights of the performers, namely the right to be identified as the performer and right to prevent any distortion, are also protected.

Moral rights

13 | Are moral rights recognised?

Yes. Turkish law recognises:

- the authority to disclose the work to the public;
- the authority to designate the name;
- the prohibition of modification; and
- the author's rights against persons who own or possess a work, such as claiming temporary possession and accessing the original work.

Moral rights are not transferable according to Turkish law, and an author of a work can exercise moral rights even after the material rights are transferred. However, an author may grant a licence to third persons enabling them to use the moral rights.

COPYRIGHT FORMALITIES

Notice

14 | Is there a requirement of copyright notice?

Displaying a copyright notice is not required.

However, Turkish law makes it compulsory to affix reproduced copies of musical and cinematographic works, non-periodical publications and computer programs with a banderol. Other rights owners whose work can be copied easily can also apply to use a banderol.

The banderol is a hologram security label or a digitally generated security label that is affixed to reproduced copies of intellectual and artistic works and non-periodical publications for the purpose of preventing unauthorised reproduction and that crumbles in case of disassembly and loses the properties of the material to which it is affixed. It shows that a work is copyrighted and copies are reproduced in accordance with relevant laws.

15 | What are the consequences for failure to use a copyright notice?

There are no consequences of not displaying a copyright notice as it is not mandatory.

As for the banderol obligation, selling or renting copies of respective works without a banderol is prohibited and constitutes a crime. Therefore, rights owners cannot exploit works that require a banderol in a commercial manner without one.

Deposit

16 | Is there a requirement of copyright deposit?

Copyright deposit is not required under Turkish law.

However, to register a work under the General Directorate of Copyrights, rights owners must send a copy of their work.

17 | What are the consequences for failure to make a copyright deposit?

There are no consequences for failing to make a copyright deposit.

However, registration is mandatory for recorded musical and cinematographic works, non-periodical publications and computer programs, and a copy of the respective work shall be submitted to the General Directorate of Copyrights for application.

Registration

18 | Is there a system for copyright registration, and, if so, how do you apply for a copyright registration?

Turkish law provides a copyright registration system under the General Directorate of Copyrights.

Rights owners can register their work by providing relevant documents showing their ownership of the rights. Applications are made through the relevant section of an electronic system called 'e-devlet,' which is a platform that provides public services in Turkey and sends the required documents to the General Directorate of Copyrights.

19 | Is copyright registration mandatory? If voluntary, what are the benefits of registration?

There are cases of both mandatory and voluntary registration in Turkey.

Registration of recorded cinematographic and musical works and computer programs is mandatory under Turkish law. However, copyright arises and copyright protection begins with the creation of a work, regardless of registration. Reproduced copies of respective works shall be affixed with a banderol, which shows that a work is copyrighted and copies are reproduced in accordance with relevant laws. Rights owners cannot obtain banderols for non-registered works; therefore, for rights owners to comply with banderol obligations, works must be registered.

Other works can be registered upon the application of a rights owner voluntarily.

Registration is beneficial for preventing the violation of rights, facilitating proof of rights ownership and tracking the authority to exercise economic rights.

20 | What are the fees to apply for a copyright registration?

As at April 2021, the application fee for voluntary registration is 207.25 lira. Mandatory registration fees range from 166 lira to 829 lira according to type of the work.

The registration fees are calculated proportionally to the public officer wage parameter, which is determined by the Ministry of Treasury and Finance twice a year, for a period of six months.

21 | What are the consequences for failure to register a copyrighted work?

Failing to register works subjected to mandatory registration prevents commercial exploitation, as it is not possible to obtain a banderol and sell or rent copies of the work without registration.

OWNERSHIP AND TRANSFER

Eligible owners

22 | Who is the owner of a copyrighted work?

Generally, the author who creates the work is the owner of the copyright in that work. Article 8 of Law No. 5846 on Intellectual and Artistic Works stipulates the following: 'The author of a work is the person who has created it.'

Employee and contractor work

23 | May an employer own a copyrighted work made by an employee?

Copyrighted work made by an employee as part of his or her duty is regulated under article 18 of Law No. 5846.

According to the provision, the authority to exercise financial rights belongs exclusively to the author of the work. However, the rights to the works created by civil servants, employees or workers as part of their duties are used by their employers or by the persons who appoint them to work unless otherwise understood from a special contract between the parties or the nature of the work. This also applies to the organs of the company. The producer or publisher of the relevant work may only exercise financial rights according to a contract with the author of the work.

24 | May a hiring party own a copyrighted work made by an independent contractor?

If there is no agreement between the parties, copyrighted work would automatically assign to the independent contractor who creates the work. However, ownership could depend on the terms and conditions of any agreement signed by the parties. Copyright cannot be transferred before it is created.

Joint and collective ownership

25 | May a copyrighted work be co-owned?

If several people have created a work and this work can be split into several parts, this can be considered as collective ownership, which is prescribed under article 9 of Law No. 5846. In these instances, the creators will own the parts of the sections of the work they have created. Where there are many independent works brought together by their creators, this can be considered as collective ownership.

Further to this, article 10 of Law No. 5846 states that:

If a work created by the participation of more than one person constitutes an indivisible whole, the author of the work is the union of the persons who created it.

The provisions on ordinary partnership shall apply to such union. If one of the authors refuses without good reason to permit a joint transaction, then such permission may be granted by the

court. Each of the authors may act individually if the interests of the union are violated.

Transfer of rights

26 | May rights be transferred? If so, what rules and procedures apply?

The moral rights recognised by Law No. 5846 are strictly related to individuals, which means that, unlike economic rights, moral rights cannot be transferred or waived.

The law necessitates that any agreement for the transfer or assignment of copyrights must be in writing, and such an agreement must contain the scope of the right, which is the subject of the transfer or waiver. An agreement in which the author transfers all economic rights generally, rather than specifying rights individually, is considered invalid.

Although the right to publicise is a moral right, this right is deemed to be used by the transfer of economic rights. If there is no reasonable cause, the person who takes over the economic rights cannot choose to not use this right.

Licensing

27 | May rights be licensed? If so, what rules and procedures apply?

Copyrights can be licensed. A copyright licence agreement must be in writing and must contain the scope of the licensed rights in detail. The licensed rights and their scope must be expressly and separately listed.

28 | Are there compulsory licences? What are they?

Since protection subsists automatically under Turkish legislation, granting a licence is required for use. Rights holders are not obliged to provide compulsory licences. However, in very limited circumstances a licence may be compulsory pursuant to a court ruling as per articles 9(2) and 10(2) of Law No. 5846.

As per article 9(2): 'Unless otherwise agreed, each of the persons who have jointly created the work may request the other persons' participation in the modification or publication of the whole work. If the other party refuses to participate without good reason, permission may be granted by the court. The same provision shall apply to the exercise of economic rights.'

As per article 10(2): 'The provisions on ordinary partnership shall apply to such union. If one of the authors refuses without good reason to permit a joint transaction, then such permission may be granted by the court. Each of the authors may act individually if the interests of the union are violated.'

29 | Are licences administered by performing rights societies? How?

Article 42 of Law No. 5846 establishes the collective licensing bodies and gives them the authority to manage the economic rights of their members on the premise of a written settlement or deed between them.

The aims of the collective licensing bodies according to Law No. 5846 are as follows:

- protect the common interests of their members;
- manage and keep track of the rights protected by the law; and
- collect and distribute fees to the rights holders.

Termination

30 | Is there any provision for the termination of transfers of rights?

The right to terminate transferred rights is regulated under article 58 of Law No. 5846. With this article, an author is allowed to terminate the licence or transfer it under certain conditions. If the holder of an economic right or a licence exercises his or her rights and authorities insufficiently within the agreed period or, where no period has been determined, within a reasonable period, and if thereby the author's interests are significantly violated, the author may rescind the contract.

Recordal

31 | Can documents evidencing transfers and other transactions be recorded with a government agency?

The documents evidencing the transfer of the rights or licences can be recorded with the General Directorate of Copyrights. However, registration is not mandatory for obtaining the rights granted with a transfer or licence and does not affect the validity of the transfer or licence.

DURATION OF COPYRIGHT

Protection start date

32 | When does copyright protection begin?

Protection starts when a work is created, without the necessity for notification or registration.

Duration

33 | How long does copyright protection last?

The duration of protection subsists through the life of the author and lasts for 70 years following the death of the author. The 70-year period starts from the beginning of the year following the author's death. In case of multiple authors, the duration will expire 70 years after the death of the last surviving author.

In cases where an author of a work cannot be established, the term of protection as regulated under the first paragraph of article 12 of Law No. 5846 on Intellectual and Artistic Works (Law No. 5846) shall be 70 years from the date on which the work was made public, unless the author reveals his or her name before the expiry of such term.

34 | Does copyright duration depend on when a particular work was created or published?

Protection begins when the work becomes public, since an idea or a plan is not protected under copyright, so the copyright duration will not subsist if the work is not published.

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

So long as the author of a published work cannot be established, the protection must be 70 years from the date on which the work was made public, unless the author reveals his or her name before the expiry of such term.

Renewal

35 | Do terms of copyright have to be renewed? How?

According to Turkish regulations, terms of copyright do not have to be renewed.

Government extension of protection term

36 | Has your jurisdiction extended the term of copyright protection?

Article 27 of Law No. 5846 has been replaced by article 10 of Law No. 4110. In the former article, the Law did not regulate the protection period. With the new regulation, protection periods are regulated.

COPYRIGHT INFRINGEMENT AND REMEDIES

Infringing acts

37 | What constitutes copyright infringement?

Use of a protected work, including partial use, without the permission of the respective rights holder or exceeding the scope of a licence agreement, without being covered by the exceptions prescribed in law constitutes copyright infringement. In addition, use of a protected work in a manner that violates the personal rights of the author is also considered copyright infringement, even if the infringer is duly authorised to use the work or is the owner of the material rights.

Vicarious and contributory liability

38 | Does secondary liability exist for indirect copyright infringement? What actions incur such liability?

Turkish law prescribes secondary liability as follows.

- The rights holder may file a preliminary injunction request against any person regardless of the intent. For instance, a request can be filed against persons who have possession of illegally reproduced copies of a work for commercial purposes, even if those persons are not aware that the copies are unlawful or infringe copyright.
- The rights holder may file a criminal complaint against service providers in cases of an infringement. In addition, with the amendment to Law No. 5651 on Regulation of Publications on the Internet and Suppression of Crimes Committed by Means of Such Publications, social network providers can be held liable for damage caused by illegal content published on their platforms, provided that the illegality of the content is ratified by a court decision.
- Employers whose employees infringe copyrights can also be held liable according to Turkish law.

In addition, rights owners can file a lawsuit for the prevention and prohibition of an infringement regardless of the intent of an infringer. In other words, an infringer will be held liable to prevent or prohibit an infringement even if they are not aware of the infringement.

Available remedies

39 | What remedies are available against a copyright infringer?

The right owners and the authors of a protected work can seek preliminary injunctions, civil actions and criminal actions against the infringer.

Preliminary injunction and provisional seizure at customs

Rights owners can seek a preliminary injunction before or after the commencement of proceedings. If it is deemed necessary for the prevention of substantial damage or imminent danger the court may order that:

- certain acts be performed or not performed;
- the premises where an infringement is being committed be opened or closed; or
- the reproduced copies of a work or moulds and other similar devices be preserved for reproduction, exclusively enabling the manufacture of such copies.

Besides the preliminary injunction ordered by the court, customs may cease the importation and exportation of the copies and seize the copies if an infringement of rights is likely to occur.

Civil actions

Although there are contrary decisions rendered by the Court of Cassation, intellectual property disputes are subject to compulsory mediation if the subject of the lawsuit is monetary. In such cases, the claimant must apply for mediation and the lawsuit can be filed if the parties could not reach a settlement. The mediation process can take between one and eight weeks, depending on the parties' willingness to compromise.

The following actions can be taken:

- the author can file a civil action for recognition of ownership;
- the rights holder can file an action for the determination of an infringement;
- the rights holder can file an action for prevention of infringement in case of a danger of infringement as well as in the presence of an ongoing infringement;
- the rights holder can file an action for the prohibition of infringement and reinstatement; and
- the rights holder can claim material and moral indemnification for the damage arising from the infringement.

Criminal actions

Sanctions (imprisonment or punitive fines, or both) may be imposed on persons who:

- violate the material and moral rights of rights owners;
- identify themselves as the owner of the protected work unlawfully;
- quote a work without reference;
- disclose the content of a work that is not made public;
- give insufficient, misleading or deceptive reference about a work; or
- violate the banded obligation, which shows that a work is copyrighted and copies are reproduced in accordance with relevant laws.

Limitation period

40 | Is there a time limit for seeking remedies?

In cases where infringements arise from a contract between the rights owner and an infringer, the time limit for filing a civil action is 10 years. If an infringement constitutes a tort, the time limit is two years after the claimant becomes aware of the damage and the identity of the infringer. Otherwise, the time limit is 10 years after the commencement of an infringement.

Where an action also constitutes a crime, and the time limit for the criminal act is longer, the longer period will apply.

Monetary damages

41 | Are monetary damages available for copyright infringement?

Yes, rights owners whose rights are violated can claim indemnification for moral and material damages suffered.

In cases of unauthorised use, the rights owner can also claim payment of compensation up to three times the amount that could have been demanded if rights had been granted by contract. Apart from indemnification claims, it is not required for the rights owner to suffer material or moral damage; the presence of an unauthorised use is sufficient to claim compensation.

Attorneys' fees and costs

42 | Can attorneys' fees and costs be claimed in an action for copyright infringement?

Yes, according to the Code of Civil Procedure Law No. 6100, the losing party is obliged to pay the fees, trial expenses and official attorney fees.

Official attorney fees are predetermined by the law and do not include the contractual fee determined between the client and the attorney. The court awards the official attorney fees to the prevailing party's attorney in the final decision. Official attorney fees are regulated and updated yearly in the Minimum Attorney's Fee Tariff issued by the Turkish Bar Association.

Criminal enforcement

43 | Are there criminal copyright provisions? What are they?

Yes. According to Law No. 5846 on Intellectual and Artistic Works (Law No. 5846), any person who does the following will incur criminal sanctions, such as imprisonment and punitive fines, upon the complaint of the rights holder:

- use the material rights of the respective rights holder without permission;
- identify themselves as the owner of the work;
- use the name of another person who is known to the public;
- quote a work without reference;
- disclose the content of a work that is not made public;
- give insufficient, misleading or deceptive reference about a work;
- violate the banderol obligation, by which work is shown to be copyrighted and copies produced in accordance with relevant laws; or
- produce and sell software disabling programs that allow the illegal reproduction of computer programs.

Online infringement

44 | Are there any specific liabilities, remedies or defences for online copyright infringement?

Yes. In cases where the material and moral rights of rights owners have been violated through service and content providers by transmission, including digital, rights owners can apply to the service or content provider for removal of the content. The service and content providers are obliged to remove the content within three days upon this application. In cases where an infringement continues, the right holders can apply to the Public Prosecutor's Office for suspension of the service being provided by the content provider.

As per Law No. 5846, service providers are also obliged to submit a list of the names of their content providers to the Ministry of Culture and Tourism every month.

In addition, with the amendment to Law No. 5651 on Regulation of Publications on the Internet and Suppression of Crimes Committed by Means of Such Publications, social network providers are held liable for damage caused by illegal content published on their platforms, provided that the illegality of the content is ratified by a court decision.

Prevention measures

45 | How may copyright infringement be prevented (including, for example, customs enforcement measures and any technological notable developments)?

Turkish law provides preliminary measures, actions for prevention and prohibition of the infringement, and notification and criminal complaints against content providers infringing copyright and customs measures.

In addition, collecting societies of the authors or rights holders monitor infringements and notify their members of applications for legal remedies.

RELATIONSHIP TO FOREIGN RIGHTS

International conventions

46 | Which international copyright conventions does your country belong to?

Turkey is a party to:

- the Berne Convention for the protection of Literary and Artistic Works (the Berne Convention);
- the World Intellectual Property Organization Copyright Treaty (the WIPO Copyright Treaty);
- the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations; and
- the Agreement on Trade-Related Aspects of Intellectual Property Rights.

47 | What obligations are imposed by your country's membership of international copyright conventions?

The WIPO Copyright Treaty regulates the protection of works and the rights of their authors in the digital environment. The treaty imposes many obligations on contracting parties. Since the treaty is an agreement under the Berne Convention, any contracting party must comply with the substantive provisions of the Berne Convention. For instance, obligations concerning technological measures are regulated under article 11, which states that:

Contracting Parties shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors in connection with the exercise of their rights under this Treaty or the Berne Convention and that restrict acts, in respect of their works, which are not authorized by the authors concerned or permitted by law.

Another obligatory regulation for contracting parties is 'obligations concerning right management information' under article 12. According to this article, contracting parties shall provide adequate and effective legal remedies against any person knowingly performing any of the acts specified in the article.

It is also obligatory for contracting parties to undertake or to adopt, pursuant to their legal systems, the measures necessary to ensure the application of this treaty.

UPDATE AND TRENDS

Key developments of the past year

48 | Are there any emerging trends or hot topics in copyright regulation in your jurisdiction? Has there been any new copyright legislation passed or proposed within the last 12 months?

The latest updates and hot topics in Turkey regarding copyright regulation are as follows.

- The Constitutional Court annulled article 81(13) of Law No. 5846 on Intellectual and Artistic Works (Law No. 5846) with its decision dated 12 June 2020, on the basis that the article is contrary to aggregation rules. The article prescribed remission for offenders who violated material rights along with a failure to comply with banderol obligations (by which it is compulsory to affix reproduced

copies of musical and cinematographic works, non-periodical publications and computer programs with a banderol), while offenders who only failed to comply with banderol obligations could not benefit from this remission.

- The amendment to the Law No. 5651 on the Regulation of Publications on the Internet and Suppression of Crimes Committed by Means of Such Publications, published on 31 July 2020, holds social network providers liable for the damage caused by unlawful content provided that a court decision ratifies that the content is unlawful. This provision also applies to online copyright infringements and imposes absolute liability on the social media platforms in cases of an infringement.
- Screenwriters and other authors engaging with cinematographic works requested an amendment to Law No. 5846 covering their right to exploit the rebroadcast of their work on any kind of platform, after the transfer of their material rights.
- There has been an increase in the conversion of artistic works to non-fungible tokens (NFTs) or unique digital assets and the sale of them. When artists convert their artistic works to NFTs they both protect their copyright and earn financial gain in the form of crypto-payment.

Coronavirus

49 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

Several precautions and measures were taken by the government and the administrative authorities regarding litigation and arbitration proceedings in general in response to the pandemic in 2020.

Upon the first official occurrence of the virus in Turkey, the government immediately shut the courthouses to prevent the further spread of covid-19. Accordingly, the courthouses were shut between 13 March 2020 and 15 June 2020 and hearings were postponed, except for urgent matters. Limitation periods were also suspended to prevent the possible loss of rights during this period. The government implemented a three-week nationwide lockdown between 29 April 2021 and 17 May 2021. Although the courthouses did not shut down during this lockdown, hearings that fell during this term were postponed, except for those concerning urgent matters. Limitation periods were not suspended during the lockdown, since the courthouses continued judicial operations with a lower capacity, unlike during previous measures.

The arrangements for remote hearings, as part of a system similar to that used by the Court of Arbitration for Sport or the Online Civil Trial project in Italy, were established quickly during the pandemic, considering the number of people in the courthouses and possible travel restrictions. Accordingly, pilot implementation of online hearings has started. In addition, the Istanbul Arbitration Centre implemented telephone and videoconferencing technology during arbitration proceedings.

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