Copyright 2020

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1. What law or laws governs copyright in this jurisdiction?

The Code numbered 5846 on the Protection of Intellectual and Artistic Works (**Copyright Code**) which entered into force on 1 January 1952 governs copyright law in Turkey. The Copyright Code has been amended several times in the past. However, it remains the main set of legislation on the matter.

2. Is there categorisation of different types of works for copyright purposes? If so what are the categories and what is the impact?

Yes, there is categorisation of different types of works for copyright purposes. The categories set out under the Copyright Code are as follows:

- (a) Scientific and literary works (works expressed in language and text, computer programmes, any kind of dance, written choreography works, pantomimes and similar non-verbal stage works, any kind of technical and scientific photography works without aesthetic qualification, all kinds of maps, plans, projects, sketches, pictures, models of geography and topography, all kinds of architectural and urban design projects, architectural models and industry, environment and stage design and projects),

  (b) Musical works (verbal or non-verbal compositions),

  (c) Works of Fine Arts (oil and watercolour paintings with aesthetic value, oil and watercolour paintings, all kinds of paintings, patterns, pastels, engravings, calligraphies, and illuminated manuscripts, works drawn or fixated by mining, stone, wood or other materials by scraping, carving, inlay or similar methods, calligraphy, serigraphy, sculptures, relief arts and intaglios, architectural works, handicrafts and small art works, miniatures and decorative art products, textile and fashion designs, photographic works and slides,. graphic works, cartoon works and all kinds of typecasting), or

  (d) Cinematographic works.

In order for any intellectual or artistic work to benefit from copyright protection, it must fall under one of the categories set out under the Copyright Code listed above. Otherwise, it will not be granted copyright protection under Turkish Law. The impact of categorisation therefore manifests itself in eligibility for copyright protection.

3. Are there any particular things which are generally protected by copyright in other jurisdictions not protected here?

As a general rule, any and all kinds of intellectual and artistic works, which fall under one of the categories of (a) scientific and literary works, (b) musical works, (c) artistic works, or (d) cinematographic works bearing the characteristics of its author may benefit from copyright protection.

Databases may be considered 'work' within the scope of copyright legislation in some jurisdictions. However in Turkey, under Article 6 of the Copyright Code titled 'Adaptations and Compilations', a database may only qualify as a 'compilation work' provided (a) it bears the characteristics of its author and (b) it does not hamper the rights arising from the compiled work(s). As a side note, *sui generis* rights of databases are recognised under Additional Article 8 of the Copyright Code, which provides protection for databases not bearing the characteristics of its author.

Anonymous cultural and folkloric heritage is not granted copyright protection in Turkey, unlike in some other jurisdictions.

4. Are there any particularly unusual things given copyright protection in this jurisdiction which are uncommon elsewhere?

Turkish Copyright Law protects the preparatory designs of computer programs provided that the design leads to a computer in the next stage. Therefore, the protection begins at an earlier stage compared to some other jurisdictions. Under any circumstances however, the computer program and its preparatory design should also meet the conditions for copyright protection. It is worth noting that, algorithms and interfaces that merely form the basis for an element of a computer program are not granted copyright protection as per the Copyright Code.

In many jurisdiction, TV formats are protected through the principles of unfair competition and/or breach of confidence. Under Turkish Law, in order for a TV format to be considered a work within the context of the Copyright Code, it must fall within one of the categories stipulated in the statutory law, as detailed in Question 2 of this Questionnaire. In this regard, the Turkish Court of Appeals (“TCA”) has ruled that TV formats may be considered “cinematographic works” or “literary works” on a case-by-case basis. Furthermore, according to another TCA ruling, a format paper itself may also be considered a “literary work.” Regardless of the category, copyright protection is granted only if the TV format bears the characteristics of its author.

5. What are the criteria for a thing to be considered original for copyright purposes?

In order for any work to qualify as a 'work' within the scope of the Copyright Code, it must bear the characteristics of its author. According to the legal precedents set by the TCA, the work should be independently and genuinely created by an author at the outcome of an intellectual effort. The work must go beyond other works created by the authors in the same field. That being said, copyright protection is granted if there is a *de minimis* quantum of creativity or if the work in question reflects the individual style of the author. Similar to the reasoning of the European Court of Justice explained in the Infopaq International A/S v. Danske Dagblades Forening case (the Infopaq case), it is sufficient for the work in question to be original in the sense it is the author's own intellectual creation. The sweat of the brow doctrine is also not applicable under Turkish Law.

6. How do rules govern rights to royalties?

Under Turkish Copyright Law, authors and their heirs may transfer all of their economic rights to third parties with or without any financial consideration. Therefore, contractual terms as mutually agreed to by the Parties apply to the license relationship.

In addition, under Article 41 of the Copyright Code, the authors and/or neighbouring rights holders may establish a collecting society to safeguard the mutual interests of their fellow rights holders and to collect and distribute royalties to the beneficiaries. Individuals and/or legal entities must apply to the Ministry of Culture and Tourism (**Ministry**) to obtain permission to operate as a collecting society.

According to Article 7 of the By-Law No. 99/12574 regarding Collecting Societies and Federations for the Rights Holders of Intellectual and Artistic Works and Neighboring Rights (**By-Law**), the fields for which a collective society may be established are as follows:

- (a) The authors of:
- -Scientific and literary works,
  -Musical works,
  -Works of fine arts,
  -Cinematographic arts, or
  -Adaptations or compilations.
- (b) In terms of neighbouring rights holders:
- -Performers,
  -Phonogram producers,
  -Radio and broadcasting organisations, or
  -Producers having conducted the first fixation of a movie.

In order to establish another collecting society in the same field other than the existing ones (if any), an application for permission to operate must be made to the Ministry, where the applicant must demonstrate they have as many as one third of the total members of the collecting society with the largest number of members in the same field.

By virtue of Article 41/3 of the Copyright Code and in line with the procedures set out under the By-Law, collecting societies are entitled to designate tariffs for royalty fees arising from the exploitation of works (i.e. communication of works, performances, phonograms, productions and broadcasts) of their members. Contracts between collecting societies and public premises must be concluded based on these tariff lists or in line with a fee mutually agreed to by the parties in the negotiations held by the relevant collecting society.

The tariff lists designated by the collecting societies mostly provide a basis for royalty fees. In most cases, authors and/or neighbouring rights holders find it practical to become members to already-existing collecting societies (i.e it may not be practical to enter into a contract with all bars or restaurants for every single copyrighted work of each author).

7. Are there any special rights for digital use?

Yes. The Copyright Code was amended on 3 March 2001 with Law No. 4630 regarding the Amendments to Articles in the Intellectual and Artistic Works Code (**Amendments**) to expand the scope of economic rights to include the digital exploitation of works.

Before the Amendments, Article 25 of the Copyright Code only restricted the communication of a work to the public through radio without the prior written consent of the author. However, with the 2001 amendments, the title of the Article was changed from 'the Right of Transmission through Radio' to 'the Right of Communication by Devices Enabling the Transmission of Signs, Sounds, and/or Images'. The scope of the provision was expanded to cover digital communications of works.

In addition, the scope of 'the Right of Reproduction' and 'the Right of Distribution' were also amended in 2001 by inserting the phrase 'by any way or form' to both articles. The scope of both rights was extended to cover the digital reproduction and the digital distribution of any work without the author's prior written consent.

8. Does the state have any particular rules around use of documents it issues?

As a general rule, any work which falls within the scope of the Copyright Code, regardless of whether it was created by the Government authorities or civilians, may benefit from copyright protection. However, as an exception, officially published laws, regulations, notices, circulars and court decisions may be reproduced and distributed in line with Article 31 of the Copyright Code.

On some occasions, the lawmaker may implicitly regulates that some works created by a specific Government authority may benefit from copyright protection. For instance, under Article 4 of the Sales Affairs Regulation on the Publications and Educational Tools of the Ministry of Education, it is implied any kind of visual or digital publications including books, magazines, and encyclopedias which are created by the Ministry of Education may enjoy copyright protection.

9. How are authors, joint authors and co-authors defined?

Under Article 8 of the Copyright Code, the author is the creator of the work.

Article 9 of the Copyright Code sets out that if a work can be divided into parts, each author is considered the rights holder of the part they created and collectively these authors are the joint authors of the work. For instance, in cinematographic works, the director, the composer of original music, the scriptwriter, the dialogue writer and the animators (if animation is involved) are the joint authors of the work.

Under Article 10 of the Copyright Code, if a work is created with the participation of more than one author and the work is an inseparable whole, then the proprietor of that work is the union of those who created it. In this case, the authors will be the co-authors of the work.

10. What happens if the author is unknown?

According to Article 11 of the Copyright Code, as a legal presumption, the person whose name or pseudonym is depicted on the work is considered the proprietor of that work until proven otherwise. Under Article 12 of the Copyright Code, in the absence of a name or a pseudonym, the person(s) having published the work may exploit the rights and powers of the author. If the publisher is also unknown, the person(s) having reproduced the work may exploit the rights and powers of the author.

11. How long does copyright last?

Under Article 27 of the Copyright Code, the term for copyright protection lasts the lifetime of the author plus 70 years from the date of the author's death. In the event there is more than one author who has created the work, the term for protection expires 70 years after the death of the last remaining author.

12. What is the position if something is created in the course of employment or as a result of a specific commission?

Under Article 18(2) of the Copyright Code, unless agreed to otherwise by the parties concerned or unless the contrary may be deduced from the nature of the work, the rights to works created by civil servants, employees, and workers during the execution of their duties will be exercised by the people who employed or appointed them. Whereas Article 18(1) and Article 18 (3) specifically refer to economic rights exclusively, Article 18(2) does not make a clear distinction. Some scholars interpret this as the lawmaker's implicit acknowledgement of the fact the moral rights of a work created by an employee during the course of employment may also be exploited by the employers. However, the legal precedents of the TCA point to the fact that Article 18(2) of the Copyright Code only refers to the economic rights of the employee and does not extend to the employee's moral rights.

13. Are there any unusual points to be aware of in this jurisdiction when copyright is assigned?

Under Article 48(3) of the Copyright Code, transactions relating to an incomplete work, which is described in the legislation as 'any work which has not yet been created or shall be completed in the future' are considered null and void. However, Article 50 of the Copyright Code and the legal precedents of the TCA acknowledge a promise to transfer the rights relating to a work to be completed in the future is valid.

Under Turkish Copyright Law, moral rights are non-transferable; yet, the authority to exploit these rights may be transferred. To that end, a contract must be structured with caution and finesse.

Under Article 52 of the Copyright Code, each economic right under a copyright assignment agreement should be enumerated separately, e.g the right of adaptation, the right of reproduction, the right of distribution, etc. Failure to comply with this provision will result in the invalidity of the transaction. The same is applicable in terms of moral rights under the legal precedents of the TCA.

Finally, copyright assignment agreements must be concluded in writing. This means the rights stemming from a copyrighted work cannot be transferred by means of an oral agreement between the parties.

14. Are there any usual points in this jurisdiction to be aware of when copyright is licensed?

Under Article 56(2) of the Copyright Code, a license is considered to be non-exclusive, unless expressly stated otherwise in the license contract.

According to Article 48(3) of the Copyright Code, transactions relating to an incomplete work are considered null and void. Nevertheless, Article 50 of the Copyright Code and the legal precedents of the TCA acknowledge a promise to license the rights relating to a work to be completed in the future is valid.

Under Article 52 of the Copyright Code, each economic right under a license contract should be enumerated separately. Failure to comply with this provision will result in the invalidity of the transaction. The same is applicable in terms of moral rights under the legal precedents of the TCA.

Finally, license agreements must be concluded in writing. This means the rights stemming from a copyrighted work cannot be licensed by means of an oral agreement between the parties.

15. What are the main types of infringement and what standard of proof is required to prove infringement?

There are two types of infringements set out under the Copyright Code: (i) the infringement of moral rights and (ii) the infringement of economic rights.

Moral rights relate to the personal relationship between the work and its author and are intended to protect both the personality of the author and the author's work. Moral rights set out under the Copyright Code are 'the Right of Disclosure (Article 14)', 'the Right of Attribution (Article 15),' and 'the Right to Object to Modification (Article 16)'.

On the other hand, economic rights are designated as 'the Right of Adaptation' (Article 21), 'the Right of Reproduction' (Article 22), 'the Right of Distribution' (Article 23), 'the Right of Performance' (Article 24), and 'the Right of Communication to the Public by Devices Enabling the Transmission of Signs, Sounds, and/or Images' (Article 25) under the Copyright Code.

When asserting these infringement claims before the court, the general rule for plausible proof laid out under the Turkish Civil Procedural Code applies. Additionally Article 76 of the Copyright Code states that, in civil cases, provided the claimant submits sufficient evidence, the Court may order the documents of permissions and authorisations and/or the lists of all of the protected works, phonograms, performances, films and broadcasts be submitted by those who use the works, phonograms, performances, films and broadcasts. If the defendant fails to bring forward the requested documents, it will be presumed the work has been used unlawfully.

16. How do copying restrictions operate in this jurisdiction?

Under Article 22 of the Copyright Code, the author has the exclusive right to reproduce the original or copies of their work in any form and by any method, wholly or partially, directly or indirectly and temporarily or permanently. To make a copy of the original or to record the work to any device which is currently available or to be developed in the future which enables the transmission or imitation of signs, sounds and images, all kinds of sound and music recordings and the application of plans, projects, and sketches of architectural works are considered reproductions. This provision also applies to molds with relief or perforation. The Right of Reproduction also covers installing, displaying, running, transmitting and storing computer programmes to the extent the actions require the temporary reproduction of a computer programme.

17. How do the rules on communicating to the public, including broadcasting, placing on a website or streaming over the internet operate in this jurisdiction?

The Right of Communication set out under Article 25 of the Copyright Code provides the author has the exclusive right to communicate the work to the public via radio and television, satellite, or cable, or by devices enabling the transmission of signs, sounds, and/or images including digital transmission. This Article also covers broadcasting, publishing on a website, streaming over the internet, or communicating the work to the public by any means of digital transmission.

18. Are there rules governing secondary infringement, including possessing or dealing with infringed things?

There are no rules or regulations specifically allocated for these issues as the articles concerning infringements of moral and economic rights (Article 66 ff.) provide protection in cases related to 'dealing with infringed things'. The Copyright Code offers two remedies: (i) Actions for the Cessation of Infringements (Article 66) and (ii) Actions for Damages (Article 70). These remedies may be invoked against both the infringer and those who deal with the infringed material (secondary infringement).

Save for when the infringed goods are utilised for mere personal use, the possession or storage of infringed materials constitutes a criminal offence under Article 71 of the Copyright Code. In other words, the possessor must commercially exploit the infringed materials for the purposes of criminal liability.

19. Do customs authorities in this jurisdiction have power to seize or act when copyright infringing things are imported.

Yes, according to Article 77 of the Copyright Code, if substantial damages or a sudden danger are imminent and the claims set out are strongly plausible, (a) an infringement or (b) the mere possibility of an infringement constitute grounds for seizure by customs authorities when the material is being exported or imported. This procedure is initiated upon the request of the author or his representatives in line with the Turkish customs legislation.

20. What are the main remedies available for copyright infringement in this jurisdiction?

There are multiple remedies offered under the Copyright Code, namely:

- (a) Action for the Cessation of Infringement (Article 66), which enables the author or the rights holder to ask the court to cease the infringing acts;
- (b) Action for the Prevention of Infringement (Article 69), which enables the prevention of possible or imminent infringements, whereas an Action for Cessation enables to prevent existing infringements. Action for the Prevention of Infringement requires the claimant bring forward plausible evidence regarding the possibility of an infringement;

- (c) Action for Damages (Article 70), which helps compensate the material and moral damages suffered as a result of an infringement. In addition, the injured party may claim the profits derived from the infringement by the infringing party;

- (d) Articles 71, 72, and 73 of the Copyright Code, outline the criminal offences and penalties for infringements; and

- (e) Authors may also resort to provisions of interim injunction and confiscation in customs (Article 77). Courts may grant precautionary measures before or during the legal proceedings in order to safeguard the rights of the injured party.

21. What are the main defences against copyright infringement in this jurisdiction?

Defendants should evaluate the facts on a case-by-case basis, and devise a defense strategy accordingly. For instance, the defense may argue that the subject matter of the case cannot be considered “work” within the scope of the Copyright Code. In such a case, an assessment with respect to eligibility for copyright protection would be conducted by the court-appointed experts.

Furthermore, the defense may also invoke the exceptions laid out between Articles 30 and 40 of the Copyright Code. The most frequently used exceptions are summarized below:

(a) As per Article 30, a work may be reproduced and distributed in any form without the author's consent by official authorities or upon their instructions for the purposes of public security or for judicial reasons;

(b) As per Article 33, a work may be performed without the consent of the author for educational and non-profit purposes, provided that the author and the work is attributed properly. In the same vein, Article 34 provides that, for educational and instructional purposes, published works can be selected and put together in pieces to the extent that it does not conflict with the interests of the author. Both Articles 33 and 34 safeguard public interest;

(c) Article 35 regulates the conditions (i.e., the quotation of a few passages from a work made public in an independent literary or scientific work, the reproduction of works of fine arts in a scientific work for the purposes of explaining its content) under which a quotation can be made legally. Insomuch as the referrer acts in a manner subject to any of these conditions, he or she shall quote the work without infringing the rights of the author; and

(d) As per Article 38, which governs non-commercial use, all copyrighted material may be reproduced for personal use and for non-profit intentions. However, the exercise of this freedom shall not undermine the author's legitimate interests. This Article is particularly essential because it is the only provision that introduces the concept of “fair use” in the Turkish copyright system, though with a limited scope.

(e) Remarkably, Article 38 also regulates the general principle for computer programs in which the user can reproduce the program. Accordingly, if the exploitation is compatible with the intended use of the program and no provision to the contrary is included in the underlying contract, the user is free to reproduce the program for personal use only.

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