

GETTING THE DEAL THROUGH

Copyright

in 24 jurisdictions worldwide

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Legislation and enforcement

1 What is the relevant legislation?

Turkey has the following legislation concerning copyright protection:

- the Law on Intellectual and Artistic Works (Copyright Act) No. 5,846 of 5 December 1951, as amended by Law No. 5,101 on 3 December 2004;
- the Law on the Evaluation, Classification and Support of Cinema Films; and
- a number of regulations concerning the implementation and enforcement of the above copyright laws, the most recent of which is Regulation No. 26,171 of 17 May 2006 regarding the recording and registration of intellectual and artistic works.

2 Who enforces it?

The administrative procedure for copyright formalities is implemented by the Ministry of Culture and Tourism (the ministry) – specifically by the General Directorate of Copyright and Cinematography located in Ankara

Copyright enforcement, however, is effected by the judicial authorities.

Copyright infringement actions are heard before specialist courts for intellectual and industrial property rights located in the cities of Istanbul, Ankara and Izmir. In other cities, actions are heard by the local civil commercial court or in the absence of such a court, the local ordinary civil court of first instance acting as specialist courts.

Agency

3 Is there a centralised copyright agency? If so, what does this agency do?

The General Directorate of Copyright and Cinematography, a subdivision of the ministry, is the centralised government agency acting in the field of copyright.

Subject matter and scope of copyright

4 What types of works are copyrightable?

According to article 1/B of the Copyright Act, a work qualifying for protection under the Act: “is any kind of intellectual and artistic creation carrying the characteristics of its author and is considered as scientific, literary, musical, fine art (artistic) or cinematographic”.

The work enjoying copyright protection shall bear the characteristics and particulars of its author. No particular test is applied for determining the characteristics or particulars of the author. The Copyright Act also provides protection for computer software and the databases.

5 What types of rights are covered by copyright?

The author of a work protected by copyright has economic rights and moral rights.

Economic rights give the author the right to adapt, reproduce, distribute, communicate, broadcast or otherwise dispose of the work.

Moral rights allow the author to communicate the work to the public, put his or her name on the work and prohibit modification of the work.

6 What may not be protected by copyright?

According to the general principles in the Copyright Act, original or creative works shall be subject to copyright protection.

The issue of originality is assessed and evaluated on a case-by-case basis within the context, and in relation to, the characteristics reflecting the personality of the author. Article 2 paragraph 2 of the Copyright Act excludes from protection the concepts or principles on which any element of a computer program is based including those on which its interface is based. This is because they are not deemed works that can enjoy copyright protection under the Copyright Act.

7 Do the doctrines of ‘fair use’ or ‘fair dealing’ exist? If so please describe. If not please describe any comparable limitations.

The Copyright Act includes the doctrines of ‘fair use’ and restricts the rights of the copyright holder for reasons of public order.

Public order restrictions include:

- use of the work as evidence before the court or other authorities in criminal proceedings; and
- reproduction of photographic works for judicial reasons.

Public interest restrictions include:

- use of officially published law texts, regulations and court decisions;
- reproduction of a public recitation with the aim of providing news or broadcasting; and
- free use of published works for educational purposes provided there is no direct or indirect commercial profit arising from the use.

Quotations may be used provided they are clearly referenced. The use of the published daily news is a further restriction.

Personal fair use also restricts the rights of the author provided that such use is not detrimental to the author's legitimate rights.

8 What are the standards used in determining whether a particular use is a fair use?

The standards used for determining whether a particular use constitutes fair use, and the circumstances when work can be used are contained within the Copyright Act. There is a proviso that use must not be commercial and must not be detrimental to the normal use of the work. Any use which is not compatible with the doctrine of fair use can be prohibited by the copyright holder.

9 Are architectural works protected by copyright? How?

Article 2 paragraph 1(3) of the Copyright Act provides that architectural works as well as all architectural and urban designs, and projects and plastic models, are protected by copyright. This provision also states that all photographic works, maps, plans, models and blueprints of a technical and scientific nature having no aesthetic characteristic are protected by copyright.

Copyright formalities

10 Is there a requirement of copyright notice? If so, please describe.

The use of copyright notice is not required by the Copyright Act. It is, however, required by the recent implementation of Regulation No. 26,171 of 17 May 2006 in respect of works for which copyright registration or recording is mandatory (see question 14).

11 What are the consequences for failure to display a copyright notice?

Since the notice (and the mandatory copyright registration) is declaratory rather than constitutive evidence for the assessment of the ownership in a copyright conflict, failure to display a copyright notice has no effect on such assessment. Nevertheless, use of the notice may be important because it informs the public that the work is protected by copyright, identifies the copyright owner and shows the year of first publication. In the event that the copyright is infringed, a proper notice of copyright shall have the effect of refuting a defence based on infringement in good faith.

12 Is there a requirement of copyright deposit? If so, please describe.

There has never been and there is at present no requirement of copyright deposit in respect of literary works according to Turkish copyright law. According to Law No. 5,224 on the Support of Cinema Films through Evaluation and Classification, which came into force on 14 July 2004, however, it is mandatory to provide the Ministry with cinema films and any other necessary information and documents to form 'an inventory of cinema films'. Paragraph 2 of the same article further states that 'the Ministry may form an archive and information department' thereafter.

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

Failure to deposit shall not affect the validity of the copyright protection. However, the deposition of the cinema and music works is required under the mandatory recording of the work for obtaining the certificate of operation for their wholesale distribution and display to the public.

14 Is there a requirement of copyright registration? If so, please describe.

According to Turkish copyright law, copyright is born with the creation of the work and simultaneously benefits the author without being subject to any other formality, ceremony or registration. Nevertheless, article 13 of the Copyright Act last modified by Law No. 5,101 of 12 March 2004 provides a dual system of mandatory and optional recording and registration.

Mandatory recording and registration

Authors of cinematographic and musical works, and movie and phonogram producers have to record their cinematographic and musical works. The purpose of registration is to evidence their authorship and to follow up any authorisations the authors may have given in respect of the use of the economic rights of their works. Mandatory registration in this instance is not concerned with preventing copyright infringement.

Voluntary recording and registration

Authors may apply to record and register all their works protected within the scope of the law. By doing so, registration will evidence their authorship and will enable the follow-up of any authorisations they may have given in respect of the use of the economic rights of the works.

The recording or registration of copyright based on declarations does not have a constitutive effect for the establishment of copyright. It only serves as evidence of the existence of the copyright. It is therefore further mentioned in article 13 that: "The Ministry shall not carry any responsibility for such recording or registrations."

On the other hand, according to Law No. 5,224 on the Support of Cinema Films through Evaluation and Classification, cinema works which are produced within Turkey or subject to importation have to be evaluated and classified by the Council of Evaluation and Classification within the Ministry. They are recorded and registered and granted a certificate of operation prior to their wholesale, distribution and display to the public.

15 How do you apply for a copyright registration?

According to the the final paragraph in article 13 of the Copyright Act: "All fees regarding the registration or recording procedures in this law shall be determined by the Ministry. All procedures and guidelines for the registration and recording of such rights, determination of fees and other issues are to be determined in the Implementing Regulation to be issued by the Ministry."

The ministry issued an implementing Regulation on 14 November 2002 on the basis of the former article 13 which only provided a mandatory registration system for cinematographic and musical works. Until recently, the ministry had not issued an implementing Regulation further to the last modification of article 13 establishing the dual system.

The ministry has recently issued and put into force implementing Regulation No. 26,171 based on the new article 13 of the Copyright Act of 17 May 2005 providing the procedures and guidelines for the recording or registration of all works.

According to this Regulation, the authors of cinematographic and musical works for which recording or registration is mandatory, have to file an application form and the following documents with the offices of the ministry in the relevant city:

- a ‘producer document’, which is obtainable from the ministry upon evidencing the applicant’s commercial activity;
- an undertaking indicating the ownership of the work in accordance with the Copyright Act and which acknowledges civil and criminal responsibilities where evidenced otherwise;
- a certificate obtained from the Council of Evaluation of Classification of Cinema Films in respect of cinematographic works;
- the scenario and dialogue script, and the genuine music notes and lyrics for cinematographic works, and the genuine music notes and lyrics for musical works;
- the advertising poster or board for cinematographic works, and the cover and sample of all promotional materials, if any, for musical works;
- a digital recording of the work (DVD, VCD or audio CD); and
- the receipt showing payment of the official registration or recording fees.

In relation to the voluntary recording or registration of works, the authors, in addition to the application form and the documents mentioned under the first, second and fourth points above, have to submit:

- the source codes for computer programs in the specified form (the specified form varies on the basis of the characteristics of the computer programs);
- the data recordings for databases (requirements vary);
- two digital recordings for all other works; and
- a digital recording with detailed description for artistic works.

According to the information obtained from the ministry, such applications have been filed with and accepted by the head offices of the ministry in Ankara since February 2007 and are currently being prosecuted within two to three weeks as of their filing .

16 What are the fees to apply for a copyright registration?

The official fee for the mandatory registration of local cinematographic and musical works is 250 new Turkish liras. The registration of imported cinematographic and musical works is 50 new Turkish liras. The official fee for the voluntary registration of works has been determined as 60 new Turkish liras.

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

As the registration does not have any constitutive effect, failure to register has no negative effect on copyright ownership.

Cinematographic or musical works for which recording or registration is mandatory will not be granted a certificate of operation for their wholesale, distribution and display to the public.

Ownership and transfer

18 Who is the owner of a copyrighted work?

According to article 8 paragraph 1 of the Copyright Act, “the author of a work is its creator”.

19 May an employer own a copyrighted work made by an employee, and in what circumstances?

Article 18 paragraph 2 as amended by Law No. 4,630 provides that: “The rights originating from the works created by civil servants, employees and workers in the course of their duties or work shall be used by their employers or by those having appointed them unless otherwise agreed by special contract between them or otherwise construed from the nature or particularity of the work or employment.”

According to general opinion, whereas the employer is entitled to use the economic rights, the employee who has created the work continues to be the owner of the moral rights including the right to claim that his or her name appears on the art work, the right of disclosure and publication, and the right to prevent unauthorised alteration on the work, etc.

Although ownership of economic rights by the employers was clearly mentioned in article 8 of the old version of the Copyright Act No. 5,846, ownership of the economic rights is not mentioned as such in amended article 18, which instead states that “all rights shall be used by the employers and by those having appointed them”. In our opinion, however, the absence of “economic rights” in amended article 18 should not be interpreted to mean that the use of both the moral and economic rights rest with the employer owing to the general acceptance of the non-transferable character of the moral rights.

20 May a copyrighted work be co-owned? If so, in what circumstances?

According to article 9 of the Copyright Act, “if a work created by more than one person can be divided in parts, each person shall be deemed the author of the part created by him”. Each person may request that others cooperate in their exercise of moral or economic rights on the whole work and permission can be granted by the court where any person refuses to cooperate.

According to article 10 of the Copyright Act, “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”. Since this type of work consists of a work created with the inseparable efforts and collaborations of a group of persons, moral and economic rights of the work of collaboration are to be used by the community of authors (the rights on cinematographic works are reserved).

The community of authors is governed by the provisions of the Code of Obligations regarding ordinary partnership.

21 May rights be transferred? In what circumstances?

The author or his successors can transfer or assign in part or in whole their legally recognised economic rights of the work, whether limited or unlimited in time, place or content, and whether for monetary consideration or not. Economic rights in relation to work not yet created shall not be transferred.

Although not expressly indicated in the Copyright Act, moral rights are absolutely non-transferable and therefore any transfer of such rights is to be considered as invalid in accordance with the provisions of the Code of Obligations.

22 May rights be licensed?

It is possible for the author or his successors to transfer or assign their right to dispose of the economic rights to a third party, namely to license. A licence can be non-exclusive or exclusive. Unless otherwise established either by law or by contract, all

licences are deemed non-exclusive. Non-exclusive licences are governed by the provisions on leases whereby the exclusive licences are ruled by the provision on usufruct.

23 Are there compulsory licences? What are they?

There are no compulsory licences according to the Copyright Act.

24 Is there any provision for the termination of transfers of rights?

The transfer of copyrights can be terminated by reverting the right to the author and by the author's renunciation of this right.

The right holder may renounce the transfer of rights and terminate the agreement when the transferee does not benefit from, and does not use as he should, the economic rights within a specified or reasonable time period, thereby not fulfilling the interests of the right holder.

If the author or his heirs have transferred an economic right for a specific purpose or for a specified period of time, the right reverts to the author when the purpose has been attained or the time period has expired. This provision does not apply in the event of the bankruptcy or death of the transferee unless the right is to be personally exercised by him.

Moreover, the author or his heirs may renounce the economic rights by an official deed provided that there is no prejudice to previous obligations.

25 Can documents evidencing transfers and other transactions be recorded with a government agency? If so, with which agency and how?

According to the Regulations, the authorisation to assign and use the economic rights can be registered before the ministry upon request. The following documents must be provided:

- an undertaking indicating the authorisation to assign and use the economic rights, and acknowledging the civil and criminal responsibilities where evidenced otherwise;
- an identification such as an identity card for individuals or a commercial registry extract for legal persons;
- a signature circular of the person or persons who represent the entity;
- a digital recording of the work (DVD, VCD or audio CD); and
- the receipt showing payment of the official registration or recording fees.

Additionally, the documents evidencing transfers and other transactions on cinematographic works can be requested and duly recorded before the ministry for the latter to grant authorisation of operation in accordance with Law No. 5,224 (see question 14).

Duration of copyright

26 When does copyright protection begin?

Copyright begins with the creation of the work. It benefits the author without being subject to any other formality, ceremony or registration.

27 How long does copyright protection last?

Copyright protection runs for the lifetime of the author and for 70 years after his death.

If the work is created by joint authors, the 70-year period will begin from the death of the last surviving author.

The protection period for works which are made public for the first time following the death of the author, is 70 years after the death of the author. This period will commence on the first day of the year following the author's death.

If the copyright is owned by a legal entity, the term of protection is 70 years from the date on which the work was made public.

If the protected work is a database, the protection period is 15 years from the date when the work was made public. If substantial amendment is made to the database causing substantial change in the content and investment, the amended version will be protected as a new database.

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

The protection period will start from the date on which the work was made public. A protection term that is deemed to start on the date which the work is made public is counted from the first day of the year following the year during which the work has first been made public.

29 What does 'published' mean for the purposes of triggering copyright protection?

The copyright protection period for a particular work starts from the date when it is made public. Therefore, the date of making the work public initiates the copyright protection period. Works that are reproduced, marketed, distributed or put into trade channels are deemed to have become public.

30 Do terms of copyright have to be renewed? How?

Terms of copyright protection are neither renewable nor extendible.

Copyright infringement and remedies

31 What constitutes copyright infringement?

The infringement of economic and moral rights will constitute a copyright infringement.

The infringement of economic rights includes adapting, reproducing, distributing, performing, broadcasting or otherwise disposing of the work without the consent of the copyright holder.

Infringement of moral rights includes:

- unauthorised communication of the work to the public;
- failure to put the author's name on the work;
- putting a name other than the author's name on the work; and
- modifying the work without the consent of the author.

32 What remedies are available against a copyright infringer?

It is possible to:

- institute civil action for stopping the copyright infringement;
- claim material and moral damages; and
- request the confiscation and destruction of the infringing or pirated goods.

It is possible to request injunctive measures within the scope of the civil proceedings by evidencing the danger of (imminent) copyright infringement that may cause substantial damage. The court will need to be convinced that there is a high probability of such an infringement. The courts are conservative and have the discretion to refuse claims for injunctive measures and they may request the deposit of a guarantee for ordering such injunctions.

The injunctive measures may be requested either before or within the context of the civil action. Should the injunctive measures be requested before the institution of the civil action and the court reach a favourable decision, the main civil action shall be instituted within 10 days of the date of the order for the injunctive measures. Otherwise, the order for injunctive measures will remain without effect.

It is also possible to institute a specific non-adversarial action for the determination of the facts. This can be an ex-parte action for the determination of the infringement. If affirmative, it will serve as evidence within the context of the main civil or criminal actions. An interlocutory injunction may also be requested within the context of the action for determination of evidence.

Copyright infringement is also a criminal offence and it is possible to request the seizure of infringing products. Criminal proceedings can be brought against the infringer by filing a complaint with the public prosecutor.

Where a complaint is favourably received, the public prosecutor may order the police to seize the infringing goods. Criminal proceedings, initiated by the public prosecutor, can be brought if the copyright infringement is determined by the seizure of the goods. The infringing goods seized by the police will be kept in judicial custody until the end of the criminal proceedings.

Local security forces can ex officio initiate proceedings against and prosecute those involved in the selling of copies of musical and cinematographic works and non-periodical publications on the street or in similar open areas without banderoles (stickers denoting that copies are legitimate); there is no requirement for the copyright holder to bring the proceedings or complaint. The person involved in such an offence is convicted through criminal proceedings.

It is possible to request customs to suspend the release of the infringing goods. During routine clearance, the customs authorities, in cases of clear indications of copyright infringement, may suspend the release of the goods. Likewise, the copyright holder may also put customs on alert for a period of 30 days by filing an application for a possible copyright infringement for incoming and outgoing goods.

33 Is there a time limit for seeking remedies?

Civil claims are subject to a one-year and 10-year limitation period. The one-year limitation period runs from the date when the infringement becomes known to the copyright holder. Should the copyright holder become aware of the act of infringement after the one-year period, he or she may still ask for compensation within a 10-year period. Where the act of infringement also constitutes a criminal offence (which has a longer limitation period) the longer period will be the valid period for the purposes of the civil proceedings.

The limitation period for filing a complaint for the criminal proceeding expires within six months of learning of the infringing act.

34 Are monetary damages available for copyright infringement?

It is possible to ask for the compensation of moral and material damages. If a work is translated without the author's consent, published in the absence of a contract with the author, published in excess of the number agreed in an existing contract, adapted or broadcast by radio or television, or performed without the consent of the copyright holder, three times the amount which the infringer would have paid the copyright holder if the parties had concluded a contract for use of the copyright may be claimed. It is possible to evidence such amount by precedent contracts.

35 Are attorneys' fees and costs available for copyright infringement?

In what circumstances?

Although attorneys' fees and official costs are claimable, the attorneys' fees awarded do not reflect the real attorneys' fees as they are calculated according to the minimum attorney tariffs, which are issued at a national level by the bar.

36 Are there criminal copyright provisions? What are they?

Acts punishable as criminal offences	Imprisonment	Fines (NTL)
Infringement of moral rights	2 to 4 years	50,000 to 150,000
Infringement of economic rights. Any person who adapts, reproduces the work, sells, offers for sale or commercially distributes copies of a reproduced work or its adaptation, imports copies of a work either by legal or illegal means, disseminates or displays publicly or disseminates or assists in dissemination including digital transmission of a work, hires or lends a work	3 months to 4 years	10,000 to 150,000
Any person who intentionally keeps infringing goods in his premises for commercial purposes, assigns an economic right or a licence in the absence of authorisation, commercially possesses or distributes the apparatus serving for unauthorised removal of the software protection	2 to 4 years	50,000 to 150,000
Any person who, reproduces or disseminates copies of works, productions and phonograms identical to the producer's name and trademark	3 to 6 years	20,000 to 150,000
Any person who sells the reproduced copies of a performance, phonogram or production reproduced without permission in open areas	3 months to 2 years	5,000 to 50,000
Manufacturing, using and taking advantage of fake banderoles (stickers of authenticity)	3 to 6 years	50,000 to 250,000
The abusive use of banderoles or obtaining banderoles with fake documents	2 to 4 years	20,000 to 200,000
Violation of the sui generis database rights	2 to 4 years	50,000 to 100,000

37 Is online copyright infringement actionable?

The provisions of the Copyright Act also apply to copyright infringements that occur online. The Copyright Act provides that the copyright holder is entitled to either authorise or prohibit the sale, distribution and presentation of the work through wires or wireless devices and the transmission of these works to the public by such means. The Copyright Act No. 5,846 with the

Update and trends

The Ministry of Culture has started to evaluate voluntary copyright registrations in 2007 after the amendment of the Copyright Act and the issuance of a Regulation for voluntary registrations. This registration, though, does not have a constitutive effect for the establishment of copyright, and serves only as evidence of the existence of the copyright; the copyright owners are recommended to register their rights in

order to evidence their rights during a possible conflict.

Moreover, it shall also be mentioned that the Turkish parliament has enacted two laws for accession to the WIPO Performances and Phonograms Treaty – WPPT and the WIPO Copyright Treaty - WCT – as a part of it harmonising its laws with the EU and WIPO in May 2007.

amendment dated 3 March 2004 has provided the right to prohibit the online copyright infringements. According to the additional article 4 of the Act the copyright owners who alleges an infringement are entitled to ask the content provider to stop the infringement. Should the content providers not stop the infringements within three working days the copyright holder is entitled to ask the Public Prosecutor to order the service provider to suspend the service to the content provider. The service providers shall continue to provide the service if the content provider stops the infringement.

38 How may copyright infringement be prevented?

Copyright infringement can be prevented with a determined attitude for its protection and by taking effective action against counterfeiters. The recent amendments to the Copyright Act have enabled copyright holders to register their copyrights for the purpose of having a declarative certificate attesting the copyright. Such registration will avoid the problems of evidencing the existing copyright before the judicial authorities and is likely to simplify the enforcement procedure. Registration is highly recommended for an efficient enforcement of copyright against infringers.

Relationship to foreign rights

39 Which international copyright conventions does your country belong to?

Turkey is a party to the following international conventions:

- the Berne Convention, of which Turkey is a signatory of the Paris text of 1971;
- Trade-Related Aspects of Intellectual Property Rights (TRIPs);
- the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, adopted at Rome;
- WIPO Performances and Phonograms Treaty – WPPT; and
- WIPO Copyright Treaty – WCT.

Turkey is not a party to the Universal Copyright Convention.

40 What obligations are imposed by your country's membership in international copyright conventions?

In Turkey, the principle of national treatment is applied on the basis of the provisions of the Berne Convention. Article 88 paragraph 1(3) of the Copyright Act reads: "This Law is applicable to all works of foreigners which have not been communicated to the public or which have been communicated to the public for the first time outside Turkey with the proviso that there are appropriate provisions to this effect in an international convention of which Turkey is signatory."

Moreover, being a party to TRIPs, Turkey provides copyright protection to software and databases and has extended the protection to performers' works as well as to producers of phonogram and broadcasting organisations.

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