



COPYRIGHT LAW IN TÜRKİYE
KEY DEVELOPMENTS AND PREDICTIONS
2025

Copyrights

We are active in all aspects of copyright law in particular music, photographic, literary, architectural and artistic works of art, cinematographic works, computer software and databases, television program formats and character merchandising,

We provide clients in all business sectors with advisory, transactional, civil and criminal litigation, alternative dispute resolution services. We regularly represent clients both in civil and criminal courts, in ad hoc and institutional arbitration and mediation as well as acting as arbitrators in IP and copyright disputes.

We create and conduct anti-piracy campaigns including public awareness activities, consolidation of enforcement of various types of remedies, forming and advising alliances between rights holders, common interest groups and other similar establishments.

Our services include negotiating and drafting various copyright agreements including commissioning of copyright works, licenses, assignments, utilization, maintenance and improvement and outsourcing agreements.

We also comment on the compatibility of Turkish IP law and regulation with International treaties, interactivity with the relevant national law and regulations, and advise and represent clients on the enactment of the law.

The firm was among the pioneers of copyright enforcement in Turkey and contributed to the development of the state-of-the-art Copyright law particularly in computer software, publications and media.

Introduction

In the context of recent digitalization trends, discussions on copyright have become central to intellectual property disputes. In Türkiye as well, these discussions continue unabated, albeit largely within a theoretical framework.

The greatest debate undoubtedly revolves around whether generative AI models, particularly computer systems capable of processing data such as text, images, and sound to create original content, qualify as works, and copyright ownership of the outputs created via these technologies as well infringement aspects of such creations. In this context, while the United States generally holds that only works created by humans can receive copyright protection, Chinese courts have ruled that works produced with the aid of AI may also be protected if a human element is involved. Moreover, the European Commission's approval of the European Artificial Intelligence Act—the first legal framework to regulate AI usage—underscores the expectation that AI will remain a central topic in copyright law for the foreseeable future.

One of the striking developments in the music industry involving artificial intelligence is the release of the song “Heart on My Sleeve,” created using AI-generated voices of world-renowned singers Drake and The Weeknd, orchestrated by an anonymous individual known as “Ghostwriter.”

As the print media sector rapidly transforms under digital pressures, the European Union's Digital Single Market Copyright Directive aims to ensure fair compensation for online content use and to address emerging disputes over content ownership and copyright infringements linked to AI. In Turkey, efforts to amend existing legislation and advance Digital Copyright Law projects are underway to meet the growing demands of digital and online usage.

In addition, the protection of digital typefaces, the legal dimensions of work titles, and recent developments in online publishing rights continue to be crucial issues in today's fast-paced digital era.

Alongside these modern challenges, traditional debates persist. Last year's high-profile plagiarism controversy between Mine Kırıkkanat and Elif Şafak—which also drew remarks from prominent figures like Zülfü Livaneli—highlighted the ongoing struggle to delineate the boundaries between inspiration and plagiarism in musical works. The creative originality and unique signature of an author, as exemplified by discussions surrounding the film “Selvi Boylum, AI Yazmalım,” remain central to the debate over work protection. Furthermore, while legal regulations exist for protecting work titles, the scope of such protection and the trademark registration of titles illustrate the complex intersection of copyright and trademark law.

The protracted legal battle exemplified by the Karalis case also holds significant importance. Additionally, the shortcomings of the provisions in Law No. 5846 on Intellectual and Artistic Works concerning cinematic works have spurred continued debates over the freedom of quotation in cinema.

This document compiles the key issues that have emerged over the past year in the realm of copyright law

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Artificial Intelligence and Copyright: Challenges and Opportunities



AI technologies and their relationship with Intellectual Property (IP) rights have remained a prominent topic on the global agenda this year, as they were last year. With the increasing presence of generative AI models such as ChatGPT, BERT, LaMDA, and DALL-E2, which are capable of creating original content by processing data like text, images and sound, debates continue over whether the outputs generated by these models qualify as copyrighted works, who owns the rights to them if they do, and potential copyright infringements. In this context, while numerous disputes have been brought before courts worldwide, countries have also initiated legislative efforts to address the legal gaps in this area.

Indeed, the AI Act, prepared by the European Union as the first known legal regulation in this field, entered into force on August 01, 2024, and will become fully applicable on August 02, 2026. Although this Act does not directly address copyrights, it can be said that the

Act in question is a regulation that provides specific, transparent mechanisms for the use of AI technologies, respecting the rights of third parties - including copyright rights- and deterring violations by imposing sanctions.

Moreover, the UK Government published a consultation on December 17, 2024 on changes and clarifications to copyright law to resolve the debate on AI and it will run until February 25, 2025. The consultation outlines the main objective of identifying a balanced approach that both protects rights holders and human creativity, while fostering innovation in the AI sector and ensuring legal certainty for long-term growth. Among the issues discussed are proposals such as the disclosure of work and data used in AI training, transparency regarding web browser details including ownership and purpose, content licensing and the requirement to maintain records to demonstrate compliance with rights reservations. Additionally, the consultation questions whether existing

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32024R1689>

² <https://www.gov.uk/government/consultations/copyright-and-artificial-intelligence/copyright-and-artificial-intelligence>

³ Andersen v. Stability AI <https://copyrightalliance.org/andersen-v-stability-ai-copyright-case/>

⁴ NYT v OpenAI Microsoft <https://www.nytimes.com/2024/03/04/technology/microsoft-ai-copyright-lawsuit.html>

⁵ <https://www.wired.com/story/new-york-times-openai-erased-potential-lawsuit-evidence/>

legal frameworks adequately align with the evolving technology and contemporary needs, particularly in providing copyright protection for computer-generated works.

In addition to the legislative work, disputes and lawsuits regarding AI and copyrights continued to arise in many countries this year.

A group of artists has filed a class action against Stability AI, Midjourney, DeviantArt and Runway AI, claiming that their works were used without permission as training data for AI and/or provided to users as outputs, resulting in violations of their rights, along with allegations of encouraging infringement and unfair enrichment through the system provided to users. Although no decision has been rendered yet on the merits of the dispute, the judge of the case dismissed the other claims of the plaintiffs in the preliminary examination, but decided to continue the proceedings with respect to the allegations of copyright infringement by unauthorized use of the plaintiffs' works as AI training material, obtained from the internet, in respect of the AI model named Stable Diffusion.

The NewYork Times also sued OpenAI and Microsoft for copyright infringement, claiming that its content was provided to users through ChatGPT and Copilot AI search results without authorization. The case discusses whether creating AI models without permission with copyrighted works can be considered fair use. The plaintiff's allegations that the defendant OpenAI has deleted the evidence that forms the basis of the lawsuit from its own

systems raises concerns about the specific challenges these AI systems may pose in judicial processes, collection of evidence and examination of the subject matter of the dispute due to their technical structures.

The attitude that the courts adopt in these cases will be crucial for the development of the related field and will set a precedent for similar cases.

Another decision by the Guangzhou Internet Court in China has also attracted considerable attention. In this case, the court ruled that certain images generated by the AI model based on users' text inputs were substantially similar to the famous Japanese cartoon character "Ultraman". The court found that the AI provider had accessed the original works through an online database and infringed upon the exclusive licensee's reproduction and adaptation rights through the images created as a result of the relevant inputs. The court also ordered the cessation of the infringement and the payment of damages.

While global developments in disputes and legislative efforts are ongoing, many discussions in this field continue within our country. Although we have yet to see any legislative work or court decisions on AI and copyright disputes, it is clear that such developments will become inevitable in the coming years, given the widespread use of these technologies in daily life and the emerging needs they bring.

The Impact of Artificial Intelligence on the Music Industry

One of the most striking developments in the music industry in 2023 was the release of the song "Heart on my Sleeves" by an anonymous user named "Ghostwriter" using the AI-created voices of world-famous singers Drake and the Weeknd. However, the song "Heart on my Sleeves" did not exist in the music market for a long time due to the removal of the song from the relevant platforms after Universal Music filed a notice of intellectual property infringement. Although the song was removed from the relevant platforms upon Universal Music's request, the complexity of the issue has led to much debate as to the copyright implications and basis of the request.



If a similar situation were to occur in Turkey, the provisions of the Law No. 5846 on Intellectual and Artistic Works ("LIAW") would need to be carefully examined. In a hypothetical case where a musical work that has been publicized but has not yet been performed is performed by the use of a voice that does not belong to any real person and is created entirely by artificial intelligence, the right of

representation of the owner of the musical work regulated under Art. 24 of LIAW would likely be infringed the first place among other economic and moral rights of the author. In fact, according to the last paragraph of Art. 24, the right of representation may not be exercised by natural and legal persons without the written authorization of the author or, in case the author is a member of a collecting society, of the collecting society within the framework of the powers specified in the authorization certificate. It should be particularly noted here that Turkish law does not have the compulsory license system that exists in some jurisdictions, such as the United States, which allows a musical work that has been released to the market to be performed as a cover by paying the license fee determined by law without the need to obtain the consent of the author. Therefore, the performance of a musical work that benefits from copyright protection is only possible with the consent of the owner of the musical work or the authorized collecting society. Covering the musical work by artificial intelligence without such consent would constitute the violation of the author's rights. Slightly different from the hypothetical situation above; in the event that the voice of the performing artist who has previously performed the musical work is changed by artificial intelligence but still performed in a way that resembles the voice of the performing artist who performed that song, both the right of representation of the owner of the musical

work regulated in Art. 24 of FSEK in the first place as stated above and the neighboring rights of the performing artist regulated in Art. 80 of FSEK will be violated. Indeed, Art. 80 stipulates that performing artists have the right, independently of their economic rights and even after the transfer of these rights, to demand that they be recognized as the owner of their performances in relation to their identified performances and that their performances be prevented from being distorted in a way that may damage their reputation. Therefore, in this case, in addition to the right of representation of the owner of the musical work under Art. 24 LIAW in the first place, there may also be a violation of the neighboring rights of the performing artist under Art. 80 LIAW.

On the other hand, in a hypothetical situation where a musical work that did not exist before is created by artificial intelligence by using the voices of real people should be evaluated from personality rights perspective. If the voice of a person, which is protected under Articles 23, 24 and 26 of the Turkish Civil Code, is used without authorization, a violation of personality rights may arise. In order for a violation of personality rights to arise, it is not obligatory for the person whose voice is used to be a public figure or a professional singer. However, in the event that the voice of a performing artist who is famous for his/her voice and is recognized as a professional singer is used without his/her permission, in addition to the personality rights protected

under Article 23 et seq. of the Turkish Civil Code, the rights which are referred as “the commercial dimension of personality / asset dimension of personality” in Turkish law that correspond to the terms “right of publicity” in the United States, “passing off” in the United Kingdom, may also be violated. This situation may also create unfair competition which is addressed in Article 84 of LIAW.

As can be seen, the use of artificial intelligence at various levels can lead to copyright infringement in various respects. Countries may need regulation in the face of new developments such as these. For example, in Tennessee, a state known as the music capital of the United States, recently enacted the Ensuring Likeness Voice and Image Security Act, also known as the “ELVIS Act”, prohibiting artificial intelligence from mimicking singers’ voices and is expected to take effect in July 2024. Although this issue is not currently debated in Turkish law, it may be considered to include provisions regulating such effects of artificial intelligence in the digital copyright law, which is on the agenda of the legislator.

Protection of Digital Fonts Under Copyright and Design Law

Digital fonts combine aesthetics and functionality as a key element of modern design and digital communication. A digital font consists of codes that define how it shall appear on screen¹. These codes enable fonts to be created and used in the digital environment. In this scope, whether fonts expressed as computer software can be protected under the umbrella of intellectual property law has been subject of various debates. This article aims to discuss how fonts can be protected in terms of copyright and design law in terms of Law on Intellectual and Artistic Works and the Turkish Industrial Property Law ("IP Code") despite there being no decision on the subject in Turkish law, as yet.

Protection of Digital Fonts under Copyright Law

Fonts can be protected by copyright, especially if the font design is based on a creative process, has the originality characteristics of, and by, the creator and is unique. Article 2 of the Law on Intellectual and Artistic Works clearly states that software is literary and scientific works. In this context, the code blocks constituting the fonts may be considered as a computer programme and may be protected by copyright. In fact, this is the underlying reason for the use of fonts under licence. Although no evaluation has been undertaken so far in Turkish law, an examination of decisions on the protection of fonts before American and Chinese courts are

seen to clearly state that fonts expressed by means of software can be protected in terms of copyright law.

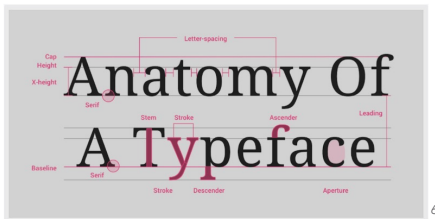
Considerations concerning the protection of digital fonts as software under copyright has been the subject of court decisions in several countries. The case of *Adobe Systems Inc. v. Southern Software Inc.*², brought before the U.S. District Court for the Northern District of California ("U.S. Court"), received worldwide attention in terms of copyrights; the software for using the font titled 'UTOPIA' belonging to Adobe Systems Inc. was copied and used without permission by changing its size dimensions and under the name of 'VERACITY'³. The U.S. Court considered the unauthorised use of the software that creates the font and the changes made to the fonts, and thus the changes made to the specific software, as copyright infringement. The reason stated is that the means by which the font/s are created and enables their use is a software, the creation of this software is unique and should be protected under copyright law.

Similarly, in the case of *Founder Electronics Co Ltd v. Blizzard Entertainment*⁴, the Chinese Supreme Court emphasised that the digital font in dispute is a software and therefore should enjoy copyright protection.

In this context, both U.S. and Chinese courts decisions reveal a common approach: that digital fonts should be considered as software

and should benefit from copyright protection in this context. This shows that there is international awareness on the protection of digital fonts under intellectual property law.

In addition to the classifying digital fonts as literary and scientific works, we are of the opinion that the fonts can also be considered as calligraphic works within the scope of Article 4 of the Law on Intellectual and Artistic Works. This is because calligraphy is a type of art applied to typefaces and aims to use typefaces in an artistic and harmonious manner. To do so, the length of the letters is specially adjusted, the letters are arranged symmetrically and the spaces between the letters are arranged proportionally⁵. For example, in the Serif typeface, i.e. a typeface with small lines or strokes added at the end of larger strokes in each letter and symbol, certain spacing between letters, the height of letters, the lines at the end of letters are important.



Therefore, if a font has a distinct originality and aesthetics in its design, it may benefit from copyright protection as a work of fine art under the Law on Intellectual and Artistic Works. For example, original fonts used in a comic book may be protected under the art of

calligraphy when used both in the text and in the title of the work.

Protection of Digital Fonts under Design Law

In addition to copyright law, fonts may also be protected under design law. According to Article 55/2 of the IP Code, typographic characters (i.e. typefaces used to make them legible and remarkable by using graphic design techniques) may be protected under design law if they are novel and distinctive. Different typographic fonts are shown below as examples. In this way, it is also considered that novel and distinctive fonts can be protected as typographic characters within the framework of Article 55/2 of the IP Code.



To summarise, digital fonts are among the important creations that may be subject to a multifaceted intellectual property protection in terms of copyright and design law. Within the framework of both international court decisions and the general principles of Turkish law, it can be stated that fonts may enjoy copyright and design protection. In today's world, where digitalisation is rapidly advancing, the handling of fonts within the framework of intellectual property protection

is increasingly gaining importance in legal and commercial terms. In this context, we believe that keeping a close eye on developments regarding digital fonts will be an effective guide to the resolution of possible disputes in Türkiye.

¹ Evans, Emily N., Fonts, Typefaces, and IP Protection: Getting to Just Right, School of Law, University of Georgia, Journal of Intellectual Property Law, April 2014, pp. 306-340.

² Adobe Sys., Inc. v. Southern Software Inc, C95-20710, 1998.

³ https://www.naavi.org/cl_editorial_04/copyright_font_case.pdf.

⁴ <https://www.managingip.com/article/2a5bxi588dmdrizkngwlc/how-to-protect-typefaces-and-fonts>

⁵ <https://www.avansas.com/blog/kaligrafi-nedir-nasil-yapilir>.

⁶ <https://www.gamzegenc.com/tr/tipografi-fontlar-ve-kompozisyon/>

⁷ <https://www.gamzegenc.com/tr/tipografi-fontlar-ve-kompozisyon/>

Publishing Rights in Online Use – Recent Developments

Digital technologies continue to influence and transform the printed publication industry, much like their impact in various other sectors. Within this scope, the European Union ("EU") adopted the Directive on Copyright in the Digital Single Market ("the Directive") to improve copyright laws to better address the challenges arising from the complexities brought by the digital environment.



The Directive, as we reported in our articles published in previous years¹, brings improvements regarding the right of content creators to enter into licensing agreements for the online use of their content as well as their right to fair remuneration, and has been the subject of various debates. In fact, EU member states have made the necessary arrangements in their national laws as of the current situation.² However, in the five years since the adoption of the Directive, it has become evident that establishing a uniform perspective and practice across the EU will take time. Additionally, through legislative efforts concerning digital copyright

regulations, countries like Australia³ and Canada⁴ have implemented systems where technology companies can only use content in the online environment by making the required payments to the rights holders.⁵ While legal regulations have been progressing as such, in practice, it has been observed that industry players continue to negotiate with rights holders. As a matter of fact, according to the studies⁶, Google's total advertising revenue from information searches using the content of media publishers is USD 21 billion, and it is estimated that approximately USD 3.8 billion of Meta's advertising revenue in the US is generated through news content on Facebook.

However, these negotiations do not always lead to successful outcomes, and in some countries, companies like Google or Meta may face fines. For example, the French Competition Authority fined Google €250 million for failing to honor commitments it had previously made in relation to press rights. This is the fourth decision in four years on France's national law adopted in 2019 under the Directive, which aims to ensure a balanced sharing of value between the press industry and digital platforms, with total fines totaling around €750 million.⁷

While there is not yet a common understanding of how the Directive is to be applied, there are pending cases before the Court of Justice of the European Union concerning the interpretation of the Directive. Notable among these cases are ONB and

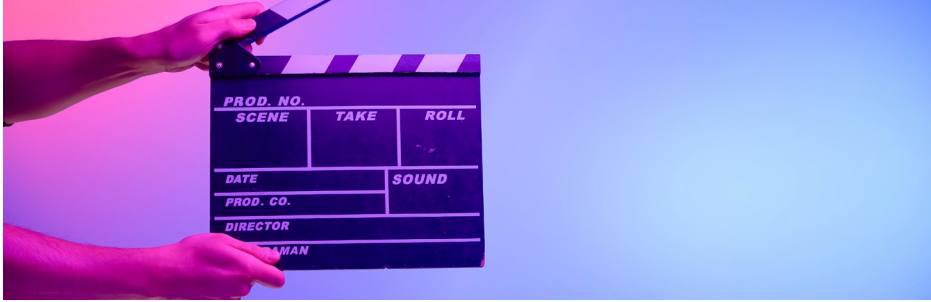
On the other hand, advancements in the field of artificial intelligence (“AI”) also bring along new disputes regarding content ownership and copyrights in the interactions between news agencies, journalists, and AI companies. Indeed, the data employed to train AI algorithms often encompasses substantial amounts of text, news, and content, leading to ongoing disputes over copyright issues related to this content. For instance, The New York Times filed a court action against OpenAI and Microsoft, alleging unauthorized use of their content and asserting violations of their copyrights.¹¹ Despite arguments from the AI companies that the data used for training the algorithm should fall under fair use, the final determination on such matters will be shaped by court decisions in these cases.

work on a draft law addressing copyrights related to the use of publishers' content on digital platforms under the Digital Copyright Law is progressing swiftly.¹²

The Turkish Grand National Assembly Commission on Digital Media ("Commission") states that discussions on the "Digital Copyright Law" are ongoing with the General Directorate of Copyright of the Ministry of Culture and Tourism, the Turkish Grand National Assembly, Anadolu Agency and other stakeholders. Indeed, over the past year, the Commission has also held meetings with Google officials and discussed the digital copyright agenda together.¹³ The Chairman of the Commission states¹⁴ that the preparations for the draft legislation have been completed and the issue is ready to be brought to the parliamentary agenda, indicating that concrete steps will be taken in terms of the relevant law.

¹⁴ <https://www.cnnurk.com/video/turkiye/dijital-telif-yasasi-yenilenecak-mi-2107403>

Protection of Work Titles



Work titles, as signs that distinguish one work from others, may also be protected independently of the work itself. Article 83 of the Law No. 5846 on Intellectual and Artistic Works ("LIAW") provides a general framework for this protection. Although it is stated in judicial decisions that the name of the work, although it is not a work in itself, will benefit from copyright protection as a part of the work only if it emerges as an effort that makes the work effective by integrating with the work and carries the characteristics of its owner; even if this is not the case, it is underlined that in cases where confusion is created against the work title, a separate protection will be activated according to the provisions of unfair competition in accordance with the first paragraph of Article 83 of the LIAW.

The first two paragraphs of Article 83 titled "Titles and Signs" of LIAW reads as follows: *"The titles and signs of a work and the shapes of the reproduced copies may not be used in another work or in its reproduced copies in a way that may cause confusion. The provision of paragraph 1 shall not apply to names, signs and external shapes that are in the public domain and do not have a distinctive characteristic."*

In this context, it is understood that the relevant unfair competition protection can only be in question in terms of work names that are not commonplace and have a distinctive character, in other words, unfair competition protection cannot be in question in terms of phrases / signs that are available to everyone, ordinary, with low-distinctive character.

As a matter of fact, the court decisions also discuss this issue in detail and evaluate the distinctive character of the work titles each time by considering the very circumstances of each case.

For example, in a recent decision of the 11th Civil Chamber of the Court of Cassation (CoC) dated 11.09.2024 and numbered E. 2023/3879 K. 2024/6251, in the case where the plaintiff, who is a songwriter and composer, claimed that the plaintiff started to use the work title "Aşk Sana Benzer/Love Resembles You" with his album published in 2008 and identified it with himself; that the defendant had obtained unfair registration with the same phrase and that the defendant's use of the same title for a movie with a 2015 release date constituted unfair competition and infringement of copyright, the court evaluated that the

expression “Aşk Sana Benzer” is one of the names that everyone uses and does not have a distinctive feature, and that it does not cause unfair competition and that the lawsuit should be dismissed. Within the scope of paragraph 2 of Article 83 of LIAW, considering that the expression “Aşk Sana Benzer” is one of the names used by everyone and does not have a distinctive characteristic, the court evaluated that it does not lead to unfair competition and the lawsuit should be dismissed and the relevant decision was upheld by the CoC.

In the same vein, within the scope of the decision of the 16th Civil Chamber of the Istanbul Regional Court of Appeals (RcA) No. E. 2017/2449 K. 2019/2091, dated 11.10.2019, in the lawsuit filed by the plaintiff against the defendant's use of the title as a book name based on its registered trademarks and the rights to the series it produced, on the grounds of trademark and copyright infringement as well as unfair competition, the expert reports concluded that the name “Diriliş/Resurrection” is used as a book title by many local and foreign authors, and that this title is neither original nor distinctive in the sense of Article 83 of LIAW, and therefore not eligible for the protection provided therein.

On the other hand, in the dispute subject to the decision of the 11th Civil Chamber of the CoC, numbered E. 2022/4102 K. 2024/204 and dated 11.01.2024, the plaintiff stated that his poem titled ‘Kuzeyin Oğlu/Son of the North’ was published in his book in 1983, and that the

defendant began using the relevant phrase as a pseudonym on stages and TV shows, clearly based on the plaintiff's poem. Although the phrase was initially evaluated as anonymous at the first instance stage, according to the evidence presented at the appeal stage, the RcA concluded that the phrase was first mentioned in the plaintiff's poem, that the plaintiff had rights arising from ownership of the work due to the phrase being an original name with distinctive character, but that the plaintiff had lost these rights by remaining silent for a period of 6 years regarding the defendant's use and registration. As a result, the case was dismissed, and this assessment was upheld by the CoC. Unlike other decisions, even if it is concluded that the relevant phrase has a distinctive character, it should be emphasized that protection is not granted as a “work title” under the scope of LIAW 83/2, but rather because the relevant phrase is considered capable of being protected as a work itself.

In this context, a work title, without prejudice to the cases where it is protected within the scope of copyright protection, can only be protected under LIAW 83/2 pursuant to the provisions on unfair competition. Considering judicial decisions and relevant legal regulations, it would not be incorrect to state that, in order to benefit from this unfair competition protection, the relevant title must possess a level of distinctiveness that exceeds the ordinary level.

¹ Similar to the evaluations made in the decisions discussed so far, in its decision numbered E. 2017/351, K. 2018/320, dated 11.09.2018, the Istanbul 1st Intellectual Property Court addressed a dispute arising from the use of the title of the plaintiff's documentary, for which the plaintiff is the registered trademark owner, as the title of the defendant's theater play. The court concluded that the relevant phrase, which carries the characteristics of the famous mystic, poet, and philosopher Yunus Emre, is a well-known and widely used phrase that has shaped societal culture. In this context, it was evaluated that its distinctiveness as a trademark is weak, and thus its scope of protection should be interpreted more narrowly.

An Evaluation on the Trademark Registration of Work Titles

Article 83 of Law No. 5846 on Intellectual and Artistic Works ("LIAW") stipulates that the names of works can be protected independently of the works themselves under the provisions on unfair competition. Our assessment of this protection is discussed in our article, 'Protection of Work Titles'

An important aspect of work title protection is their registration as trademarks. In practice, it is common for elements of cinematographic works, such as characters and locations, as well as literary works like novels, stories, and poems, and even song or composition titles, to be registered as trademarks. This benefits both the trademark owner and other commercial entities through licensing agreements, while also allowing consumers to experience the work in various forms. For instance, characters from popular animated films are often used in commercial products like toys, clothing, stationery, textiles, magazines, and other printed materials. In such cases, registering the work title for merchandise, as well as magazines and printed materials, provides a significant advantage in the production and marketing of these licensed products.

However, the registration of the work title as a trademark does not provide direct legal protection to the work itself or its elements. For example, even if the name of a song is registered as a trademark, the use of this name in another song by a different artist may not infringe on the originality of the work. Therefore, when the work title is registered as a trademark, it only offers protection within

the scope of Trademark Law, and at this point, understanding the concept of 'trademark use' becomes essential.

This debate becomes particularly significant when the work title is registered under 'film, television, and radio program production services' in Class 41 and 'motion pictures, series, and video music clips recorded on optical and electronic media' in Class 09. This is because the service type in Class 41 primarily refers to the production service itself. In this context, trademark use may only be considered if the work title is used in connection with the name of a production company or related production activities. Similarly, regarding the category of goods in Class 09, the registered trademark protects not the content of the work but the physical product recorded on optical and electronic media itself. Therefore, in our opinion, the protection of the work title as a trademark would not constitute trademark use in this case either.

In the disputes before the courts, the issue of whether the use of a work name can be considered as trademark use is evaluated separately according to the circumstances of the case.

For example, within the scope of the decision of the 16th Civil Chamber of the Istanbul Regional



Court of Appeals (RcA) No. E. 2017/2449 K. 2019/2091, dated 11.10.2019, the use of the name “Diriliş/Resurrection” was assessed in this regard within the lawsuit filed by the plaintiff against the defendant’s use of the title as a book name based on its registered trademarks and the rights to the series it produced, on the grounds of trademark and copyright infringement as well as unfair competition. In the relevant dispute, the Court clearly stated that although the plaintiff’s trademarks are registered in Class 41 under “book, magazine, printing, and publishing services,” the term “Resurrection” does not constitute trademark use that distinguishes the book commodity it appears on from other entrepreneurs’ books and publishing services. The Court also clarified that the defendant did not use the term in a way that could be associated with a particular good or service as a trademark.

Similarly, in the decision of the 11th Civil Chamber of the Court of Cassation (CoC) dated 18.04.2017, numbered E. 2015/14472 K. 2017/2229, a lawsuit was filed to annul the Turkish Patent and Trademark Office’s rejection of the plaintiff’s objections to the defendant’s trademark application for the title of a book published by the plaintiff between 2009 and 2014. The plaintiff claimed to be the first to use the relevant phrase and the owner of the sign under copyright and industrial property rights. However, the Court concluded that the plaintiff’s use could not be considered

as “trademark use” under Classes 16 and 41 for goods and services. The work belonged to a different author, and the plaintiff failed to provide evidence of holding the material rights or the authorization to use the work. Even if the plaintiff were the owner of the material rights, the defendant’s use was not considered an infringement of rights related to processing, reproduction, or distribution as the Court dismissed the case, noting that the phrase had been used as the title of hundreds of works, was an anecdote, and was widely used. As a result, it could not be considered original or distinctive, and unfair competition protection was not applicable. The decision was upheld by the CoC.

In our opinion, this is a natural consequence of the function of trademark protection, which, among other things, aims to distinguish the goods/services of one undertaking from those of others, allowing the average consumer to recognize the source of the relevant goods/services and thus differentiate them from other offerings. Trademark protection, by its very nature, requires the existence of use specific to a particular good/service. In contrast, copyright protection primarily seeks to safeguard and reward the creative activity of the human mind, encouraging further creativity. As such, creations that are embodied, reflect the personality of the creator, and fall within the categories specified in the LIAW are protected as works. Unlike trademark protection, these works do

not need to be specific to a certain good/service. In this context, although there may be situations where both types of protection coexist in a single case, the difference between their purposes and functions becomes clearly evident. The use of a title as a work and as a trademark can thus be distinguished from one another.

¹ For all of the statements, see: <http://okumakijigilir.com/yazarlar-mine-kirikkanat-ve-elif-safak-arasinda-hicbir-benzerlik-yoktur/>

Creative Signatures: How a Work Reflects Its Author's Unique Characteristics

The Law on Intellectual and Artistic Works ("LIAW"), which has been amended many times since its entry into force in 1952, still causes uncertainty and confusion in practice. The 2022 decision of the Court of Cassation¹ and the recent decision of the 16th Civil Chamber of the Istanbul Regional Court of Appeals² have been a very guiding and clarifying decision in terms of examining the signs of the work, which are controversial in practice, and the amendments made to LIAW, especially with regard to cinematographic works, and the issue of the works bearing the characteristics of the owner.

The lawsuit subject to the decision was filed by the screenwriter of the 1977 film "*Selvi Boylum, Al Yazmalım*", where the plaintiff filed the court action based on violation of his rights arising from the copyright on the screenplay and unfair competition due to the use of the slogan "*Sevgi Emektir*" ("Love is Labor") in the screenplay of the film, which was inspired by the work named "Red Scarf" and created as an independent adaptation, in the commercial of the defendant without any permission or approval from the plaintiff. The defendant based his defense on the fact that the screenplay of the film "*Selvi Boylum, Al Yazmalım*" was not entirely original since it was inspired by Aytmatov's story "*Selvi Boylum*" and that all rights on the film belonged to the producer since the film was made before 1995, and that the rights to use the work were duly purchased from the persons holding the financial rights.

The Court of First Instance ruled that since the movie subject to the lawsuit was made before 1995, the first version of Article 8 of the LIAW³ will be taken into consideration and accordingly, the producer who produced the movie will be deemed as the author, and the plaintiff will not have a financial right in the works in question, since the script and the movie were created before 12.06.1995. In addition, the Court considered that the screenplay was adapted from Aytmatov's novel and that the only part where the plaintiff could claim a right on the screenplay was the plaintiff's contribution to the screenplay in terms of characteristics. In this context, the Court decided to reject the plaintiff's claims for damages on the grounds that the defendant obtained written permission from the producer company, which is the author, to use the images of the film in the commercial, and that the financial rights were transferred to the defendant in accordance with the law as per the document in the file relating to the transfer of the rights.

The Regional Court of Appeal ruled in the same direction and stated that the first version of Article 8 of the LIAW should be taken into consideration in accordance with the explicit provision of Additional Article 2 of the LIAW⁴ and argued that the plaintiff cannot claim a right arising from the LIAW as a screenwriter in terms of cinematographic works. However, although the Court stated in the expert reports that the phrase "Love is Labor" was identified with the film as it was

the motto of the film and should be protected as a work, the Court stated that this phrase became impressive with the other elements in the scene and the talents of the performing artists and concluded that the expression did not bear the characteristics of the plaintiff and is used by everyone in the society. The Court rejected the appeal of the plaintiff's attorney since the plaintiff could not make a claim based on the rights arising from the script in accordance with Additional Article 2 of the LIAW and the plaintiff did not have a copyright on the expression "Love is Labor" separate from the script, thus the Regional Court of Appeal ruled that the decision of the Court of First Instance to dismiss the case was appropriate since it was also determined that the plaintiff had transferred all his financial rights.

Within the scope of its decision, the Court of Cassation clarified the discussions regarding the plaintiff's right ownership as a screenwriter and although it accepted that the producer is the author of the cinematographic works created before the amendment made by the Law dated 1995, it emphasized that this provision is not applicable in the concrete case, since the owners of the screenplay works are considered as authors both before and after the amendment. In this context, the reasoning of both the Local Court and the Regional Court of Appeal that the plaintiff cannot assert his rights arising from the screenplay he wrote as an adaptation was found incorrect.

Subsequently, the Supreme Court held that although there is no dispute that a contract was concluded between the film producer and the screenwriter for the production of the relevant film and the use of the screenplay, considering that the term of protection of a film shot in 1978 is 20 years from the date of publicity under the FSEK, this contract cannot cover the later period and that the screenwriter transferred his financial rights to the producers for a maximum of 20 years. Which rights were covered by the agreement signed in 1978 regarding the production of the movie and the use of the screenplay was discussed as well. Pursuant to Article 52 of LIAW, the transfer of a financial right shall not be valid unless it is shown separately and in writing. Therefore, in the concrete case, it has been correctly determined that the signed agreement is valid only for the use of the screenplay in cinema screenings, and that the defendant has not obtained a written permission for the use of the screenplay in a commercial.

Finally, the Supreme Court analyzed the most controversial point in the dispute, which is the **issue of originality**, it has been stated that in order for the work to reflect the characteristics of the author, originality is not sought in each element or sentence of the work, it is sufficient that the impression created by the combination of these elements as a whole is original, and in terms of the concrete case, it has been accepted that the display of the phrase "Love is Labor" by presenting excerpts

from the film evokes the elements of the scenario work as well as the cinematographic work.

As a result, it was not deemed correct by the Regional Court of Appeal to rescind the decision of the Local Court and to dismiss the case on different grounds, and the judgment was reversed in favor of the plaintiff since although there is no dispute that the plaintiff is the author of the work on the scenario, it is necessary to evaluate whether the phrase "Love is Labor" is a work or at least a "distinctive sign of the work" pursuant to Article 83/1 of LIAW and whether the unauthorized quotation made accordingly requires compensation protection pursuant to Article 68 of LIAW based on the rules of infringement or unfair competition.

Following this, the case was remanded to the 16th Civil Chamber of the Regional Court of Appeal, where the plaintiff's attorney requested compliance with the Court of Cassation's reversal order, while the defendant's attorney argued for upholding the previous decision. In its decision dated April 5, 2023, the Chamber finally decided to comply with the Court of Cassation's reversal order.

In this context, the Regional Court of Appeal, referencing the expert report in the appeal file, noted that the phrase "Love is Labor", which serves as the motto of the film "Selvi Boylum Al Yazmalım", was not directly included in

the commercial but instead appeared in the phrase "then you can explain that love is labor." The court also acknowledged that this motto held impact through the contributions of the film's actors, director, and composer. On the other hand, the court recognized that the commercial contained scenes reminiscent of the film and this motto, incorporated key moments and dialogue, which effectively evoked the emotional essence of the screenplay. As a result, the court definitively ruled in favor of the plaintiff, finding a violation of their financial and moral rights as the screenplay's author and awarding compensation.

In reviewing the case, the Regional Court of Appeal did not establish whether the phrase "Love is Labor" alone could be considered a distinct, protectable work bearing the characteristics of its author or a distinctive sign of the work. Rather, after evaluating the defendant's commercial as a whole, the court concluded that it was intended to evoke the plaintiff's script, thereby constituting violation of its rights. Indeed, determining whether a brief motto qualifies as an independent work requires assessing the extent to which the larger work contributes to its distinctiveness. In cases where such phrases or slogans are discussed, it is important to note that, under Article 83/2 of the LIAW, protection is not granted for commonly used names and expressions lacking distinctive character. In line with the final decision of the Regional Court of Appeal, it can be concluded that

a phrase like “Love is Labor” would be difficult to protect in isolation, without the accompanying script and other defining elements of the cinematic work.

You can find more details on the conditions for protecting the names and signs of a work in the article titled “**Protection of the Names of Works**” by Atty. Hande Hançar Koç and Atty. Havva Yıldız.

¹ Court of Cassation General Assembly of Civil Chambers decision numbered E. 2020/350 K. 2022/1638 and dated 01.12.2022.

Bit Palas vs. Sinek Sarayı: A Debate on Plagiarism in Creative Works

"Plagiarism" is not clearly defined in Law No. 5846 on Intellectual and Artistic Works ("LIAW"). Plagiarism, which is defined by the Turkish Language Association as "pilferage," is used in the context of intellectual and artistic works law to mean *"to present someone else's work as your own, taking a piece from someone else's work without citing the source."*

use of someone else's work is plagiarism or inspiration should be investigated separately for each concrete case. When evaluating plagiarism between two works, it is necessary to evaluate the works as a whole and evaluate whether the author's original expression, which adds originality to work, is used without permission for each concrete case.



While there is no definition for plagiarism under LIAW, instances of *"freedom of quotation"* are clearly defined under Article 35. In this context, it is theoretically possible to say that any unauthorized use of someone else's work that exceeds the freedom of citation as plagiarism, this definition does not always lead to correct results in practice. This is because *"inspiration"* is free within the scope of intellectual and artistic works law, the evaluation of whether a work's unfair

In light of this information, a recent plagiarism decision rendered by the Anatolian Intellectual and Industrial Property Rights Court in the case brought by Mine Kırıkkanat against Elif Şafak has sparked significant controversy and discussion in both literary and legal circles.

In the lawsuit, Kırıkkanat alleged that the content of Şafak's work *"Bit Palas"* (2002) was plagiarized from her work *"Sinek Sarayı"* (1990), and the Court, after determining that

Kırıkkanat's rights arising from ownership of the work were infringed upon, ordered the prevention of infringement, and awarded both material and moral compensation in favor of the plaintiff. In response to the verdict, Elif Şafak announced her intention to appeal the decision as well as filing a lawsuit for material and moral compensation against Mine Kırıkkanat.

Despite the report underlying the judgment stating that *"there is no copying of any part or page and paragraph of the plaintiff's book by the defendant, in other words, there is no sentence-by-sentence or page-by-page quotation,"* it is noted that certain concepts were found to be similar, leading to a conclusion of "5% plagiarism." However, upon examination of the prominent concepts and keywords in the report, it is observed that they consist of facts such as the presence of characters engaged in architecture in both works, the portrayal of minorities in a positive light while addressing religions and beliefs, the adorned motif of the apartment in both books with bird motifs, the architectural texture of constructions and their detrimental effect on the past, the presence of a janitorial residence consisting of a father, mother, and son in both books, the inclusion of physically disabled characters, the depiction of transvestite or homosexual characters, the use of famous street names in Beyoğlu, the inclusion of garbage, foul odors, and the use of cigars as harmful habits in environmental descriptions, the portrayal of terrorism

incidents, and the negative emotional states of the main characters.

The discussion arises as to whether these concepts, considering the realities of Turkey and particularly Istanbul, are sufficient to establish the existence of plagiarism. Indeed, not every similarity leads to plagiarism; the presence of plagiarism requires the identification of a similarity that surpasses mere ordinary ideas and coincidentally transcends the elements of the work that bear the characteristics of its author.

The report by the experts evokes the methodology used by plagiarism checker tools to determine whether there is plagiarism in a text, rather than a comparison of two literary works. In such tools, a scan is conducted based on the words and sentences used in the text, and a comparison report is prepared accordingly. However, especially in terms of works such as scenarios and stories, the author's original idea, for instance, about the characters or the plot etc., created by the author may not have been expressed with precisely the exact words. For this reason, comparing the texts in determining the existence of plagiarism will not give the correct result.

The aforementioned observations in the report have raised concerns, especially regarding the selection of experts in cases related to intellectual property rights. For example, in a statement published on the website of the

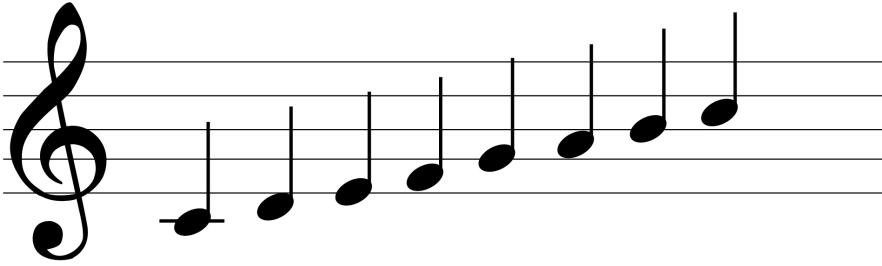
defendant publisher, Doğan Kitap, it was pointed out that the person who prepared the aforementioned report was “someone who writes and publishes non-literary, test books”, and their selection as an expert by the Court despite this was argued to have contributed to the deficiencies in the report that formed the basis of the final judgment.

In the opinions submitted by many authors and presented to the court by the defendants, authors argued that upon examining both works, similarities between the works could not go beyond ordinary inspirations. Among these authors, Gaye Boralıoğlu emphasized that although both works are set in Beyoğlu, Kırkkanat primarily highlights the local characteristics of Beyoğlu, draws the district’s picture through characters, and this leads to a distinction between the books due to the impressionistic-realistic narrative style. Writer İsmail Güzelsoy, in his examination, stated, *“There is neither a commonality nor any resemblance in any of the components of the novel such as character schema, setting, plot, narrative style, narrative flow, conflict characteristic, time frame, or dramatic depth that would indicate plagiarism from one work to another.”*

The common denominator in these statements is the authors’ justified concerns that the existence of thematic similarities between two works may lead to an incorrect assertion that a work is not original, particularly if there are no linguistic, structural, or formal

similarities. Indeed, the broad interpretation of the concept of plagiarism by courts in cases based on intellectual property rights may suppress the production of creative works and encourage the use of plagiarism lawsuits as a leverage in essentially personal disputes. This situation is significant both legally and culturally, as it may hinder the recognition of the rights of truly injured intellectual property owners by the courts or the public.

“7 Notes” and the Dilemma of Originality: The Limits of Plagiarism and Inspiration in Musical Works



Although “plagiarism” is not defined under Law No. 5846 on Intellectual and Artistic Works (“LIAW”) it is widely accepted in Turkish law as the act of using and appropriating the intellectual or artistic work of another without the permission of the owner. Similarly, “inspiration”, which does not have a clear definition or criteria in the LIAW systematic, means the creation of a new and original work by being influenced by another work. While drawing inspiration from existing works is typically seen as permissible under copyright law, the lack of clear, objective criteria distinguishing inspiration from plagiarism often leads to uncertainty and debate.

The boundaries between plagiarism and inspiration are even more blurred when it comes to musical works. Evaluating similarities in musical works may necessitate a more flexible and art-focused approach compared to literary works. This is largely due to the unique creative process behind musical composition and the inherent need for reliance on inspiration from existing works. More significantly, music often incorporates

universal elements such as shared tempo, meter, melody, and rhythmic patterns.

This understanding is present in the decision of the 11th Civil Chamber of the Court of Cassation dated November 1, 2017, and numbered E. 2016/3508 K. 2017/5950, which stated that *“In composing a musical work, it is not necessary to invent an entirely new musical genre or a melody that has never been created before. Drawing inspiration from and being influenced by existing works is acceptable, as long as the resulting work does not constitute plagiarism or imitation...”*

In order to determine whether a musical work has been created through plagiarism rather than inspiration, it is essential to conduct a detailed analysis of its melodic, rhythmic, and harmonic elements and to assess whether the observed similarities are coincidental.

Is it truly the case, as Kirby Ferguson suggests, that every work is a ‘remix’ of another, as per his statement dedicated to various fields of art?¹ Is the question posed

by another famous artist about how many different compositions can be made with the seven existing notes also a legally valid question?

The recent decision in *Structured Asset Sales, LLC v. Sheeran*, upheld by the United States Court of Appeals for the Second Circuit has made quite a stir in terms of the music industry and assessment of plagiarism. In its ruling on November 1, 2024, the Federal Court addressed allegations that Ed Sheeran's song *Thinking Out Loud* infringed the copyrights of *Structured Asset Sales*, based on claims that the chord progression and harmonic rhythms in the song were substantially similar to those in Marvin Gaye's *Let's Get It On*. In its decision, the Federal Court noted that the chord progression in the plaintiff's song is a simple, four-chord sequence, and the harmonic rhythm represents a basic *syncopation*² technique. The Federal Court affirmed the District Court's ruling that these elements, when considered in isolation, are not copyrightable. It further held that the combination of these elements was too common to meet the originality threshold required by law, as similar patterns had been used in numerous works both before and after the two songs in question, ultimately concluding that no copyright infringement had occurred.

It is noteworthy that the decision of the US Court of Appeals for the Second Circuit in

Gaste v. Kaiserman, which is cited in the judgment, echoes similar sentiments to the famous singer's 'seven-note lament': "[In assessing the evidence], we are mindful of the limited number of notes and chords available to composers and the resulting fact that common themes frequently reappear in various compositions, especially in popular music".

The decisions rendered by Turkish courts are also of a similar nature, and in two recent rulings, similar principles have been evaluated.

Within the scope of the decision of the 16th Civil Chamber of the Istanbul Regional Court of Appeals dated December 1, 2021 and numbered E. 2019/375 K. 2021/2035, the expert reports submitted to the file by two different panels were examined, and the First Instance Court's ruling, which determined that the similarity between the two musical works did not constitute plagiarism but rather fell within the scope of inspiration, similar to other works in the market, was upheld.

In this case, the additional report from the first expert panel analyzed the works both through listening and by examining the musical and lyrical elements separately. It was noted that the 'intro' sections of the works were different, and therefore, the main comparison was made on the remaining parts of the songs, where a similarity of 48% was found. While this percentage does not

reflect the overall similarity between the two works, it was deemed a notable figure considering the production processes. In this regard, the experts acknowledged that the varying distribution of similarity between the melodies, according to specific measures, reduces the likelihood of a systematic and deliberate act of plagiarism. However, taking into account the similarities in the relevant section, they concluded that at least the plaintiff's composition had been used without permission to create the work.

Within the scope of the report received from the second expert panel, it was noted that the common musical phrase, which was described in the previous report as "largely similar with minor rhythmic and melodic differences", was only four measures long, and thus was not sufficient to bear the characteristics of its author or elements of uniqueness. It was also noted that this musical phrase did not appear in the chorus, which constitutes the identity of the work. Finally, it was stated that the fact that many similar musical phrases had been published previously in the music industry and presented to the public meant these musical phrases could not be considered original. Based on these findings, it was concluded that there was no similarity between the works to the extent of plagiarism.

Again, in the decision of the 16th Civil Chamber of the Istanbul Regional Court of Appeals, dated May 30, 2024, and numbered

E. 2022/1859 K. 2024/1045, the appellant's request for appeal was reviewed. The First Instance Court had rejected the plaintiff's case on the grounds that the works in question and the reasons provided were fundamentally different, and that the small details showing similarities between them were derived from the stereotypical, anonymous elements commonly used in Turkish folk music.

The Regional Court of Appeals, referring to the expert reports obtained in the case, stated that the similarity between the defendant's work and the plaintiff's work was limited to the two-measure section of the instrumental part and the last two beats of the measures that form the chorus of the lyrical sections (i.e., half of the mentioned measures). It was concluded that the main reason for the similarity between the works stemmed from the shared sequence, meter, tempo, instrumentation choices, and the use of characteristic and regional musical elements of the 'Kaşık' folk dance performed in the Nikriz scale of Turkish Folk Music. The common 'Haydaa' exclamation was also identified as a widely used anonymous call in such dances. Considering the use of these stereotypical melodies in other works within and beyond the field of Turkish Folk Music, the court concluded that the defendant's work was not created as a form of plagiarism from the plaintiff's work.

When all these judicial decisions are examined, it is seen that both in our country

and in other countries, a very high level of similarity in melodic, rhythmic, maqam, harmonic issues and its distribution to the whole song are sought in order to decide that there is plagiarism. Additionally, elements that could be common in works across various music genres, such as “anonymous” elements, are differentiated.

In our opinion, it is crucial to maintain a high threshold of similarity and originality high in plagiarism investigations regarding musical works. Otherwise, a contrary attitude could make it difficult for new works to reach listeners. In these types of cases, courts adopting a more flexible perspective would, in our view, support musicians in freely utilizing common rhythmic structures or melodic patterns, thereby encouraging their creativity and the production of original works. However, this should certainly not mean allowing the exploitation of another artist's creative labor, beyond mere inspiration. At this point, it is of utmost importance that the legal analysis is based on sensitive and scientific grounds.

¹ Ferguson, Kirby, “Everything is a Remix.” TED, https://www.ted.com/speakers/kirby_ferguson.

² “A temporary displacement of the regular metrical accent in music caused typically by stressing the weak beat.” Merriam-Webster. “Syncopation” Merriam-Webster.com Dictionary.

³ Gaste v. Kaiserman, 863 F.2d 1061, 1068 (2nd District 1988).

The Karalis Case: A 20-Year Legal Odyssey

More than 20 years of copyright litigation has finally ended in favor of Yannis Karalis a Greek composer and lyricist. While the dispute has made a lot of noise with the inclusion of prominent names in the music industry among the defendants, it also draws attention to the problematic points in the judicial system in terms of the length of the trial process.

As [discussed in our previous](#) article, in the context of the relevant dispute, Yannis Karalis (the Claimant) filed an infringement action in 2003, stating that his song “Eclipse”, released in 1997, was used without authorization by the famous Turkish singer and lyricist Sezen Aksu and other lyricists and production companies (“Defendants”) within the scope of the work entitled “Adı Bende Saklı” and that such use constituted infringement of his copyright. The Musical Work Owner’s Society of Türkiye (“MESAM”) was also informed and involved in the lawsuit. The claims in the lawsuit consist of the injunction against the continuing infringing acts of defendants, and also for material and moral damages in the amount of € 60.000 and € 900.000, respectively. The plaintiff additionally requested the payment of a specific amount, which is calculated as 3 times of the amount that could have been demanded if he had been granted the right by a contract, according to Article 68 of Law on Intellectual and Artistic Works No. 5846 (“LIAW”).

The First Instance Court partially accepted the plaintiff’s case by ordering the payment of € 10.000 in material, and € 5.000 in moral

damages. Upon the appeal of the relevant decision by both parties, the Court of Cassation (“CoC”) examined the file and reversed the decision, stating that the amount claimed under Article 68 of the LIAW was not taken into consideration and that moral damages should be determined in domestic currency in accordance with the provisions of the Turkish Code of Obligations No. 818 (“TCO”), unless otherwise agreed by the parties.

The First Instance Court complied with this reversal decision and decided *“Plaintiff’s compensation claim as to Article 68 of the Law shall be accepted and 10.000 € shall be paid to compensate the plaintiff’s material damages in this direction (...) by taking into account the reversal decision it has also been decided that the defendants shall pay TRY 15.000 for the plaintiff’s moral damages since the TCO requires this payment to be made in local currency.”* as a result of the retrial.

Upon the appeal of the relevant decision by the parties, the decision of the First Instance Court was upheld by the decision of the 11th Civil Chamber of the CoC numbered 2021/6063 M. 2023/1453 D. and dated March 9, 2023. With the rejection of the parties’ requests for correction of the decision, the decision of the First Instance Court became final only after almost 20 years since the beginning of the dispute.

Although “infringement of copyright” has been established and compensation has

been awarded as a result of the relevant proceedings, there are issues that need to be discussed in the file in terms of both the proceedings and the calculation of compensation.

In our opinion, it was not appropriate for the First Instance Court to interpret the CoC's reversal decision by including the amount of material damages within Article 68 of LIAW. As a matter of fact, these two are different from each other and are separate remedies granted to the copyright owner. Moreover, although the reversal decision states that the moral damages should be determined only in local currency, it is not clear how the court reduced the initial award of € 5.000 to TRY 15.000. The case was finalized without any of these substantive objections being resolved in the relevant legal remedy proceedings.

An individual application has been made to the Constitutional Court on behalf of the plaintiff on the grounds of violation of the right to a fair trial and violation of the right to property within the scope of infringement of intellectual property rights, taking into account the much longer than normal trial process and the existence of substantial deficiencies regarding the calculation of compensation, and the outcome of this process is awaited.

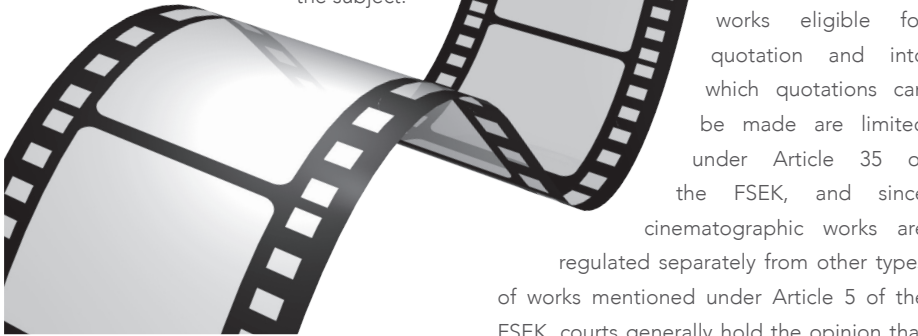
Despite the lengthy proceedings, the case is significant in terms of the determination of infringement and the award of material and moral damages against the leading actors in the music industry in Türkiye, and will

encourage actors in the music industry, and especially foreign authors, to pursue their rights in Türkiye.

**Heartfelt thanks to our colleague, Att. Zeynep Berfin Ekinci, for her contributions and research in the process.*

Freedom of Quotation in Cinema Works

With respect to lawsuits filed in the scope of Law No. 5846 on Intellectual and Artistic Works ("FSEK") No. 5846, an important standard in terms of plagiarism is the limits of freedom of quotation. According to Article 35 of the FSEK, in order to make a quotation from a work, it is necessary to; (i) incorporate some sentences and paragraphs of a work made public, into another work of science and literature, (ii) incorporate certain elements of a published composition, at the most of such as themes, motifs, passages, and ideas, into an independent musical work, (iii) insert works of fine art that have been made public and other published works into a scientific work for the purpose of explaining its contents and to the extent justified by such purpose; or (iv) display works of fine art that have been made public in scientific conferences or lectures by means of projection and similar methods to explain the subject.



Although quotation is permitted in the aforementioned cases, it is also stated in the law that it must be done in a specified manner. In the case of scientific works, the name of the quoted work and its author, as

well as the place where the quoted part was taken, should be indicated.

The fact that the mentioned article of the law refers solely to works of science and literature expressed in language and writing, physical works of fine art, and musical works has led to debates on the limits of the freedom of quotation in terms of

cinematographic works. Since works eligible for quotation and into which quotations can be made are limited under Article 35 of the FSEK, and since cinematographic works are regulated separately from other types of works mentioned under Article 5 of the FSEK, courts generally hold the opinion that cinematographic works are not among the works eligible for quotation, mainly because it is not explicitly regulated in the law.

In this regard, the 11th Civil Chamber of the Court of Cassation stated in its decision dated

25.9.2018 with the number E. 2016/14735 K. 2018/5691 that *“Although it is possible to make a quotation without permission from the author from legally published works of science and literature, music, or fine arts within reasonable limits and subject to citation rules under Article 35 of Law No. 5846, it is understood that the work subject to quotation in the specific case is a cinematographic work, as indicated in Article 5 of the FSEK, which defines cinematographic works as an independent type of work, and therefore not eligible for quotation.”*

However, there are also opinions in the legal doctrine that, since the third subparagraph of Article 35 of FSEK stipulates that publicized works of fine arts and other published works may be quoted to a scientific work within a proportion justified by the purpose and in order to illuminate its content, if a cinematographic work has a scientific character, for example, if it is a scientific documentary, it is possible to quote other works to the cinematographic work in question. In the mentioned opinion, it is argued that the entertainment purpose of the cinematographic work should not outweigh its scientific nature. Although it is argued within the scope of this opinion that it is possible to make quotations from cinematographic works due to the mention of publicized works in the first paragraph of Article 35 of the FSEK, the general approach in the doctrine is that, due to the explicit wording of the relevant paragraph, the works eligible for quotation and those into which

quotations can be made are limited to written works of science and literature.¹

Indeed, the decision of the 44th Civil Chamber of the Istanbul Regional Court of Appeals numbered E. 2020/1079 K. 2022/664 and dated 21.4.2022 is in line with the majority opinion in the doctrine: *“ Although Article 35 of the FSEK constitutes a provision regarding freedom of quotation, the issue of quotation from one cinematographic work to another (in the form of a documentary film as in the present case) is not regulated... Although the program subject to the lawsuit is a documentary, since it is clear that commercial gain will be obtained from this documentary, it has been seen that the current use is not included in the reasons for compliance with the law and the right of the author is violated due to unauthorized use, for these reasons, the reason for appealing that the use in the case is within the limits of freedom of quotation is not appropriate.”*

An opposite finding is present in the decision of the 11th Civil Chamber of the Court of Cassation numbered E. 2020/1399 K. 2021/1927, dated 3.3.2021. In the mentioned decision, it is stated that considering the showing of the cover of the plaintiff's book and the mention of the plaintiff in the documentary cinematographic work published by the defendant, “the existence of a valid reference in accordance with the procedure should also be accepted when considering the genre of the work created through the processing

of the script.” In this context, taking into account that the defendant also stated the name of the author, moral compensation should not have been awarded and it was not found correct to make a decision without considering this issue. From the mentioned decision, it can be understood that the documentary cinematographic work of the defendant is interpreted as a “work of science and literature” and accepted as a work into which quotations can be made.

Another important exception that needs to be mentioned regarding freedom of quotation in cinematographic works is the news exception found in Article 37 of the FSEK. Within the scope of the aforementioned article, it is permissible, provided that it is in the nature of news and does not exceed the scope of informing, to take parts of all intellectual and artistic works related to daily events for transmission by means of signs, sound, and/or images, to reproduce, disseminate, represent, or broadcast such taken parts by means such as radio and television, as long as it does not harm the legal interests of the rights holder and does not violate the normal use of the work.

The decision of the 11th Civil Chamber of the Court of Cassation numbered E. 2016/14735 K. 2018/5691 dated 25.9.2018 has made determinations regarding the limits of the news exception. In this regard, the decision held that “the “news” exception regulated in Article 37 of the FSEK is possible

for cinematographic works; however, the quotation must be included in a news article related to daily events and must be for information and must not exceed a reasonable amount. In the concrete case, it was found that the interview conducted with the actor of the “...” film did not have the nature of being related to daily events, and it cannot be said that it is necessary to show some parts of the movie to the public during the interview. Therefore, the acceptance of the “news” exception under Article 37 of the FSEK by the court was deemed incorrect, and the unauthorized exhibition of the work, even partially, was considered a violation of rights.”

It is evident preserving a broad interpretation of the freedom of quotation is crucial for fostering scientific and cultural accumulation in our nation. However, given the above-mentioned contradictory decisions and doctrinal opinions, it becomes apparent that obtaining necessary permissions from the rights holders of the relevant works could be beneficial when making quotations from or within cinematographic works, even when they are of scientific nature or pertain to news content.

¹ Öncü, Özge. “Fikir ve Sanat Eserleri Hukukunda İktibas Serbestisi ve Sınırları.” Doktora Tezi, Dokuz Eylül Üniversitesi, 2009. pg. 296 vd.

² As a result of the first instance court's persistence against the reversed decision, with the recent decision of the Court of Cassation General Assembly dated 14.6.2023 with file number E. 2022/219 K. 2023/631, it was stated that sufficient examination regarding whether the book belonging to the plaintiff carries the plaintiff's uniqueness was not conducted. Therefore, it was emphasized that the entire book in question should be examined, and the parts considered as plagiarism due to unauthorized quotation should be evaluated to determine whether they possess the plaintiff's uniqueness. Consequently, the decision of the first instance court to persist was annulled, and the case was remanded to the local court for reconsideration.

KEY CONTACTS



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Firm Overview

We are one of the oldest and largest law firms in Turkey and are considered internationally to be among the top-tier of legal services providers.

We are a full-service law firm leading the intellectual property field among others, providing dispute management, advisory, transactional, prosecution, investigation, and regulatory markets law services to domestic and multinational corporations.

We are based in Istanbul, with working and correspondent offices in Ankara, Izmir and the major commercial centres in Turkey.

We operate mainly in Turkish and English and also work fluently in German and French.

We advise a large portfolio of clients in numerous fields of activity including life sciences, insurance and reinsurance, energy, construction & real estate, logistics, technology, media and telecoms, automotive, FMCG, chemicals and the defense industries.

Our vision is to be the leader in the services we provide, sensitive to wider society, the environment, and our employees as an innovative and sustainable institution.

Our clients' success is at the heart of our own success. We closely monitor developments in the business sectors in which our clients operate and invest in accumulating industry specific knowledge to understand their changing needs. We actively participate in professional, trade and business organisations in Turkey and internationally.

We are committed to adapt to our clients' changing business needs by delivering innovative, high quality and commercially prudent legal solutions.

