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COPYRIGHT LAW IN TURKEY

KEY DEVELOPMENTS AND PREDICTIONS

2023



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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.

Key Developments and Predictions for Copyright Law in Turkey

Turkish copyright law continues to develop solutions to issues arising from new technological developments while also focusing on existing and traditional sub-fields.

Many plagiarism cases concerned with cinematographic works have been filed in the past year, receiving significant media coverage. Expert reports have elaborated on the subject of plagiarism in these cases, including those filed against award-winning films and TV shows. The elaboration of the term before the courts is important as there is no fixed definition provided in Law on Intellectual and Artistic Works no. 5846 ("LIAW"). Amendments to LIAW have additionally led to ambiguity regarding cinematographic works created before 1995. First passed in 1951, the law still does not keep up with the rapidly developing modern technological world.

Non-Fungible Tokens (NFTs) have received significant attention alongside the ownership rights of works created by artificial intelligence. Important amendments affecting the protection of intellectual property rights have been made to the E-commerce Law in response to the rapid expansion of e-commerce and digitalisation. We have also seen a new discussion emerge in Turkish law surrounding publishing rights on online platforms within the scope of the EU Directive on Copyright in the Digital Single Market.

This document addresses the most prominent issues in the field which we believe are important to copyright holders through an overview of the following topics:

This paper provides an overview of the following topics:

- [A Glance at the Concept of Plagiarism in Turkish Law](#)
- [The Protection of Cinematographic Works in Türkiye](#)
- [Non-Fungible Tokens and Copyright Law](#)
- [Artificial Intelligence and Copyright Law](#)
- [What's New in the Amended E-Commerce Law for IP](#)
- [Publishing Rights in Online Use](#)
- [Protection of Websites under Turkish Law](#)

A Glance at the Concept of Plagiarism in Turkish Law

Plagiarism claims recently brought against popular works of cinema have led to frequent media coverage. Such news can create the impression that the mere existence of some similarities between two works might amount to plagiarism.

However, mere similarity is not sufficient to claim plagiarism. For such a claim to be successful there must be a determination of a similarity that goes beyond accidental; the similarity must be in the elements that give the works their originality, beyond ordinary ideas.

Plagiarism is not clearly defined in LIAW and in fact there is not even a mention of this term under LIAW. However the term is in the sense of *“presenting someone else’s work as your own, taking a piece from someone else’s work without citing the source”* within the scope of intellectual property law. While the law does not explicitly define plagiarism, *“Freedom of quotation”* is clearly defined under Article 35 of the LIAW. We may infer that in theory any unauthorized use of someone else’s work that exceeds the freedom of citation is plagiarism. Unfortunately, this approach does not always lead to correct results in practice, because *“inspiration”* is allowed under intellectual and artistic works law. Therefore the evaluation of whether the similarities to someone else’s work amount to plagiarism or inspiration should be evaluated on a case-by-case basis.

The gap in legislation has been filled

somewhat by the significant guidance from the Court of Cassation. The General Assembly of the Civil Chambers of the Court of Cassation (CoC) established the following test for plagiarism citing relevant academic studies in its decision¹ rendered in February 2019: *“..., when examining plagiarism between two works; it is necessary to investigate whether the later work was created upon the former work; if there is a similarity between the works, by comparing the works as a whole in terms of whether the characteristics of the author of the first work are transferred to the next work, and finally, whether the concluded similarity remains within the scope of freedom of citation or inspiration as specified in Article 35 of LIAW.”*

In the same decision, the CoC also emphasized that similarities between works should be considered legitimate if related to common and anonymous elements such as abstract ideas, subjects, and methods that can be found in other works produced in the same field or if it is only at the level of inspiration from the previous work.

As a matter of fact, in the decision of the 11th Civil Chamber of the Court of Cassation dated 14 November 2018 and numbered 2017/425 E. 2018/7072 K., the Court stated that *“although it was determined that some of the choreographies and musical compositions are used in the defendant’s choreography, there are also original choreographies in the*

defendant's performance, all similarities are not in the form of imitation or copying from the plaintiff's work, these can be considered as inspiration from the plaintiff's work and this situation does not infringe on the rights of the plaintiff arising from work."

However, it should be noted that the use of anonymous or widely known elements does not preclude the courts from finding plagiarism. The material aspect is whether the author adds his original expression to these known elements. As a matter of fact, the decision of the 11th Civil Chamber of the Court of Cassation dated 28 June 2013 and numbered 2011/12752 E., 2013/13684 K. is instructive in this sense. In the decision, the Court stated that *"Although the Berdel stories are common and anonymous, and the names, places, and some situations have been changed between the GÜVERCİN story of the plaintiff and the SILA story produced by the defendant, there is a similarity between the main characters, story development, mathematics, studies and even in some details. Although SILA series was processed and extended and turned into a TV series based on the movie story called GÜVERCİN and these determinations were detailed comparatively in the supplementary report, it is not necessary to take the work for a total plagiarism. It has been decided that the defendant's unauthorized use of the basic elements that turned into concrete expressions in plaintiff's story as mentioned in the report constitutes an infringement of the*

plaintiff's copyright on the work."

Another approach to the lack of a legislative definition of plagiarism has been the use of plagiarism checker tools. These are used to compare two works and detect whether there is plagiarism. However, such tools would not work for every category of intellectual and artistic works because such tools scan the texts of the works and compare them to produce reports that supposedly detect plagiarism. However, certain aspects of a work such as scenarios and stories, the author's original ideas about the characters and/or the plot, etc., may not have been expressed in a manner that plagiarism checker tools can capture. For this reason, comparing the texts of such works to determine the existence of plagiarism is an imperfect solution.

As a result, when evaluating plagiarism between two works, it is necessary to evaluate the works as a whole and consider whether the author's original expression, which adds originality to work, is used without permission for each concrete case.

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¹General Assembly of the Civil Chambers of the CoC's February 07, 2019 dated and 2017/63 E., 2019/86 K numbered decision.

The Protection of Cinematographic Works in Türkiye

LIAW which entered into force in 1952, has been amended in 1995, 2001, 2004, 2006, 2008, 2012, and 2014. The amendments in 1995 and 2001 were major amendments which changed the legal regime for rights to cinematographic works and created legal uncertainty as to the ownership and protection term for rights to cinematographic works.

The initial text of the LIAW (dated 1952) recognized the Producer of a cinematographic work as the author and provided for a protection term of 20 years starting from the publication of the work.

The 1995 amendment changed the regime for ownership rights and protection terms for cinematographic works. The 1995 version of the LIAW made the Director, Scriptwriter and the Original Music Composer as the joint authors of cinematographic works. The protection period was changed to 70 years from the publication date. The newly added Additional Article 2 provided two important exceptions to the changes: (i) the new provisions regarding the ownership of the cinematographic works would not apply to cinematographic works created before 1995, and (ii) the new protection term of 70 years would apply only to cinematographic works released after 12 June 1995.

Therefore, for the cinematographic works which were created and released before 12 June 1995, the copyright owner remained as the Producer and the protection term to be

applied is 20 years.

In 2001 the law changed again to make the director, scriptwriter, dialogue writer and the original music composer the joint authors of cinematographic works. For animated cinematographic works the animator would also consider a joint authors of the work. The old provision (Article 29) for the legal protection term of cinematographic works was annulled and general principles as to protection terms became applicable to cinematographic works, i.e. (i) For works of which the author is an owned by real person the term is lifetime plus 70 years from the date of death, or (ii) if the first owner of the work is a legal entity the protection period is 70 years starting from the date of release (the work is made available to the public). Film producers were granted "neighbouring rights" to cinematographic works.

Barring some exceptions, the new provisions would apply to all works produced in countries party to international treaties with Türkiye. The exceptions to this were (i) the new ownership regime would apply only to works the creation process of which began after 12 June 1995, (ii) the work must not have been in the public domain when the amendment entered into force on 03 March 2001.

These changes created legal uncertainty because of the narrower exceptions to its applicability versus the 1995 amendment. Indeed, as per the amended wording of the Additional Article 2/last of 2001, the new

provisions including the protection term shall be applied to all works, which are produced in the countries party to the international treaties that Türkiye is a party to and are not under public domain at the date that this amendment has become effective, i.e., 03 March 2001. But the provisions as to the authorship of cinematographic works will be applicable only to works of which the creation process has started after 12 June 1995.

The amendment's silence on the matter of protection terms created uncertainty around the determination of the correct protection term for cinematographic works created and released before 12 June 1995, unlike the clear ownership regime.

The current legal regime is based on the 2001 law and uncertainty around protection terms remain. There are differing views on the matter. One is that if the initial protection term, i.e. 20 years has already expired, then it should be extended no further. Another view states that cinematographic works created before 12 June 1995 lie completely outside the scope of the new protection terms. Finally, some state that the exclusion is applicable only to the ownership provisions so the ownership of these works should remain with the Producer, while the new provisions for protection terms should be applied.

There are few cases discussing this legal uncertainty, and those cases are mostly concerned with Turkish productions from the

1970's. The Court of Cassation acknowledged that the extended protection term, i.e., 70 years should be applied, without making a distinction regarding the expiration of the initial 20-year protection term.

In our view, as the 2001 text of LIAW covers all works produced in countries party to the same international treaties as Türkiye, that are not under public domain before March 03, 2001. The new 2001 protection terms for cinematographic works should be applied to the works created before 12 June 1995; the while their ownership should remain with the Producer. Accordingly, for works created before 12 June 1995 (i) If the Producer was a real person, then the protection must be the lifetime of the Producer and plus 70 years upon the date of death and (ii) If the Producer was a legal entity the protection period is 70 years starting from the date of release (making available to the public).

As there are many cinematographic works which were created and released before 12 June 1995, it is important that the uncertainty around the legal regime applicable to these works be clarified.

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Non-Fungible Tokens (“NFTs”) and Copyright Law

NFTs have been one of the most popular topics for copyright law during 2022. Discussions were widely held about whether NFTs could be considered copyrightable works, whether purchase of an NFT grants authorship rights to the buyer, which formal requirements are relevant for a valid copyright assignment for an NFT, and which particular rights associated with copyright could be infringed by unauthorized use.

Although we are yet to see legislation concerning these issues, many national and international court decisions have shed light on legal questions about NFTs over the past year.

The first preliminary injunction concerning NFTs has already been issued by a Turkish court. As we [shared](#) last year, the case pertained to the unauthorized exploitation of a portrait of Cem Karaca, an artist, songwriter and composer with a legendary reputation in the world of Anatolian rock music. His portrait was converted into an NFT and offered for sale on the Opensea NFT marketplace. The presiding Istanbul 3rd Intellectual Property Court, upon the plaintiff's request, issued a preliminary injunction (“PI”) to prevent access to the websites hosting the infringing content and to cease the sale of the relevant portrait in NFT format on the Opensea platform. The defendant's objection to the PIs and request for appeal were rejected. This decision is significant as it is the first court judgment in

Türkiye related to NFTs, and it recognizes that NFTs can be subject to a PI. While the court did not elaborate on the legal aspects of NFTs, the decision is still noteworthy as NFTs were considered a valid “format” by the court for the purposes of infringement cases.

On the administrative side, the Digital Transformation Office of the Presidency of Türkiye defined NFTs as a “qualified intellectual property deed”. Some initiatives and institutions that are interested in NFTs have also created assessment reports dealing with NFTs from an intellectual property perspective².

Some cases of international relevance have tackled the question of who owns the right to convert a work into NFT format. For instance, world-famous director Quentin Tarantino has announced that he would convert seven never-before-seen scenes from the movie Pulp Fiction and the original script thereof into NFTs and offer them for sale. Miramax, the movie's production company, thereupon filed a copyright infringement case against Tarantino based on infringement of its right to communicate the work to the public. The parties settled in the subsequent phases of the case³.

In a similar case filed by ROC-A-FELLA RECORDS INC. against Damn Dash, a shareholder of the record label, due to Dash's plan to offer Jay Z's “Reasonable

Doubt” album in NFT format. The record label requested that trading of the NFT cease. The court issued a PI to temporarily prohibit conversion of the album into an NFT and its trading on the ground that “Dash is not entitled to sell anything that he does not own”.⁴ This dispute was amicably settled by the parties.

In addition, we observe that many courts across the world including courts in the United Kingdom⁵, China, Singapore⁶ and Spain, have concluded that NFTs could be deemed as “assets which may be subject to property rights” and ordered sanctions like ceasing the sale and transfer of NFTs to eater addresses and the payment of compensatory damages.

In another dispute arising from the unauthorized sale of NFTs of comics created by Artist Ma Qianli picturing a tiger getting vaccinated on the NFT marketplace called BigVerse, China’s Hanzhou Internet Court concluded that the platform was at fault for failing to check the right ownership chain and on that basis awarded the plaintiff damages.⁷ In a different case between Mango and a Spanish collecting society a court in Barcelona rendered an innovative PI decision ordering that NFTs that allegedly infringe the right of member artists should be kept in a “wallet” under the court’s control.

Although we see that both national and global courts are prepared to interpret existing rules

in their respective systems in disputes arising from NFTs, it is still difficult to argue that a consistent legal opinion has been established regarding NFTs. Such certainty in this field may be achieved with future regulation and court decisions.

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² <https://bctr.org/wp-content/uploads/2023/01/NFTRaporV03.pdf>

³ <https://www.lexology.com/library/detail.aspx?g=70a02ea5-c9c6-44f3-b265-b3b6d6fbd9b6>

⁴ <https://www.lexology.com/library/detail.aspx?g=c298edf9-89dd-4ebe-b73c-e3add6aabeff>

⁵ Lavinia Deborah Osbourne v (1) Persons Unknown (2) Ozone Networks Inc Trading as Opensea decision

⁶ Janesh s/o Rajkumar and Unknown Person decision

⁷ Qice v. BigVerse decision

Artificial Intelligence (AI) and Copyright

AI-generated works of art and their ownership and enforcement of related rights have remained among the most controversial issues in copyright law around the world as we entered 2023.

As in many fields, AI has begun to play a direct role in the legal industry. Indeed, the media eagerly followed the hearing in which an AI application developed by the company DoNotPay in the United States (US) was introduced as “the first robot lawyer” in the press that can provide legal assistance by conveying legal arguments to defendants via headphones. However, the hearing was postponed due to the State Bar Prosecutors’ warnings regarding the use of such technology in court⁸.

Although no sufficiently comprehensive judgments on AI and copyright law have been rendered in Türkiye or elsewhere, the general rule appears to be that an AI programme cannot have rights to the works it creates and that only human creativity can be protected within the framework of copyright protection.

In fact, Stephen Thaler, who works in the field of AI technologies, filed an application in the US for the registration of work generated by an AI and demanded the identification of the AI as the author of the work. However, in its decision⁹ dated 14 February 2022, the US Copyright Office rejected the application stating that the relevant application did not

meet the “human authorship” requirement for a valid copyright claim.

On the other hand, on 15 September 2022 a copyright application filed in the US for a comic book featuring AI-generated drawings was accepted. However, after it was discovered that the illustrations were generated by artificial intelligence, the Office cancelled the registration due to “a failure to exclude non-human authorship contained in the work.” The drawings generated by AI were excluded from the scope of the registration on that basis, and copyright protection was granted only in relation to the text, selection, coordination, and arrangement of text created by the author.¹⁰

In this regard, it should be emphasized that current regulations prohibit copyright ownership of AI and the copyright registration/ protection of works generated by AI appear to be rather challenging.

As AI began to generate works that are deemed to be the product of creativity and intelligence, discussions on the potential violations of rights by AI have also recently emerged. This situation was described as a “double-edged sword” by the European Union Intellectual Property Office’s “Study on the Impact of Artificial Intelligence on the Infringement and Enforcement of Copyright and Designs”⁴, published in March 2022. In other words, AI may be used to violate rights

while also strengthening notions of ownership and the protection of rights.

Indeed, there is currently a lawsuit pending in Canada alleging that an AI-created image infringes the copyright of another work.⁵ Similarly, lawsuits for copyright infringement have also been filed against AI applications such as Stable Diffusion and Midjourney, which are used to generate visuals from text prompts.⁶ On the other hand, platforms such as Getty Images, a stock photography agency, has banned AI-generated works from their website in order to avoid inadvertent copyright infringement. They determined suspected works via users' notifications and filters co-created with the C2PA (Coalition for Content Provenance and Authenticity).¹¹ These concrete examples demonstrate that AI technology may well infringe on rights.

In this context, while legal regulations and/or judicial decisions effectively clarifying the place of AI in relation to copyright ownership and violations are yet to be encountered, it is clear that this issue will continue to be heavily debated in the coming years given the speed and significance of the technology's development.

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⁸ <https://www.cbsnews.com/news/robot-lawyer-wont-argue-court-jail-threats-do-not-pay/>

⁹ Copyright Review Board, United States Copyright Office, Second Request for Reconsideration for Refusal to Register A Recent Entrance to Paradise (Correspondence ID 1-3ZPC6C3; SR # 1-7100387071), 14 February 2022.

¹⁰ <https://copyright.gov/docs/zarya-of-the-dawn.pdf>

What's New in the Amended E-Commerce Law for IP

Law No. 7416, amending the E-Commerce Law, came into effect on 01 January 2023. A comprehensive change has been made to Article 9, titled "Obligations of Intermediary Service Providers". Following this change, the title of Article 9 was changed to "Illegal Content". It specifies that unless there is a contrary provision in other laws, the general principle is that intermediary service providers are not responsible for the illegality of content they hosted. Nevertheless, the intermediary service providers are obliged to remove the content and to report the illegal issue to the relevant public institutions and organizations without delay once they become aware of the illegality of the content.

The 3rd paragraph of Article 9, specifically regulates the violation of IP rights. In instances of such a violation the intermediary service providers are obliged to take down the violating product subject to a complaint upon the right owner's complaint based on information and documents regarding the violation of IP rights. If the complaint is objected to, the intermediary service provider must republish the product complained about.

If illegal content is not removed following a complaint, or if the content is republished despite being proven illegal, the intermediary service provider will be subject to an administrative fine ranging from 10,000TL to 100,000TL for each violation.

A further regulation complementing Law No. 7416 came into effect on 1 January 2023. It explains the takedown procedure to be followed upon receipt of a legitimate complaint by IP rights holders. According to this regulation:

- Complaints alleging IP rights infringement should be made to the platforms through their internal communication system – which the platforms will establish - or via Notary Public or Registered Electronic Mail.
- The platforms shall remove the product subject to the complaint within 48 hours and inform the complainant and the service provider.
- The service provider is entitled to file an objection against the complaint.
- If the objection is on rightful grounds, based on the information and evidence provided, the platforms must republish the complained product within 24 hours.

The new regulation details how IP rights holders may make complaints to e-commerce platforms, as well as how objections to those complaints may be made by e-commerce service providers. It aims to provide a balanced, predictable, and fast-moving procedure to protect IP rights against infringement on e-commerce platforms. However, there are still some ambiguities about the procedure that may create problems in its application. For instance, while the internal communication

system to be established by the intermediary service provider would in principle create a simple and functional tool to file complaints and objections, it raises the question of whether such a system would fulfil the burden of proof.

Intermediary service providers are also given a very limited period to take action upon complaints and objections. Although these limits are in place to ensure the speed of examination, it may be overly burdensome for the intermediary service providers and open to question the depth and accuracy of the platforms' analysis on the merits of issues.

It seems that the complaint procedure outlined by the new regulation could enable a fast-track solution and help right holders take effective action against infringing products marketed on e-commerce websites, and it is envisaged that the specified administrative fine will be an effective deterrent and that the regulation of the IP rights' violation in the law will motivate e-commerce sites to continue their activities in compliance with the law. Therefore, we consider this change in the E-Commerce Law a very positive development for IP rights holders.

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For further information, please go to www.worldtrademarkreview.com.

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Publishing Rights in Online Use

Digital technologies continue to transform the way creative content is produced, distributed and accessed, and one of the most affected sectors is the printed publication industry. To illustrate, the results of an EU Commission 2021 survey¹² revealed that 72% of internet users aged 16 to 74 in the EU access newspapers and magazines online.

The increasing importance of the Internet in the sharing of intellectual works necessitates legislative regulations that are compatible with technological developments and that will protect authors' rights regarding their use on online platforms. In this regard, the Directive on Copyright in the Digital Single Market (CDSM), adopted on 26 March 2019, aims to improve licensing practices and achieve a well-functioning market by adapting copyright principles to the digital and cross-border environment. Member states were required to implement the Directive into their national law by 07 June 2021. The CDSM 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.¹³

Article 15 of the CDSM, entitled "Protection of Press Publications' Online Uses", regulates the neighboring rights of the press publishers. It allows online platforms and news publisher websites to take measures against copyright infringements, regulates the transfer of the high revenues of large digital companies to

content owners by ensuring fair remuneration for online use of right holders works from the revenues of Information Society Service Providers. However, hyperlinking, private or non-commercial use, use of individual words or very short extracts of a press publication are exempted from these regulations for two years after the publication date. The start of this period is calculated from January 1st of the year following the publication.

Following enactment of the CDSM it has become inevitable that platforms providing access to online content will encounter legal claims and will need to adjust their systems accordingly. As a significant example, Google, which features the content of third parties through detailed analysis, categorization, ranking, summarization, and redirection, initially took several measures¹⁴ explaining that it would only show previews and thumbnails of the news unless the publishers agree to provide the content free of charge. But with the enactment of the CDSM, it has faced multiple lawsuits¹⁵ involving claims that extend beyond EU borders. By changing its policy and starting to obtain licenses¹⁶, Google has announced that it is now working on a licensing program with more than 750 publishers across Europe.¹⁷

In Türkiye, there is no specific legislation regulating the rights of press publishers in digital media. The general provisions concerning printed publications under the

¹² <https://ec.europa.eu/eurostat/web/products-eurostat-news/-/ddn-20220824-1>

¹³ <https://cdn.istanbul.edu.tr/file/JTA6CLJ8T5/D982D971D89C4AA3A4F299FAD2FF18F5>

¹⁴ <https://www.forbes.com/sites/nicolemartin1/2019/09/26/the-battle-between-google-and-eu-online-copyright-reform/?sh=78435c7f3e08>

Press Law No. 5187 and copyright protection provisions under the LIAW for such works are applied to disputes regarding their online use.

Pursuant to Article 36/1 of LIAW, daily news and information communicated to the public by the press or radio can be freely quoted, provided that the mandatory information stipulated in the Press Law is included therewith. In terms of articles and features on social, political, and economic issues of the day published in newspapers or journals, if the right of quotation is not reserved, they are free to be used in original or adapted form; even if the right is reserved, quoting them by abridging a press review, disseminating them via radio or other channels is allowed. In all these cases, the name, issue and date of the source and the name/pseudonym/mark of the author must be mentioned.

In Türkiye, the need to introduce provisions in terms of digital copyrights in parallel with the developments in the EU has been widely discussed, and it has been stated that the Digital Transformation Office of the Presidency of the Republic of Türkiye and the Ministry of Culture and Tourism are working on draft legislation to ensure that publishers in Türkiye also receive fair royalties for the use of their content in digital media¹⁸.

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¹⁶ <https://blog.google/products/news/google-news-showcase/>

¹⁷ <https://blog.google/around-the-globe/google-europe/google-licenses-content-from-news-publishers-under-the-eu-copyright-directive/>

¹⁸ <https://cbddo.gov.tr/haberler/6508/dijitallesme-surecinde-basinda-telif-haklarinin-korunmasi-sempozyumu>

Protection of Websites Under Turkish Law

Websites that are part of our daily lives consist of many elements such as webpages, the user interface, computer software, databases, and servers. Although there is no set of rules specifically applicable to them under Turkish law, their constituent elements and their content can be conferred legal protection if they meet the requirements of existing legislation. The question of whether websites are conferred additional legal protection separate from their constituent elements should be examined within the scope of the Law on Intellectual and Artistic Works 5846 ("LIAW") and the Turkish Commercial Code 6102 ("TCC").

To accept a creation of mind as a "Work" under Article 1(b) of the LIAW, there must be an intellectual product that is the outcome of a real person's intellectual labour. Additionally, it must be fixed in a tangible medium, bear the characteristics and originality of its author, and be classified under one of the categories defined in the LIAW. Websites easily satisfy the originality, fixation, and intellectual labour criteria. On the other hand, it is more complex to determine whether websites satisfy the criteria¹⁹ of classification under one of the other categories defined in the LIAW. This constitutes the main challenge of determining the scope of legal protection conferred to websites. Academic studies and judicial decisions contain varying views, arguing that websites could be protected as

"works of fine arts", "computer programs", "compilations", or "databases" which are the current categories of "Work" under the LIAW. The more dominant views argue that they should benefit from protection conferred to "graphic works", a subcategory of "work of fine arts", or to "databases".

For instance, the 11th Civil Chamber of the Court of Cassation ("CoC") stated in a 2018 dated decision that "...the images, graphs, colours, and layouts of the website where ads appear, briefly the overall look thereof, constitute a qualified whole and its design bears the characteristics of the author, which additionally gains the website in question the qualification of a "graphic work". In this respect, considering that websites constitute a whole consisting of images, graphs, layouts and colors contained therein, websites could be protected as "graphic work"²⁰ if they bear the characteristics of the author and have an artistic value.

In its decision in 2018, the CoC upheld the decision of a Court of First Instance and concluded that websites should be categorized as databases. In a later 2021 dated decision with important explanations regarding websites, the Istanbul 2nd Civil Court of Intellectual and Industrial Rights stated that the dominant view under Turkish law is to protect websites as databases specifically noting that "it is generally accepted

under Turkish law and comparative law that websites are in the form of “databases”.²¹ In accordance with these decisions, websites could also benefit from the protection granted to databases pursuant to LIAW.

It may be inferred from the analysis of the academic studies and judicial decisions mentioned above that websites could enjoy copyright protection as graphic works or databases if the conditions set under the LIAW are met.

In addition to the options mentioned above, websites could also benefit from “unfair competition” protection pursuant to the TCC since they are a form of “work product”. Particularly, Article 54 of the TCC, which reads as “the provisions pertaining to unfair competition under this section aim to provide fair and undistorted competition in favour of all participants. Acts and commercial practices that impact the relations between competitors or between providers and customers or that breach the principle of good faith in other manners are unjust and unlawful.” could be relied upon for the protection of websites.

In this regard, pursuant to the cumulative protection principle that is widely accepted in Turkish doctrine, websites could be properly granted both copyright and unfair competition protection under the rules of the LIAW and the TCC.

Furthermore, those wishing to protect their websites and avoid infringing others’ rights should register original logos, icons, and other signs for their websites as trademarks, clearly regulate terms for assignment and licensing of intellectual property rights and post-contract relation of the parties, periodically monitor the market to check third party uses, conduct intellectual property right clearances so as not to remain silent against infringing activities, search for trade names and copyrights of others before inserting these to any part of the website, and make sure their activities remain within the scope of fair use when dealing with others’ intellectual property rights.

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¹⁹ İstanbul 16th Commercial Court of First Instance’s decision no. E. 2018/422, K. 2018/417 and dated 10 May 2018.

²⁰ 11th Civil Chamber of CoC’s decision no. E. 2016/6829 K. 2018/768 and dated 05 February 2018.

²¹ İstanbul 2nd Civil Court of Intellectual and Industrial Rights decision no. E. 2020/29 K. 2021/139 and dated 18 March 2021.

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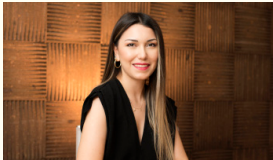
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FIRM OVERVIEW

We are one of the oldest and largest business law firms in Turkey and are ranked among the top tier legal service providers. We are widely regarded as one of the world's leading IP law firms.

Based in Istanbul, we also have working and correspondent office in Ankara, Izmir and all other major commercial centers in Turkey.

We advise a large portfolio of clients across diverse fields including life sciences, energy, construction & real estate, logistics, technology media and telecom, automotive, FMCG, chemicals and the defence industries

We provide legal services mainly in Turkish and English and also work in German and French.

We invest to accumulate industry specific knowledge, closely monitor business sector developments and share our insight with our clients and the community. We actively participate in various professional and business organisations.

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