

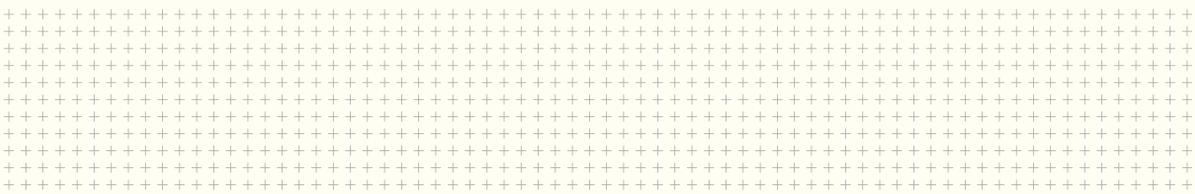


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COPYRIGHT LAW IN TURKEY

KEY DEVELOPMENTS AND PREDICTIONS

2021



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.

Key Developments and Predictions for Copyright Law in Turkey

This past year of 2020 was a tough year for Turkey, just like the rest of the world. After the announcement of the first official recognition of Covid-19 on March 11, 2020, our country experienced lockdowns, travel restrictions, and limited access to official bodies throughout the year.

During the second quarter of the year, business came to a standstill but, after June, with the introduction of the "new normal" into our lives, most actors learned to conduct business under the shadow of the Covid-19 pandemic.

There has been a very rapid digital transformation in almost every field in our country, as the entire world has had to employ. In the digitalizing world, the protection of copyrights in the internet environment, copyright ownership on products created by artificial intelligence, the protection of copyrights in sectors with more comprehensive technical details, such as computers and software, which are increasing daily, the transfer of these rights, and how the rights of employees will be regulated, have also gained great importance.

This document is a compilation of various topics that we believe are important for copyright owners in the context of digital transformation that have taken place over the past year.

This paper provides an overview on the following topics:

- Notice and Takedown Procedure for Copyright Protection
- Artificial Intelligence and Copyright
- Assignment of Copyrights
- Ownership of the Works Created by the Employee
- Ownership of the On-Demand Works
- Does Technical Function Impede Copyright?
- Compensation Liability for Copyright Infringement
- A Brief Review of the Karalis Case

Notice and Takedown Procedure for Copyright Protection

Copyrights are amongst the most infringed-upon rights in the internet environment. On this account, Turkey applies a notice and takedown system in online copyright infringement cases as a practical tool, which is also widely recognized in many jurisdictions around the globe.

In Turkey, copyrights are protected under Law on Literary and Artistic Works No. 5846 ("Law No. 5846"). According to Law No. 5846, if a work is adapted, duplicated and circulated, performed or broadcast through devices that provide transmission of all kinds of images, sounds or signs, without the owner's permission, this means that the copyright has been infringed.

For online copyright infringement, additional Article 4 of Law No. 5846 introduces the basic "notice and takedown procedure." This provision provides that the copyright owner first send a notice to the content provider that supplies the relevant material for use on websites, and requests that the infringing content be removed within three days. If the content provider does not comply with the three-day window request, and the violation continues, a request must then be addressed to the Public Prosecutor asking that the service being provided to the content provider be removed within three days by the relevant internet service provider that provides access

to internet. Once the infringing acts are ceased, access is provided to the content provider once again. It should be noted that the notice and takedown procedure does not prevent the copyright owners from exercising their rights to pecuniary and non-pecuniary damages.

In parallel with this provision, Law No. 5651 on the Battle Against Crimes Committed Through the Internet and to Regulate Internet Media ("Law No. 5651") sets out the general principles as to the liability of content providers, service providers, and public use providers, who must remove the content of the website if they are informed of the infringing content. On the other hand, there are divergent views as to whether the principles set out in Law No. 5651 may also be applied to copyright infringement (or other types of intellectual property rights) considering that Law No. 5651 is applied for a specific list of crimes and, thus far, there is not much case law providing guidance in this regard. However, in practice, the copyright owners have recourse through this provision, as well, especially if the infringing activity violates their personal rights to broadly benefit from the protection provided under Turkish Law. As a matter of fact, some High Court decisions have been rendered where Law Nos. 5846 and 5651 are interpreted, together.

Additionally, Draft Bill to Amend Law No. 5846 (the "Draft Bill") was published online on May 05, 2017 for public comment. The Draft Bill abolishes the Additional Article 4 of Law No. 5846, and envisages a new Article 77/B, with regard to digital infringement by content providers. It is planned with the referred Article 77/B to harmonize the notice and takedown procedures provided under Law No. 5651 and Additional Article 4 of Law No. 5846. As well, under Article 77/B, sending a notice to the infringing party for the removal of the infringing content is no longer a requirement, and the copyright owner may directly file its request for takedown with the Public Prosecutor. The rationale of this optional notice procedure is to expedite the proceedings, and to minimize the damages of the copyright owner. On the other hand, it is thought that this provision will create discussions, in practice, on the part of the relevant public, since the procedures under Article 77/B are rather, once again, different from Law No. 5651, while the major goal is to harmonize the notice and takedown procedures.

Finally, it is worth questioning whether the European Union's Directive on Copyrights in Digital Single Market 2016/0280/COD (the "Copyright Directive"), which was intended to accommodate the digital age, will have an

impact on Turkish Copyright Law in terms of the "notice and takedown" procedure. While the Draft Bill is still undergoing changes, and there is no indication that it will enter into force soon, a similar provision to Article 17 (formerly Article 13) of the Copyright Directive might come to the force during parliamentary discussions, in Turkey, and in the accession talks with the European Union. With the introduction of Article 17, it is criticized by many as it is found to be incompatible with the right to privacy and encourages self-censorship. The European Union takes a further step in securing copyrights by requiring online content sharing service providers to obtain authorization from the right-holders, such as through a licensing agreement. This is interpreted as a change in the "notice and takedown" procedure, where the copyright owner actively takes part in the process. Article 17 implicitly "obliges" the online content sharing service providers to automatically check the infringing content in order to protect copyright owners, without having to send a takedown notice.

Artificial Intelligence and Copyright

Artificial intelligence (“AI”) is defined as “The ability of a digital computer or computer-controlled robot to perform tasks commonly associated with intelligent beings.” With the advancement of technology, AI systems have learned to create music and art and, furthermore, today, AI can write poems, novels, stories, and legal articles. As a result of these developments, discussions have begun regarding AI-created works of art, as well as the notion of ownership and enforcement within the context of copyright law.

In modern society, scholars ask whether AI-created work is copyrightable, and whether AI can be regarded as the owner of a copyright. One of the most discussed topics concerns the language of AI’s and copyright. In the United Kingdom, scholars are trying to adopt the phrase “AI-assisted work,” rather than “AI-created work.” With this change, English scholars are trying to establish that AI, alone, cannot create a copyrightable work but, rather, can only assist with the process of creation.

Taking this one step further, if the AI is considered as the author of a work of art, the doctrine examines the problems that the courts might face given the current legal framework of copyright law. For example, the issue of accountability has become a frequently raised question in the event of infringement by AI systems because, in the case of an infringement, what benefits can copyright holders derive from suing an AI

system, and who would be the infringing party in this scenario, since the plaintiff probably would not receive any compensation from the AI, considering the fact that the AI does not have any assets that could neutralize the effect of the violation. Most importantly, what form of deterrence might laws have on AI? Moreover, the enforcement of copyright law by AI might be problematic and, as well, the present rules do not answer how, and in what way, an AI system can enforce a copyright, who might act on behalf of the AI, and how the legal representative may be appointed.

Currently, even though case law on this subject is immature as to reaching conclusions, it is important to mention the developments. In the United States and Australia, judges have not recognized AI as the creator, and have decided to afford protection only to the works created by humans. While on the other side of the world, a Chinese Court has decided that neither the software developer, nor the user, is the author and, after analysing whether software may be regarded as the owner of the work in question, the Court ruled that the work is not subject to copyright; however, considering the composition of the work, and the input of the software developer and the user, some sort of protection should be afforded. Similarly, this issue is being assessed by a Canadian Court. Nevertheless, considering the lack of legal framework surrounding AI-created works, it is evident that

the courts are constrained by the current rules that do not provide enough space for ground-breaking judgments, nor for interpretations. Until the copyright rules are modernized, some scholars suggest using work-made-for-hire rules to overcome the challenges of ownership, enforcement, or accountability regarding AI-created work within the context of copyright law. While we have seen no Turkish case law concerning AI-created work and copyright, this subject has become ubiquitous amongst Turkish scholars. There are many articles discussing whether AI should be regarded as the author of a work of art, and the benefits and problems associated with it. At the same time, some Turkish scholars study the subject from another perspective, and suggest the use of work-made-for-hire rules. Even though, currently, the case law and the doctrine cannot clarify the legal uncertainty surrounding AI-created works within the context of copyright law, considering the constant technological advancements in the field of AI, we believe that this topic will continue to be a point of discussion in the upcoming years.

Assignment of Copyrights

Law on Intellectual and Artistic Works No. 5846 (the "LIAW") takes a very formalistic approach regarding the transfer of copyrights arising from these types of work.

Under Turkish copyright law, the general principle is that the person who actually creates a work is the author of that work. The "work made for hire" concept is not accepted under Turkish law. The right transfers should be made in writing, once the work is embodied, indicating, expressly, which rights are transferred, and under which conditions. As per Article 48 of the LIAW, in order to realize the assignment, the work should be physically created. Any agreement that relates to the transfer of rights arising from work that has not yet been created, or shall be completed in the future, shall be null and void.

However, as per Article 50 of the LIAW, it is possible to take undertakings from the right owners for right transfers relating to future works. Therefore, before the work has been physically created, the right owner is able to undertake the assignment of the rights on the future work for a specified party. For a valid assignment, however, a separate deed of assignment must be signed once the work has been completed.

Due to the practical difficulties created with this formalistic approach, the Court of Appeals does not consider the transfer or license agreements that relate to future

works to be null and void, but considers that these agreements should be accepted as undertakings from the right owners.

In addition, because of the difficulties of this two-stage agreement process, the Court of Appeals also accepts that despite the lack of a second agreement, if the parties act in accordance with their undertakings, and if the work is completed as agreed, then the rights are deemed to be transferred. This view of the Court of Appeals is also supported by some scholars.

Thus, while the Law is very strict about the transfer of rights, in practice, we see that these principles are softened. That being said, despite his/her undertakings, if the right owner rejects, or is unable to execute, the second agreement (after the completion of work), when we follow the case-law of the Court of Appeals, if the talent/ performer received the payment as agreed and completed his/her undertakings, then it would not be possible to argue the invalidity of the first agreement, and the work owner will be deemed to have his/her rights assigned.

While this assessment is based on current practice and case-law, to be on the safe side, it is advised to implement a two-stage action despite the practical difficulties.

Ownership of the Works Created by the Employee

Pursuant to Law No. 5846 on Intellectual and Artistic Works ("LIAW"), the owner of the work, in principle, is the person who creates the work, and this person is the exclusive owner of the material and moral rights arising from the creation of the work.

According to the LIAW, although material rights may be waived by the author or transferred to third parties, the transfer of moral rights, or waiver of these rights, are not possible in accordance with the mandatory provisions. Therefore, in principle, the owner of the work can transfer his/her material rights arising from the work to third parties, but can only transfer the right to use the moral rights, and continues to be the right owner in terms of the moral rights.

The exception to the rule stated, above, with respect to the right ownership is regulated within the scope of Article 18 of the LIAW. In the first paragraph of the relevant Article, in accordance with the general regulation on right ownership, the authority to exercise material rights is also reserved for the author. However, in the ongoing paragraph, the authority to exercise the rights on the works created by the civil servants, servants and workers, during the performance their work is given to the employer, unless otherwise agreed by a special contract or by the nature of their job.

Although the provision in question can be regarded as similar to the "work-for-hire" principle in Anglo-Saxon law, it essentially provides a narrower field of rights to the employer. In the "work-for-hire" principle, the employer becomes the owner of all the rights on the work created by the employee without any further action; whereas, the rights granted to the employer within the scope of Article 18/2 in the LIAW in Turkish Law are restricted as "The authority to exercise material rights." With this restriction, the employee's moral rights on the work are protected since the employer is not the owner of material rights, and is defined as a person authorized to exercise these rights.

With this Article, the LIAW guarantees that the employer has the authority to exercise material rights without the need for a separate transfer of rights agreement with a special regulation in terms of right ownership on the works created by the employee.

However, in order for this regulation to be applicable, it is important to carefully prepare the definition of the job that is expected to be fulfilled by the employee as is set out in the employment contracts and the provisions on intellectual property rights. Within the scope of Article 18/2, the employer's authority to use the material rights on the work is subject

to the condition that the work in question is created as a result of the work carried out in accordance with the employment contract between the parties. Therefore, the inclusion of provisions on the transfer of intellectual property rights into employment contracts will strengthen the rights recognized by Article 18/2. Hence, it is important for the employee to undertake that he/she will transfer the financial rights of the works created as a result of the nature of his/her job to the Employer, and to transfer the authority to use his/her moral rights to the Employer.

In the increasingly digitalized world, this situation is especially important in sectors with more technical details, such as computers and software, which work intensity is increasing daily. Thus, it is recommended that employment contracts be supported with additional protocols. It will be useful to detail the nature of the software to be created with the aforementioned additional protocols, as well as the transfer of ownership to the employee, in order to prevent possible disputes that may arise in the future.

Ownership of the On-Demand Works

The General Assembly of the Civil Court of Cassation (GACoC) made important determinations with its decision dated 16.01.2020 and numbered E. 2019 / 11-474, K. 2020/26, concerning the scope of the ordering party's use of the work created within on-demand work agreements, and whether a separate contract is required for the transfer of the economic rights of the author in terms of related uses.

In this case, the plaintiff was working as the purchasing manager in the defendant companies (ordering parties) and created a computer program upon the order of these companies. Since the plaintiff alleged that he did not receive payment in return for the computer program and there was no contract regarding the transfer of his economic rights, the plaintiff requested the cessation of the infringing use, and to be compensated due to the violation of his economic rights arising from the authorship. On the other hand, the defendants claimed that the use was based on permission, and that the program was created using the company's database during working hours; thus, it was a work created within the scope of the employment contract, and they filed a counter action.

After a long trial period, the case was brought before the GACoC, and the subject matter dispute was determined as mainly whether the legal relationship between the parties in the actual case could be evaluated within the

scope of the "on-demand work agreement," according to the Turkish Code of Obligations (TCoO), whether the use of the work by the ordering party constituted infringement of the economic rights of the author, and whether a separate contract is required for the transfer of these rights.

In the decision, on-demand work agreements are defined as the type of agreements in which one or more persons undertake to create an idea and work of art in line with the plan and instructions given by the ordering party, and it has been underlined that these agreements are considered as work agreements pursuant to Article 470 of the Turkish Code of Obligations (TCO). The defining element of these agreements is that the subject, content, form, and even the material to be used, is determined by the ordering party, and the other party makes a commitment to create the work for a fee. However, here the work is not created by a person working in the workplace of the employer, under orders and instructions; namely, not by a person who works in a close relationship with the ordering party; on the contrary, the work is created independently and, thus, differentiates from the works created by the employees.

In the subject matter decision, the relationship between the parties was defined as an on-demand work agreement considering that the computer program in question was created and delivered upon the order of

the defendants and in line with the needs of the defendants and, within this context, it has been evaluated whether the use by the defendants has violated the economic rights of the plaintiff or not.

The GACoC assessed that the defendants were the proprietor of the computer program, they had the right to use the computer program within the scope of the agreement, and the economic rights and the right to use the non-monetary rights arising from the authorship on the computer program were not transferred to the defendants, separately, and remained with the plaintiff. It has been evaluated that the use by the defendants is in accordance with the on-demand work agreement between the parties, and it has not been proved that they used the program in a way that would infringe the economic rights of the plaintiff. According to the GACoC, in such a case, the plaintiff can only claim the fee for the work under the agreement, and the rights granted to the owner of the work in violation of the economic rights will not be applied here, as if there is use without an agreement between the parties.

In our opinion, this decision is important as it emphasizes that the ordering party has the right to use the work within the scope of the on-demand work agreement, and that there is no need to make a separate transfer/license agreement for this use under the Law on Intellectual and Artistic Works (LIAW).

According to such agreements, the creator of the work may only request payment of the fee under the agreement, and cannot claim infringement in case such use of the other party falls under the agreement. However, if the relevant work is intended to be used in a different manner other than the one agreed to in the on-demand work agreement, a written right transfer agreement must also be made under the LIAW by specifying the format and media of the relevant use.

Does Technical Function Impede Copyright?

The question of whether appearance features of utilitarian objects with technical functions can benefit from copyright protection has become a debated issue in recent years, and it has also started to find a place in the decisions of the Court of Justice of the European Union (CJEU). In the decision of the CJEU, dated June 11, 2020, and numbered C-833/18, it was evaluated how appearance features of products with technical functions can benefit from copyright protection.

The dispute subject to the decision is based on the claim that appearance features of “Brompton Bicycles,” which have been produced and sold in the same form since 1987 by “Designer SI” and “Brompton Bicycle Limited Company,” and which can be adjusted to 3 different positions (folded, unfolded and stand-by) are copied in the production of “Chedech Bicycles,” produced by Get2Get, thus, infringing the copyright of the “Brompton Bicycle.”



Brompton Bicycle

Chedech Bicycle

The dispute was initiated at the local level before the Belgian Court, and it was discussed whether copyright protection must be provided in cases where appearance features

are dictated by technical function, such as in the case of “Brompton Bicycles,” and what criteria the Court must use when conducting that assessment. At this point, the Referring Court decided to stay the proceedings, and referred the matter to the CJEU for a preliminary ruling.

The CJEU has made important findings for the sector in its decision, and framed the issue as whether the “Directive on the Harmonization of Certain Aspects of Copyright and Related Rights in the Information Society,” numbered 2001/29/EC, should be applied in terms of products whose shapes are necessary to achieve a technical result, at least in part.

In summary, it was stated in the decision that copyright protection would not be granted to products whose appearance features are exclusively dictated by technical functions, but that copyright protection may be provided in the presence of the requirements concerning originality, and objective perception sought for a product to be regarded as “work” for products whose appearance features are at least, in part, technical functions. In evaluation of originality criteria, the CJEU stated that if a subject matter may be regarded as original, it is both necessary and sufficient that the subject matter reflects the personality of its creator, as an expression of his/her free and creative choices. In terms of the effect of the technical function on the evaluation of originality criteria, the CJEU has held that

a creator's original intellectual creation is capable of copyright protection, but that will not be the case where it is dictated by technical considerations, rules or constraints, which have left no room for creative freedom. According to the CJEU, regardless of the external and subsequent factors in the creation of the product, it should be evaluated whether the criteria of originality has been met by considering all conditions that existed at the time of the creation of the "work," and a decision should be made, accordingly.

As a result, the CJEU has clarified that in terms of appearance, the features of products, such as bicycles for daily use, the technical function may not prevent copyright protection if the condition of originality is met.

Similarly, in Turkish Law, it is emphasized by the Supreme Court that it is necessary to examine whether the technical function dictates the whole or a part of the appearance of the product, whether the creativity is restricted due to the technical function, and whether the product as a whole preserves its originality. It is also stated that as long as the created intellectual product is original as a whole, the technical function will not eliminate its quality as a "work."

On the other hand, in Turkish Law, it is not sufficient for a product to be original by itself, but these products must also be included in one of the main categories that are listed and limited by the "Law on Intellectual and

Artistic Works." In addition, the Law seeks the requirement that fine art works, including product designs, should have aesthetic value that is an additional criteria, which is not required for other types of works. When examining the aesthetic value requirement, the Supreme Court also applies the criteria of being unique, and accepts that products, which are created to appeal to the aesthetic sense beyond daily use, and as a result of an artistic activity, can benefit from copyright protection.

As a result, although it can be said that technical function, alone, will not prevent copyright protection under Turkish Law, product designs, as in the case that is subject to the cited decision, may need to have aesthetic value in addition to being original, in order to benefit from copyright protection.

Compensation Liability for Copyright Infringement

The author or the owner of a work is entitled to claim compensation in the case of violation of economic and moral rights arising from the ownership of the work protected under Law No. 5846, the Intellectual and Artistic Works (the "LIAW"), in addition to other legal remedies.

Article 70 of the LIAW regulates compensation that may be claimed based on violation of economic and moral rights, separately. Accordingly, the author whose moral rights have been infringed, is entitled to file a court action for his/her moral damages. Although Article 70/1 creates the impression as if only moral damages may occur when moral rights are infringed, it is accepted by the scholars and in court precedents that if the infringement of moral rights also caused material damages, the author may file a court action based on general terms that are applicable according to Tort Law for the recovery of material damages. In the case of the infringement of economic rights, the author may claim not only for his/her actual damages, but also for the loss of profit by proving the fault of the infringer, incurred damages, and the casual link therein between. The author may also claim compensation for moral damages, if any, when economic rights are violated.

The LIAW also provides other pecuniary claims which are even more advantageous for the author, where the liability of the infringer is not subject to fault.

According to Article 68 of the LIAW, the author (or the owner) may demand from the infringing party payment in compensation up to three times of the amount that could have been paid by the infringing party if the rights had been granted through a contract where the copyright protected work was reproduced, distributed, or publicised, without the permission of the right holder.

Even though this pecuniary claim is evaluated as a compensation claim, in practice, in fact, it is a one of the mechanisms employed by the LIAW for the cessation of copyright infringement. In other words, the LIAW legalises the infringing act by creating a fictitious contractual relation between the infringing party and the right holder in return for payment made by the infringer. In consequence, for example, reproduced works without the permission of the right holder could continue to be sold as if they were legally reproduced under the contract between the parties. Certainly, this may only be applied if the right holder prefers to apply this remedy. Another important issue while applying this pecuniary claim as to Article 68, is that it does not require the right holder to prove the infringer's fault; namely, it sets strict liability for the infringer.

On the other hand, as per Article 70/3 of the LIAW, the infringing party may also claim the profits gained by the infringing party due to the infringing activity, in addition to the

compensation claims for its material and moral damages. This claim should be defined as an additional pecuniary claim rather than compensation, itself. Doctrinal resources define the legal basis of this claim as "Agency without Authority." Therefore, the right holder whose rights are violated may seek payment of the profits that arose from the infringing act, in a similar way that a person whose business conducted without his/her authority by a third party would ask for the transfer of the benefits gained through this unauthorized agency. The infringed party is not required to prove the infringer's fault while asking for the transfer of the profits realized. In addition, the infringed party may demand payment of the profits made by the infringer, even if the act has not caused any harm to the right holder. Similarly, the transfer request of the right holder shall be accepted as it is, even if the amount of profit gained by the infringer is greater than the right holder's loss, or even if it exceeds the profit, by comparing the right holder's loss, if it reaches significant amounts. This remedy, which aims to prevent the party who violates the economic and moral rights of the right owner, from profiting, as it is an independent remedy for compensation claims for material and moral damages, and it may also be sought even there is no harm to the copyright holder due to the violating act. As is clear from the above, the copyright owner holds additional pecuniary claims to its compensation options when economic and

moral rights are violated. However, it should be noted that these claims cannot be made all together by the copyright owner. Thus, in a scenario where the right owners base their claims on Articles 68 and 70/3, the Code sets the deduction of the amount that the right owners may demand under Article 68, as if there were a contract for the amount that the right owners may claim, as to Article 70/3 of the Code, as a transfer of the profit gained by the infringer.

Lastly, it should be stated that following the enactment of Law No. 7155 on the Initiation of Enforcement Proceedings Regarding Monetary Claims Arising from Subscription Agreements, mandatory mediation processes have started to be applied in compensation claims and/or any other monetary claims. Accordingly, the right owner must first apply for mediation process prior to initiating a court case

A Brief Review of the Karalis Case

Mr. Yannis Karalis ("Plaintiff"), a Greek composer and lyricist who is the copyright owner of the "Eclipse" song, which was released in 1997, brought an infringement action against the famous Turkish singer and lyricist, Ms. Sezen Aksu, as well as against other lyricists and several music record and production companies ("Defendants") due to their infringing use of the cited song in 2003. The Musical Work Owner's Society of Turkey ("MESAM") was also informed and involved in the lawsuit.

The plaintiff asked the Court to order an 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 the right had been granted by a contract, according to Article 68 of Law on Intellectual and Artistic Works No. 5846 ("LIAW"). The defendants requested dismissal of these claims by alleging that (i) all permissions were obtained from the collecting society that the plaintiff was a member of in Greece at that time, and (ii) that the right to bring such action lapsed due to the time limitation.

Following lengthy proceedings, 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. Both

parties appealed the decision. Thereafter, the Court of Cassation ("CoC") reversed the decision by explaining that the First Instance Court did not evaluate the compensation claims of the plaintiff as to Article 68 of the LIAW, and merely ruled for material and moral damages. The CoC also indicated that payment of the moral damages shall be made in local currency under the provisions of the Turkish Code of Obligations No. 818 ("TCO"), unless decided by the parties to the contrary. The First Instance Court complied with this reversal decision. However, this time, the Court stated in its decision that the "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."

We are of the opinion that such assessment, where the Court simply included material damages in the specific compensation claim under Article 68, while those are two separate remedies stipulated under the LIAW, is inappropriate. The Court also failed to explain how the moral damages have been calculated, and declined to pay TRY 15.000 as € 5.000 had been ruled before.

Under normal circumstances, the legal proceedings in such copyright infringement cases are expected to take around four years. However, this case, where the court obtained five expert reports, and held more than 20 hearings, it has been ongoing for more than 18 years, and may even continue for the next couple of years if the parties do not settle.

This case file, despite all of these lengthy court proceedings, is important, as the Court handed down its decision by declaring the infringement and imposing material and moral damages against these highly known actors in the music industry in Turkey, and it is encouraging for the right holders in the music sector and, especially, for foreign right holders to claim copyright ownership in Turkey.

CONTACTS



MEHMET GÜN
PARTNER

Intellectual Property
Dispute Management
Life Sciences
Corporate and M&A
Competition

mehmet.gun@gun.av.tr



BARIŞ KALAYCI
PARTNER

Intellectual Property
Anti-Counterfeiting
Business Crimes and Anti-Corruption
Trademarks and Designs
Copyrights

baris.kalayci@gun.av.tr



GÜLDENİZ DOĞAN ALKAN
PARTNER

Intellectual Property
Trademarks and Designs
Copyrights

guldeniz.dogan@gun.av.tr



HANDE HANÇAR
PARTNER

Intellectual Property
Trademarks and Designs
Copyrights
IP Prosecution
Life Sciences
Technology, Media and Telecom

hande.hancer@gun.av.tr



MUTLU YILDIRIM KÖSE
PARTNER

Intellectual Property
Trademarks and Designs
Copyrights
IP Prosecution

mutlu.kose@gun.av.tr



UĞUR AKTEKİN
PARTNER

Intellectual Property
Trademarks and Designs
Copyrights
IP Prosecution
Technology, Media and Telecom

ugur.aktekin@gun.av.tr



ZEYNEP SEDA ALHAS
PARTNER

Intellectual Property
Trademarks and Designs
Anti-Counterfeiting
IP Prosecution
Copyrights

zeynep.alhas@gun.av.tr



TALAT YÖRÜK
MANAGING ASSOCIATE

Intellectual Property
Anti-Counterfeiting
Trademarks and Designs
Copyrights
Business Crimes and Anti-Corruption

talat.yoruk@gun.av.tr



BARAN GÜNEY
SENIOR ASSOCIATE

Intellectual Property
Trademarks and Designs
Copyrights
IP Prosecution
Anti-Counterfeiting
Technology, Media and Telecom

baran.guney@gun.av.tr



DİLAN SILA KAYALICA
SENIOR ASSOCIATE

Intellectual Property
Trademarks and Designs
IP Prosecution
Copyrights

dilan.aslan@gun.av.tr



İREM GİRENES YÜCESOY
SENIOR ASSOCIATE

Intellectual Property
Trademarks and Designs
Copyrights

irem.girenes@gun.av.tr

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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