



## FIRM OVERVIEW

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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.

## Key Developments and Predictions for Copyright Law in Turkey

Copyright protection is granted under Law on Intellectual and Artistic Works No. 5846 (the "LIAW") in Turkey. The LIAW entered into force on January 01, 1952, and was amended in the years of 1983, 1995, 2001, 2004, 2007 and, lastly, 2008. The Draft Bill on the Amendment of the Code (the "Draft Bill") was published for public opinion on May 05, 2017; however, there is currently no indication that this Draft Bill will enter into force in the near future.

On the other hand, the European Union's Directive on Copyright in the Digital Single Market 2016/0280/COD (the "Copyright Directive"), which is intended to accommodate the digital age, was approved by the European Council on April 15, 2019, and came into force on June 7, 2019. Accordingly, it has been a concern as to how the Copyright Directive will be reflected in the Turkish Copyright Law and the mentioned Draft Bill.

Due to its broad content and different approaches, copyrights may be defined as the least harmonized field of intellectual property, as compared to others in the world. Therefore, not surprisingly, the implementation of similar matters differs amongst countries.

In an age where digital media has become wide-spread, and television formats gain great importance in Turkey, like the rest of the world, protection of digital media content, and television formats, have become common and highly debated topics in copyright law and, likewise, the cumulative protection for intellectual works, as well as the determination of compensation in cases of infringement.

### **This paper provides an overview on the following topics:**

- Assignment of Copyrights
- Notice and Takedown Procedure for Copyright Protection
- Artificial Intelligence and Copyright
- Fair Use Doctrine
- Compensation Liability for Copyright Infringement
- Copyrights Overlapping other IP rights
- Protection of TV Program Formats in Turkish Law

## 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 the 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.

Because of the practical difficulties created with this formalistic approach, we see that 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.

## 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 its owner's permission, this means that the copyright is 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 the removal of the infringing content within three days. If the content provider does not obey the request within a three-day window, 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 which establishes 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. Besides, 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 actually 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 the Digital Single Market 2016/0280/COD (the "Copyright Directive"), 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 (former 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, and 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, 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; 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, as well, as the present rules do not answer how, and in what way, an AI system can enforce a copyright, and 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. Currently, a similar 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 what are 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.

## Fair Use Doctrine

Intellectual Property Law, in principle, rewards the creativity of owners by granting them privileged rights on related works within the scope of copyright legislations, and prohibits reproduction, transmission, representation or use of the work in other ways, without the consent of the owner. On the other hand, the "Fair Use" doctrine, which basically finds application in Anglo-Saxon legal systems, allows limited use on copyrighted work without the permission of the right holder, thereby aiming to balance the rights arising from the ownership of the work and the public interest.

In Turkish law, the rights arising from the ownership of the work are restricted only in some specified cases that have been previously determined under the Law on Intellectual and Artistic Works (the "LIAW"). Indeed, the LIAW regulates the matter under the heading of "Limitation of Copyrights on the Work" between Articles 30 and 47. Each of these limitations, which are set with individual and public concerns, are clearly defined in the LIAW, and if a use falls within the scope of these Articles, there is an exception to copyright infringement. Frequently encountered examples of these limitations are "Freedom of Representation," under Article 33, and "Freedom of Citation," under Article 35.

In terms of the application abroad, the American system and European Continental system have differing approaches on the subject.

When deciding whether or not use is fair by the American Courts, in accordance with the criteria under Section 107 of the American Copyright Act, taking into account the specific circumstances of each case, a four-factor assessment is carried out, including the purpose and character of the use that allegedly infringed the copyright, the nature of the copyrighted work, the amount and substantiality of the use, and the effect of the use on the current and potential market value of the work.

On the other hand, the European Continental system adopts a "3 Step Test" method system on the limitation of the rights arising from work ownership, although it does not have the same content as with the fair use doctrine. This method, which was first discussed in Bern Convention Article 9/2, in terms of the right to reproduce, was later expanded to include other economic rights of the right holder in TRIPS Article 13 and, today, many legislations, such as InfoSoc Directive 2001/29 / EC, the WIPO and WPPT refer to the "3 Step Test" method. According to the "3 Step Test" method, it is evaluated whether the restriction of the right is related to a specific situation, whether the restriction will prevent the normal use of the work by the right holder, and whether the restriction will cause unreasonable harm to the legal interests of the right holder.

As to the provisions of TRIPS, signatory countries can freely determine the limitations on copyrights in their domestic law systems; however, as per Article 13, each limitation on copyright needs to be precisely determined in advance.

While the fair use principle has enough flexibility to respond to the changing needs and technological developments in today's world, through its numerus clausus nature, the "3 Step Test" method also creates a more specific and predictable environment by pre-determining the conditions in which the copyright may be limited.

Considering the current regulations in the ILAW, it should be said that Turkish copyright law adopts a system close to the "3 Step Test" method by giving priority to the owner's rights arising from the work, and does not reflect the features of the fair use principle.

As to the decisions made by the Turkish Courts on copyright infringement cases, the use of the copyrighted work should either fall under the scope of the pre-determined copyright limitation cases, or express consent should be provided by the right owner, in writing, to not be declared as a copyright infringement. However, it has recently been encountered with some opposing views in the decisions of the Court of Appeal on copyright infringement cases by referring to the decisions of the Court of Justice of the

European Union (the "CJEU") on this matter, which states that an examination by the Court should be conducted as to the nature of the use to understand whether it is fair, according to the characteristics of the established case -even if it is currently limited to the assessment of the commercial impact of the use- and in addition to the general copyright law principles. (e.g. E.2015 / 19627, K. 2018/7669; E. 2016/12740 K. 2018/7674; E. 2015/32515 K. 2018/7675 numbered decision of the 19th Criminal Chamber of Court of Appeal)

This recent approach in the decisions of the Court of Appeal is an important step in adapting the existing system to the requirements of today's digitalized world by allowing the use of the work within the limits that can be considered fair. Considering all of the above, the fair use principle, which has started to be discussed at least with its derivatives in terms of Turkish copyright law, is now expected to be on the agenda of Turkish Copyright Law in the coming years.

## 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 the 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 the moral rights are infringed, it is accepted by the scholars and 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 to Tort Law for the recovery of the 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 damage, and the causal 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, the 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, it 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 for 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 profit 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 made. In addition, the infringed party may demand payment of the profit made by the infringer, even if this 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 for compensation claims and/or any other monetary claims. Accordingly, the right owner must first apply for mediation process prior to starting a court case.

## Copyrights Overlapping other IP rights

The overlapping of copyrights with other IP rights, in particular, with trademarks and designs, is a common case in many jurisdictions, including Turkey. It refers to the protection of an intellectual creation under both copyright law and trademark or design law.

In Turkey, an intellectual creation benefits from cumulative protection, if it simultaneously fulfils the criteria to be protected as a copyrighted work under Law of Literary and Artistic Works No. 5846 ("Law No. 5846") and as a trademark or a design under Intellectual Property Code No. 6769 (the "IP Code").

To be eligible for copyright protection, a work must bear the characteristic of its author, and fall within one of four categories, namely, scientific and literary, musical, artistic or cinematographic works. A work meeting these criteria may also be registered and protected as a design, provided that it has novelty and distinctiveness and/or a trademark, so long as it distinguishes the goods or services of one undertaking from those of other undertakings.

Within this scope, the IP Code explicitly stipulates in Article 58, paragraph 3, that a design protected as per the provisions of the IP Code is also protected under Law No. 5846, in the event that it meets the conditions set forth in that Law. The decision of Istanbul 4th IP Court numbered 2010/55 E., 2012/113 K.

and dated May 08, 2012, is an example of the application of such cumulative protection. In that specific case, the owner of the registered key holder design claimed that the defendant manufactured and sold key holders indistinguishably similar to his design, and requested determination of the design and copyright infringement, as well as a claim for pecuniary and non-pecuniary damages. The Court decided that the plaintiff's registered design is also an artistic work protected under Law No. 5846, and the defendant's activities infringed not only the plaintiff's design rights as per design law, but also his moral and economic rights on the artistic work as per copyright law. In another decision numbered 2009/191 E. 2010/258 K. and dated October 26, 2010, the Ankara 3rd IP Court resolved that an unauthorized use of Mickey Mouse, a copyrighted character and a registered trademark of Disney, on a slipper design application, infringed Disney's rights, and that the contested design cannot be granted registration as per the design law.

The IP Code has a specific Article concerning the interplay between copyrights and trademarks, as well. According to Article 6, paragraph 6, of the IP Code, a trademark application shall not be registered, or it will be invalidated, if it contains a third party's copyrighted work. In this regard, the IP Courts and the Turkish Patent and Trademark Office often invalidate/refuse to register words or device trademark applications,

including copyrighted works, such as names or images of movies, comics or cartoon characters; names of books, magazines, movies or TV series, as well as logos. For instance, in its decision numbered 2007/98 E. 2008/114 K. and dated May 07, 2008, the Istanbul 3rd IP Court decided to invalidate the defendant's "GARFIELD + DEVICE" trademark, taking into consideration that the plaintiff, Paws Incorporated, is the trademark and copyright owner of the Garfield name and Garfield character. Similarly, in its decision numbered 2016/11836 E., 2018/3892 K. and dated May 23, 2018, the 11th Chamber of Court of Appeals upheld the decision of an IP Court, which resolved that the defendant's trademark application containing a Lion device cannot be registered, and it infringes copyrights of the plaintiff due to the fact that the Lion device used in the contested trademark application is an original work of art created by the plaintiff and is protected by copyright law.

Considering the Turkish legislation and case law with regard to the situations when copyrights overlap with trademarks or designs, it might be said that right owners can simultaneously enjoy protection afforded under both Law No. 5846 and the IP Code.

## Protection of TV Program Formats in Turkish Law

Regardless of being intellectual creations that are of great importance for the television production sector, program formats lack clear definition within the scope of Turkish law, as well as a broadly accepted assessment of their legal characteristics.

Uğur Çolak, a former member of the Istanbul District Court, defined program formats as “Frameworks or outlines for programs transmitted by any broadcast format, including digital communications, which demonstrate how each episode should be produced and which bear the characteristics of its author and the program itself, such as the name and flow of the program, the position and attitude of the host, the position and manner of participation of at-home and/or studio audience, camera angles, studio designs, catchphrases, slogans and theme music,” in his academic work titled, “Protection of Television Program Formats.”

Although Law No. 5846, On Intellectual and Artistic Works (“FSEK”), and other related legislation does not include a comprehensive definition of formats as the one provided, above, it is argued by the established case-law, and by the dominant view amongst legal scholars, that program formats which are fixed, in writing, should be deemed as intellectual works under the FSEK. In this regard, it is accepted that program formats that bear the characteristics of their authors (“originality/uniqueness”) should be protected as intellectual works under the

FSEK, provided that they are fixed in a tangible medium (“fixation”) in a manner that reflects such authorship.

On the other hand, there are some doctrinal views arguing that TV formats may not be protected under the FSEK as they do not fall under any of the four *numerus clausus* categories, conclusively stipulated by the said law. The opposing view asserts that program formats, indeed, fall under the category of literary and scientific works by virtue of FSEK Article 2/b.1, which defines such works as, “works that are expressed by language and writing in any form...”

In line with the above, the 11th Civil Chamber of the Supreme Court, in its decision numbered 2004/6612 E., 2005/3278 K. and dated April 5, 2005, held that “According to Article 5 of the Law concerning Intellectual and Artistic Works, numbered 5846, as amended through Law numbered 4630, it must be accepted that program broadcast formats must be deemed as works and protected as such under the said law. In this regard, our Chamber has assessed program formats within the scope of the aforesaid law in its decisions numbered 2000/6049-8439 and 2004/1281-10333,” clearly showing that television formats also enjoy the protection same granted to the works under the FSEK. Similarly, the 11th Civil Chamber of the Supreme Court, in its decision dated September 21, 2004 and numbered

2003/12452 E., 2004/8678 K, upheld the decision of the Court of First Instance, which had held that the game show titled "Kim Gitsin?" infringed upon the rights of the copyright holder/author of the TV program entitled "Weakest Link" (the Turkish version of which was broadcast with the title "En Zayıf Halka"), since the former was produced with the same format, content and rules as the latter foreign-originated program, which was deemed to be an original work.

In another case, the Istanbul 1st Civil Court for Intellectual and Industrial Rights, with its decision dated April 29, 2003 and numbered 2001/1123-2003/202, held that the contest, which was broadcast on the "Show TV" channel, was an imitation of the "2008 SMS" program, originally broadcast in Italy, and where the right to use it, in Turkey, was granted to the plaintiff in accordance with license contracts and, therefore, constituted an infringement of the rights of the plaintiff.

It is also accepted among legal scholars that TV formats may be afforded protection as per the general unfair competition provisions under the Turkish Commercial Code ("TTK") in any case, even if it is not possible to consider formats as scientific and literary works.

Accordingly, in the unpublished decision of the Istanbul 1st Civil Court for Intellectual and Industrial Rights, numbered E. 2003/239, K. 2007/152, it is held that: "...If the television

format is not an imitation and is original, that is, if it contains very concrete original details beyond an abstract concept; if it is unique, and has a certain philosophy and atmosphere, it is accepted that it will be protected as an intellectual work; whereas, if it is not original, it may be protected under provisions of parasitic or unfair competition, provided that the relevant conditions are fulfilled."

In light of the abovementioned doctrinal views and legal precedents, it is understood that (i) original TV formats that satisfy the requirement of (ii) fixation are entitled to protection under the FSEK provisions as (iii) intellectual works; whereas, formats that do not meet such conditions may be protected under the unfair competition provisions of the TTK.

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## 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.

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