

Intellectual property right assignments Q&A: Turkey

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Country Q&A | [Law stated as at 31-Oct-2018](#) | Turkey

This Q&A provides country-specific commentary on the following standard documents:

Assignment of intellectual property rights: Cross-border.

Assignment of trade marks: Cross-border.

Assignment of copyright: Cross-border.

Assignment of patents: Cross-border.

Assignment of industrial designs: Cross-border.

Waiver of moral rights: Cross-border.

Letter confirming assignment of intellectual property rights: Cross-border.

and forms part of *Cross-border intellectual property.*

Key aspects of intellectual property right assignments Definition of IP Rights

1. Does the definition of "Intellectual Property Rights" in *Standard document, Assignment of intellectual property rights: Cross-border: Clause 1.1* include any rights that are not recognised in your jurisdiction? If yes, what are those rights?

Standard document, Assignment of intellectual property rights: Cross-border: clause 1.1 does not include any rights that are not recognised in Turkey.

2. Should this definition be amended to include any additional rights that are recognised in your jurisdiction? If yes, what are those rights?

No amendments necessary.

Assigning the benefit of licences to use IP rights

3. Subject to any restrictions in the terms of the relevant licence, is it possible to assign the benefit of a licence to use IP rights? If yes:

- Are there any restrictions on this (such as on the identity of the assignee or the price of the assignment)?
- Does the assignment have to comply with any particular formalities to be valid and enforceable?
- Does the burden of the licence automatically pass to the assignee along with the benefit?

Subject to any restrictions in the terms of the relevant licence, it is possible to assign the benefit and burden of a licence to use IP rights. The assignment should be in writing, and the burden of the licence will automatically pass to the assignee along with the benefit even if not expressly stated.

Assigning future intellectual property rights

4. Is it possible to assign future IP rights? If yes, does an assignment have to comply with any formalities additional to the existing assignment, or do any additional documents need to be entered into, for that future assignment to be valid and enforceable?

The assignment of future IP rights is not possible under Turkish law.

Implied covenants

5. Do any of the laws applicable to IP assignments in your jurisdiction imply covenants relating to title?

Use of the phrase "full title guarantee" implies the following covenants into the terms of an assignment:

- The assignor is entitled to sell the property.
- The assignor will do all it reasonably can, and at its own expense, to vest title to the IP in the assignee.
- The IP is free from encumbrances and adverse rights other than those which the assignor does not reasonably know about.

The phrase "limited title guarantee" implies the first two of the above covenants, and also that the assignor itself has created no encumbrances on the rights.

Right to sue for past infringements

6. Is it possible to assign the right to sue for past infringement or misuse of IP rights? If yes, is this right automatically transferred to an assignee on an assignment of the relevant IP rights, or must it be expressly included in the terms of the assignment?

An assignee of IP rights automatically obtains the right to sue for past infringement or misuse of those rights, provided the limitation periods for such claims has not expired. Assignment of the right to sue for past infringement or misuse of IP rights does not have to be expressly included in the terms of the assignment.

7. If it must be expressly included, comment on whether the following clauses are effective to assign the right and, if not, set out below any necessary amendments to make them so:

- *Standard document, Assignment of intellectual property rights: Cross-border: clause 2(c).*
- *Standard document, Assignment of trade marks: Cross-border: clause 2(c).*

- [Standard document, Assignment of copyright: Cross-border: clause 2.](#)
- [Standard document, Assignment of patents: Cross-border: clause 2\(e\).](#)
- [Standard document, Assignment of industrial designs: Cross-border: clause 2.](#)

It need not be expressly included (see [Question 6](#)).

Right of priority

8. Do applicants for registered IP rights have the right to seek a priority date for their applications? If yes, is it possible to assign that right of priority along with the IP right to which it relates? Are there any formal requirements for a valid and enforceable assignment of the right of priority?

Applicants for registered IP rights have the right to seek a priority date for their applications. It is possible to assign that right of priority along with the IP right to which it relates. The requirements for a valid and enforceable assignment of the right of priority are the same as for assignments of trade marks, that is that they are in writing, notarised and signed by the assignee and assignor.

Tax considerations

9. What tax charges and tax considerations typically arise on an assignment of IP rights? Do these vary depending upon:

- the type of IP right being assigned; and/or
- whether the assignor or assignee is an individual or corporation; and/or
- whether the assignor or assignee is tax-resident?
- If yes, explain those variations.

VAT, income tax, corporate tax and stamp duty may arise on an assignment of IP rights. The parties may freely agree which party will bear such charges.

The tax charges will not vary depending on the type of IP right being assigned.

Stamp duty applies to assignments of IP rights at the point at which the deed of assignment is notarised. The rate of stamp duty is determined by the ministry every year; for the year of 2018, stamp duty for agreements and deeds of assignment is 0.948%.

VAT and stamp duty are charged to individuals and corporations.

In addition, if the assignor or assignee is an individual, income tax will arise, and if the assignor or assignee is a corporation, then corporate tax will arise. The income tax rate varies according to the level of income (ranging from 15-35%); the corporate tax is currently 22%. The assignor pays the income/corporate tax.

If the assignor is tax-resident then income tax and corporate tax will arise.

10. Set out below any amendments necessary to the following standard documents to reflect tax charges and considerations arising in your jurisdiction:

No amendments are required to the following documents:

- *Standard document, Assignment of intellectual property rights: Cross-border.*
- *Standard document, Assignment of trade marks: Cross-border.*
- *Standard document, Assignment of copyright: Cross-border.*
- *Standard document, Assignment of patents: Cross-border.*
- *Standard document, Assignment of industrial designs: Cross-border.*

Power of Attorney

11. Is it common practice for an assignee to seek to include a power of attorney in an assignment of IP rights? If yes, comment on whether *Standard document, Assignment of intellectual property rights: Cross-border: clause 7.2* is sufficient to grant a valid and enforceable power of attorney. If not, set out below any necessary amendments to make it so.

It is common practice for an assignee to seek to include a power of attorney in an assignment. *Standard document, Assignment of intellectual property rights: Cross-border: clause 7.2* is sufficient to grant a valid and enforceable power of attorney.

Assistance with future proceedings

12. Is it usual for an assignor to be obliged to assist the assignee in obtaining, defending and enforcing the assigned rights, and to assist with any proceedings that relate to them after completion of an assignment (see for example [Standard document, Assignment of intellectual property rights: Cross-border: clause 7.1\(b\)](#))?

This issue depends on the contractual relationship between the parties. Turkish IP Law does not oblige parties to support each other after an assignment is executed. However, general rules (obligation, commercial and contract laws) may apply to an assignment, which require parties to act as prudent merchants when they are entering into an agreement (*Article 18/2, Commercial Law*). This would encompass an obligation on the assignor to assist the assignee.

Perfecting the assignment

13. Does either party have to take any additional steps after execution of an assignment for an assignee to receive and enjoy the full benefit of an assignment? If yes, briefly describe those additional steps, and whether they vary depending on the IP right being assigned.

An assignment must be submitted to the Turkish Trademark and Patent Office for recording on the register. There is no time limit for recording the assignment. There is an official fee of around EUR120 for recording the assignment. If a deed of assignment is not in Turkish it must first be translated into Turkish by a certified translator. This is the case irrespective of the type of IP right being assigned.

Liability

14. Is it possible for an assignor to seek to limit or exclude all liability that might arise after execution of an assignment in relation to the assigned rights (see for example *Standard document, Assignment of intellectual property rights: Cross-border: clause 9*)?

It is possible for an assignor to seek to limit or exclude all liability, as long as the parties agree.

15. Is it possible to limit or exclude liability for death and personal injury under particular circumstances?

Turkish law permits the exclusion of liability arising from death and personal injury insofar as the contract relates to the creation or transfer of a right or interest in any IP right.

Guarantor

16. Is it possible for a third party to guarantee the obligations of an assignor in an assignment of IP rights? If yes, is it usual for the guarantor to be made a party to the assignment and/or does a separate guarantee agreement need to be entered into by the parties?

It is possible for a third party to guarantee the obligations of an assignor in an assignment of IP rights. The parties can choose whether or not a separate guarantee agreement will be signed. If it is not, the guarantor will be made a party to the main IP assignment.

Formalities for assignment

17. Does an assignment of intellectual property (IP) rights have to comply with any particular formalities to be valid and enforceable (including in relation to format, language and execution)? If yes, describe briefly what these are for each type of IP right.

Trade marks

Assignment of a trade mark must be in writing, signed by both parties and notarised. IP Assignments should be signed before a Turkish notary, or before a foreign notary and also apostilled and then translated into Turkish.

Copyright

Assignment of a copyright must be in writing, signed by both of parties and notarised. IP Assignments should be signed before a Turkish notary, or before a foreign notary and also apostilled and then translated into Turkish.

Patents and know-how

Assignment of patents and know-how must be in writing, signed by both parties and notarised. IP Assignments should be signed before a Turkish notary, or before a foreign notary and also apostilled and then translated into Turkish.

Industrial design right

Assignment of a design must be in writing, signed by both parties and notarised. IP Assignments should be signed before a Turkish notary, or before a foreign notary and also apostilled and then translated into Turkish.

18. If some form of consideration has to be transferred between the parties for an assignment to be valid and enforceable, is a nominal sum acceptable, or must it be an amount that reflects the current market value of the IP rights being assigned, whether for tax reasons or otherwise?

A nominal sum is acceptable, whether or not the assignment is on "arm's length" terms. There is no requirement that some form of consideration is transferred.

Compliance with local law and practice

19. Are any of the terms in the following standard documents invalid, unenforceable or contrary to standard practice in your jurisdiction? If yes, set out below any necessary amendments to make those terms valid, enforceable and reflective of standard practice.

- *Standard document, Assignment of intellectual property rights: Cross-border:*
No amendments.
- *Standard document, Assignment of trade marks: Cross-border:*
No amendments.
- *Standard document, Assignment of copyright: Cross-border:*
No amendments.
- *Standard document, Assignment of patents: Cross-border:*
No amendments.
- *Standard document, Assignment of industrial designs: Cross-border:*
No amendments.

Brexit

20. Are any amendments required to the following standard documents to reflect the fact that the UK is preparing to leave the EU; and/or will have left the EU after March 2019? If yes, set those amendments out below and, if necessary, briefly explain them (and where no amendments are necessary, insert "no amendments").

- *Standard document, Assignment of intellectual property rights: Cross-border:*
No amendments.
- *Standard document, Assignment of trade marks: Cross-border:*
No amendments.
- *Standard document, Assignment of copyright: Cross-border:*
No amendments.
- *Standard document, Assignment of patents: Cross-border:*
No amendments.
- *Standard document, Assignment of industrial designs: Cross-border:*
No amendments.

Registration and recordal aspects of intellectual property right assignments

Registrable intellectual property rights

21. Which intellectual property (IP) rights are registrable in your jurisdiction? Provide a link to the website of the relevant registry in each case.

Industrial property rights such as trade marks, geographical indications, designs, utility models, patents and integrated circuit boards are the registrable rights under Turkish Law. These IP rights are registered before the Turkish Patent and Trademark Office. The link for Turkish Patent and Trademark Office is www.turkpatent.gov.tr/TURKPATENT/?lang=en.

Copyrights are also registrable optionally before the Ministry of Culture and Tourism, and plant varieties are registrable before the General Directorate of Plant Production.

Assignment recordal / registration

22. Can an IP assignment be recorded at the IP registry in your jurisdiction? If yes, is this optional or a statutory requirement? If the position varies depending on the IP right being assigned, explain those variations.

An IP assignment can be recorded. This is optional and not a statutory requirement (this applies to all IP rights). However, the rights that arise from the assignment cannot be held against bona fide third parties unless the assignment is recorded in the register.

23. Is it usual to include a mechanism in the terms of an assignment to ensure that the assignor satisfies its obligation to record the assignment, or that the assignee is able to take action if the assignor fails to do so?

The common practice is that the assignee will apply for registration of the assignment and that the assignor has no obligation to do so. A deed signed by both parties should be submitted with the application, but no further input is required from the assignor.

Warranties and indemnities in intellectual property right assignments

Express warranties from assignor

24. Is it usual for an assignee to seek certain express warranties from an assignor in an IP assignment? If yes, comment on whether the following clauses reflect the scope of express warranties typically given by an assignor and, if not, set out below any necessary amendments so that they do (where no amendments are necessary, insert "no amendments").

The specific warranties given by an assignor will depend on a number of factors, including the IP rights being assigned and the bargaining position of each of the parties. At the very least, it is common for an assignor to warrant that it owns the IP rights it is assigning; but it is usual for an assignee to seek further express warranties from the assignor. No amendments are required to the following clauses:

- *Standard document, Assignment of intellectual property rights: Cross-border: clause 4.*
- *Standard document, Assignment of trade marks: Cross-border: clause 4.*
- *Standard document, Assignment of copyright: Cross-border: clause 4.*
- *Standard document, Assignment of patents: Cross-border: clause 5.*
- *Standard document, Assignment of industrial designs: Cross-border: clause 4.*

Implied warranties from assignor

25. Is it usual for certain warranties to be implied into the terms of an IP right assignment in your jurisdiction? If yes, briefly describe what those implied warranties are; which types of IP assignments they apply to (if not all); and whether their application can be excluded from the terms of an assignment. State any relevant legislation.

It is not usual for warranties to be implied into the terms of an IP right assignment in our jurisdiction. Warranties are expected to be expressly promised orally or in writing.

An entire agreement clause is not common in Turkey. However, there is no law which prohibits such clauses, and if made they will be valid and enforceable.

Assignor indemnity

26. Is it usual for an assignee to seek an indemnity from an assignor? If yes, comment on whether the following clauses reflect standard practice in your jurisdiction and, if not, set out below any necessary amendments so that they do.

It is usual for an assignee to seek an indemnity from an assignor. The following clauses reflect standard practice in Turkey with no need for amendment:

- *Standard document, Assignment of intellectual property rights: Cross-border: clause 5*
- *Standard document, Assignment of trade marks: Cross-border: clause 5*
- *Standard document, Assignment of copyright: Cross-border: clause 5*
- *Standard document, Assignment of patents: Cross-border: clause 6*
- *Standard document, Assignment of industrial designs: Cross-border: clause 5*

27. Does an assignee have a general obligation at law to mitigate any loss that it may suffer or incur as a result of an event that would give rise to a claim under an indemnity? State any relevant legislation.

The assignee does not have a general obligation at law to mitigate any loss that it may suffer or incur as a result of an event that would give rise to a claim under an indemnity.

Assigning specific types of intellectual property rights

TRADE MARKS

Partial assignment

28. Is it possible to make a partial assignment of a registered trade mark?

Yes, it is possible to make a partial assignment of a registered trade mark goods and services.

Goodwill

29. What is understood by the term "goodwill" in your jurisdiction?

The term "goodwill" is not explicitly defined in Turkish law. However, there is a doctrinal definition, according to which goodwill represents the sum of reputation, value, portfolio and so on which are bound to the trade mark.

30. Is goodwill automatically transferred to the assignee of a trade mark, or must it be expressly included in the terms of an assignment (see for example [Standard document, Assignment of intellectual property rights: Cross-border: clause 2\(b\)](#) and [Standard document, Assignment of trade marks: Cross-border: clause 2\(b\)](#))? Does this depend upon whether the trade mark is registered or unregistered?

Goodwill is automatically transferred to the assignee of a trade mark. However, the parties can agree not to assign the goodwill, whether or not the trade mark is registered.

Co-ownership

31. Is it possible to co-own trade marks? If yes, are co-ownership agreements used to formalise the terms upon which the parties agree to co-own trade marks?

Co-ownership of a trade mark is possible under Turkish law, and two or more parties can apply to register a single trade mark. Parties can formalise the terms under which the parties agree to co-own trade marks in a co-ownership agreement, but this is not a statutory requirement.

Copyright in trade marks

32. Under what circumstances might a trade mark also be protected by copyright? Is there anything additional that an assignee must do to ensure that copyright in a trade mark is transferred to it by the terms of an assignment?

For a trade mark to be protected by copyright, some or all components of the trade mark must be comprised of copyrightable features created originally by its owner. When an assignor transfers all rights bound to a trade mark, any copyrights bound to such trade mark will be automatically transferred to the assignee without having to be expressly included within the terms of the assignment.

Acquiescence

33. If a registered trade mark owner has acquiesced in the use of a later trade mark whilst being aware of such use, is the owner prevented from applying for a declaration that the later trade mark is invalid, or from opposing the use of the later trade mark? If yes, how long must the period of acquiescence be before this rule applies, if at all? Are there any exceptions to this rule?

The owner of a trade mark will be prevented from applying for a declaration that a later trade mark is invalid or from opposing the use of the later trade mark if the owner has acquiesced in its use for five years (*Article 25/6, Industrial Property Law*).

There is an exception if the later trade mark was applied for in bad faith. The five-year period does not apply to cases of bad faith. In such cases, the owner can seek a declaration of invalidity or oppose the later mark at any point in time, irrespective of how long the period of use by the later trade mark owner has been.

COPYRIGHT

First owner of copyright work

34. Is the general rule that the author of a copyright work (the person who creates it) is the first owner of that work? Are there any exceptions to this rule? If yes, briefly describe them.

Under Turkish law, ownership of a work arises with its creation, so the author is the first owner of the work. An exception to this rule applies if the author created the work in the course of their employment. In this case the employer is first owner of the copyright in the work, subject to any agreement to the contrary (*Article 18/II, Law on Intellectual and Artistic Works*).

Recognition of moral rights

35. Does your jurisdiction recognise moral rights, or any equivalent or similar rights that accrue to the author of a copyright work? If yes, provide a brief overview of those rights.

Under Turkish law, moral rights are personal rights. These rights are:

- The right to publicise.
- The right to be identified as author.
- The right to object to alterations to the work.
- Rights against the possessor of the work.

The owner of moral rights can prevent any alteration to their work and protect its integrity. The owner of the rights exclusively decides whether the work will be published or not, as well as the means and timing of publication (as moral rights cannot be assigned).

36. Set out below any necessary amendments to clause 6 in each of the following standard documents to reflect the typical approach to moral rights (or the equivalent rights) in your jurisdiction:

- [Standard document, Assignment of intellectual property rights: Cross-border.](#)
- [Standard document, Assignment of copyright: Cross-border.](#)

Moral rights cannot be assigned. Therefore, the following clause reflects the typical approach to moral rights:

"The Assignor, being the sole author of the Works, expressly reserves and asserts his right to [be identified as the author of the Works,] such right [arising under [LEGISLATION]], and expressly reserves all his other moral rights [arising under [LEGISLATION]] and, so far as is legally possible, any broadly equivalent rights he may have in any territory of the world."

Assertion of moral rights

37. Do some or all moral rights have to be asserted by the author before they apply, or do they take effect immediately upon creation of a copyright work?

Ownership of a work starts with its creation, and so all rights regarding the work arise with creation.

Assignment and waiver of moral rights

38. Can moral (or similar) rights be assigned and/or waived? Is the author the only one entitled to assign and/or waive them, or can an assignee of the works to which they relate also assign and/or waive them?

Moral rights cannot be assigned or waived. They can exclusively be used by the owner.

39. Comment on whether Standard document, Waiver of moral rights: Cross-border is valid and enforceable in your jurisdiction and, if not, set out below any necessary amendments to make it so, and briefly explain your reasons.

Under Turkish Law, moral rights cannot be assigned and waived and can only exclusively used by the owner.

Exceptions to moral rights

40. Are there any particular types of works that moral rights do not apply to?

There are no particular types of work that moral rights do not apply to.

Database right

41. Under what circumstances might the subject matter comprised in a copyright work also be protected by database right? Is there anything additional that an assignee must do to ensure that rights to use the database are transferred to it by the terms of the assignment?

There are no laws regarding database rights in Turkey.

First owner of database

42. Is the general rule that the maker of a database (the person who creates it) is the first owner of the database right in it? Are there any exceptions to this rule? If yes, briefly describe them.

N/A.

PATENTS

First owner of invention

43. Is the general rule that the inventor is the first owner of an invention, and entitled to the rights in any patent granted in respect of that invention? Are there any exceptions to this general rule? If yes, briefly describe them.

The right to apply for registration of an invention exclusively belongs to its inventor. An exception applies if the inventor created the invention in the course of their employment (*Article 113, 6769 No IP Code*).

Divisional applications

44. Do patent applicants have the right to file "divisional patent applications"? If yes, is it possible to assign that right, along with the patent to which it relates? Are there any formal requirements for a valid and enforceable assignment of the right to file divisional applications, other than listing it in the manner shown at [Standard document, Assignment of patents: Cross-border: clause 2\(a\)\(ii\)](#)?

Patent applicants have the right to file divisional patent applications. It is possible to assign this right along with the patent to which it relates. This should be expressly stated in the terms of the assignment, there is no automatic assignment of a patent. There are no other formal requirements.

Improvements

45. Briefly describe any potential issues that the obligation in *Standard document, Assignment of patents: Cross-border: clause 3* might give rise to, including in relation to competition law, and set out below any necessary amendments to address them.

No potential issues arise and no amendments are required.

INDUSTRIAL DESIGNS

First owner of industrial design

46. Is the general rule that the designer is the first owner of any design right in a design? Are there any exceptions to this rule? If yes, briefly describe them.

The designer is the first owner of the design right in a design. An exception to this rule applies if the designer has created the design in the course of their employment, in which case the employer is generally the first owner (*Article 73, 6769 No IP Code*).

Registered and unregistered

47. Do both registered and unregistered design rights subsist in your jurisdiction? State any relevant legislation.

Both registered and unregistered design rights subsist in Turkish law (*Article 59, 6769 No IP Code*).

48. How is the territorial scope of each type of design right determined?

Both registered and unregistered designs are protected throughout the whole of Turkey.

49. Do both types of design right protect the same aspects of a design? What are those aspects for the respective rights?

If a design is publicised for the first time in Turkey without being registered, it will be protected as an unregistered design.

According to Article 59 of 6769 No IP Code,

- The rights originating from the design belong exclusively to the owner of the design. Third parties cannot produce, place on the market, sell, take the necessary steps to make an agreement for, import, use for commercial purposes or keep for such purposes a product which is designed within the scope of protection or on which such design is applied without the permission of the holder of the design right.
- The right to prevent the act stipulated in clause one shall be granted to the owner of the non-registered design only in case the same version of the protected design or its similar version which is indistinguishably similar as a general impression is taken upon being copied. A design which is prepared independently by a designer for whom it is not possible to know via reasonable means that the protected design has been presented to the public before his own design shall not be accepted to be copied from the design encompassed by the design under protection.

50. Do both types of design right give the proprietor the same duration of protection, and scope of rights, for their design? What are the respective periods of protection and scope of the rights?

The protection period for an unregistered design is three years from the date it was publicised. Registered designs are protected for a period of five years from the application date, which can be extended to a total of 25 years. The scope of the protection is the same as for a registered design.

51. Are any particular features or types of design excluded from protection under the registered and/or unregistered design right regimes?

Under Article 58 of Industrial Property Law the following conditions are excluded from the scope of protection:

- Designs violating public order or morality.
- The appearance characteristics necessitated by the technical function of the product.
- The appearance characteristics of the products which need to be produced in certain forms and sizes to enable the product where the design is used or on which it is applied, to be mechanically mounted on or be connected to another product.
- Designs comprising inappropriate use of the sovereignty signs included into the scope of Article 6ter of the Paris Convention and of the marks, coat of arms, emblems, signs or names not included into this scope but which are relevant for the public, have become public property in terms of historical and cultural values and have not been granted a registration permit by relevant authorities.

Confirmatory assignments of intellectual property rights

52. Under what circumstances are confirmatory assignments of intellectual property (IP) rights used in your jurisdiction, if at all (see [Standard document, Letter confirming assignment of intellectual property rights: Cross-border](#))?

Confirmatory assignments might be used to register the assignment of an IP right before the Office in cases where the parties prefer not to disclose confidential information within the original agreement.

53. Does a confirmatory assignment of IP rights have to comply with any particular formalities to be valid and enforceable?

Confirmatory assignments must be in writing, signed by both parties and notarised. They need not be drafted in Turkish, but should be translated into Turkish to be registered.

54. Set out below any necessary amendments to make *Standard document, Letter confirming assignment of intellectual property rights: Cross-border* valid and enforceable in your jurisdiction, and briefly explain your amendments.

There is no need to make any amendments to *Standard document, Letter confirming assignment of intellectual property rights: Cross-border*.

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