

COPYRIGHT PROTECTION

Introduction

Copyright is a legal term used to illustrate the rights that creators have over their literary and artistic works. Copyright protection extends to literary, musical, or artistic works, sound recordings, movies, computer programs, broadcasts, cable programs, advertisements, maps, and technical drawings. The owner of the copyright is the author, meaning the person who creates the work. The rights are granted exclusively to the copyright owner to reproduce the material, and for some material, where applicable and relevant, the right to perform or show the work to the public. Copyright entitles the copyright owner to prevent others from reproducing or communicating their work without the owner's permission and to sell these rights to someone else.

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In Turkish Law, copyright protection is regulated within the Code of Intellectual and Artistic Works ("CIAW").

1

Definition of Work

CIAW classifies these works under four main sections; namely, scientific and literary works, works of art, musical works and cinema works. Scientific and literary works include novels, stories, poems, scripts, dances, scientific photographs, maps, plans, projects, sketches, illustrations, computer programs, architectural models, town-planning schemes, etc.

Watercolour and oil paintings, any kind of pictures, patterns, engravings, ornamentations, calligraphy works, sculptures, handiworks, fashion and textile designs, photographic works, and comics exemplify the works of art covered by copyright.

Definition of Author

Within the context of copyright protection, the author is the person who created the work. If a work formed through the combined efforts of more than one person can be separated into different sections, then each of the persons having

created the said work is regarded as the author of the section s/he created. Otherwise, (i.e. if the said work cannot be separated into different sections) the author of the work is the union of those having created it.

Authors of the works covered by copyright are generally real persons. A legal entity also can be an author of a work and apply to the Directorate General of Copyright (“Directorate”) for the registration of its copyright on the condition that the employees working with a contract of employment within its body create the relevant work in the process of executing the labour they have been assigned to.

Emanation and Registration of Copyright

Works covered within the scope of CIAW benefit from copyright protection commencing from the moment of creation thereof. There is no need or requirement to register the work before an official authority; likewise, for the protection of copyright, the relevant work is not required to be certified. However, Turkish law allows some legal actions to be taken for the purpose of protecting the copyright over the relevant work, and specifically, for providing a convenience facilitating the determination of right ownership over the work.

The copyright owner may register his right at his own discretion. Such a registration serves the purpose of establishing a proof regarding the right ownership over the work. The registration of copyright is a procedure based upon declaration and does not function as an establisher of copyright. It is not possible for the ideas to be registered within this method; however, when ideas are embodied in a form of work that is covered by copyright, then such works can be registered.

Author’s Rights

In Turkish law, the copyright owned by the author of a work is effective on the whole work and any part thereof. In this respect, the author can practice his copyright, depending on his own wish and will, in matters pertaining to both the whole work and parts of it. The author of a work has also the right to

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prohibit the publication of his work by any means in advance. Any agreement made for the purpose of renouncing such a right is regarded as null and void.

When a work is to be publicized, the author has the right to determine the title and/or the name of the work. In addition to this, if the relevant work is a piece of fine art, the name or the sign of the author must be shown on the copies of the work.

If the original version of the work is in the lawful possession of a third party, the author of the work has the right to request to utilize the original version for a temporary period of time. The proprietor of the original version of the work may use his right to dispose in accordance with the provisions of the agreement made with the author.

CIAW also regulates the financial rights of the author in connection with the copyright. The financial rights, within the scope of CIAW, include five distinctive rights: a) the right of adaptation, b) the right to reproduce, c) the right of distribution, d) the right to exploit, and e) the right to communicate the original version of a work or its copies to the public.

“The author may also request an interlocutory injunction from the court for the purpose of preventing the infringement of his copyright.”

“... copyright is protected during the life-time of the author and for 70 years commencing from the date of death of the owner.”

Term of Copyright Protection

In Turkish law, copyright is protected during the life-time of the author and for 70 years commencing from the date of death of the owner. The term of protection of the works that have become public after the death of the owner is 70 years commencing from the date of death.

Where the author is a legal entity, this term is 70 years commencing from the date of publicity of the work. In case the author of the work is indefinite, the term of protection is 70 years commencing from the date of publicity of the work. In any case, the term of protection does not commence as long as the work remains unshared with public.

Upon the expiry of the term of copyright protection, financial rights owned by the author terminate. Accordingly, such works of which term of protection has expired can be freely used without a need to take the consent or permission of the author.

Copyright Infringement

CIAW regulates what can be claimed by the author from the court in case of a copyright infringement. First of all, the author can request the court to detect whether the actions in question infringe the relevant copyright. If the actions in question are found to be infringing the copyright, then the author may request the prevention of the actions giving rise to the probable or current infringement. The author may also request an interlocutory injunction from the court for the purpose of preventing the infringement of his copyright. In addition to these claims, the author can also request to be indemnified for the pecuniary loss and intangible damages. Pursuant to the relevant provisions of CIAW, those having infringed a copyright are obliged to indemnify the copyright owners. Especially if the reputation of the copyright has been negatively affected due to the actions taken by the infringer, the copyright owner may request further indemnification for the said intangible damages.

The products infringing the copyright and the devices, machines and tools that have been and/or are used to manufacture these products can be confiscated in a manner that such a confiscation does not hinder the manufacture of other products being irrelevant to the infringement in question. Furthermore, the author can also request the court to grant him the proprietary right of the confiscated products.

The court may decide to take precautions to prevent further infringements as well. These precautions may appear as the deformation of the confiscated products, devices, machines, and tools, erasure of the signs on these materials, or, if inevitable for the protection of copyright, destruction of these materials.

Ultimately, the author may request the announcement of the court decision regarding the copyright infringement by means of daily newspapers or similar mediums, as well as the notification of the court decision to those concerned.

Apart from the civil lawsuits and cases that can be executed against those infringing copyrights, CIAW also regulates the criminal aspects of such infringements.

Firstly, any person who, by infringing the copyright, adapts, performs, reproduces, changes, distributes, communicates to the public by devices enabling the transmission of signs, sounds or images or publishes a work, performance or production without the written consent of right holders or puts up for sale, sells, distributes by renting or lending or in any other way, buys for commercial purposes, imports or exports, possesses or stores for non-private use any works adapted or reproduced unlawfully, are sentenced to imprisonment from one year to five years or a judicial fine.

In a similar manner to the above regulation, other kinds of infringement of copyrights, such as giving a title to another person's work as one's own work, citing from a work without referring to the source, making a declaration to the public without permission of the copyright owner concerning the content of a work, and giving a wrong, incomplete or misleading reference regarding a work are punished with imprisonment and judicial fines.

