

Report Concerning the Law on Intellectual and Artistic Works

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Part One***

The Development of the Protection of Authors' Rights in Turkey

Authors' rights in Turkey are regulated by Law No. 5846 on Intellectual and Artistic Works ("LIA"), which was introduced in 1951 and amended in 1983 by Law No. 2936.

I. General

The LIA provides four categories of intellectual and artistic works:

1. Literary and Scientific Works, – all works expressed by language, all written dances, choreographic works and other dramatic works without a script, technical plans, etc.¹
2. Musical Works, – all musical works with or without lyrics.²
3. Artistic Works, – paintings, sculptures, architectural works, handicrafts, photographs.³
4. Films, – cinema films or technical films.⁴

The categories are governed by the principle of *numerus clausus*. In other words, the list of four main categories is an exhaustive list. However, the types of works that can be categorised under each of these headings are not exhaustive⁵. An adaptation of an original work which is not totally independent from the original work, but which carries the special characteristics of the adaptor, is also considered to be a "work" under the LIA.⁶

The LIA grants rights to authors and describes the author of a work as the person who created the work.⁷ The LIA also contains special

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*** Part One of this Report was prepared before the 1995 amendment of the law. Please see Part Two for the 1995 amendments.

1 LIA, Art. 2 (All article numbers to be cited hereinafter refer to the Law on Intellectual and Artistic Works, unless stated otherwise).

2 Art. 3

3 Art. 4

4 Art. 5

5 For the expansion of protection to computer programs and other new types of works, please see Part Two. II. 1 of this Report.

6 Art. 6

7 Art. 8

provisions in addition to this general rule. For films, the author is the producer and for adaptations, the author is the person who adapts a work or converts it from one category into another, the rights of the author of the original work being preserved.⁸ A work created by an employee during the course of his employment belongs to the employer.⁹ The author may be a natural person, or a legal entity. A work may also be created by several authors. In this case, if the work can be divided into individual sections, then the creator of each individual section will be its author. However, if the work can not be divided into individual sections, then the author of the complete work will be the union of all its creators.¹⁰

Under the terms of the LIA, authors' rights are divided into moral and economic rights. Whilst moral rights protect the integrity of the author's reputation, economic rights provide the author with commercial exploitation rights. Both categories have the following features:

1. Rights granted by both categories are absolute rights which can be enforced against all persons and grant an absolute monopoly over the work in all respects.
2. Rights granted by both categories are legally restricted in that the monopoly mentioned above can only be exploited within the limits of these restrictions.

Authors rights are restricted by (i) public policy; (ii) public interest; (iii) personal use; and (iv) authorities of the government, which are partially exercised by Turkish Radio and Television ("TRT"). The authorities granted to the TRT are so broad that they virtually eliminate authors' rights, especially the rights of performance, broadcasting and adaptation.

II. Moral Rights

Moral rights protect the integrity of the work and the author's reputation. There are four moral rights, which are discussed below.

a) The right of disclosure¹¹:

The author has the absolute right to determine when the work is complete and when and how the work should be made available to the public. This right includes the right to give information and an explanation regarding the work. The author may authorise a third person to determine how to disclose the work to the public. If the manner in which the work is disclosed, published, performed or broadcasted damages the reputation of the author, the author may prohibit such acts. This right of prohibition cannot be waived by contract.

⁸ *Ibid.* For the change in authorship of films, please see Part Two, II. 2

⁹ *Ibid.*

¹⁰ Art. 9, 10

¹¹ Art. 14

- b) The right as to the determination of whether the work will be published under the author's name, under a pseudonym or without the name of the author¹²:

The author has the absolute right to determine and decide whether the work will be made available to public under his own name or a pseudonym or anonymously. By depending on this right, the author can ask for his name to be put on the copies of a work or of its adaptation, and require that the fact that the work is a copy or an adaptation be indicated. This right also covers the right to claim authorship of a work. In the event that there is a conflict as to the identity of the author, a claim may be put to establish the real identity of the author or authors.

- c) The right to prohibit the work from being amended¹³:

One other fundamental moral right is the right to prohibit any distortion, mutilation or other modification of the work or any derogatory treatment in relation to the work. Another aspect of this right is that the author's name cannot be modified, shortened or have additions made to it without the author's consent. Under the terms of the law, any modification, distortion or mutilation is regarded as an offence against the integrity of the author's reputation. Therefore, if the author grants a modification right to a third person, he may nevertheless prohibit any modifications which violate the integrity of his reputation. Any waivers of this right are invalid.

This right may lead to conflicts between authors and publishers/directors, who may need to make changes to the work. In order to solve this problem, the law provides that a publisher, producer, director or adaptor is allowed to make minor changes which are required by the technicalities of publishing, broadcasting or performing.

- d) The right to have access to the work¹⁴:

Those persons who have the right of reproduction or adaptation of the work may request the possessor of the work to enable them to avail themselves of the work, in ways such as using the work to make reproductions, or including it in a catalogue, exhibition or film, etc. However, such persons cannot ask for the work to be delivered to them if delivery is not necessary to attain the authorised purpose.

12 Art. 15

13 Art. 16

14 Art. 17

III. The Exercise of Moral Rights

Despite the fact that the term of protection of economic rights may have expired, moral rights may be exercised by authors who are natural persons throughout their lifetime and by legal entity authors throughout the term of their existence¹⁵. Even if the author has not attained his majority, he may exercise his moral rights without the consent of his guardian. The author may also appoint others to exercise his moral rights. After the author's death, moral rights are not inherited in the same manner as economic rights or other rights and assets. This means that these rights will not be distributed to the inheritors, but will be exercised by the executor after the author's death, or if no executor is appointed, then by the spouse, children, testamentary heirs ("*heres institutes*"), parents or brothers and sisters, for a period of 50 years after the author's death¹⁶. If such people do not exist, or do not wish to exercise such rights, or if the term of protection has expired and the work is important for the country, such rights may be exercised by the Ministry of Culture.

IV. Economic Rights

These rights are those of (a) adaptation; (b) reproduction (copying); (c) distribution; (d) performance; (e) broadcasting; and (f) *droit de suite*.

- a) The right of adaptation is an exclusive right of the author. A third person may adapt a work or convert it into a different category of work only with the consent of the author¹⁷. Moreover, despite the fact that an adaptation is merited as an individual work, the author of an adaptation can use his economic rights to the extent that is permitted by the author of the original work.¹⁸
- b) The right of reproduction is perhaps the most fundamental economic right of the author. This is an absolute and exclusive right. Reproducing a work by means of printing or recording on sound, image and picture carriers is an author's right and cannot be exercised by others without the author's consent¹⁹.
- c) The distribution right is the right to put copies of the work, or of its adaptation, into commercial use. Further distribution of copies put into commercial use with the author's consent does not infringe the distribution rights of the author.²⁰ However, the author may

15 Art. 18

16 Art. 19

17 Art. 21

18 Art. 20

19 Art. 22

20 Art. 23

prevent parallel importation, ie. the importation of copies of a work which have been legally put into commercial use outside the country.

- d) The performance right covers the acts of performing, reading, playing, acting and audio or visual presentation, including presentation by means of a sound recording, cable or other instruments. Obtaining economic benefit from the performance of the work is an exclusive right of the author. In the event that the author is a member of a society of authors, this right may not be exercised by a third party without the consent of the said association.²¹
- e) Broadcasting is the transmission of a work through those instruments which transmit sounds, images and pictures through technical installations and instruments by wire or wireless technology. Broadcasting can only be done with the consent of the author.²²
- f) Authors are entitled to a certain payment ("droit de suite") on the resale of their works²³ within the term of protection. A tariff for the determination of the amount of droit de suite, not to exceed 10% and to be calculated on the difference of the first and last sale price, is to be determined by a decree of the Council of Ministers. This has not yet been done.

V. The Exercise of Economic Rights

Economic rights may be licensed, assigned, abandoned, inherited and treated like a commercial commodity. Each economic right is independent from one another and the exercise of one does not affect the others. Authors of an adaptation may use their economic rights as permitted by the author of the original work.

If the author is a member of a society of authors, then these rights are exercised by the society according to the authorisation granted to it by the author. For example, rights such as concluding licence agreements, and collecting and distributing royalties may be exercised by the society, which can also authorize other people to do so, by means of a mandate certificate.

The term of protection of economic rights is the author's life and 50 years thereafter. Where a work is made available to the public after the death of the author, the term of protection is 50 years. If a work is published anonymously, the protection period is 50 years starting from the disclosure of the work to the public, unless the author has disclosed his name before expiry of this term. Where the author is a legal entity, the

21 Art. 24

22 Art. 25

23 Art. 45 (1)

term of protection is 20 years from the date on which the work is made available to the public.²⁴

There is a special provision regarding the translation of a work into Turkish. In the event that a literary or scientific work has been published in a foreign language, it may be translated into Turkish without the consent of the right holder upon the expiry of 10 years from the date of publication, provided that within these 10 years the work has not been translated into Turkish and published in Turkish with the consent of the right holder of said work.²⁵

The term of protection for films, photographs and works of artistic craftsmanship is 20 years from the date of disclosure to the public.²⁶

VI. Transfer of Economic Rights

1. Transfer of rights by contract

Economic rights can be transferred wholly or with restrictions in terms of duration, place and scope.²⁷ The use of economic rights can be licenced, so that the right itself remains with the author and will be used by the licensee as determined by the contract.²⁸ The transferees and licensees of economic rights can transfer these rights only with the consent of the author²⁹. If such a right is transferred without the consent of the author, or by a person who is not authorised to make such a transfer, then the transfer is not valid even if the transferee has acted in good faith³⁰. In this case, the transferor is liable for the damage caused to the transferee by the invalidity of the transfer.

If economic rights stemming from an incomplete work are desired to be transferred, they can be transferred subject to a transfer agreement. In this case, the agreement will constitute a commitment to transfer, but the transfer will not take place until the work is complete³¹. Such commitments may be revoked with a year's notice, and they will be deemed to be ipso iure cancelled if the completion of the work by the author becomes impossible without the author's fault³². Furthermore, if a right that is transferred or licenced is not used properly, and therefore damages

24 Art. 27. For the amendment to the terms of protection, please see Part Two, II, 5 of this Report.

25 Art. 28. For the change in the term of protection, please see Part Two, II, 5.

26 Art. 29, see note 24 above.

27 Art. 48

28 Id.

29 Art. 49

30 Art. 54

31 Arts. 48, 50

32 Art. 50

the benefit of the author, such transfer or licence can be revoked. This right can not be waived by contract³³.

According to a rule of interpretation, the transfer of the ownership of a work, or an authorised copy of the work, does not include the transfer of any moral or other economic rights that are attached to the work³⁴. However, there are three exceptions to this rule:

- (i) the transfer of the ownership of the original work, or a copy of a work, includes the transfer of the distribution right (by means of sale) of the original or that copy of the work³⁵;
- (ii) the transfer of the ownership of a work, or a copy of a work, includes the transfer of the public rental right, unless otherwise stated on the copy of the work³⁶; and
- (iii) the transfer of the ownership of copies of a cinema film, includes the transfer of the public performance right, unless decided otherwise³⁷. However, since the right of public performance cannot be exercised without the written approval of the rightholder, or the society of which he is a member, this last exception does not have a great practical value³⁸.

2. Transfer of rights by inheritance

Economic rights are transferred by inheritance just like any commodity³⁹. However, if the right is connected to an incomplete or undisclosed work which consists of inseparable sections created by more than one author, then the inheritors of one of the authors are required to transfer their economic rights to the rest of the authors against a sum that can be determined by the parties, or in case of a conflict, by the court⁴⁰.

VII. Legal Protection of Moral and Economic Rights

1. Civil Actions:

a) Termination:

A legal action can be commenced for the termination of an existing violation of moral or economic rights, whether or not the violator is negligent.

33 Art. 58

34 Art. 57

35 Art. 23

36 Art. 38

37 Art. 57

38 Art. 24 (3)

39 Art. 63

40 Art. 64

In order to commence a case for the termination of a violation of moral rights, the work which has been disclosed against the will of the author must have been reproduced and distributed⁴¹. The author can, depending on the situation ask (i) for his name to be put on the work; (ii) for the prevention of the reproduction and performance of his work which has been changed against his will; and (iii) for the amendment of the reproduced copies and the advertisement of the change.

In the case of a violation of economic rights, the author can ask for the unauthorised copies to be destroyed or returned to him against the payment of a sum not greater than the cost of the copies. If the copies have already been distributed, the author can also ask for the payment of a sum 50% greater than would be paid under an agreement⁴².

b) Prevention:

A legal action can be commenced to prevent the occurrence of a threatened violation. The existence of negligence is not a condition of this case⁴³.

c) Indemnity:

The author may claim an indemnity for both moral or financial damage caused by a wilful violation of his rights as provided by the Law on Intellectual and Artistic Works. Furthermore, if there is an exploitation of the work through its unauthorised adaptation in a way not described by the LIA, then the author may claim compensation under the general principles of unfair competition.⁴⁴

The author whose intellectual property rights have been violated can claim the compensation for his damages, an indemnity and, additionally, an account of the profits made through the violation of his rights⁴⁵.

2. Penal Actions:

The wilful violation of the intellectual property rights listed by the LIA constitutes a criminal offence and can be penalised by imprisonment of between one and three months. Moreover, the trading, broadcasting or public performance of copies which are known to be illegal, are criminal offences. It is also a criminal

41 Art. 67

42 Art. 68

43 Art. 69

44 Decision of the Supreme Appellate Court 18.2.1941 K. 1-2.

45 Art. 70

offence to transfer licences or financial rights without due authorisation of the author where this is necessary. The prosecution of these offences is conditional upon complaint.

3. Precautionary Methods:

As a result of the 1983 amendment, the LIA introduced a system of marking audio and video tapes, with what is called a "bandrol", in order to help prevent the unlawful copying, distribution or public performance of musical works and films⁴⁶. All lawful copies of a work must carry a bandrol issued by the Ministry of Culture, in order to prove their legality. However, unfortunately, in practice the authorities do not make a strict control of illicitness and, therefore, the bandrol system does not totally solve the problem of the pirating of intellectual and artistic works.

Furthermore, according to the Law on Cinema, Video and Music Works of 1986, a person who publicly performs a work, must obtain a certificate and licence of performance from the relevant authorities besides the bandrol and, of course, due permission of the author. This method should also increase the effectiveness of controlling unauthorised public performances.

VIII. Restrictions

Both economic and moral rights are restricted for the purposes of public order, public benefit and private use and especially by the authorities granted to the state.

1. Restriction by Public Order:

A work can be used before a court in order to establish its authorship, or by prosecuting authorities during a penal procedure without the consent of the author⁴⁷.

The restriction of moral and economic rights due to *public order* should not be confused with restrictions due to *public policy*. The rights of the author may also be restricted if the work is contrary to public policy, public morals or is illicit⁴⁸.

2. Restriction by Public Benefit:

Restrictions due to public benefit stem from the needs to avail the public of legislation and official speeches, to raise funds for charity,

46 Art. 44

47 Art. 30

48 Such restrictions may stem from other laws, such as the Press Law or the Law on the Protection of Minors from Obscene Publications.

to educate and benefit the public with cultural and scientific works and to inform the public of daily events⁴⁹.

Artistic and cultural works which have already been made public can be partially or totally adopted or incorporated into another work without making any modifications to the work and by stating the name of the author, to the extent that such adoption or incorporation can be justified by one of the purposes mentioned above⁵⁰.

3. Restriction by Personal Use:

- a) copying or adapting a work for personal use without the author's consent is permitted for all works except films, and artistic and architectural works. Films, and artistic and architectural works can only be copied with the consent of the author⁵¹.

This provision was designed with the idea of allowing the public to copy written literary, scientific and musical works by rewriting them, which would only allow a very limited number of copies to be made. Technical developments, such as photocopiers and optical scanners, have changed the scope of this provision. It would be appropriate to say that copying is only allowed to the extent that the use is strictly personal, is not intended for publication or distribution and does not lead to an economic benefit. For example, photocopying a whole book and obtaining a copy for half the price of the original, should infringe this provision.

In order to compensate for losses that may be generated by private copying, the law has placed a 5% levy on blank audio and video tapes⁵². However, this money does not directly compensate for losses due to private copying, since it is collected by the Ministry of Culture in order to be distributed among the four societies of authors to be used only for social purposes such as the construction of social facilities⁵³. In practice some of this money has been used by the Ministry of Culture for purposes such as financing people who wish to invest in the music industry.

- b) The law provides one important restriction to the rights of authors of literary works. Composers may use "small excerpts" of a literary work which has already been made public, as lyrics to their music and may copy, publish, distribute and perform this to the public by

49 Art. 31, 32, 33, 36 37

50 Arts. 34, 35. Please see Part Two, II. 4. (a), for the amendment of Art. 34.

51 Art. 38

52 Art. 44 (2)

53 Art. 44 (3), (4)

stating the author's name. However, it is not necessary to obtain the consent of the author, nor to even pay remuneration for use of this piece of work.⁵⁴

4. Restriction by public authorities

Certain rights granted to the state, which are used by the Turkish Radio and Television Institution ("TRT"), nearly eliminate the economic rights of authors. The TRT has been granted broad rights to avail itself of intellectual and artistic works without the consent of authors, for the purpose of benefitting the public.⁵⁵

The TRT can use all intellectual and artistic works (except dramatical works with or without a script) which have been made public but the protection terms of which have not yet expired, without consents of authors, other right-holders or authors' societies in order to:

- a) use them in audio and visual broadcasting;
- b) make any adaptations necessitated by the technical requirements of radio and television programmes;
- c) have them performed by artists that it considers appropriate;
- d) record, copy and reproduce them in order to use them in audio and visual broadcasting and to send them to educational and cultural organisations and foreign radio and television broadcasting organisations; and
- e) to record, by way of audio recorders and transmitters, musical pieces performed in its programmes.

In these cases, the TRT is required to pay royalties, the amount of which are determined by the Cabinet of Ministers. Therefore, not only are works of authors used without the necessary consents (except for dramatical works), but, at the same time, royalties cannot be determined freely by right-holders. These provisions are applicable to dramatical works, but require the consent of the author.

Moreover, the TRT is not required to pay remuneration for those uses which are already exempt, such as those on the grounds of public order, public benefit and personal use. As may be recalled, the adoption of small pieces of literary works to be used as lyrics to music is exempt from requiring the author's consent and the payment of royalties. This provision was provided for in order to encourage composers to write music. It is not very comprehensible why the TRT should benefit from such an exemption.

54 Art. 39. Please see Part Two, II, 4, (d) for amendments.

55 Art. 43. Please see Part Two, II, 4, (b) for amendments.

There are other instances where the TRT is not required to pay any royalties. One of these is where the TRT uses a work for short wave radio broadcasts to foreign countries. Another is where the TRT uses part of a work in a generic or advertisement of a programme or as a supporting dramatic element. Such use is called a "short recording" and the TRT does not have to pay any royalties or obtain any consents for such use. Therefore, for example, part of a song could be played, or even a short poem could be read every week on television at the start of a weekly magazine programme without mentioning the author's name or giving him any economic benefit of such use.

The LIA in its article 47 also provides for compulsory use. If a work is published in Turkey or by Turkish citizens abroad, if the work is deemed to be important for the country, if no copies of it exist for two consecutive years and if the author believes no copies will be made in the near future, the economic rights belonging to the author of such work can be expropriated to be used by official authorities and for public purposes, in return for a sum to be determined by the State.

IX. Future Prospects

In order to serve new demands stemming from changing technology and to provide greater compatibility with international regulations, a substantial amendment to the LIA has been proposed and is currently being examined by a parliamentary commission.⁵⁶

The proposed amendments shall be examined in three different groups: a) provisions enlarging or altering the scope of application of the law; b) provisions on restrictions; and c) provisions aiming at a more effective functioning and protection of copyright. Comparison will also be made to the law of the European Communities (EC) and to GATT law.

- a) The provisions aiming at the enlargement or amendment of the scope of the Law deal with the definition and types of (i) authors; (ii) works; and (iii) rights.

- (i) Under the current law the "authors" of films are producers, whereas the amendment proposes to give the authorship of films collectively to directors, scriptwriters and composers⁵⁷.

According to EC law, the author of a cinematographic or audiovisual work is its principal director, and Member States

⁵⁶ Said amendment has been enacted after the preparation of Part I of this report and is examined in Part II of this Report.

⁵⁷ Draft Law on the Amendment of the Law on Intellectual and Artistic works, Ar. 4 (4), corresponding to Art. 8 of the LIA (All reference numbers hereinafter cited belong to the articles of the draft amendment unless otherwise stated).

are free to designate other co-authors. This is what will be done by the proposed amendment⁵⁸.

- (ii) Computer programs will be an addition to the type of works protected under the Law⁵⁹. Databases which collect data and materials in a special manner shall be protected by the LIA as an adaptation⁶⁰. It is stated in the draft amendment that protection will not be granted to the idea behind a computer program or a database, but to the way in which it is presented. This is in accordance with the EC Directive on the protection of copyright and certain related rights⁶¹ and also with the Agreement on Trade Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods ("TRIPS") accepted and signed by Turkey in April 1994 as a result of the Uruguay Round of GATT negotiations⁶².

Meanwhile, before the draft amendment is enacted by the Turkish Parliament, the Turkish Council of State has given a ruling which extends copyright protection to computer programs. An importer of computer programs who applied to the Ministry of Culture in order to obtain a "bandrol" for the protection of his programs was refused by the Ministry on the grounds that computer programs were not protected by the Law on Intellectual and Artistic Works. The administrative court which tried the complaint of the importer justified the action of the Ministry. The importer then challenged this court decision before the Council of State, which decided, against the ruling of the court, that computer programs which are created in a special way by an author deserve protection under article 2 of the LIA, ie., as a scientific and literary work⁶³. This shows that Turkish courts adopt a progressive attitude towards technological developments and the improvement of the law.

- (iii) Under the present law, neighbouring rights are only granted to performers and to the holders of reproduction and distribution rights, to a certain extent⁶⁴. The latter may prevent third parties from reproducing and distributing a work for which they have

58 Council Directive 93/98/EEC harmonising the term of protection of copyright and certain related rights 24.11.1993, (1993) OJ L 290/9. For the enacted amendment, please see Part Two, II. 2 of this Report.

59 Art. 1, corresponding to Art 2 (1) of the LIA. For the enacted amendment, please see Part Two, II. 1 of this Report.

60 Art. 3, corresponding to Art. 6 of the LIA.

61 Council Directive 91/250/EEC on the legal protection of computer programs 17.5.1991, (1991) OJ L 122/42.

62 MTN/FA II-A1C, TRIPS Arts. 9 (2), 10 (2).

63 10th Chamber of the Council of State, E. 1992/4550, K. 1994/1856.

64 Art. 81 of the LIA.

been granted the rights of reproduction and distribution, whilst the former may, by virtue of a 1983 amendment, prevent the unauthorised reproduction and distribution of their performances.

The proposed amendment grants other neighbouring rights such as those of fixation, public rental, public performance and broadcasting to performers, the producers of phonograms and broadcasting organisations⁶⁵. These rights will be protected for a period of 50 years from their first communication to the public⁶⁶. This period is in conformity with both the TRIPS Agreement and the relevant EC Directive⁶⁷. However, the EC Directive has granted neighbouring rights to producers of cinematographic works, whereas the draft amendment does not. Moreover, neighbouring rights have not been explained in sufficient detail, and this may lead to conflicts between authors and the holders of neighbouring rights.

According to the draft amendment, provisions regarding neighbouring rights shall also be applied to performers, producers and broadcasting organisations protected by an international agreement to which Turkey is a party.⁶⁸

In order to bring Turkish copyright law closer to that of the European Union, distribution rights and the exhaustion of authors' rights have been redefined⁶⁹. According to a very poorly worded provision of the draft amendment, the authorised distribution of an authorised copy of the work only exhausts the first distribution right of the author, while the author's rights of public rental and public lending are not exhausted, ie., are not transferred with the ownership of the authorised copy⁷⁰. This draft provision will repeal Article 38 of the current law which stipulates that the purchaser of an authorised copy will also obtain its public rental right unless otherwise stated on the copy of the work. This will bring Turkish law into line with the relevant EC Directive⁷¹.

65 Art. 26, corresponding to Art. 80 of the LIA. Please Part Two, II. 3. (f), for the enacted amendment.

66 Art. 28, corresponding to Art. 82 of the LIA.

67 TRIPS Art. 14 (5), Council Directive 93/98/EEC, Art. 3.

68 Art. 28, corresponding to Art. 82 of the LIA.

69 Art. 9, corresponding to Art. 23 of the LIA.

70 Art. 9, corresponding to Arts. 23 and 38 of the LIA. For the enacted amendment, please see Part Two, II. 3. (d), (e).

71 Council Directive 92/100/EEC on rental right and on certain rights related to copyright in the field of intellectual property, Art 1 (4); 27.11.1992, (1992) OJ L 346/61.

- b) It has been stated that the LIA contains very broad restrictions on author's rights. Unfortunately, the proposed amendments do not change the authorities of the TRT which limit author's rights. It should also be pointed out that the TRT's authorities do not only unduly restrict authors' rights, but they also create an unfair competitive advantage for the TRT. At the time of the drafting of the LIA, these restrictions could perhaps be justified by the fact that there was only one radio and television organisation, whereas today, this justification is no longer valid due to the existence of numerous radio and television organisations which do not benefit from such rights. Besides, these restrictions conflict with the TRIPS principle that "Members shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder⁷²." These restrictions should therefore be reconsidered.

One restriction on authors' rights which has been eliminated by the proposed amendments is the right granted to composers which enables them to use small parts of literature works as lyrics to their music without the author's consent⁷³. It is hoped that both restrictions due to the rights granted to the State and restrictions due to public benefit will be eliminated, since such restrictions do not achieve their purpose. For example, the use of complete or partial works for educational purposes without the author's consent benefits publishers rather than students and harms authors at the same time.

There are certain provisions which deal with the restriction on author's rights stemming from consumers' right of private copying. The proposed amendments allow private copying in principle, provided it is done without the aims of distribution or profit-making and is strictly for personal use⁷⁴. Computer programs and cinematographic films are not covered by this principle and cannot be copied, even for personal use, without the consent of the author. It is stated that private copying must not prejudice the legitimate interests of the author and the normal exploitation of the work. This can be used as a criterion in determining whether private copying is lawful or not.

In order to compensate for losses which may be generated by private copying on blank audio and video tapes, the law provides

⁷² TRIPS, Art. 13. Please see Part Two, II, 4, (b), for enacted amendments regarding this point.

⁷³ Art. 15, corresponding to Art. 39 of the LIA. Please see Part Two, II, 4, (d) for the enacted amendment regarding this point.

⁷⁴ Art. 14 (1) corresponding to Art. 38 (1) of the LIA. Please see Part Two, II, 4, (c), for enacted amendments regarding this point.

for a levy on such blank tapes. Under the current law, this is collected by the Ministry of Culture and is principally used for the benefit of authors. The proposed amendments, however, state that 75 percent of the levy collected from blank audio and video tapes and compact discs will be distributed back to the authors' societies to be distributed to the members of these societies according to a distribution plan to be approved by the Ministry⁷⁵.

The remaining 25 percent of the collected levy shall be used for "cultural and social objectives and the prevention of the infringement of authors' rights"⁷⁶. The term "cultural and social objectives" can be interpreted very broadly and it may cover areas other than those protected by this law. It seems that a fund will be created from the blank tape levy which will be used for purposes other than that for which the levy will be imposed, i.e., for the compensation of losses which may be generated by private copying on such blank tapes. In order to prevent this, and to provide for a just distribution and use of the levy, it should be clarified how this money will be used.

- c) The proposed amendments contain provisions which will provide for the effective functioning of authors' societies and therefore serve for the purpose of a better protection of authors' rights. Whilst the existing law provides for the establishment of only four societies, one for each of the four categories of works, the amendments allow for the establishment of as many associations as may be necessary⁷⁷.

The ability of create more than one association per category of work is more democratic, anti-monopolistic and conducive to free competition. The explanatory memorandum of the proposal states that the existence of one society per category of work in more developed countries is due to historical development and that Turkey should also undergo the same type of *de facto* development, instead of having certain conditions and limitations imposed by law.

However, having more than one society per category of work may create practical problems in terms of reducing the powers of such societies to collect and distribute royalties and to defend authors' rights.

Therefore, the State must clearly define by law what rights these societies shall have, and must supervise the application of having numerous societies until one society per category of work proves its efficiency and stands out among the others, in order to prevent

⁷⁵ Art. 17, corresponding to Art. 44 (2) of the LIA.

⁷⁶ *Ibid.*

⁷⁷ Art. 16, corresponding to Art. 42 of the LIA.

exploitation of the freedom which will be introduced by the proposed amendment.

Other provisions which aim at a stronger protection of author's rights deal with the terms of protection, the infringement of these rights, and available remedies.

The different terms of protection currently provided for natural and legal persons and different types of work and translations have been unified and fixed at 50 years⁷⁸. For natural persons, protection will be for the lifetime of the author, plus 50 years, and for others, 50 years from publication⁷⁹.

Certain provisions aim at the prevention of the pirating of works protected by authors' rights. Under the current law, legal copies of a work have to carry a special mark (the "bandrol"). However, the Ministry of Culture does not currently ask for proof of authority for copying. The proposed amendments state that before granting the bandrol the Ministry will ask to be shown a notarised contract and mandate certificate, which grant the right of copying by the right-holder⁸⁰.

Any copying (other than private copying) without having obtained these documents will be considered to be illicit. Illicit copies of a work will be liable to seizure upon the order of the public prosecutor⁸¹. Moreover, for proof of illicitness, it will be sufficient to prove that any person who holds copies of a work which have been made illicitly, will be liable if he knows or "is in a position to know" of such illicitness⁸².

The proposed amendments increase the lower and upper limits of imprisonment from one to three months and from three months to one year, respectively⁸³. It is provided that in order to maintain their deterrent effect, such punishments cannot be converted into fines. Moreover, in order to obtain moral indemnity, it will no longer be necessary to prove default on the part of the infringer⁸⁴. In addition, the amount of compensation will be raised from 50% to 3 times of what the author would normally ask for, if he had agreed to such a use of his right⁸⁵.

78 Arts. 10, 11, 12 corresponding to Art. 27, 28, 29 of the LIA.

79 Please see Part Two, II. 5 for the enacted amendment of the terms.

80 Art. 27 (1) corresponding to Art. 81 (1) of the LIA.

81 Art. 27 (3) corresponding to Art. 81 (3) of the LIA.

82 Art. 24 (1) adding a new paragraph to Art. 73 of the LIA.

83 Art. 24 (3) corresponding to Art. 73 (Final) of the LIA.

84 Art. 21, corresponding to Art. 70 of the LIA.

85 Art. 20, corresponding to Art. 68 of the LIA.

Part Two

The Recent Amendments to the Law on Intellectual and Artistic Works

I. Introduction

Turkish copyright law was regulated in 1951 by Law No. 5846 on Intellectual and Artistic Works ("LIA")¹ which superseded the Copyright Act of 1910. The LIA is Turkey's principal legal source on copyright. The Law contains various provisions regarding the categories of intellectual and artistic works, authorship and author's rights, the protection and infringement of these rights and remedies².

The LIA was amended in 1983 and in 1995 by Laws No. 2936³ and 4110⁴ respectively. The 1983 amendment aimed at providing a more effective protection of author's rights, especially the prevention of pirating of audio and video tapes through a special marking system, and general protection through the establishment of authors' societies.

The recent 1995 amendment aims at harmonising Turkish law with that of the European Communities ("EC"). Therefore, various provisions have been promulgated regarding the protection of computer programs, neighbouring rights, and rental and lending rights, in line with Council Directives 92/100/EEC⁵, 91/250/EEC⁶ and 93/98/EEC⁷.

It is necessary to point out that Decision No. 1/95 of the Turkish-EC Association Council (the "Decision") entails the approximation of legislation between Turkey and EC *inter alia* in the field of, the protection of intellectual, industrial and commercial property. According to Article 29 of the Decision, "the Parties confirm the importance they attach to ensuring adequate and effective protection and enforcement of intellectual, industrial and commercial property rights, and the Parties recognise that the Customs Union can function properly only if equivalent levels of effective protection of intellectual property rights are provided in both constituent parts of the Customs Union. Accordingly, they undertake to meet the obligations set out in Annex 8 to the

1 Turkish official Gazette No. 7931 (December 5, 1951).

2 For a general explanation of the LIA please see Part One of this Report.

3 Turkish Official Gazette No. 18210 (November 3, 1983).

4 Turkish Official Gazette No. 22311 (June 12, 1995).

5 Council Directive 92/100 EEC on rental rights and lending rights and on certain rights related to copyright in the field of intellectual property, 27.11.1992, (1992) OJ L 346.

6 Council Directive 91/250/EEC on the legal protection of computer programs, 17.05.1991, (1991) OJ L 122.

7 Council Directive 93/98/EEC harmonizing the term of protection of copyright and related rights, 24.11.1993, (1993) OJ L 290/9.

Decision." In Annex 8, the above-mentioned Council Directives are explicitly cited. Thus, the requirement set out in Article 29 of the Decision has been fulfilled by the 1995 amendment of the LIA realised by Law No. 4110. Furthermore, Law No. 4110 also seeks to approximate Turkish law with the provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS") which was signed by, *inter alia*, Turkey, in April 1995 under the auspices of the World Trade Organisation.

The object of this article is to give a brief description of the major changes to the Turkish Law on Intellectual and Artistic Works by Law No. 4110 of 12 June 1995. The amendments will be explained in the following order: the extension of copyright protection to new types of works, changes in authorship, broadening of the rights related to copyright, certain restriction of exclusive right, terms of protection, measures for the prevention of infringement, institutional protection, legal protection and remedies.

II. An In-Depth Look at Law No. 4110

1. Extension of Copyright Protection to New Types of Works

a) Computer Programs

The LIA provides protection to four main categories of works: those of literature and science, music, fine art and cinematography⁸. Although a new category cannot in principle be created, the law does not prevent the admission of new types of works under any one of these four categories. One of the most important amendments made by Law No. 4110 is the extension of copyright protection to computer programs, which are now included in the category of literary and scientific works. All computer programs and their preparatory design materials are protected by the Law, provided that such design material is of such a nature that a computer program can result from it at a later stage⁹. However, the ideas and principles which underlie any element of a computer program, including those which underlie its interfaces, are not protected by copyright under the Law¹⁰.

8 Any creation in one of these fields, which carries an attribute of its creator, is deemed to be a "work" under article 1 of the LIA.

9 Art. 2.1 LIA., corresponding to Art. 1.1 of Council Directive 91/250/EEC.

10 Art. 2/final LIA. This provision corresponds to Art. 1.2 of Council Directive 91/250/EEC. According to this Directive, "the function of a computer program is to communicate and to work together with other components of a computer system and with other users, and for this purpose, a logical and where appropriate, physical interconnection and interaction is required to permit all elements of software and hardware and with users in all the ways in which they are intended to function. The parts of the program which provide for such interconnection and interaction between elements of software and hardware are generally known as 'interfaces'".

b) Adaptations (Derivative Works)

Adaptations are works which are derived from an original work, such as translations, arrangements, dramatisations, and abridgements, and which are realised with the permission of the author. They are protected as original works if they carry a distinctive quality of the person who has created the adaptation. The amendments provide that the adaptation, arrangement or any form of alteration of a computer program is considered to be a derivative work. In addition, databases which collect and arrange data and materials within a special plan are also deemed to be derivative works, except that copyright protection does not cover the data and materials included in the database¹¹.

c) Works of Fine Art

Works included in the category of fine art were mainly paintings, engravings, sculptures, architectural works and handcrafts. The amendments have broadened this category to include calligraphy, silkscreen printing, miniatures, decorative arts, fashion and textile designs, cartoons, type-casting, slides and graphic designs.

2. Changes in Authorship

Before the amendments, the author of a cinematographic film was deemed to be the producer, whereas the amendments have granted the authorship of such films to the director, the scenario writer and the composer collectively. Should such co-authors choose to assign their economic rights to the producer, they cannot then object to the disclosure to the public, reproduction, distribution, cable transmission, broadcasting, subtitling or dubbing of the film by the producer, unless provided otherwise by contract¹².

3. Broadening of the Rights Related to Copyright

a) Right to Claim Authorship

The author of a work has the exclusive right to determine whether the work shall be disclosed under his own name, a pseudonym or anonymously. The author therefore has the right to be identified as the author of his work. With the amendments, this right has been extended to architectural works, in such a way that, upon written request by author of an architectural work which is deemed to be protectable by the LIA, the name of the author shall be written in a non-eraseable manner on a visible part of the work¹³. Another aspect of the right to be identified

¹¹ Art. 6.10, 11 LIA.

¹² Art. 8, par. 3, 4, 5 LIA.

¹³ Art. 15, par. 4 LIA.

as the author manifests itself in the opposite dimension. The amendments provide that, for artistic works, should the owner of the original work make a change in the work, or subject the work to derogatory treatment, thereby infringing the author's right of integrity, the author has the right to ask that his name be removed from the work, or that it be made known that the change was not made by himself.¹⁴

b) Right to Have Access to the Work

The author of a work has certain rights vis-à-vis the possessor or owner of the original. The amendments provide that the owner of the original work can use the work only in accordance with the contract made with the author and that the owner of the original work cannot destroy or demolish the work or damage the author's rights¹⁵. Furthermore, according to the amendments, if the work exists in only one original, the author of the work may demand this original from its owner, in order for it to be included in retrospective works or exhibitions, under the conditions that the work is duly preserved and protected and returned to the owner after use¹⁶.

c) Right of Reproduction

The author has the exclusive right to reproduce the work or its adaptations of it, in whole or in part. The amendments have redefined the term "reproduction" to further include the reproduction of a work through any means currently known or to be discovered in the future¹⁷. In respect of computer programs, the acts of loading, displaying, running, transmission or storage of a computer program shall be included in the exclusive right of reproduction, in other words, shall be subject to the authorisation of the author if such acts necessitate the temporary reproduction of the program¹⁸.

d) Right of Distribution

The right of distribution, rental, sale, marketing or commercial exploitation in any other way of a work or copies made from an original or derivative work belong exclusively to the author. The same rule applies to copies imported from abroad. The amendments provide that the author has the right to prevent the importation of copies which have been produced without the permission of the author¹⁹. However, according to the amendments, the exclusive rights of first sale and distribution shall be exhausted upon their exercise by the author. This

14 Art. 67, par. 4.2 LIA.

15 Art. 14, par. 2 LIA.

16 Art. 14, par. 3 LIA.

17 Art. 22, par. 2 LIA.

18 Art. 22, par. 3 LIA., corresponding to Article 4 (a) of Council Directive 91/250/EEC.

19 Art. 23, par. 1 LIA.

means that the owner of an original or legal copy shall have the right to further sell the work or copy which is in his possession²⁰.

e) Right of Public Lending and Rental

The rights of public lending and rental are mentioned in the amendments, in the context of the right of distribution and its exhaustion. The sale of an original or a copy of the work grants the right of further sale to the owner²¹. However, the owner may not benefit from public lending and rental rights without the authorisation of the author or right holder. The LIA did not require this authorisation prior to the 1995 amendments²².

f) Neighbouring Rights

In 1983, neighbouring rights were introduced into the LIA. The right to be identified as contributors to a cinematographic film was given to leading actors, scenario writers, composers, directors, conductors of orchestras or chorus and singers²³. Besides these rights performers were given the rights of reproduction and distribution regarding the fixation of their performances²⁴.

The 1995 amendments have substantially broadened the rights of performers, and have introduced the rights of phonogram producers and broadcasting institutions, thereby approximating the Law with Council Directive 92/100/EEC²⁵. According to Article 80 of the LIA, as amended, performers have the exclusive rights to the fixation of their performances, the reproduction and rental of such fixations, and to the display and broadcasting of their performances by wired or wireless means. Producers have exclusive rights of reproduction, rental, broadcasting and display of their recordings. Finally, broadcasting organisations have exclusive rights to the reproduction and re-broadcasting of their recordings and the display of such recordings in public places where an entrance is charged. All of these rights are collectively identified as "neighbouring rights." In contrast to Council Directive 92/100/EEC, Article 80 of the LIA does not mention the right of distribution among the neighbouring rights. Nevertheless, it can be assumed that this right is inherent in the right of reproduction, since a reproduction right without the right of distribution would amount to nothing. The neighbouring rights of film producers are mentioned, together with the authorship of films. According to Article 8 of LIA, producers may obtain rights such as the rights to the reproduction, distribution and communication to the public of a film in accordance with a contract to be made with the

20 Art. 23, par. 2 LIA.

21 *Ibid.*

22 Art. 38 (unamended) LIA.

23 Art. 80 (unamended) LIA.

24 Art. 81 (unamended) LIA.

25 Arts. 6, 7, 8, 9. See Part Two note 5 above.

co-authors of the film²⁶. Therefore, in contrast to Directive 92/100/EEC, such rights are not automatically granted to film producers, but are subject to the permission of the co-authors of a film.

According to Article 82 of the LIA., the provisions regarding performers apply to Turkish citizens and to non-Turkish citizens whose performances either take place in Turkey or are included in sound recordings which are protected by this Law or which are broadcast in broadcasts protected by this Law. Likewise, the provisions of the LIA regarding sound recordings apply to those persons who are on Turkish territory or those persons whose producers are Turkish citizens. Finally, the provisions of the LIA regarding radio and television broadcasts apply to those broadcasts which are centered in Turkey or those which are broadcast by reflectors within Turkish frontiers. In addition, the provisions of the LIA regarding neighbouring rights also apply to those performers, producers and broadcasting organisations which are protected under an international agreement to which Turkey is a party.

4. Certain Restrictions on Exclusive Rights

The exclusive rights of the author may be restricted by the requirement of public order, public benefit, public authorities and private use. The amendments have mainly reduced the extent of these restrictions.

a) Restrictions Required in the Interests of the Public Benefit

One of the restrictions required in the interests of the public benefit stemmed from the incorporation of copyright works in collective works for educational purposes. The amendments provide that such incorporation of a work may not unreasonably prejudice the legitimate interests of the author or right holder and may not conflict with a normal exploitation of the work²⁷.

b) Restrictions in Favour of the Public Authorities

Restrictions in favour of the public authorities were due to the far-reaching rights of the Turkish Radio and Television Institution ("TRT"), which could use all types of copyright works without requiring the permission of authors or right holders, in return for a remuneration to be determined by the State. The amendments have limited these restrictions to ephemeral fixations, which are the use of a section of a work for the presentation of a program in a manner which does not damage the rights of the author or the right-holder of the whole of the work. Institutions are not required to obtain the permission of the author or right-holder, nor to pay the copyright fee for the use of such short excerpts. Moreover, not only the TRT but all radio and television

²⁶ Please see Part Two, II. 2 above.

²⁷ Art. 34 LIA.

institutions may benefit from this right, which restricts the exclusive rights of authors. However, there is still one right which is only granted to the TRT, which is the ability to use, free of charge, works for short wave broadcasts to be made to third countries. Apart from these exceptions, copyright fees shall be paid for all broadcasts of intellectual and artistic works²⁸.

c) Restrictions for Private Use

Restrictions for private use entail the ability to copy a work for strictly personal use without the aims of distribution and profit-making. The amendments have provided for another criterion, which is in line with Article 13 of the TRIPS Agreement. According to Article 38 par. 1 of the LIA, private copying may not conflict with a normal exploitation of the work and may not unreasonably prejudice the legitimate interests of the author or right holder.

The amendments provide for detailed rules on how private copying applies to computer programs²⁹. These rules have been substantially taken from Articles 4, 5 and 6 of Council Directive 91/250/EEC. In principle, the rights of reproduction, distribution, rental, translation, adaptation or arrangement of computer programs lie with the person who is deemed to be the author of the program³⁰. However, the lawful acquirer or user of a computer program does not need the authorisation of the right holder in order to perform one of these acts (except distribution and rental), if such acts are necessary for the use of the computer program, including error correction, or if they are indispensable to obtain the information necessary to achieve the interoperability of an independently created computer program with other programs (provided that certain other conditions regarding the user and purpose are met). Furthermore, the lawful user of a computer program is free to make a back-up copy and is also entitled to observe, study or test the functioning of the program in order to determine the ideas and principles which underlie any element of the program, while the user performs the acts of loading, displaying, running, transmitting or storing the program, which he is entitled to do.

Another aspect of restriction by private use stemmed from the right previously granted to composers who had the right to use, without authorisation, "small excerpts" of a work as lyrics to their music and could publish, reproduce and distribute such pieces without the

28 Art. 43 LIA.

29 Art. 38 LIA.

30 It should be noted that the amendments do not provide for a definition for the author of a computer program, unlike the relevant EEC Directive. Therefore, the general rule laid down in Article 8 of the LIA shall apply. According to this, the author of work is the person who has created the work. The holder of proprietary (economic) rights of a work which is created by employees during the course of their employment is the employer, unless otherwise provided by contract or the context of the business.

permission of the author of the literary work. The amendments now provide that no part of a literary work may be used in a musical piece without the written authorisation of the author. Furthermore, a literary piece for which music is composed forms a joint work, and the permissions of both authors will be required for the recording and commercial exploitation of the work³¹.

d) Restriction of Neighbouring Rights

Neighbouring rights may also be restricted by the requirements of public order, public benefit and private use, without the authorisation of the right-holder. In this context, the following acts are permitted: the performance or display of copyright works for the purpose of public order, education, scientific research or interview and without the aim of profit-making; the reproduction of copyright works and radio and television programs for private use and without the aims of distribution and profit-making; the making of ephemeral fixations by broadcasting organisations, which are made through their own facilities and for their own broadcasts, and other restrictions which apply to the exclusive moral and economic rights of authors, to the extent that they can apply to neighbouring rights.

5. Term of Protection

In accordance with Council Directive 93/98/EEC³², the term of protection of all moral and economic rights in relation to all types of copyrightable works is unified and is fixed at, for real persons, for the lifetime of the author and for 70 years after death, and, for legal persons, for 70 years after the first communication of the work to the public³³. Therefore, the shorter terms of protection for handcrafts, photographs and cinematographic films and for the right of translation of foreign literary and scientific works have been eliminated.

Neighbouring rights shall be protected for a term longer than that designated in Council Directive 93/98/EEC, which fixed the term at 50 years³⁴. The amendments have determined this term to be 70 years, starting, for performers, from the date of performance, or, if a fixation is made, from the date of first publication of the fixation; for producers, from the date of the first publication of sound recordings; and, for broadcasting organisations, from the date of the first broadcasting of a programme³⁵.

31 Art. 39 LIA.

32 Art. 1 See note 7 above.

33 Arts. 27, 28, 29 LIA.

34 Art. 3. See note 7 above.

35 Art. 82, pars. 5 and 6 LIA.

6. Precautionary Measures for the Prevention of Infringement

a) Written Authorisation

The amendments provide that in order for a work to be reproduced, the person who wants to make the reproduction has to prove to the printing house, or the production or recording company, that he is the author or right holder, through a notarised contract or statement of authorisation³⁶. This requirement may easily be fulfilled by right-holders. However, it is not clear how an author may prove by a notarised certificate that he, himself, is the author of the work concerned.

b) Special Marking

The 1983 amendment of the LIA provided for a system of special marking of certain intellectual and artistic works. Holders of economic rights, producers of devices which are used in the reproduction of such works and persons who publish or reproduce those works, are collectively responsible for maintaining a special mark and serial number on every copy of a work which shall be reproduced, exhibited for sale, distributed or commercially exploited in any other manner in compliance with the Law³⁷. The 1995 amendments provide that this requirement shall also apply to non-periodic publications besides those works which can be reproduced by devices which can copy signs, sounds and picture in accordance with the Law³⁸. It is not clearly stated whether computer programs are also required to carry such a mark. Nevertheless, taking into account a recent judgment of the High Court of Appeal which, even before the 1995 amendments were made, granted copyright protection to computer programs and admitted a request for a special mark to be given for a computer program, there should not be a reason for the denial of such protection for computer programs. This special mark, which is called a "bandrol", is obtained from the Ministry of Culture upon the presentation of a statement of authorisation, as mentioned above³⁹.

Furthermore, the 5% levy on blank audio and video tapes now also applies to blank compact disks and floppy discs to be used with computers.

7. Institutional Protection

With the 1983 amendment, the Law provided for the establishment of authors' societies, which aimed at providing effective protection of the economic rights of authors and the collection and distribution of

36 Art. 81, par. 1 LIA

37 Art. 44, par. 1 LIA.

38 *Ibid.*

39 Art. 81, par. 2 LIA. For the judgment of the High Court, see note 63 above.

royalties. Only one society per category of work could be established. These could then open branches and collectively form a confederation of four societies. The 1995 amendment has lifted the restriction on the number of societies that may be established. Any number of different societies can be established for works in the same category in compliance with a statute to be approved by the Cabinet of Ministers. These can also collectively form a confederation.

Consequently, with the latest amendment, the monopoly on the number of author's societies has been eliminated. Also, another problem could arise due to the existence of one society per category of work with the increase in the variety of the works collected under the same category. Different types of works such as computer programs and literary books are collected under the same category of works and the existence of only one society for this category could lead to the protection of authors' rights by persons who are not familiar to the subject matter. With the possibility of establishing numerous societies, authors have the chance to achieve a greater degree of expertise in the protection of their rights.

Nevertheless, an increase in the number of societies may also lead to a weakening in the powers of the societies as pressure groups against publishers, producers and the like. Fractional groups may tend to increase and result in a less effective collection of royalties. Therefore, societies will have to work harder to establish an efficient and effective system of collection of fees and defending of authors' rights.

8. Legal Protection and Remedies

In case of infringement of authors' moral or economic rights, legal action may be taken under civil or penal law provisions.

a) Civil Actions

Under the LIA, the author and, where appropriate, other people such as, the holders of economic rights, inheritors, testamentary heirs, executors of wills, and, in some cases, the Ministry of Culture may take legal action. Author's societies may start legal action only in the case of breach of contract by the holders of economic rights. Holders of neighbouring rights may also have recourse to the following actions⁴⁰. Civil actions may be based on the provisions of the LIA or other codes such as the Turkish Commercial Code, the Turkish Civil Code or the Turkish Code of Obligations.

i) Declaratory Action

An author may, by depending on his right to claim authorship,

⁴⁰ Art. 80, par. 10 LIA.

⁴¹ Art. 15 LIA.

demand a court declaration confirming his authorship of a work⁴¹. Although the LIA has only foreseen one type of declaratory action, authors should not be estopped from demanding legal judgements stating the existence of other types of breaches of their rights in accordance with the provisions of the Turkish Commercial Code on unfair competition.

ii) Action for Termination and Removal of Infringement

In case of the breach of *moral rights*,⁴² authors may start a legal action for both the termination of existing infringement and its remedy. In order to remedy the infringement of the moral rights of an author, the court may order the correction of a misattribution, the identification as author or the correction of the identification, the rectification of any changes made without authorisation on the work, or the communication to the public of the correct version in the manner in which the damaged version was communicated initially. For artistic works, the amendments provide the author with the rights to demand rectification of the work to its original state if this shall not substantially damage the interests of the public and of the owner, and to demand either the removal of the author's name or the announcement that the change on the work was not done by the author. Besides bringing an action for the breach of their moral rights recognised by the LIA., authors may also bring claims in accordance with the Turkish Civil Code's provisions regarding the protection of personality.

The types of breach of *economic rights*⁴³ have been listed and they include, after the amendments, the unauthorised publishing, or publishing in unauthorised numbers, of works. The author may demand a maximum of three times (previously 50%) the amount of his damages, to be calculated according to the current price. It is not clear how a "calculation of damages according to the current price" can be realised. Furthermore, the author may demand either the destruction or the transfer to his possession of unauthorised copies and devices used in unauthorised copying against the payment of an appropriate sum, or three times the amount he would be able to demand in the case of the existence of a contract.

The amendments provide that the action for termination and removal of infringement can be started in the court at the place of domicile of the author⁴⁴.

iii) Action for the Prevention of Infringement

Authors who are subject to a threatened infringement may bring an action to prevent the threatened breach. This action may also be brought in the case of a continuation of a current breach or the prevention of a

42 Art. 67 LIA.

43 Art. 68 LIA.

44 Art. 66/final LIA.

probable repetition of it. The amendments provide that this action may also be brought in the court at the place of domicile of the author⁴⁵.

iv) Action for Damages

In the case of a breach of *moral rights*, the amendments have eliminated the requirement of fault for a claim of indemnification⁴⁶. The court may also order other forms of indemnification such as the publishing of the court order or of an open apology.

In the case of a breach of *economic rights*, authors may demand compensation in accordance with the provisions on tort of the Turkish Code of Obligations.

Besides the payment of an indemnification for a breach of moral and economic rights, the author may also claim an account of the profits made by the infringer through the infringement of his rights. In this case, the amount he can claim under the action for termination and removal of infringement shall be decreased⁴⁷.

b) Penal Actions

The LIA lists infringing actions which constitute a crime. In order for a breach of moral or economic rights to constitute a crime, the act must be committed deliberately. The amendments add to the current list of criminal acts the breach of the exclusive right of public rental⁴⁸, the importation of unauthorised copies⁴⁹, the maintaining for commercial purposes of copies which are or should be known to be illicit⁵⁰, the maintaining or distribution of a technical tool which serves to render functionless a technical device that protects computer programs⁵¹, and the reproduction and distribution of copies made without obtaining the necessary authorisation and the special mark⁵².

Penalties against criminal acts were increased by the amendments. The term of imprisonment has been raised from one to three months to three months to one year and fines have been increased.

These acts are prosecuted upon the complaint of the person whose rights are violated. Furthermore, the amendments provide that upon such a complaint, in the case of the unauthorised reproduction and distribution of works, the public prosecutor may demand the court to make an order for the collection of the illicit copies and the sealing up of the facilities used in their production. In cases where delays may cause loss, the public prosecutor may order collection on his own initiative,

45 *Ibid.*

46 Art. 70, par. 1 LIA.

47 Art. 70/final LIA.

48 Art. 72.5 LIA.

49 Art. 72.6 LIA.

50 Art. 73.5 LIA.

51 Art. 73.6 LIA.

52 Art. 81/final LIA.

such order to be approved by the court within three days⁵³. The complaint for the collection of illicit copies may also be made by an authors' society.

The holders of neighbouring rights may also start criminal actions against the violation of their rights⁵⁴.

9. Application in Time

The amended provisions regarding the terms of protection shall apply to works communicated to the public after the entry into force of such provisions regarding neighbouring rights, cinematographic works, computer programs and databases. The amended provisions regarding the authorship of cinematographic films shall be applicable to those films whose production has begun after the entry into force of such provisions.

The amendments provide a term of one year for the conversion of existing authors' societies to new societies under the supervision of the Ministry of Culture.

The Ministry of Culture shall issue detailed regulations for the implementation of the amended provisions.

53 Art. 81, pars. 3, 4 LIA.

54 Art. 80/final LIA.