

**Council for Trade-Related Aspects of
Intellectual Property Rights**

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**MAIN DEDICATED INTELLECTUAL PROPERTY LAWS AND REGULATIONS
NOTIFIED UNDER ARTICLE 63.2 OF THE AGREEMENT**

TURKEY

The present document reproduces the text¹ of the following laws and regulations, as notified by Turkey under Article 63.2 of the Agreement (see document IP/N/1/TUR/2):

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**Conseil des aspects des droits de propriété
intellectuelle qui touchent au commerce**

**PRINCIPALES LOIS ET RÉGLEMENTATIONS CONSACRÉES À LA
PROPRIÉTÉ INTELLECTUELLE NOTIFIÉES AU TITRE
DE L'ARTICLE 63:2 DE L'ACCORD**

TURQUIE

Le présent document contient le texte¹ des lois et réglementations ci-après, notifiées par la Turquie au titre de l'article 63:2 de l'Accord (voir le document IP/N/1/TUR/2):

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**Consejo de los Aspectos de los Derechos de Propiedad
Intellectual relacionados con el Comercio**

**PRINCIPALES LEYES Y REGLAMENTOS DEDICADOS A LA PROPIEDAD
INTELLECTUAL NOTIFICADOS EN VIRTUD DEL PÁRRAFO 2 DEL
ARTÍCULO 63 DEL ACUERDO**

TURQUÍA

En el presente documento se reproduce el texto¹ de las siguientes leyes y reglamentos que Turquía notificó de conformidad con lo dispuesto en el párrafo 2 del artículo 63 del Acuerdo (véase el documento IP/N/1/TUR/2):

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¹ In English only. The texts in the original language are available for consultation by interested Delegations at the WTO Secretariat./En anglais seulement. Les délégations intéressées peuvent consulter les textes dans leur langue d'origine, au Secrétariat de l'OMC./En inglés solamente. Las delegaciones interesadas podrán consultar en la Secretaría de la OMC los textos en su idioma original.

Law No. 5846 on Intellectual and Artistic Works

Date of Acceptance: 5.12.1951

Date and No. of Official Journal: 13.12.1951/7931

Law No. 2936 on the Amendment of Some Articles of Law No. 5846 and the Annexing of Two Provisional Articles

Date of Acceptance: 1.11.1983

Date and No. of Official Journal: 3.11.1983/18210

Law No. 4110 on the Amendment of Some Articles of the Law on Intellectual and Artistic Works

Date of Acceptance: 7.6.1995

Date and No. of Official Journal: 12.6.1995/22311

**LAW NO. 5846 ON INTELLECTUAL AND
ARTISTIC WORKS DATED 5/12/1951
PART ONE
Intellectual and Artistic Works**

A) Definition

Article 1- Within the meaning of this law, a work is any kind of intellectual and artistic product bearing the characteristics of its owner and which is considered a work of science and literature, music, fine arts or cinema under the following provisions.

B) Types of intellectual and artistic works:

I- Works of science and literature:

Article 2- Works of science and literature are as follows:

1. (Amended: 7.6.1995-4110/article 1) Works expressed in language and writing in any way and computer programs expressed in any form and their preliminary designs, provided that these lead to a program in the next stage;

2. (Amended: 1.11.1983-2936/article 1) All kinds of dances, written choreography works and similar unworded stage works.

3. (Amended: 7.6.1995-4110/1) All kinds of technical and scientific photographic works that do not have rhetorical character, all kinds of maps, plans, projects, sketches, pictures, geographical and topographical models and alike, all kinds of architectural and civil designs and projects, architectural models, industrial, environmental and stage designs and projects.

Ideas and principles constituting a basis for any element of a computer program, including the ideas and principles constituting a basis for its interface, are not considered works.

II. Works of music:

Article 3- Works of music are all kind of worded and unworded compositions.

III. Works of fine art:

Article 4- (Amended: 7.6.1995-4110/2)

Works of fine art are;

1. Oil and watercolour paintings; all kinds of pictures, designs, pastels, engravings, manuscripts and gilding, works drawn or fixed with mineral, stone, wood or other substances by scratching, engraving, tapping or similar methods, calligraphy, screen printing,
2. Statutes, reliefs and carvings,
3. Works of architecture,
4. Handicrafts and minor works of art, miniatures and products of decorative art, and textile and fashion designs,
5. Photographic works and slides,
6. Graphic works,
7. Cartoon works,
8. All kinds of typing, with esthetical value.

The usage of sketches, pictures, models, designs and similar works as industrial models and pictures does not affect their title as intellectual and artistic works.

IV- Works of cinema:

Article 5- Works of cinema are as follows:

1. Movies,
2. Films carrying didactic and technical characteristics or reflecting daily events,
3. All kinds of scientific, technical or rhetorical projection dia-positives.

The above mentioned works take place in the group of cinema works if they are displayed through projection, even if they are fixed on material other than film and glass.

Films used merely for the transfer of compositions, speeches, conferences, etc. are not considered as works of cinema.

C) Adaptations:

Article 6- The intellectual and artistic products created through the use of another work and not independent as compared to such work, and the principal ones of which are listed below are adaptations;

1. Translations,

2. The conversion of one of the works such as novels, stories, poems and dramas to another of these kinds,
3. The conversion of works of music, fine arts, science and literature into films or conversion of the same into a form suitable for taking into a film and broadcasting through radio and television,
4. Musical arrangements,
5. Conversion of works of fine arts from one form into other forms,
6. The conversion of all works or works of the same kind of the owner of a work into a complete work,
7. Arrangement of selected and collected works in line with a certain purpose and within a special plan,
8. Making a work not published yet suitable for publication through scientific research and study (ordinary transcriptions and facsimiles which are not the product of a scientific research and study are excluded from this),
9. Description or commentary or abridgement of a work belonging to someone else.
The adaptations bearing the characteristics of the adapter are considered works under this law.
10. (Supplemented: : 7.6.1995-4110/3) Adaptation, arrangement or any modification of a computer program.
11. (Supplemented: : 7.6.1995-4110/3) Data bases constituted as a result of the selection and gathering of data and materials in line with a certain purpose and within a special plan. (However, the protection provided here may not be expanded so as to protect the data and materials within the data basis.)

D) Publicized and Published Works:

Article 7- A work presented to the public with the consent of the owner of its rights is considered as publicized.

In case the copies of a work obtained by way of its duplication are presented to the public by way of putting on the market or distribution or any other way with the consent of the owner of its rights, such a work is considered as published.

The provision of 2nd paragraph of article 3 of Press Law no. 5680 is reserved.

PART TWO

Owner of the Work

A) Definition:

I- General

Article 8- (Amended: 7.6.1995-4110/4)

The owner of a work is the person who creates it.

Unless otherwise is understood by the special contract between them or the content of the work; the owner of the financial rights of the works created by the officials, servants and workers in conduct of their job is the persons employing or assigning them. The same rule applies to the organs of the corporal persons.

The owner of an adaptation is, provided that the rights of the original owner are reserved, the adapter.

The producer or publisher of a work can exercise the financial rights only under the contract he will conclude with the owner of the work.

In cinematographic works; the director, the composer of the original soundtrack and the author of the scenario are the collective owners of the work. The collective owners of a work can transfer the financial rights to the producer under a contract they will conclude and against a suitable cost.

After the collective owners of a cinematographic work transfer their financial rights, they can not object to the duplication, distribution, supply to the public, cable transmission, broadcast by means of television or other media, subscription or dubbing of the work by the producer, unless there is any provision otherwise.

II- More Than One Owner of Work

Article 9- In case the work created by more than one person can be divided into parts, each of the owners is considered as the owner of the part he created.

Unless otherwise decided, each of the persons collectively creating the work may request the participation of the others for the changing or publication of the whole work. If the other party does not participate without any justified reason, the court can permit such an action. The same provision applies to the exercise of the financial rights.

III- Unity Among the Owners of the Work

Article 10- If the work created through the participation of more than one person constitutes a whole, the owner of the work is the unity of its creators.

The provisions regarding ordinary corporations are applied to the unity. In case one of the owners of the work does not permit a collective action without any justified reason, the required permission may be granted by the court. Each of the owners of the work can act individually, in case the interests of the unity are violated.

The technical services or aids regarding the details during the creation of a work do not constitute a basis for participation.

B) Inferences on the ownership of a work

I- In works where the name of the owner is stated:

Article 11- The person using his name or his known pseudonym in the published copies of a work or in the original of a work of fine arts as the owner of such a work is considered as the owner of the said work until otherwise is proven.

(Amended: 7.6.1995-4410/5) The person regularly presented as the owner of the work in public places or in the conferences and performances broadcast by radio-television is considered as the owner of the said work; unless another person is considered as the owner of the work by way of the inference set forth in the first paragraph.)

II- In works where the name of the owner is not stated:

Article 12- Unless the owner of a published work is not known according to article 11, the publisher, and in case it is also not known, the duplicator may exercise the rights and authorities of the owner of the work in his own name.

Such authorities belong to the deliverer of the conference or the executor of the performance in cases where the owner of the work is not known by inference in the second paragraph of article 11.

The provisions of ordinary proxy are applied in the relations between the persons authorized under this article and the original owners of the right.

PART THREE

Intellectual Rights

A) Rights of the Owner of the Work

I- General

Article 13- The financial and moral interests of the owners of intellectual and artistic works on such works are governed within the framework of this law.

The rights and authorities granted to the owner of the work cover the whole and parts of the work.

II- Moral Rights

1. Authority to Present to the Public

Article 14- The owner of the work exclusively determines the presentation or non-presentation and the time and way of promulgation of a work.

Only the owner of a work can give information on the content of a work, the whole or a substantial part of which has not become publicized or the main lines of which have not yet been introduced to the public.

In case the presentation to the public or the way of publication of the work will humiliate the honour and prestige of its owner, the owner of the work, even if he had authorized someone else, may prohibit the introduction to the public or the publication of both the original and the adapted form of the work. The right to demand indemnity of the other party is reserved.

2. The authority to state the name:

Article 15- The authority to decide on presenting to the public or publishing the work with the name or pseudonym of its owner or without a name rests exclusively with the owner of the work.

It is obligatory to state the name or sign of the original owner of the work in the decided or customized manner and to clearly show that the created work is a copy or adaptation on the duplicated copies of a work of fine art and the original or duplicated copies of an adaptation.

In case the creator of a work is disputed or any person claims that he is the owner of the work, the original owner may request the establishment of his right from the court.

(Supplemented: 7.6.1995-4110/6) In the architectural constructions carrying the properties of a work, the name of the owner of the work is written indelibly on a visible place on the work with a material deemed suitable by the owner of the work upon written request.

3. Prohibition of changes on the work

Article 16- Abbreviations, additions or other changes can not be made on the work or the name of the owner of the work without the permission of the owner of the work.

The person who adapts, presents to the public, duplicates, promulgates, performs or otherwise disseminates a work with the permission of the law or the owner of the work can make the changes deemed necessary due to the technique of adaptation, duplication, performance or promulgation without any special permission of the owner of the work.

Although he has unconditionally granted permission, the owner of the right reserves his right to objection against all kinds of changes disturbing his honour or prestige or the content and properties of the work. Waiver from this right by a contract is void.

4. The rights of the owner of the work against the possessor and the owner:

Article 17- The owner of the rights of duplication and adaptation can request from the possessor of the original to make use of the work as much as required for the exercise of such rights. However, the owner of the rights can not request the handing over of the work to himself.

(Amended: 7.6.1995-4110/7) The possessor of the original can own the work under the conditions of the contract he makes with the owner of the work. However, he can not deteriorate and destroy the work and damage the rights of the owner of the work.

(Supplemented: 7.6.1995-4110/7) In case the work is single and unique, the owner of the work can request the work so as to return it by fulfilling the protection conditions in order to use it in the studies and exhibitions covering all the periods belonging to him.

5. Exercise of the rights

a) General

Article 18- Even if the period of continuance of the financial rights has expired, the owner or the work may exercise the rights he has under articles 14, 15 and 16 as long as he lives, in case a real person and as long as it continues, in case of a corporal person. Discriminating infants and handicapped persons to not need the consent of their legal representatives in the exercise of such rights.

b) Persons who may exercise the rights

Article 19- In case the owner of the work did not establish the way of exercise of the authorities granted to him through the first paragraphs of articles 14 and 15 or did not assign the same to anyone, the exercise of such authorities after his death shall rest with the person authorized to exercise his legacy, and if this was not assigned, his surviving spouse and children and heirs, parents and brother(s)/sister(s) respectively.

After the death of the owner of the work, the persons listed in the above paragraph can exercise the rights granted to the owner of the work under the third paragraphs of articles 14, 15 and 16 during the effectiveness of the financial rights and within 50 years from the death of the owner of the work, in their own names.

In case the owner of the work or the persons authorized under the first and second paragraphs do not exercise their authorities, any person acquiring a financial right from the owner of the work or his heir may exercise the rights granted to the owner of the work under the third paragraphs of articles 14, 15 and 16 in his own name, provided that he proves his legal interest.

In case the authorized persons are more than one and can not agree on the action, the court settles the dispute by way of simple judgment most suitably to the possible will of the owner of the work.

(Amended: 1.11.1983-2936/article 2) In case none of the authorized persons mentioned in article 18 and the above paragraphs is present or they are present but they do not exercise their authorities or the periods mentioned in the second paragraph have expired, the Ministry of Culture may exercise the rights granted to the owner of the work under the third paragraphs of articles 14, 15 and 16 in its own name, if this is deemed important in term of the culture of the country.

III- Financial Rights

1. General

Article 20- (Amended: 1.11.1983-2936/article 3) The right to make use of a work not publicized yet in any way whatsoever belongs exclusively to the owner of the work. The right to make use of a publicized work exclusively by the owner of the work consists of the right set forth in this law as the financial right. Financial rights are not bound to each other. The deposit and use of one of these does not affect the other.

In case the owner of the work is member of a professional union, the observation of his work stated in the written authorization document and the financial rights related to it, the collection of copyrights and the distribution of these charges and the work are carried out by the professional union.

The rules and principles related with the authorization document are determined by the regulations to be prepared by the Ministry of Culture.

The owner of an adaptation exercises the financial rights granted to him under such title to the extent allowed by the original owner of the work, except where adaptation is free.

2. Types

a) Right to adapt

Article 21- The right to make use of a work by way of adapting it rests exclusively with the owner of the work.

b) Right to duplicate:

Article 22- (Amended: 7.6.1995-4110/article 8) The right to partially or wholly duplicate the original or adaptations of a work belongs exclusively to the owner of the work.

Making a second copy of the original of the works or recording the work on all kinds of media, known or to be developed in the future, used for transfer and replay of signs, sound and image, all kinds of sound and music recordings and the implementation of the plans, projects and sketches of the works of architecture are considered as duplication. The same rule applies to the relief and perforated shapes, as well.

The right to duplicate covers the acts of loading, displaying, operating, transmitting and storing of the program, to the extent necessitated by the provisional duplication of the computer program.

c) Right to disseminate:

Article 23- (Amended: 7.6.1995-4110/article 9) The right to disseminate, lease, lend or sell or make a subject of trade in any way whatsoever a work and its copies obtained by duplication from the original or adaptation of it and to benefit from this way belongs only to the owner of the work. In case the copies of the work duplicated abroad are brought home, the right to promulgate the work at home and to benefit from the work belongs exclusively to the owner of the work.

The resale of certain copies after their first sales or dissemination is made within the borders of the country by the transfer of their property by the owner of the right upon the utilisation of the right to disseminate does not violate the dissemination right granted to the owner of the work, provided that the rights to lease and lend to the public are reserved.

D) Right to perform

Article 24- The right to make use of a work by means of performance such as reading, playing and displaying its original or adaptations directly or through devices used for sign, sound or image transfer at public places belongs exclusively to the owner of the work.

The transport of the performance from the place it is realized to be presented to the public to another place by any technical means also belongs to the owner of the work.

(Supplemented: 1.11.1983-2936/article 4) The right to perform may not be exercised by other real or corporal persons without the permission of the owner of the work, or in case he is member of a professional union, of the professional union within the authorities stated in the authorization document. However, the provisions of articles 33 and 43 are reserved.

d) Right to broadcast through radio

Article 25- The right to make use of a work by promulgating its original or adaptations by means of radio or similar technical facilities used for sign, sound or image transmission; or promulgating the works promulgated by this way again through or without cable by receiving it live at another radio facility or performing it at public places by means of loudspeakers or similar technical facilities used for sign, sound or image transmission belongs exclusively to the owner of the work.

3. Periods

a) General

Article 26- The financial rights granted to the owner of the work are restricted by time. After the expiry of the protection period, everyone may make use of the rights granted to the owner of the work, except the situations stated in articles 46 and 47.

The protection periods granted for the original or adaptations of a work are not dependent on each other.

This provision also applies to the works in the first paragraph of article 9. The protection period does not become effective prior to the becoming publicized of the work.

For works published in sheets or fascicles, the date of publication of the last sheet or fascicle is considered as the date of becoming publicized. The date of becoming publicized for each volume of the works consisting of numerous volumes published at intervals and for works such as bulletins, booklets, periodicals and yearbooks is the date of publication of each of these.

The periods commencing at the date of becoming publicized are calculated from the first day of the year following the year that the work initially becomes publicized or is deemed to have been publicized.

In the calculation of the periods commencing from the date of death of the owner of the work, the first day of the year following the year that the owner of the work has died is considered as the commencement date. In cases mentioned in the first paragraph of article 10, the period commences after the date of death of the last surviving one of the owners of the work.

b) Continuation of the periods

Article 27- (Amended: 7.6.1995-4110/article 10)

The protection period continues during the lifetime of the owner of the work and for 70 years after his death.

For works becoming publicized after the death of their owner, the protection period is 70 years after the date of death.

In cases stated in the first paragraph of article 12, the protection period is 70 years from the date that the work becomes publicized; provided that the owner of the work discloses his name before the expiry of this period.

In case the first owner of the work is a corporal person, the protection period is 70 years from the date that the work becomes publicized.

c) Protection period for translation into Turkish:

Article 28- (Amended: 7.6.1995-4110/article 11)

In case a work of science and literature originally published in a language other than Turkish is not translated into Turkish and published by the owner of the work or by someone else by his permission within 70 years from its date of publication, it may be translated into Turkish upon the elapse of 70 years.

d) Periods for handicrafts, minor works of art, photographic and cinema works

Article 29- (Amended: 7.6.1995-4110/article 12)

The protection period for handicrafts, minor works of art, photographic and cinema works is 70 years from their date of becoming publicized.

B) Limitations

I- In consideration of public order

Article 30- The rights granted to the owner of the work do not impede the use of the work before the court and other government offices for its proof and as the subject of a proceeding in the absolute security and penalty procedures. Photographs may be duplicated and disseminated through any way whatsoever by the government offices and by other through their orders without receiving the consent of the owner, in consideration of public security and for ordinary purposes.

The provisions of public legislation prohibiting or binding to permission or control the marketing, performance or use in other ways of the work are reserved.

II- In consideration of general interest

1. Legislation and jurisprudence

Article 31- Duplication, dissemination, adaptation or otherwise use of the laws, rules, regulations, notifications, circular letters and juridical decisions which are officially promulgated or announced is free.

2. Speeches

Article 32- The duplication of the words told and the speeches delivered in the Grand National Assembly and other official assemblies and congresses, courts and public meetings for the purpose of giving news and information, reading these in public places or broadcasting them through radio or otherwise is free.

When not necessitated by the scope of the event and the requirements of the situation, the names of the owners of the words and speeches may not be mentioned.

Duplicating or otherwise disseminating such words and speeches other than mentioned in the first paragraph rests with the owner of the work.

3. Freedom of performance

Article 33- The free performance of a published work at public places exclusively for training and education purposes or without any aim of benefit is allowed.

The same rule applies to the performances, the net revenue of which are completely allocated to felicities.

Yet, it is obligatory to regularly mention the name of the owner of the work and the work.

4. Selected and collected works for training and education

Article 34- (Amended: 7.6.1995-4110/article 13) Creating selected and collected works from the published works of music, science and literature and publicized works of fine art, which are understandably aimed at training and education from their states and situations, by way of borrowing to the extent justified for the purpose is allowed. The works stated in the third indent of article 2 and the first and fifth indents of the first paragraph of article 4 may only be borrowed in order to describe the contents of the selected and collected works. However, this freedom may not be exercised in a way as to give harm to the legal interests of the owner of the right without any justification or in contradiction to the normal use of the work.

The provisions of the first paragraph also apply for the broadcasts (school-radio) exclusively prepared for the schools and approved by the Ministry of National Education.

In all these cases, it is obligatory to regularly mention the name of the work and the owner of the work.

5. Freedom of borrowing

Article 35- Borrowing from a work under the following circumstances is allowed:

1. Including some sentences and paragraphs of a publicized work in an independent work of science and literature;
2. Including mostly the parts such as theme, motive, passage and idea of a promulgated composition in an independent work of music;
3. Including publicized works of fine arts and other promulgated works in a work of science to the extent justified by its purpose and for the purpose of describing its contents;
4. Illustrating publicized works of fine arts in scientific conferences or courses through projection or similar means in order to describe the subject.

6. Contents of the newspapers

Article 36- Daily news and information promulgated to the public through press or radio may be freely borrowed, provided that article 15 of the Press Law is reserved.

Unless the borrowing right of the articles and paragraphs concerning daily social, political or economic matters published in the newspapers or periodicals is clearly preserved, their citation in the other newspapers and periodicals literally or as adapted and their promulgation through radio or otherwise is allowed. Even if the right to borrow is reserved, the citation of the said articles and paragraphs as press summaries by way of abridgement and their promulgation through radio or otherwise is allowed.

In all these cases, it is obligatory to mention the name of the borrowed newspaper, periodical or agency and if they also cited these from another source, the name and volume of such source as well as the name, pseudonym or sign of the owners of the articles.

7. Interviews

Article 37- The inclusion of some parts of the intellectual and artistic works in the media used for sign, sound or image transmission in relation to daily events, provided that these have the characteristics of an interview, is allowed. The duplication, promulgation, performance or broadcasting through radio of the parts cited in such a manner is allowed.

The broadcasting of some parts of the publicized intellectual and literature works through radio is allowed, provided that this action does not step beyond the framework of an interview.

III- In consideration of private interest

1. Personal usage:

Article 38- (Amended: 7.6.1995-4110/article 14)

All the intellectual and artistic works may be duplicated for personal usage without the purpose of promulgation or profit. However, such duplication may not damage the legal interests of the owner of the right without any justified reason or may not be contradictory to the normal use of the work.

Within the framework of the provision of the first paragraph, everyone may adapt or have adapted the works of music, science and literature.

In case of lack of determining provisions in the contract, when required for the intended use of a computer program, the duplication and adaptation of a computer program, including correction of faults, by the person who has legally obtained it is allowed.

The loading, operating and fault-correcting of a program by the person obtaining such computer program through legal means may not be prevented by the contract. To the extent required for the use of the computer program, the person who has the right to use the computer program can not be prevented by virtue of the contract from generating a back-up copy.

The person who has the right to use the computer program is free to observe, detect and try the operation of the program for the purpose of determining the ideas and principles underlying any element of the computer program during the conduct of the acts of loading, imaging, operation, transmission or storage of the computer program he is entitled to make.

In cases where the duplication of the code and the conversion of the code form is also compulsory in terms of the duplication and adaptation of the computer program in order to obtain the information required for providing the interoperability of an independently created computer program and the other programs, the conduct of such acts is allowed when the following requirements are fulfilled:

1. Such acts should be conducted by the owner of the license or such other person who has the right to use the copy of the computer program or the person authorized to do so on their behalf,

2. The information required for providing interoperability should not be supplied for usage by the persons mentioned in indent (1),

3. Such acts should be restricted to the program components required for providing interoperability.

The provisions of the above paragraph does not allow, with respect to the information obtained by its practice;

1. To be used for purposes other than providing the interoperability of the independently created computer program,

2. To be given to persons other than in cases required for providing the interoperability of the independently created computer program,

3. To be used for the development, creation or marketing of a computer program from the original one similar in terms of expression or to be used for any other act violating the intellectual rights.

The provisions of the sixth and seventh paragraphs may not be interpreted so as to be in contradiction to the normal use of the program or so as to interfere with the legal benefits of the owner of the rights unreasonably.

2. Rights granted to the composers:

Article 39- (Amended: 7.6.1995-4110/article 14)

A work of literature may be used in a work of music only upon the written permission of the owner of the work.

When all kinds of lyrics, librettos and similar works used in a work of music are composed, such permission is documented at each stage before the collective work is recorded, registered and marketed and is inspected by the owners of the right and the other relevant persons.

It is possible to distribute the lyrics freely by including in radio-television programs and print them to be supplied on or together with the sound carrying devices. The person making use of these possibilities is obliged to state the name of the work of literature and the owner of the work.

3. Copying and demonstration

Article 40- The duplication through illustrations, graphics, photographs, etc., promulgation, demonstration by projection at public places and broadcasting through radio and similar media of the works of fine arts stationarily placed on the public roads, streets and avenues are allowed. This authority is exclusive only to the outer shape in the works of architecture.

Unless a prohibitory record is clearly placed on them by their owners, the works of fine arts can be demonstrated at public places by their possessors or by others upon their approval.

Works to be sold by auction may be demonstrated to the public. Duplication and promulgation of a work demonstrated at public places or put on an auction by means of catalogues, manuals or similar publications to be published by the organizers of such auction for these purposes are allowed.

In such cases, unless there is any otherwise accepted custom, the mentioning of the owner of the work may be renounced.

4. Usage of records, video cassettes and sound cassettes at public places

Article 41- (Amended: 1.11.1983-2936/article 6) The performance of works recorded in the mediums used for sound, image or sound and image replay with the permission of the owner of the work and specifically marked for performance at places open to the public by way of playing or displaying is possible. However, in case of works not specifically marked, the rights of the owner of the work or the professional union, where authorized, to demand a suitable indemnity is reserved.

The rules and principles for the determination, follow-up and sharing between the owner of the work and the professional union of this amount of indemnity is determined by the regulations to be prepared by the Ministry of Culture after receiving the opinion of the professional union.

IV- Authorities granted to the government:

1. Establishment of professional unions:

Article 42- (Amended: 7.6.1995-4110/article 16) The owners of the works and the owners of the neighbouring rights may establish professional unions in accordance with the regulations and type statutes prepared by the Ministry of Culture and approved by the Board of Ministers, in order to protect the common interests of their members and to follow their rights granted by this law within the principles and procedures set forth by the legislation, to collect the receivable charges and to distribute such revenues to the owners of the rights. Field determination is decided by the regulations. More than one professional unions may be established in the same field. Each union may operate by opening branches in line with the requirements.

The professional unions may establish a superior institution according to the type status prepared by the Ministry of Culture and approved by the Board of Ministers.

Professional unions and confederation are corporal persons subject to special legislation. Their members can not be held responsible for depositing capital and participating in the profit and loss and legal obligations.

In the type statutes of professional unions and federation, the general assembly, board of management, board of inspection, technical-scientific board and board of prestige are established as compulsory organs. The establishment, control and inspection of these unions and federation and the minimum number of members required for holding the first general assembly meeting, other arbitrary organs, way of establishment of the boards, number of members and their duties, requirements for acceptance, resigning and dismissal from

membership, determination of the areas where they can establish their branches, their relations with the public organizations and institutions home and abroad and real and private legislation corporal persons, their rights and authorities in these relations, their financial relations with their members, the distribution of the copyright fees and indemnities and the matters related with the other procedures and principles are determined by the regulations to be prepared by the Ministry of Culture following the receipt of the opinion of the relevant organizations.

Second paragraph of article 21 and articles 30, 37, 40, 42, 43, 44, 45, 48, 65, 66, 67, 68, 69, 70 and 90 of the Law no. 2906 on Associations dated 4/10/1983 are applied to the professional unions and federation to be established under this article together with their penal provisions.

The financial rights of the owners of the works who are Turkish citizens may not be followed by unions, associations and similar organizations other than the professional unions established within the country under this article.

Copyrights in radio-television broadcasts

Article 43- (Amended: 7.6.1995-4110/article 17)

The intellectual and artistic works used in the radio-television broadcasts are paid copyright charges.

In all kinds of broadcasts, no permission is received from the owners of the works and no charge is paid for short citations at a level that will not damage the rights on the whole of the work used for the purpose of promotion.

The usage of any portion of the works in the introduction of verbal or musical programs, as auxiliary dramatic element, signal, generic and passage music and for similar purposes is considered a short citation.

The owners of the works are not paid for the works used in the broadcasts to be made abroad through the short wave radio stations of Turkish Radio and Television Organization.

3. Marking the intellectual and artistic works:

Article 44- (Amended: 7.6.1995-4110/article 18)

Owners of the financial rights and the manufacturers and publishers of the devices used for the replay of intellectual and artistic works through signs, sound and image are collectively responsible for putting signs and serial numbers on all copies of a work to be marketed, distributed or otherwise marketed in accordance with this Law.

The real and corporal persons manufacturing or commercially importing all kinds of empty video cassettes, sound cassettes, compact disks and computer disks are liable to deduct an amount over the manufacturing or import value to be determined by the decision of the Board of Ministers so as not to exceed five percent of the same and to deposit the sum they collected within one month in a special account to be established in a national bank in the name of the Ministry of Culture until the half of the following month at the latest.

The Ministry divides 3/4 of the amount collected in this account among the professional unions to be distributed to the owners of the rights represented by the professional unions. The professional unions distribute this sum to the owners of the rights according to the distribution plans to be approved by the Ministry. When approving these plans, the Ministry considers the duplication numbers of the works represented by the professional unions. The Ministry uses the remaining 1/4 of this amount for cultural and social purposes and for the prevention of the violation of intellectual rights.

The rules and regulations regarding the signs and serial numbers to be placed on the copies of the intellectual and artistic works according to their usage for the purposes of their performance at personal or public places, the collection of the copies not bearing these, the authority to whom the number of duplicated and distributed copies will be informed and the other matters are determined by the regulations to be introduced by the Ministry of Culture.

4. Giving shares from the sales values of the works of fine arts

Article 45- After the one of the originals of the works of fine arts listed in 1st and 2nd indent of article 4 and of the works listed in 1st indent of article two and in article 3 and handwritten by the authors and the composers is once sold by the owner of the work or his heirs, in case there is a clear disproportion between the sales value of such work in its circulation as a subject of sales in an exhibition or auction or store selling such goods and its previous sales value, the vendor may be charged through a decree to pay a suitable share of the value difference each time to the owner of the work, to his legal heirs up to the 3rd degree (excluding 3rd degree) and his spouse, if he is dead and to the professional union, if these are not also available.

In this decree:

1. A share tariff to be determined according to the proportion of the difference, so as not to exceed ten percent of the value difference;
2. That the sales not exceeding a certain amount, the value of which will be determined in the decree, will be exempted from the liability to give shares;
3. The branch of the professional union that will be considered relevant in respect of types of works;

are shown.

The owner of the establishment where the sales is realized is successively liable together with the vendor.

In cases of forced sales, the share is paid only after all the other receivables are completely paid.

The forfeiture of the share giving liability is five years from the sales leading to the rise of such liability.

5. State's authority to benefit

Article 46- (Amended: 1.11.1983-2936/article 10)

The works, which are not published or publicized yet, the duplication and promulgation of which are not expressly prohibited by the owner of the work and which are kept in public libraries, museums and similar organizations belong to the public organizations and institutions they are kept by, provided that the period related with the financial rights has expired. The authority that the public organizations and institutions and the persons and organizations who want to benefit from these for scientific and similar purposes will receive permission from and the fees to be charged from these, the cultural purposes that such fees will be spent for and the other matters are determined by the regulations to be prepared by the Ministry of Culture after receiving the opinion of the relevant organizations.

6. Expropriation

Article 47- The authority to make use of the financial rights on a work that is deemed to carry importance for the country culture may be expropriated by way of paying a suitable value before the expiry of the protection period through a decree.

In order to decide on this matter, the work should have been promulgated in Turkey or by Turkish citizens out of Turkey and at the same time the copies of the work should have been sold out for two years and the promulgation of new copies by the owner of the rights within a suitable period should have been considered impossible.

The following are written in this decree:

1. Name of the work and its owner;
2. The value to be paid to the persons whose acquired rights are violated;
3. The authority or organization that will exercise the financial rights;
4. The cultural purposes that the net profit gained after the paying off of the given value will be allocated for.

PART FOUR

CONTRACT AND DEPOSITS

A) Deposits protective in life

I- Original acquisition

Article 48- The owner of the work or his heirs can transfer the financial rights legally granted to them to others in a restricted or unrestricted manner in terms of duration, place and contents, with or without any return.

The authority to merely exercise the financial rights (license) can also be assigned to another person.

The deposit procedures mentioned in the above paragraphs are void if they concern a work which is not created yet or which will be completed.

II- Acquisition by transfer

Article 49- Any person who has acquired a financial right or a license to exercise such a right from the owner of the work or his heirs may transfer such rights or a license to exercise such rights to someone else only through the written consent of them.

In the transfer of the right to adapt, the consent of the owner of the work or his heirs is also required for the person acquiring these by transfer in the same manner.

III- Contracts

1. Works to be created

Article 50- The commitments regarding the disposal procedures mentioned in articles 48 and 49 are valid even if they are made prior to the creation of the work.

Such commitments concerning the whole or a certain type of the works that the owner of the work will create in the future may be terminated by each of the parties so as to be effective one year after the date of notification.

In case the owner of the work dies or loses his ability to complete the work or it is impossible for the work to be completed without his default before the completion of the work, the said commitments are automatically terminated. The same provision also applies in cases where the other party declares bankruptcy or becomes incapable of using the financial rights it has taken over under the contract or such usage becomes impossible without his default.

2. Possibilities for further exploitation

Article 51- Contracts concerning transfer of the financial rights possibly granted through further legislation to author in the future or exploitation of the financial rights by others shall be null and void.

The same provision shall be in force concerning the contracts for extending the scope of the financial rights or renouncing the authorization caused by extension of the protection term or containing the transfer of the rights through further legislation.

IV- Form

Article 52- The contracts and deposits including financial rights should be in writing and the rights subject to these should be shown separately.

V- Engagement

1. Absence of right

Article 53- Any person transferring a financial right to someone else or gives the license of usage guarantees the presence of the right against the acquirer under the provisions of articles 169 and 171 of Debt Law.

Claims arising from unjustified acts and groundless acquisition of goods are reserved.

2. Absence of authority

Article 54- Any person acquiring a financial right or license of usage from a person not authorized to transfer is not defended even though he has goodwill.

The person transferring a financial right to someone else or gives the license of usage without authority is liable to indemnify the damage arising from the ineffectiveness of the deposit unless he proves that the other party knows or had to know that he did not have such authority. In case of default, the court may determine a higher indemnity, if justice requires to do so.

Claims arising from unjustified acts and groundless acquisition of goods are reserved.

VI- Rules of interpretation

1. Scope

Article 55- Unless otherwise decided, the transfer of a financial right or giving a license does not cover the translations or other adaptations of a work.

2. License

Article 56- The license is a “simple license”, if it does not prevent the granting by the owner of the financial right of the same license to others and a “full license”, if it is exclusive to only one person.

Unless otherwise understood from the law or the contract, every license is considered a simple license.

The provisions on revenue lease are applied for simple licenses and the provisions on right of benefit are applied for full licenses.

3. Transfer of property

Article 57- The transfer of the property right on the original or duplicated copies does not include the transfer of intellectual rights unless otherwise decided.

Any person who acquires the possession of shapes and other duplication means from a person who has duplication right on a work of fine art is considered to have acquired the right to duplicate, as well, unless otherwise decided.

Any person who acquires property on the duplicated copies of a cinema work is considered to have acquired the right to perform, as well, unless otherwise decided.

VII- Right to renounce

Article 58- In case any person acquiring a financial right and license does not duly make use of his rights and authorities within the agreed period of time and a suitable period of time required by the situation if no time is determined, and thus, the interests of the owner of the work are substantially neglected, the owner of the work may renounce from the contract.

The owner of the work who wants to exercise his right to renounce is obliged to give a term of grace to the other party through the notary public for the exercise of the rights under the contract. In case the exercise of the right is impossible for the acquirer or rejected by him or in case the interests of the owner of the work are substantially jeopardized upon the granting of such a term of grace, the determination of a term of grace is not necessary.

In case no result is obtained during the term of grace or the determination of a term of grace is not necessary, renouncement is completed upon a notification through the notary public. No case of objection can be sued against the renouncement after 4 weeks have passed from the furnishing of the renouncement notification.

In case the acquirer does not have default in not exercising the financial right or the default of the owner of the work is graver, the acquirer may demand a suitable indemnity in cases where justice is required.

While advance waiving from the right to renounce is not allowed, restrictions prohibiting the expression of this right for a period more than two years are also void.

VIII- Returning of the right to the owner of the work

Article 59- In case the owner of the work or his heirs have transferred a financial right for a certain purpose or a certain period, the right is returned to its owner upon the elimination of the purpose or the expiry of the period. This provision does not apply in case of the death or bankruptcy of the person acquiring a financial right, the transfer of which is not allowed through the contract; provided that the exercise of the right is bound to the person of the acquirer due to the scope of the work.

Licenses granted for a certain purpose or a certain period of time expire in the cases mentioned in the first paragraph.

B) Waiver:

Article 60- The owner of the work or his heirs may waive the financial rights granted to them legally upon the arrangement of an official bond and the announcement of the matter in the Official Journal, provided that they do not violate their deposits that were realized previously.

Waiver commences on the date of announcement and gives rise to the results caused by the expiry of the protection period.

C) Attachment and pledge

I- Cases not allowed

Article 61- Provided that the provisions of articles 24 and 30 of Execution and Bankruptcy law are reserved:

1. The drafts or originals of a work not publicized yet which are under the possession of the owner of the work or one of his heirs;
2. The financial rights on the works mentioned in the 1st indent, except cinema works;
3. The receivables other than cash of the owner of the work arising out of the legal proceedings regarding financial rights; can not be the subject of a legal or contractual right of pledge, forced execution or right of imprisonment.

II- Cases allowed

Article 62- Within the framework of the following provisions:

1. The draft or original of a publicized work;
2. The duplicated copies of a promulgated work;
3. The financial rights of the owner of the work on a publicized work, provided that the moral rights deserving protection of the work are not violated;

4. The cash receivables of the owner of the work arising from the legal proceedings regarding the financial rights;

May constitute the subject of a legal or contractual right of pledge, forced execution or right of imprisonment.

The pledge contract regarding the matters listed in the first paragraph should be made in writing to be valid. The pledged goods should be separately shown in the contract.

Shapes of the works of fine arts and other duplication means may be provisionally taken from the possessors to the extent that it is considered necessary for the implementation of forced execution on the financial rights mentioned in the third indent of the first paragraph.

The originals of works of fine art, excluding works of architecture and the drafts of works of music, science and literature belonging to the owner of the work or his heirs may be provisionally taken from the possessors to the extent that it is considered necessary for the implementation of forced execution on the financial rights mentioned in the third indent of the first paragraph.

D) Heritage

1- General

Article 63- The financial rights granted by this law are transferred by heritage. Deposits depending on death may be realized on the financial rights.

II- Death of one of the collective owners of the work

Article 64- In case one of the collective creators of the work dies before the completion or becoming publicized of the work, his share is divided among the others. These are liable to pay a suitable value to the heirs of the deceased. In case they can not agree on the amount, the court determines it.

In case one of the collective creators of the work dies after the becoming publicized of the work, the others are free to continue the unity with the heirs of the deceased or not.

In case they decide to continue, the surviving owners of the work may request the assignment of a representative from the heirs on the exercise of their rights against the unity.

In case they do not decide to continue, the provisions of the first paragraph apply.

III- More than one heirs

Article 65- In case the financial rights granted by this law are present in the legacy of the owner of the work and a representative has been assigned under article 581 of the Civil Law, the representative is obliged to receive the decision of the heirs for the procedures he will apply on these rights.

PART FIVE

Cases of Jurisprudence and Penalty

A) Cases of jurisprudence:

I- Case of elimination of violation:

1. General:

Article 66- The person who has been subject to violation may sue for the elimination of the violation against the violator.

If the violation has been performed by the representative or employees of an organization during the conduct of the services, the owner of the organization may also be sued.

The default of the violator or the persons stated in the second paragraph is not necessary.

The court considers the immaterial and financial rights of the owner of the work, the scope of the violation, the presence of a default, if any, its gravity and the damages that the violator will possibly be subjected to in case of elimination of the violation, and decides upon the implementation of the measures that it will deem necessary for the elimination of the violation.

(Supplemented: 7.6.1995-4110/19) The owner of the work may also sue a case of elimination of violation at the place he is domiciled.

2. In case of violation of the immaterial rights

Article 67- In case a work not publicized yet is presented to the public without the consent of its owner or in contradiction to his will, the case of elimination of violation may only be sued when the act of presentation to the public is performed through the promulgation of duplicated copies. The same provision also applies in cases where the work is named in contradiction to the will of its owner.

In case the name of the owner has not been placed at all on the work or placed wrongly or the placed name might lead to confusion and the owner of the work has requested the elimination of the violation besides the determination case mentioned in article 15, the violator is obliged to inscribe the name of the owner of the work on both the original and the circulating duplicated copies. The announcement of the decision in maximum 3 newspapers to the cost of the violator may be demanded.

In case wrong or insufficient sources are stated or no source is given at all in the cases listed in articles 32, 33, 34, 35, 36, 39 and 40, the provision of the second paragraph is applied.

In case the work is unjustly modified, the owner of the rights may demand the following:

1. The owner of the work may demand the prohibition of the duplication, promulgation, performance and radio broadcasting of the work as modified and the violator to correct the

modifications in the circulating duplicated copies or to restore them. If the modification has taken place during the promulgation of the work through newspapers, periodicals or radio, the owner of the work may demand from all the newspaper, periodical and radio administrations that have promulgated the work as modified to correct the modification by way of announcement to the cost of the violator;

2. (Amended: 7.6.1995-4110/20) In works of fine arts, the owner of the work may demand that the modification was not made by himself or the deletion or changing of his name on the work. In case return to the old state is possible and the removal of the modification does not substantially damage the interests of the public or the owner, the owner of the work may restore the work.

3. In case of violation of the financial rights:

Article 68- (Amended: 7.6.1995-4110/21)

In case the work has been translated without the permission of the owner of the rights, printed out of the contract or in a number more than that stated in the contract, otherwise adapted or broadcast or performed through radio and television, the owner of the work for which permission was not taken may demand maximum three times the damage he was subject to as of the current value.

In case a work is used by way of unauthorised duplication and the duplicated copies have not been marketed, the owner of the work may demand the destruction of the duplicated copies and the films, shapes and similar devices used for duplication or the delivery of the duplicated copies and the films, shapes and similar devices used for duplication against a suitable value not to exceed the cost price or three times as much the amount he would be entitled to demand in case of the presence of a contract. This does not prejudice the legal responsibility of the person performing unauthorised duplication.

In case the copies of a work obtained by unauthorised duplication are placed on the market or the sales constitute an unjust violation, the owner of the work may choose one of the options in the second paragraph with respect to the copies held by the violator.

The person claiming a value may exercise all the rights and authorities against the violator that he would be entitled to in case he had made a contract with him.

II- Case of prevention of violation

Article 69- The owner of the work subjected to the danger of violation of financial or immaterial rights may sue for the prevention of the possible violation. The same provision applies to the cases where the continuation or repetition of a realized violation is deemed possible.

The provisions of second, third and fourth paragraphs of article 66 apply here, as well.

II- Case of indemnification

Article 70- (Amended: 7.6.1995-4110/22) The person whose immaterial rights are damaged may sue a case for the payment of an immaterial indemnity against the immaterial damage he has been subject to. The court may decide for another type of immaterial indemnity in place of or in addition to such amounts.

The person whose immaterial rights are damaged may claim indemnity within the framework of the provisions concerning unjust acts, if the violator is defaulting.

In the cases stated in the first and second paragraphs, the person subjected to violation may demand the delivery of the gained profit to himself besides the indemnity.

In such a case, the value demanded under article 68 is discounted.

B) Cases of Penalty

1. Violation of immaterial rights:

Article 71- (Amended: 1.11.1983-2936/article 11)

Any person who intentionally:

1. Presents to the public or promulgates a work publicized or not, without the written permission of the owner of the work or his successor,
2. Places names in a work or its duplicated copies without the written permission of its owner or his successor,
3. Demonstrates a work belonging to someone else as his own or his work as someone else's or acts in contradiction to the provision of the second paragraph of article 15,
4. Does not show any source or shows wrong or insufficient or deceptive sources in cases stated in articles 32, 33, 34, 35, 36, 37, 39 and 40,

in contradiction to the provisions of this Law,

(Amended: 7.6.1995-4110/23) is sentenced to imprisonment from three months to one year and a major fine of 300 million to 600 million liras.

2. Violation of financial rights:

Article 72- (Amended: 1.11.1983-2936/article 12)

Any person who intentionally:

1. Adapts a work in any way,
2. Duplicates a work in any way,

3. Sells or supplies for sale or circulation the copies of a work or its adaptations duplicated by himself,
4. Performs or demonstrates or displays at public places or promulgates through radio or similar media a work or its adaptations,
5. (Supplemented: 7.6.1995-4110/24) Leases a work or its adaptations,
6. (Supplemented: 7.6.1995-4110/24) Imports the copies made without the permission of the owner of the work,

without the written permission of the owner of the rights in contradiction to this law, is sentenced to imprisonment from three months to one year and a major fine of 300 million to 600 million liras.

3. Other offences:

Article 73- (Amended: 1.11.1983-2936/article 13)

Any person who intentionally:

1. Places on the market the copies of a work that he is or should be aware of duplication thereof in contradiction to the provisions of this law or uses these for the purpose of promulgation at public places by performance or radio or in any way for gaining profit;
2. Sells to others the copies of a work that he is or should be aware of marketing thereof in contradiction to the provisions of this law or uses these for the purpose of promulgation at public places by performance or radio or in any way for gaining profit;
3. Transfers or grants or pledges or makes the subject of any deposit the financial right or the license that he is or should be aware of the unavailability of or that he is not authorized for disposal of;
4. Duplicates or causes to be duplicated copies in a number more than he is permitted contractually or legally;
5. (Supplemented: 7.6.1995-4110/25) Keeps in his hand for commercial purposes the copies of a work that he is or should be aware of duplication thereof in contradiction to the provisions of this Law;
6. (Supplemented: 7.6.1995-4110/25) Keeps or distributes for commercial purposes any technical means which is used merely for invalidating or removing without permission a technical device applied for the protection of a computer program;

is sentenced to imprisonment from three months to three year and a major fine of 300 million to 600 million liras.

II- Perpetrator

Article 74- In case the offences stated in articles 71, 72 and 73 are committed by the representative or employees of an organization during their conduct of services, the owner or director of the organization who has not prevented the realization of the offence or the person actually administrating the organization under any name or title is also punished as the penetrator. In case the act requiring a penalty is ordered by the owner or director of the organization or the person actually administrating the organization, these persons are punished as penetrators and the representative or employee is punished as an assistant.

Any person reserving a place with or without any return for the display of a work that he knows is contradictory to law to be performed or any person assuming duty or role in the performance of such a work is punished as an assistant.

If any of the offences stated in articles 71, 72 and 73 is committed during the conduct of the business of a corporal person, the corporal person is successively liable for the cost and the fine.

The provisions of articles 64, 65, 66 and 67 of the Penal Code are reserved.

III- Legal proceedings

Article 75- Legal proceedings for the offences stated in articles 71, 72 and 73 are dependent on complaints.

(Amended: 1.11.1983-2936/article 14) The ones authorized for complaints other than the person subjected to the violation are as follows:

1. When acts contradictory to the liability to show sources under article 35 in cases stated in the fourth indent of article 71 are concerned, Ministries of National Education and Culture and the professional union of which the person who was subject to or who committed the violation is a member.
2. When acts contradictory to the liability to show sources under article 36 in cases stated in the fourth indent of article 71 are concerned, the Ministry of Culture and the General Directorate of Press and Publication and the institutions representing the Turkish press.

The case of penalty should be sued within one year from the commitment of the act.

The affairs included in the scope of this law are of urgent affairs covered by article 423 of the Law of Criminal Procedure.

C) Miscellaneous provisions

I- Assignment

Article 76- In the cases arising from the legal relations arranged by this law, the assigned office is the court of first instance notwithstanding the amount of the sued thing and the degree of the penalty shown in law.

In case a personal case has been sued, article 358 of the Law of Criminal Procedure is applied. If personal rights are also demanded together with the penal case, the documents are directly transferred to the court of justice in case of acquittal.

II- Precautionary measures

Article 77- If considered necessary for the prevention of a substantial damage or a sudden danger or accomplished facts or for any other reason and the claims set forth on this matter are also considered strongly possible, the court, upon the request of the person whose rights granted by this law are subject to a threat or violation, may order the other party to do or not to do something prior to or after the bringing the suit at law or decide to seize the duplicated copies of a work or the shapes used for its manufacture and similar duplication means by way of precautionary measures. In the decision, it is stated that acting contradictory to the order will lead to the penal results in article 343 of Execution and Bankruptcy Law.

III- Announcement of the decision

Article 78- Except for the case stated in the second paragraph of article 67, the justified party is entitled to the right to demand the announcement of the final decision in whole or summary in newspapers or similar media to the cost of the other party, if he has a justified reason or interest.

The form and contents of the announcement are determined in the decision.

The right of announcement is annulled unless it is exercised within three months from the finalization of the decision.

IV- Seizure, confiscation and destruction

Article 79- The provisions of article 36 of Penal Code and articles 392, 393 and 394 of the Law of Criminal Procedure are applied in the seizure, confiscation and destruction of the duplicated copies, the production or promulgation of which require penalties under the provisions of this law and the shapes and similar means used for their duplication.

PART SIX

Miscellaneous Provisions

A) Neighbouring rights and prevention of violation

I- Rights neighbouring the rights of the owner of the work

Article 80- (Amended: 7.6.1995-4110/26)

Provided that they do not damage the material-immaterial rights of the owner of the work, the performing artists uniquely performing and commenting the intellectual and artistic works and the producers of sound carrying devices initially recording a performance or the voices and the radio-television organizations have neighbouring rights to the rights of the owner of the work.

The right to benefit from the performance of a performing artist by way of recording it, duplicating and leasing this recorded work, broadcast of the performance by all kinds of cable and cordless means or its performance belongs exclusively to the performing artist and the written permission of the performing artist is required for these. Performing artists may transfer such rights to the producer against a suitable value.

If the performance is conducted by an orchestra, chorus or a theatre group, the permission of only the conductor is sufficient.

If the artist or the group is hired by a venturer for reading, performance or presentation, the permission of the venturer should also be received.

The right to make use of a recording by way of its direct or indirect duplication, leasing, broadcasting by all kinds of cable or cordless means or its performance at places open to public belongs exclusively to the producer and the written permission of the producer is required for these.

No person or organization may duplicate all or part of the broadcasts, broadcast them again by all kinds of cable and cordless means and display them at places with charged entries without the written permission of the radio-television organizations.

The written permission of the owner of the neighbouring rights is not required in the following cases:

1. Performance and supply to the public of intellectual and artistic works for the purposes of public order, training-education, scientific research or interview and without the aim to gain profit,
2. Duplication of intellectual and artistic works and radio-television programs for personal usage without the aim to broadcast them or to gain profit,
3. The provisional recordings made by the radio-television organization on their own possibilities for their own broadcasts,

4. The cases stated in articles 30, 32, 34, 35, 43, 46 and 47 of this law.

However, this implementation can not damage the legal interests of the owner of the rights without any justified reason or can not be contradictory to the normal use of the work.

Artists, conductors and soloists in choruses and orchestrates and chiefs or lead actors in theatre groups may request the citation of their names in the means used for image and sound transmission.

The owners of neighbouring rights may also exercise the rights of suing cases of elimination of violation, prevention of violation and indemnification as well as the owners of the works.

The persons violating the rights of an owner of neighbouring rights without receiving the written permission stated in this article are sentenced to imprisonment from three months to one year and a major fine of 300 million liras to 600 million liras.

II- Prevention of violation of intellectual rights:

Article 81- (Amended: 7.6.1995-4110/27)

In order to duplicate a work, the printing office, production company or filling facility should be convinced that the person is the owner of the work or the rights through the contract approved by the notary public and in compliance with article 52 or through the authorization certificate. The persons duplicating the work should fill bills of order and lading approved by the Ministry of Finance and submit these together with the invoice.

The bandrole to be taken from the Ministry of Culture should be attached to the non-periodical publications. The submission of the documents stated in the first paragraph is required for receiving bandroles. Upon such submission, the bandrole is given within fifteen days without the need for any further procedure. The rules and principles related with the receipt of the documents are determined by the regulations to be prepared by the Ministry of Culture.

In case of unauthorised use of the financial or neighbouring rights of the owners of intellectual and artistic works or the owners of the rights by persons other than the owner of the rights, the Chief Public Prosecutor of the place where the event has taken place, upon the application of the owners of the work and the financial rights or the authorized Professional Union, may request from the authorized judge to have the unduly duplicated or performed copies of the work collected and the technical means used for this purpose sealed.

In cases where delay is disadvantageous, the Chief Public Prosecutor may directly take the decision of collection and sealing, to be submitted to the approval of the authorized judge within three days.

The owners of the rights may apply to the Chief Public Prosecutor within six months from the date that they are aware of the violation and the perpetrator together with the documents proving their rights, provided that the crime is within the period of prosecution forfeiture. The provisions of Law no. 3005 on Witnessed Offences are applied in relation with this offence.

The persons duplicating or disseminating the works by means of devices or methods used for sign, picture or sound replay without receiving the written permissions and the bandrole prescribed in this article, are sentenced to imprisonment from three months to one year and a major fine of 300 billion liras to 600 billion liras.

III- Scope and periods of neighbouring rights:

Article 82- (Amended: 7.6.1995-4110/28)

The provisions of this law related with the performing artists are applied to the performing artists;

1. Who are citizens of the Republic of Turkey,
2. Who are not citizens of the Republic of Turkey, but whose performances are realized within the borders of the Republic of Turkey, included in the sound carrying devices where the provisions of this law are applied and not recorded in a sound carrying device, but broadcast through radio-television broadcasts where the provisions of this law are applied.

The provisions of this law related with the sound carrying devices are applied to the radio-television programs;

1. Within the borders of the Republic of Turkey,
2. Broadcast through the reflector within the borders of the Republic of Turkey.

The provisions of this law related with the neighbouring rights are also applied to the performing artists, producers and radio-television organizations protected under the provisions of an international agreement to which the Republic of Turkey is a party.

The rights of the performing artists commence on the date of the initial recording of the performance and last for 70 years. If the performance is not broadcast, this period commences upon the initial becoming publicized of the performance.

The rights of the producers commence on the date of the initial broadcast of the sound carrying devices and lasts for 70 years.

The rights of the radio-television organizations commence on the date of the initial broadcast of the program and lasts for 70 years.

B) Unjust competition

I- Names and signs

Article 83- The names and signs and the forms of the duplicated copies of a work can not be used in another work or its duplicated copies in a manner as to cause confusion.

The provision of the first paragraph does not apply to names, signs and outer forms which are used by the public and which do not have any discriminating property.

The application of this article is not subject to the realization of the conditions in the 1st, 2nd and 3rd parts.

The provision of article 14 of the press law on the names of the periodicals is reserved.

Even if the violator is not a trader, the provisions concerning unjust competition are applied for the persons acting in contradiction to the provision of the 1st paragraph.

II- Sign, image and sound

Article 84- Any person recording a sign, image or sound on a device used for the transmission of the same or duplicating them reasonably for commercial purposes may prohibit the duplication or promulgation of the same sign, image or sound by a third person through the same means.

Even if the violator is not a trader, the provisions concerning unjust competition are applied for the persons acting in contradiction to the provision of the first paragraph.

The provision of this article also applies to all kinds of photographs, images recorded through similar methods and cinema products which do not bear the characteristics of a work.

C) Letters

Article 85- The letters, memories and similar writings can not be promulgated without the consent of their authors or the persons stated in the first paragraph of article 19, if the authors have died, even if they do not bear the characteristics of a work, unless ten years have passed from the death of the author.

Other than the above conditions, letters can not be promulgated without the consent of the correspondent or the persons stated in the first paragraph of article 19, if the correspondent has died, unless 10 years have passed from the death of the correspondent.

The provisions of article 49 of the law on debts and articles 197 and 199 of the penal code are applied for the ones acting in contradiction to the above provisions.

In cases where promulgation is allowed according to the provisions of the first and second paragraphs, the provision of article 24 of the Civil Law is reserved.

D) Pictures and portraits

I- General

Article 86- Pictures and portraits can not be presented to the public by demonstration or otherwise without the consent of the illustrated person or the persons stated in the 1st paragraph of article 19, if the illustrated person had died, even if they do not bear the characteristics of a work, unless 10 years have passed from the death of the illustrated person. The consent mentioned in the first paragraph is not necessary for:

1. The pictures of the persons who play roles in the political and social life of the country;

2. The pictures illustrating the military reviews or official ceremonies or general meetings where the illustrated persons have participated;
3. Radio and film news on the pictures concerning daily events.

The provisions of article 49 of the debts law and articles 197 and 199 of Turkish Penal Code are applied for the persons acting in contradiction to the provision of the first paragraph.

The provision of article 24 of the Civil Law is still reserved in cases where promulgation is allowed under the provisions of the first and second paragraph.

II- Exceptions

Article 87- Unless otherwise agreed, the person giving the order or the illustrated person or the heirs of the same can make photographs of a picture or portrait of a person created upon his order.

This provision does not apply to the portraits and pictures created by pressing method. However, in case the pictures and portraits so created are not available or difficult to supply for the ones stated in the first article, these may also be photographed.

E) Difference of laws

Article 88- The provisions of this law apply to:

1. All the works presented to the public in Turkey for the first time and present in Turkey but not presented to the public yet and all the letters and pictures in Turkey, notwithstanding the citizenship of the owner of the work;
2. All the works of the Turkish citizens not presented to the public yet or presented to the public abroad for the first time;
3. All the works of the foreigners not presented to the public yet or presented to the public in Turkey for the first time, provided that they are relevant provisions in an international agreement to which the Republic of Turkey is a party.

In case the state where the owner of the work belongs to protects the rights of the Turkish owners of the works sufficiently or an international agreement allows exceptions and restrictions on the matters concerning foreign owners of works, the Board of Ministers may decide to make exceptions from the provisions of the first and third indents of this article.

Supplementary Article 1- (this is the provision of article 18 of Law no. 1.11.1983-2936 and was converted into a supplementary article and numbered for succession)

The laws and regulations to be introduced under this law are prepared within six months and published in the Official Journal.

Supplementary Article 2- (7.6.1995-4110/29)

The protection periods in this law apply to the works, adaptations and products that become publicized after the enforcement of the Law, with respect to neighbouring rights, cinema works, computer programs and data bases. The provisions of this law related with the ownership of cinema works apply to the cinema works started to be produced after the enforcement of this Law.

Supplementary Article 3- (7.6.1995-4110/30)

The principles related with the applications regarding the neighbouring rights are determined by the regulations to be introduced within 6 months from the effective date of this law.

F- Provisional Articles

I- Provisions for transfer

1. General

Provisional Article 1- Unless otherwise determined in the articles below, the provisions of this article are also applied to the works presented to the public or registered within the country prior to enforcement. The inclusion or non-inclusion of the work or product within the provisions of the Copyright Law dated 8 May 1326 does not change the situation.

The protection periods concerning the works publicized prior to the enforcement of this law are calculated according to this law. The terms copyright, rights of possession, literal possession, possession of fine arts and similar mean the rights and authorities granted by this law in similar cases.

In case the rights pertaining to a work or the use of such rights have been handed over to someone else in whole or in part prior to the enforcement of this law, the new and wider rights granted to the owner of the work by this law are not considered to be transferred, as well. The same provision applies to a longer protection period when compared to the older one or the works and products not protected under the former law.

2. Protection of acquired rights

Provisional Article 2- If the periods in the former law are longer, such periods are valid for the works promulgated prior to the enforcement of this law.

In case a lawful translation or adaptation of a work is promulgated prior to the promulgation of this law, the rights and authorities that the translator or adapter has acquired under the provisions of the former law are not prejudiced.

In case the promulgation of a translation allowed under the provisions of the former law but prohibited by this law has commenced prior to the effective date of this law, such promulgation may be completed. However, the period of such promulgation can not exceed one year. The same provision applies to the translated works delivered to the performance organizations for performance at public places.

In case a duplication allowed under the provisions of the former law but prohibited by this law has been commenced on the promulgation date of this law, such duplication may be completed and the duplicated copies may be promulgated.

The promulgation of copies present at the time of enforcement of this law and allowed to be duplicated under the provisions of the former law may continue. The same provision applies to the devices used for sign, image and sound transmission and shapes and similar means used for the duplication of the works of fine arts.

Any person who wants to exercise the authority granted by the above paragraph is obliged to notify such copies and devices to the competent authority and have them sealed within 6 months from the enforcement of the law. If required, the details may be determined by a regulation.

Provisional Article 3- (Supplemented: 1.11.1983-2936/article 17)

The chairman and members of the compulsory organs of professional unions and the federation are determined by the decision of the Board of Ministers upon the recommendation of the Ministry of Culture, until they complete the required number of members set forth in the regulations and hold elections.

Provisional Article 4- (Supplemented: 1.11.1983-2936/article 17)

The Decree of the Board of Ministers no. 8/423 dated 15.3.1980 introduced under article 43 of the Law no. 5846 on Intellectual and Artistic Works and the price tariff to be introduced under this decree are applied as of 15.3.1980 until 31.12.1985.

Payments for the works transferred to the professional union through authorization certificate under the price tariff to be introduced by the Board of Ministers are effected to the relevant professional union to be distributed to the owners of the rights and in other cases, directly to the owners of the financial rights. Such payments are established by the Turkish Radio and Television Organization until 31.12.1985 at the latest.

The professional union deducts its share from the payroll given by Turkish Radio and Television Organization and pays the balance to the owners of the rights who are members of such professional union within two years following the payment made to itself.

The amounts not demanded by the members within two years are deposited in a special account to be established in a national bank in the name of the Ministry of Culture under article 44.

Provisional Article 5- (Supplemented: 6.7.1995-4110/article 31)

The professional unions established prior to the enforcement of this law are converted into new professional unions in line with the relevant provisions of the Law and the type status principles under the supervision of the Ministry of Culture within one year from the promulgation of their type statutes and form their new organs through the general assembly meeting that they will hold within this period.

The professional unions which do not comply with the provisions of the first paragraph are considered to have been abolished at the end of the first year.

II- Annulled Provisions

Article 89- The provisions of the Copyright Law dated 8 May 1326 and the other laws contradictory to this law have been annulled.

G) Final provisions

I- Enforcement of the law

Article 90- Articles 42 and 43 of this law enter into force as of the promulgation date of the law and the other provisions enter into force on 1 January 1952.

II- Competent authority in the enforcement of the law

Article 91- The provisions of this law are enforced by the Board of Ministers.

**THE BILL OF LAW RELATED WITH THE CHANGING OF SOME ARTICLES OF
THE LAW OF ARTISTIC AND INTELLECTUAL WORKS
NUMBERED 5846**

Article 1. The first article of the Law of Artistic and Intellectual Works numbered 5846 and dated 5.12.1951, was changed as follows together with its title.

Purpose

Article 1. The purpose of this law is to determine and protect the moral and financial rights of the owners of works who created the artistic and intellectual works, the soloists who performing or reading these works, the phonogram makers and the radio-television foundations, to arrange the using conditions from these works and to determine the sections in case of using against the accepted principles and rules.

Article 2. The following articles were added after the first article of the law numbered 5846.

“Content

Article 1a. This law includes the moral and financial rights of the owners of works who created the artistic and intellectual works, the soloists who performing or reading these works, the phonogram makers and the radio television institutions, using principles and rules on these rights, judgment ways and sanctions and duty, authority and responsibility of Ministry of Culture”.

“Definition

Article 1b. The definitions in this law:

- a) Work: Every kind of artistic and intellectual product which are seen as the works of cinema, fine arts, music, science and literature and bearing its owner’s speciality in itself.
- b) Owner of works: The natural person who created the work.
- c) Derived work: Intellectual or artistic products which are formed by using another work and so aren’t independent comparing with the other and bear the speciality of its owner.
- d) Collecting work: The work like anthology and encyclopaedia whose content is formed by selections and arrangements. It is the result of a creative idea with the condition that all rights of original works are reserved.
- e) Record: Recording of sounds or sound effects on an instrument in a manner that they can be understood, multiplied and carried.

- f) Phonogram: Sound transmitting physical medium in which sounds of performance or other sounds or sound effects are recorded, excluding the sound records in audio-visual works like cinema.
- g) Computer Program: It defines the computer command system which is put into order in a way that ensure a computer system to perform a special processor duty and preparation studies which will provide the formation and development of this command system.
- h) Interface: It defines the program segments which form the interaction and interconnection between the hard and software of computer.
- i) Interaction: It defines the cooperation of computer program segments functionally and capacity of inter use of interchanged data.

Article 3. 5-Article of the Law no. 5846 was changed as follows.

IV. Cinema Works

Article 5. Cinema works are films or cinema films which include every kind of esthetical, scientific, instructive or technical films or cinema films which record daily events, as well as they are a series of moving images related with each other, talking or silent and can be showing by electronic or mechanical or similar instruments without regarding how it is recorded.

Article 4. The title of the 6- article of the law no. 5846 was changed as “Derivations and Collections” the statement “and can be read with an instrument or in other form” was added to 11. sentence of its first paragraph after the statement ”which appeared“ and the statement “formed with the condition that no harm would be brought to the rights of the owner of benefited work and” was added to the beginning of its second paragraph.

Article 5. The variable 8- article of the law no. 5846 was changed as follows.

“A) Description

1. In General

Article 8. The owner of a work is the one who created it.

The owner of a derived work is the one who derived it with the condition that the rights of the owner of work reserved.

As for the cinema works; director, original music composes, scenario writer and dialogue writer are all together the owner of the work. For the cinema works done by the animation technique the animator is also among the common owners of the work.

Article 6. The following paragraph was added to the 10- article of the law no. 5846.

“If the work formed by the contribution of more than one person, is an inseparable unity, the rights on the common work are used by the natural person or corporate body who brings the owner of the work together if there is nothing against to this in an agreement on working conditions or in any law which is in power when the work is created.”

Article 7. The following paragraph was added to the end of the 13-article of the law no. 5846.

“The owners of cinema and music works and producers make the register and approval of the works, for the purposes that their moral and financial rights aren’t violated, that proof-facility is provided for the determination of ownership and that using authorities related to financial rights are followed without intention of creating rights. For the same purpose, works and using authorities related with financial rights can be registered for other work groups upon the request of the owner of work. The principles and rules of register and approval are determined by the regulations issued by the Ministry of Culture.”

Article 8. The last paragraph of the 14- article of the law no. 5846 was changed as follows.

“If presentation to public or publication manner of the work is a kind that an damage the honour and credit of the owner, then the owner can prevent the work or its derivation to be presented to public even though he/she has given written permission to others. Giving up the authority to prohibit with an agreement is invalid. The compensation right of the other side is reserved.”

Article 9. The last paragraph of the 16- article of the Law no. 5846 was changed as follows.

“The owner of work can prohibit every kind of changing which spoils the content and characteristics of the work and damages his/her honour and credit even though he/she has given a written permission unconditionally.

Giving up the authority to prohibit is invalid even though an agreement was made on this matter.

Article 10. The first paragraph of the variable 17- article of the law no. 5846 was changed as follows.

“When necessary the owner of work has right of demanding to use the originals of hand-written works of writers and composers as stated in the first sentence of article 2 and in article 3, and the originals of fine art works as stated in first and second sentences of article 4, from the possession of original and with the condition of fulfilling the preserving requirements. This right of the owner of work is declared to those who bought or got the work by the sellers of these works with a selling catalogue in bidding or related documents.

Article 11. 18- article of the law no. 5846 was changed as follows together with its title and following tittle are arranged according to this.

III. Using of Rights

a) In General

Article 18. The power to use financial rights only belongs to the owner of work.

If otherwise isn't stated in the special agreement in-between; the rights upon the works that officers and workers created while they were performing their jobs, are used by their employers or nominators.

The producer or publisher of a work can only use the financial rights according to agreement that he/she made with the owner of work.

After the common owners of cinema works delivered up their authority to use financial rights they can't object to; presentation, multiplication, publication, sound recording, subtitles, transmitting with cables or satellites, broadcasting by the instruments which transmit and replay signs, sounds and/or images and re-broadcasting and presentation to public at the time and place which natural persons decided. The owner of a musical product has preserves the rights of publishing and performing with the condition that the sentences of this paragraph are reserved.

"A natural person or corporate body whose name is normally found in a cinema work, is accepted as the producer of that work unless otherwise stated."

Article 12. The second paragraph of the variable 19- article of the law no. 5846 was changed as follow.

"After the death of the owner of work, the rights which are given to the owner in the third paragraphs of Articles 14, 15, 16 can be used by the persons who are Stated in the previous paragraph for 70 years in behalf of themselves.

Article 13. The first paragraph of the variable 22- article of the law no. 5846 was changed as follows.

"The right to multiply the original or copies of a work by any method or form, totally or partly, direct or indirect, temporarily or continuously only belongs to the owner of work."

Article 14. The variable 23- article of the law no. 5846 was changed as follows.

"c) The Right to Publish

Article 23. The right to book, lend, sell an original or multiplied copies of a work, or to publish, it in other ways only belongs to its owner.

With the condition that the right to book or lend to public belongs to the owner of work, after the first selling and delivering of certain copies in the borders of country as the result of that the right owner's using his/her publishing right, selling again these, doesn't violate the publishing right given to the owner of work.

The publication of a work or its multiplied copies in the form of booking or lending cant lead the way of copying the work commonly 50 as to damage the right of the owner to multiply it. The principles and rules which are to be applied in the matters of lending and booking will be arranged by a regulation that prepared by the Ministry of Culture.”

Article 15. 25- article of the law no. 5846 was changed as follows together with its title.

“d) The right to broadcast to public with the instruments transmitting sound, sign and/or image.

Article 25. The right to broadcast the original or multiplied copies of a work by the broadcasting companies doing Broadcasting wireless or with wire like radio-television, satellite and cables or by instruments which are for transmitting signs, sands and/or images including digital transmitting, and the right to take back these works from the broadcasting companies and give other companies so that they can be broadcasted again, only belongs to the owner of work.

The owner of work has also the right to permit or inhibit the selling of his/her work’s original or multiplied copies by the instruments wireless or with wire or delivery of them to the public in any form, and presentation of them to the public at the time and place that natural persons have chosen.

The delivery and presentation of works by the transmission type to the public which is arranged with this article doesn’t violate the right to broadcast of the owner of work.”

Article 16. To the end of the first paragraph of the variable 27- article of the law no. 5846 the following statement has added.

“If the owner of work is more than one, than this period ends at the end of 70 years after the death of the last alive owner”.

Article 17. 33- article of the law numbered 5846 was changed as follows.

“3. Freedom of Playing

Article 33. The playing of a published work in face to face educational activities, for the purposes of education and instruction and in the places for these purposes, in the educational and instructive institutes which are working without payment or aiming to profit directly or indirectly, is free to play with the condition that the names of the owner and the work are stated as usual.”

Article 18. The first sentence of the first paragraph of the 34- article of the law numbered 5846 was changed as follows.

“Forming selected or collected works from the published musical, scientific and literature works and anonymous fine art works, and quoting from them for the purposes of education and instruction are possible only with the permission of the owner of work.”

Article 19. 37- article of the law no. 5846 was changed as follows.

“7. News

Article 37. It is possible to take some parts of the intellectual and artistic works in instruments which carry signs, sound and or images, depending on the daily events and with the condition that it is for the purposes of information and news. It is free to broadcast these parts by radio television or to multiply, publish and play. This freedom can't be used in a way that damages the legal interest and is against the normal using of the work.”

Article 20. The variable 41- article of the law no. 5846 was changed as follows together with its title.

“4. Using of sign, sound and/or image transmitting, instruments in common places.

Article 41. The carriers of sign, sound and/or images on which intellectual and artistic works are recorded, must be put bandroles for using in common places where commercial intention is sought, its entrance free or with payment.

The bandroles are given by the Ministry of Culture or Related Professional Unions after the agreement which permits the presentation made between the owners of work or related union of owners of work and user, and after the cost of bandroles paid.

If the transmitters of sign, sound and/or image don't have bandroles related with the using in common places, this means a violation of financial rights.”

Article 21. The second and last paragraphs of the 42- article of the law no. 5846 was changed as follows and the statement “The persons who bears the membership requirements and whose number is at least four times the number of real members of the compulsory organs apply to the Ministry in order to establish a union” was added after the first sentence of the forth paragraph.

“It is compulsory to establish a federation by at least three professional union that are founded for the same scope, in conformity with the type of status which is prepared by Ministry of Culture and approved by the Cabinet. More than one federation can't be established.”

“The rights of the owners of work and the neighbouring right owners can't be followed by other union, association and similar foundations in the country except the profession unions established according to this article.”

Article 22. The variable 43. article of the law no. 5846 was changed as follows.

“2. The payments related with the intellectual and artistic works which are transmitted by the instruments like radio - television:

Article 43. Radio and television institutions have to get permission from the owners of work related with the staged works that they will use in their broadcasting.

Radio-television institutions and satellite and cable broadcasting companies and broadcasting companies which use the present or future technical possibilities, have to get permission by making a collective agreement (with the owners of work or neighbouring rights or their professional unions of which they are members) appropriate to the 52. article for the intellectual and artistic works except the stage works that they used in their broadcasting, and have to make payments relative with these usage to the owners of work or neighbouring rights or professional unions of which they are members.

The principles and rules related with the using of works are arranged by a regulation prepared by the Ministry of Culture with the contribution of Radio and Television High Council and related professional unions.”

Article 23. The second and third paragraphs of the 44- article of the law no. 5846.

“Natural persons or corporate bodies which produce or import every kind of technical apparatus that are used in the multiplication of intellectual and artistic works and every kind of transmitting material such as empty video cassettes, sound cassettes, computer diskettes, CD, DVD, are responsible to put the amount that they collected in a month into a special account in a national Bank on behalf of Ministry of Culture, cutting the rate determined by the Cabinet without exceeding three percent above the price of import or export, until the half of the next month.”

“3/4 of the amount collected in this account, is shared between the professional unions in order to be given to the right owners after the union share is discounted according to delivery plans that the Ministry will approve. The ministry uses the rest 1/4 of this amount for preventing the violation of intellectual rights and for cultural and social purposes. The principles and rules related with the use and delivery of these amounts are determined by a regulation that will be issued by the Ministry of Culture.”

Article 24. The second paragraph of the 47. article of the law no. 5846 was changed as follows.

“In order to decide on this matter it is necessary that the work must be created by the Turkish citizens in Turkey or out of Turkey and at the same time the published work copies must be out of market for last two years and the right owner will not make any new edition of the work in an appropriate period.”

Article 25. First paragraph of variable 68. article of Law no. 5846 was changed as follows.

“If the work was translated without permission of work’s owner, published more than number stated in agreement or outside of agreement, processed in other form or transmitted and presented by radio-television and similar means, owner of work could request maximum threefold of the value that can be demanded and the value paid for similar work in case of

having an agreement. For fixation of similar value the price list of profession unions concerned should be applied.”

Article 26. The paragraph no. (5) was added to the first paragraph of variable 71. article of the law no. 5846 and the last paragraph was changed as follows.

“5. On persons who change a work without a written permission of work’s owner”

“A punishment of imprison from one year to tree years and fine from 5 billions to 10 billions should be sentenced”.

Article 27. Paragraphs (4) and (5) of the first paragraph of variable 72. article of law no. 5846 and last paragraph were changed as follows.

“4. On persons who represent or exhibit or demonstrate the work in public, organize this exhibition or publish by all the audio - visual means or intervene this publication”,

“5. On persons who lease a work or lend it to public”,

“A punishment of imprison from one year to tree years or a fine from 5 billions to 10 billions or the both should be sentenced.”

Article 28. Last paragraph of variable 73. article of law no. 5846 was changed as follows.

“On persons, a punishment of imprison from two years to four years or a fine from 10 billions to 15 billions or the both should be sentenced.”

Article 29. The title of variable 75. article of law no. 5846 and its fourth paragraph was changed as follows and the paragraphs no. (3), (4) and (5) were joined at the end of second paragraph.

“III. Legal proceedings and Relapse”

“3. In cases stated in third paragraphs of 14th and 16th articles on frame of last paragraph of the 10th, article, Ministry of Culture.”

“4. In cases stated in paragraph (1) of 1st article, in paragraphs no. (3) and (4) and in paragraphs no. (2) and (3) of 73. article, Ministry of Interior Affairs, Ministry of Finance and Ministry of Culture.”

“5. Profession unions that are authorized by owner of work.”

“Holder of right could apply to the Public Chief Prosecutor of the Republic in 6 months from date at which they are informed about violation and acting on condition of remaining in prescription period together with the documents evidenced their rights. Regarding this crime judicial procedure in same Law Should be applied without considering the place described in (A) paragraph of first article and the time described in 4. article of law no. 3005 concerning judicial procedure law of the witnessed crimes.”

“If person who has a definitive condemnation concerning the crimes described in this law commits once more similar crime, punishment to be sentenced about crime should be doubled.”

Article 30. Title of 76. article of law no. 5846 and its first paragraph was changed as follows and at its end the following paragraph was added.

“I. Duty and Evidence”

“In the lawsuit created from juridical relations that are arranged by this law, without regarding to the quantity of lawsuit matter and the degree of punishment indicated in Law, the charged court is a specialty court that will be found by Ministry of Justice. Till the specialty, courts will be found and activated by the Higher Board of Judges and Public Prosecutors upon a proposal of the Ministry of Justice determines whether court of first instances or criminal courts will be charged as speciality courts and their judicial environments.”

“In the lawsuit to be brought in accordance with this law, in case that plaintiff presents enough evidences that were strongly satisfied about the truth of plaintiff’s claim, the court could request persons who use the preserving works, phonograms, executions and publications to present all the documents of permission and authorization defined in this Law and/or the lists of works, phonograms, execution and publications used.”

Article 31. The variable 77. article of the law no. 5846 and its title were changed as follows.

“The optional measures and temporary seizure in the customs

Article 77. To prevent an important loss and any sudden risk or to prevent the definitive orders or if the claims presented in this matter are strongly probable and are necessary because of other reasons. On the demand of persons whose legal rights submit a breaking and menace in accordance with this law and are authorized to file a complaint, the court could give a verdict to seize provisory the copies multiplied of works and the means used for their multiplication by way of optional measures and also order to close and to open the working place and could order other part to perform or not a work before and after lawsuit. In the verdict, it is specified that opposition to order will create the penal results described in article 343 of execution and bankruptcy law.

In case of transpiration probability against rights on the work, the rules of 57. article of the custom law no. 4458 should be applied while importing and exporting of the copies for which sanction is required.

Because of transgression probability against the rights on the work, the procedures regarding seizure the copies should be executed by custom authorities according to the rules concerned of the custom rule while importing and exporting them.”

Article 32. The variable 80. article of the law no. 5846 was changed as follows.

“I. The neighbouring rights of work’s owner

The neighbouring rights to the rights of work's owner with the condition that it doesn't damage to a moral and financial right of work's owner and with his permission artisans who, in specific form, introduce, explain, play and perform a work in different forms, phonogram producers and radio-television institutions that firstly demonstrate the sounds that are execution products and the others have the neighbouring rights described as follows.

I. Performance have the following rights.

1. Performers, as independent from financial rights and even if they transferred them, have a right to request to be introduced as holder of their executions and to prevent the corrupting of the executions against their personal dignities, excluded the situations required application conditions regarding their directly Voice executions and their executions fixed on the phonogram.
2. A performer who comments a work in a specific form with permission of work's owner is exclusively holder of a right on permitting or prohibiting to fix this execution and to multiply, sell, distribute, rent, lend, transmit to the public by audio-visual means and re-transmit, present this fixation.
3. Performer has a right on permitting or prohibiting included to distribute the original execution records and their copies multiplied that were not sold or distributed by selling or by other means at home.
4. Performer has a right on permitting or prohibiting included to sell his execution fixed or its copy multiplied by wired or unwired means or to distribute or present them to the public by other means and to transmit them for execution in time and place fixed by natural persons. The distribution and presentation of executions made by transmission to public could not break the transmission right of performer.
5. Performers can transfer their rights to producers by an agreement in exchange for an appropriate value.
6. In case that execution was realized by an orchestra, a chorus or theatre group, only permission of chief in orchestra or chorus, only permission of director in theatre group is enough.
7. For executions that are realized depending on a agreement and with a enterprise of enterprising person the permission of enterprising also must be taken.

II. Producers of phonogram have the following rights.

1. On the matters of multiplying directly or indirectly, distributing, sending and leasing and lending to public of the fixation of work made with a permission of performer and owner of work, the rights to permit or inhibit belong exclusively to phonogram producer. The phonogram producers have exclusively a right to permit transmitting and re-transmitting of their phonograms to the public by audio-visual, sign means.

2. Producer has a right of permitting and inhibiting to distribute the originals of fixations or their copies multiplied that are not process of selling or distributed by other means at home, by selling or other ways.

3. In condition that the fixations of executions should be sold by wired or unwired means or presented or distributed to public by other means and that it provide to reach their fixations in place and time determined by natural persons, producer has a right of permitting or inhibiting to transmit them to public.

III. Radio-Television Institutions have the rights of permitting or inhibiting to fix the broadcasting, to multiply these fixations, to rebroadcast and to show them in places with payment.

In case that performances recorded in phonograms are transmitted to public by any way, users of these phonograms are responsible to pay an appropriate value concerning to using to performers, phonogram producers or profession unions concerned besides owners of work. In case that there is no an agreement relating to sharing the value between performers and phonogram producers the value mentioned is shared equally.

The permissions given by neighbouring right owners should be written.

In the following cases the written permission of neighbouring right owner should not be necessary.

1. Presenting the intellectual and artistic works to public with the purpose of education scientific research or information or without earning any profit.

2. Broadcasting the radio-television programs with Intellectual and artistic works and multiplying them to use individually without earning any profit.

3. Temporary records in short made by possibilities of radio-television institutions an for their broadcast.

4. In cases stated in 30., 32., 34., 35., 43., 46. and 47. articles of this law.

This application should not damage to legal interests of owner's right except right reasons and should not be contrary to normal using.

Neighbouring right owner's as owners of work use the right of the lawsuits of the violation's removing and prohibiting and the compensation.

On persons who violated the rights of neighbouring right owners sentenced to a punishment of imprisonment from one year to three years and a fine from 5 billions to 10 billions or to both of them."

Article 33. The variable 81. article of law no. 5846 was changed as follows.

"II. Preventing the violation of rights

Article 81. In order to multiply a work there must be an agreement or a written permission between the owner of work and the persons or corporate bodies wanting to multiply the work, showing the right of multiplication or the authority to use this right is given in conformity with the articles 48 and 52.

It is compulsory to stick bandroles to the multiplied copies of musical and cinema works and to the publications which aren't periodical. In addition, it is compulsory to stick bandroles to the multiplied copies of other works which are suitable to be copied upon the request of the owner of work or right. In order to take bandroles, it is compulsory to show the agreement or written permission mentioned in the first paragraph, the order ticket showing the multiplication quantity and shipping list or invoice.

Upon this showing, bandroles are given within fifteen days without any extra procedure.

The bandroles are printed and sold by the Ministry of Culture. Ministry can make the bandrole selling by means of professional unions. Incomes from bandrole deposited into an account opened in a national bank on behalf of Ministry. Incomes are used in the activities aiming to develop and enforce the intellectual ownership system.

A Commission which is formed by civil administration managers in provinces from Ministries of Interior Affairs, Finance and Culture, and representatives of professional unions of owners of work and/or neighbouring rights, can Control the works mentioned in second paragraph and required to be put bandrole whether they are put bandrole or not. The copies and publications that are without bandrole or carrying false bandrole are collected any sent to Public Attorney together with offence notice.

In case of the violation of the rights of owners of work, neighbouring right owners or other right owners, upon the application of persons authorized to complain or request of the Commission the Public Attorney of the place where violation occurred or its results appeared, can request from the court that this place where unlawful multiplication done to be shut, copies and publications there to be kept and the technical equipment that used to be sealed.

If delaying cause any drawback then Public Attorney can decide to take in hand and to seal directly.

The right owners that are mentioned in the fifth paragraph, can apply to Public Attorney within six month after they learnt the violation with the documents that proving their rights.

The principles and rules related with the application of the matters stated in this article are arranged by a regulation which is issued by the Ministry of Culture.

Those who multiply or publish the works by using instruments which copy signs, images and sounds with the usage of bandroles beyond its purpose or who doesn't get the written permissions stated in this article, and who make the false bandroles or make wrong announcement about the multiplication right even though they don't have; are sentenced to 10 to 15 billion liras or 2 years prison, or both of them.

Article 34. "Sound carrier" and "Sound carriers" statements in the variable 82. article of the law no. 5846 was changed as "phonograms, "punctuation mark" the end of (1) sentence of

second and third paragraphs of the same article was changed as” or “. “found” statement in the second sentence of the second paragraph was changed as “recorded”. The fifth and sixth paragraphs of this article were changed as follows.

“The rights of performing artists, continues seventy years starting from the date of the first recording of performance. If the performance isn’t recorded, this period starts with the first publicity of the performance.

The rights of producers continues seventy years starting with the date on which their sounds recorded first time”.

Article 35. The added 2. article of the law no. 5846 was changed as follows.

“Added article 2- The preservation which provided by this Law, is applied to followings when the change arising from this article gains power;

1. All the works found in Turkey produced by the owners of work and neighbouring rights who are. Turkish citizens; performance recorded in phonograms and phonograms;
2. Foreign works which are produced in other countries which are for the same international acts and agreements as Turkey, and not anonymous since their preservation period not ended; performances recorded in phonogram and phonograms.

Those who possess the works taken into preservation as a result of application of first paragraph, performances recorded in phonogram and copies of phonogram, can sell or give away these copies until the end of six months period following the date on which this law becomes effective.

Nevertheless, using of rights given to owners of work and other right owners related with works, performances recorded in phonogram and phonograms, depends on the permission of owners of work or right owners within the frame of this law.

The statements of this law related with the possession of cinema works, are applied to the cinema works which are started after the date 12.06.1995 on which the Law no. 4110 became effective.

Article 36. From the law of Intellectual and Artistic works no. 5846 dated 05.12.1951.

- a) “its original or derivatives “statement which comes after the statement” from a mark” in the first paragraph of the 24. article
- b) variable 28. article
- c) variable 29. article
- d) “being published or” in the first paragraph of the variable 38. article and its second paragraph
- e) variable 39. article

- f) last paragraph of 37. article
- g) (4) numbered sentence of the variable 73. article
were abrogated.

Article 37. The following additional 4. article was added to the law no. 5846.

Additional Article 4. “Culture and Tourism” statements in this law changed as “Culture”.

Article 38. This law becomes effective when it is published.

Article 39. Cabinet executes the rules of this Law.
